CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
TUESDAY, FEBRUARY 16, 2016, 5:00 PM

1. Call to order

2. Water and Wastewater Rate Structure Study –Advanced Engineering and Environmental Services (AE2S) consulting engineers

    - Review of Study Process and Progress Update
    - Water Study
        - Summary of Cost of Service Results for Water
        - Water Rate Considerations
            - Description of System and Current Rate Structure
            - Low Income Rate Qualification (Water and Wastewater)
            - Irrigation Rate Philosophy
            - Water Rate Considerations
    - Wastewater Study
        - Summary of Cost of Service Results for Wastewater
        - Review of Wastewater Rate Considerations
            - Description of System and Current Rate Structure
            - Inflow/Infiltration Cost Allocation
            - Pumping Service Zone Rate Philosophy
            - Wastewater Rate Considerations
    - Next Steps – Rate Design, Revenue Adequacy, Final Rate Projections and Recommendations
    - Regional Comparison of Aspects of Late Fee Policy
    - Questions/Comments

3. Public Comment

4. Direction to City Manager on above topics

5. Adjourn

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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the
City Council at its regular session to be held on Tuesday,
February 16, 2016, at **7:10 p.m.** at Interim City Hall, 1005 Baker Avenue.

Ordinance numbers start with 16-05. Resolution numbers start with 16-11.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATION – Whitefish Convention and Visitors' Bureau – Presentation of new tourism dashboard – Dylan Boyle (p.17)

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 February 1, 2016 Council regular meeting (p.21)
   b) Ordinance No. 16-04; 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 (Second Reading) (p.36)
   c) Resolution No. 16-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 6260 US Highway 93 South, for which the owner has petitioned for and consented to annexation (p.48)

7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
   a) Ordinance No. 16-___; An Interim Ordinance imposing a moratorium on allowing the averaging of residential density across underlying zoning districts when a Planned Unit Development overlays more than one district (First and only Reading) (p.61)
   b) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to amend Section 11-2, Zoning Districts, to add 11-2W, WT-3 Neighborhood Mixed-Use Transitional District, and 11-2X WI-T Industrial Transitional District, as well as development requirements for Artisan Manufacturing, Micro-Breweries and Micro-Distilleries, and Live/Work Units in Special Provisions 11-3, and new definitions for Artisan

Manufacturing, Business Incubators, Coffee Shops/ Sandwich Shops, Live/Work Unit, Micro-Brewery, Micro-Distillery, Mixed-Use Environment, Mixed-Use Building, and Research Facilities in 11-9, as an implementation of the Highway 93 West Corridor Plan. (First Reading) (p.66)

8) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p.185)
   b) Other items arising between February 10th and February 16th
   c) Resolution No. 16-11; A Resolution relating to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond And $4,900,000 Series 2016B Bond; authorizing and directing the issuance, confirming the sale and prescribing the form and terms thereof and the security therefor (p.202)

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Letter from Lauren Oscilowski Owner/Spotted Bear Spirits LLC regarding parking problems in downtown during the summer of 2016 (p.256)
   b) Email from Heather Mull regarding ice on pedestrian – bicycle trails (p.257)
   c) Select an elected official to serve on the selection committee for an engineering consulting firm for the design of the 55 Woodland Avenue parking lot for City Beach and the tennis court resurfacing project (p.258)
   d) Select one or two city officials to participate on the local Climate Change task force (p.263)
   e) Discuss and provide direction on the process and time frame to rewrite the Planned Unit Development (PUD) zoning section of the City Code (p.265)
   f) Discuss and provide direction on whether to change 1996 Consultant Selection Policy and Procedures (p.266)

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

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

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

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

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

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

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

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

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

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

Adopted by Resolution 07-09
February 20, 2007

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February 10, 2016

The Honorable Deputy Mayor Hildner and City Councilors
City of Whitefish
Whitefish, Montana

Deputy Mayor Hildner and City Councilors:

Tuesday, February 16, 2016 City Council Agenda Report

There will be a work session at 5:00 p.m. on the Water and Wastewater Rate Study. Food will be provided.

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

CONSENT AGENDA

a) Minutes from the February 1, 2016 Council regular meeting (p.21)
b) Ordinance No. 16-04; 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 (Second Reading) (p.36)
c) Resolution No. 16-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 6260 US Highway 93 South, for which the owner has petitioned for and consented to annexation (p.48)

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

Item a is an administrative matter, items b and c 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) Ordinance No. 16-___; An Interim Ordinance imposing a moratorium on allowing the averaging of residential density across underlying zoning districts when a Planned Unit Development overlays more than one district (First and only Reading) (p.61)

There is no staff report and recommendation for this item as the City Council requested this proposed ordinance after the public hearing and denial of the ordinance on blended zoning at the February 1, 2016 public hearing. The findings are contained in the Ordinance.

This item is a legislative matter.

b) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to amend Section 11-2, Zoning Districts, to add 11-2W, WT-3 Neighborhood Mixed-Use Transitional District, and 11-2X WI-T Industrial Transitional District, as well as development requirements for Artisan Manufacturing, Micro-Breweries and Micro-Distilleries, and Live/Work Units in Special Provisions 11-3, and new definitions for Artisan Manufacturing, Business Incubators, Coffee Shops/ Sandwich Shops, Live/Work Unit, Micro-Brewery, Micro-Distillery, Mixed-Use Environment, Mixed-Use Building, and Research Facilities in 11-9, as an implementation of the Highway 93 West Corridor Plan. (First Reading) (p.66)

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 11-2, Zoning Districts, to add 11-2W, WT-3, Neighborhood Mixed-Use Transitional, and 11-2X, the WI-T, Industrial Transitional zoning districts, as well as development requirements for Artisan Manufacturing, Micro-breweries, Micro-distilleries, and Live-work units in Special Provisions 11-3, and new definitions for Business Incubators, Coffee Shops/Sandwich Shops, Live/work units, Artisan Manufacturing, Micro-brewery, Micro-Distillery, Mixed-Use Environment, Mixed-use Building, and Research Facilities in 11-9 as an implementation of the Highway 93 West Corridor Plan.

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

Public Hearings: Planning Board workshops was held on these items on September 17, 2015 and November 5, 2015, and a Public Hearing was held on January 21, 2016.

Public Comment from January 21, 2016 Public Hearing:
At the January 21, 2016 public hearing, the following people spoke:

- Ryan Zinke, 409 W Second, said he'd followed a five year process and every hoop asked for to be allowed to do a small micro-brewery on the river, that the corridor study agreed it was appropriate, and asked that the Planning Board recommend the WT-3 zone language include micro-breweries as a Conditional Use.
- Doug Wise, 1000 Birch Point Drive, supported more commercial growth on Highway 93 West as it was similar to Wisconsin and Highway 93 South.
- Doug Reed, 520 Somers Avenue, chairman of the Highway 93 West Steering Committee, said the Code Amendments capture the spirit of what the committee

decided, and said that breweries/distilleries were appropriate in the WT-3 and the WI-T.

- Hunter Homes, 216 Midway Drive in Columbia Falls, steering committee member and representative of the owner of Idaho Timber, said his client needs the code recommendations adopted to move forward on their development, asked that they be approved.
- Mayre Flowers, Citizens for a Better Flathead, handed out two pages of written comments (included). She also brought up the need for the area to accommodate affordable housing.
- Anne Moran, 432 W 3rd, steering committee member, supported the amendments, but also supported Mayre Flowers concerns. Was not in support of a micro-brewery in the WT-3.
- Barbara Palmer, W 3rd St, said people who supported a brewery don't live near it. She read a letter from Susan Prilliman that did not support alcohol related businesses.
- Rhonda Fitzgerald, said the council was very clear about their previous decisions with regard to breweries, thought everything needed a CUP, and that no formula retail should apply to everything in the new zones. She was concerned with short term rentals in live/work units, and that buildings 7,500 square feet and over in the industrial zone should need a CUP.
- Lola Zinke didn't feel people giving public comments were being respectful and courteous, and that people were spreading fiction, and that the original corridor study should be honored.
- Andrea Beatty, 245 Diamond Court, supported the Zinke's and their micro-brewery on the river proposal.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended unanimous approval (Ellis/Norton) of the proposed amendments. Additionally, a motion was passed unanimously (Meckel/Ellis) to add "and no larger than 2,000 square feet of gross floor area" under Conditional Uses on Page 8 of 14 following "Coffee Shops and sandwich shops (no "formula" businesses)" under the WI-T, and strike "with no more than 2,000 square feet of gross floor area" form the definition of Coffee Shops and Sandwich Shops on page 12". An additional motion (Meckel/Ellis) was passed unanimously to strike the work "open" in the WI-T Outdoor Storage requirements number 4, so that it now read "Outdoor storage areas shall not be used to store waste or recycle materials".

RECOMMENDATION: Staff respectfully recommends the City Council, after considering the testimony at the public hearing, the staff recommendation, and the Planning Board recommendation, approve An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to amend Section 11-2, Zoning Districts, to add 11-2W, WT-3 Neighborhood Mixed-Use Transitional District, and 11-2X WI-T Industrial Transitional District, as well as development requirements for Artisan Manufacturing, Micro-Breweries and Micro-Distilleries, and Live/Work Units in Special Provisions 11-3, and new definitions for Artisan Manufacturing, Business Incubators, Coffee Shops/ Sandwich Shops, Live/Work Unit, Micro-Brewery, Micro-Distillery, Mixed-Use

Environment, Mixed-Use Building, and Research Facilities in 11-9, as an implementation of the Highway 93 West Corridor Plan. (First Reading)

This item is a legislative matter.

8) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p.185)
   b) Other items arising between February 10th and February 16th
   c) Resolution No. 16-11; A Resolution relating to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond And $4,900,000 Series 2016B Bond; authorizing and directing the issuance, confirming the sale and prescribing the form and terms thereof and the security therefor (p.202)

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.

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).

On February 1, 2016, the City Council adopted Resolution No. 16-06 which was the "parameters" resolution. This "parameters" resolution authorized 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 planned 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. A 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.

Current Report

On February 8th, we priced the interest rate of the bond issue. Rates had come down even more since January 22, 2016 and they even decreased between 8:00 a.m. and 10:00 a.m. on February 8th – we set our pricing time for 10:00 a.m. on February 8th. The interest rate at that time was set at 2.21%. All other parameters in the Resolution were met. A copy of the parameters Resolution, Resolution No. 16-06 is attached to this report in the packet for your review. A copy of the final bond sizing and debt service schedules are also included with this report. The pricing sheet is also included and the pricing for a 4 ½ year bond was 1.11% (interpolated between the 4 and 5 year bonds) plus 110 basis points (1.1%) for the margin above the Des Moines index being the original price quotes from the banks, so the final interest rate is 2.21%.

Our Bond Counsel of Dorsey and Whitney of Missoula, MT and Minneapolis, MN has prepared the final bond resolution with all of the details of the $9,800,000 Tax Increment Refunding Bonds, Series 2016 (A and B) for the final Council action on the TIF "New Money" Bonds for the City Hall/Parking Structure project. Important points to note in the resolution are:

- The cost and allocation of sources and uses are shown on page 2 in Section 1.04.
- In Section 1.07, the City Council finds that the terms of the "parameters" Resolution were met.
- Other City Council findings are contained in Section 1.09 and the City Council should review those carefully.
- On page 3 of the Resolution, the Original Purchaser of the 2016 Bonds are identified as Glacier Bank (Series 2016A) and First Interstate Bank (Series 2016B).
- Within the bond (top of pages A-3 in each bond), it clearly states that these bonds are not General Obligation Bonds and our taxing powers to levy taxes are not pledged to repay the bonds. The bonds are called Revenue Bonds and the source of revenues are Tax Increment Revenues, not new or additional property taxes.
- In Section 2.01 on page 4, the interest rate is shown as 2.21% and each bank gets one-half of the total bond issue or $4,900,000.00 each.
- Section 2.06 on page 7 allows us to redeem or prepay the bonds as we want. However we do not want to retire all of the principal amount of the bonds before July, 2020 because as soon as all of the 2015 and 2016 bonds are retired, we will no longer collect any tax increment from our 1987 Tax Increment District.
- On page A-4, the bond allows us to issue additional bonds in the future (before July, 2020) if we meet certain conditions and tests.
- There are some important tax covenants in Section 3 on page 9 that the City Council should be aware of.

Financial Requirement

The interest rate of 2.21% is an excellent rate and is even lower than the 2.62% we received last summer on the 5 year TIF refunding bonds. The Tax Increment Fund will be able to make the payments on this bond on and before July, 2020 when the Tax Increment District expires. A copy of the latest TIF pro-forma statement is included with the packet.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution No. 16-11; A Resolution relating to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond And $4,900,000 Series 2016B Bond; authorizing and directing the issuance, confirming the sale and prescribing the form and terms thereof and the security therefor

This item is a legislative matter.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Letter from Lauren Oscilowski Owner/Spotted Bear Spirits LLC regarding parking problems in downtown during the summer of 2016 (p.256)
   b) Email from Heather Mull regarding ice on pedestrian – bicycle trails (p.257)
   c) Select an elected official to serve on the selection committee for an engineering consulting firm for the design of the 55 Woodland Avenue parking lot for City Beach and the tennis court resurfacing project (p.258)

d) Select one or two city officials to participate on the local Climate Change task force (p.263)
e) Discuss and provide direction on the process and time frame to rewrite the Planned Unit Development (PUD) zoning section of the City Code (p.265)

   Planning and Building Director Dave Taylor has a memo in the packet with some ideas on how to proceed with this item.

f) Discuss and provide direction on whether to change 1996 Consultant Selection Policy and Procedures (p.266)

ADJOURNMENT

Sincerely,

Chuck

Chuck Stearns, City Manager

Table 1: Common Motions Used in a Meeting.[1]

	Wording	Interrupt another speaker	Requires a second	Debatable	Amendable	Vote Required	Reconsider
Privileged Motions							
Fix time for next meeting (12)	"I move that we meet next at..."	No	Yes	No	Yes	Majority	Yes
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority	No
Take a recess (12)	"I move that we recess. . ."	No	Yes	No	Yes	Majority	No
Raise a question of privilege	"I rise to a question of privilege affecting the assembly"	Yes	No	No	No	(1)	No
Call for the orders of the day	"I call for the orders of the day"	Yes	No	No	No	(1) (15)*	No
Subsidiary Motions							
Lay on the table	"I move to lay the question on the table" or "I move that the motion be laid on the table"	No	Yes	No	No	Majority	(3)*
Previous question (to close debate)	"I move the previous question" or "I move we vote immediately on the motion"	No	Yes	No	No	2/3 of assembly	Yes
Limit-extend debate (12)	"I move the debate be limited to. . ." or "I move that the speaker's time be extended by. .	No	Yes	No	Yes	2/3 of assembly	Yes
Postpone to a definite time (12)	"I move that the question be postponed until. . ."	No	Yes	Yes	Yes	Majority	Yes
Refer to a committee (12)	"I move to refer the matter to the . . . committee"	No	Yes	Yes	Yes	Majority	Yes
Amendment to the main motion (12)	"I move to amend by adding/striking the words. . ."	No	Yes	(5)	Yes	Majority	Yes
Postpone indefinitely (12)	"I move that the motion be postponed	No	Yes	Yes (16)	No	Majority	(4)
Main Motions							
Main Motion	"I move that we..."	No	Yes	Yes	Yes	Majority	Yes
Incidental Motions (11)							
Suspension of rules	"I move to suspend the rules so that. . ."	No	Yes	No	No	(9)*	No
Request to withdraw a motion (13)	"I move that I be allowed to withdraw the motion"	*	*	No	No	Majority*	(3)
Objection to the consideration of a question (10)	"I object to the consideration of the question"	Yes	No	No	No	2/3 of assembly (17)	(3)
Point of order	"I rise to a point of order" or "Point of order!"	Yes	No	No	No	(1)*	No
Parliamentary inquiry	"I rise to a parliamentary inquiry" or "A parliamentary inquiry, please"	Yes	No	No	No	(1)	No
Appeal to the chairperson	"I appeal from the decision of the chair"	Yes	Yes	Yes*	No	(7)	Yes

	Wording	Interrupt another speaker	Requires a second	Debatable	Amendable	Vote Required	Reconsider
Point of information	"I rise to a point of information" or "A point of information, please"	Yes	No	No	No	(1)	No
Division of assembly	"Division!" or "I call for a division"	Yes	No	No	No	(14)	No
Division of a question	"I move to divide the motion so that the question of purchasing ... can be considered separately."	No	Yes	No	Yes	Majority	No
Renewal Motions (8)							
Reconsider* (2)	"I move to reconsider the vote on the motion relating to. . ."	No*	Yes	(5) (16)	No	Majority	No
Take from table	"I move to take from the table the motion relating to. .	No	Yes	No	No	Majority	No
Rescind	"I move to rescind the motion passed at the last meeting relating to. . ."	No	Yes	Yes (16)	Yes	(6)	(3)
Discharge a committee	"I move that the committee considering . . . be discharged."	No	Yes	Yes (16)*	Yes	(6)	(3)

[1] Source: Robert, H. 2000. *Robert's Rules of Order* (Newly Revised, 10th Edition) New York: Perseus Books Group; Sturgis, A. 2000. *The Standard Code of Parliamentary Procedure* (4th Edition). New York: McGraw-Hill.

**** Refer to Robert's Rules of Order Newly Revised***

(1) The chair decides. Normally no vote is taken.

(2) Only made by a member who voted on the prevailing side and is subject to times limits.

(3) Only the negative vote may be reconsidered.

(4) Only the affirmative vote may be reconsidered.

(5) Debatable when applied to a debatable motion.

(6) Majority with notice, or 2/3 without notice or majority of entire membership.

(7) Majority or tie vote sustains the chair.

(8) None of these motions (except Reconsider) are in order when business is pending.

(9) Rules of order, 2/3 vote—Standing rules, majority vote.

(10) Must be proposed before debate has begun or a subsidiary motion is stated by the chair (applied to original main motions).

(11) The Incidental Motions have no precedence (rank). They are in order when the need arises.

(12) A Main Motion if made when no business is pending.

(13) The maker of a motion may withdraw it without permission of the assembly before the motion is stated by the chair.

(14) The chair can complete a Division of the Assembly (standing vote) without permission of the assembly and any member can demand it.

(15) Upon a call by a single member, the Orders of the Day must be enforced.

(16) Has full debate. May go into the merits of the question which is the subject of the proposed action.

(17) A 2/3 vote in negative needed to prevent consideration of main motion.

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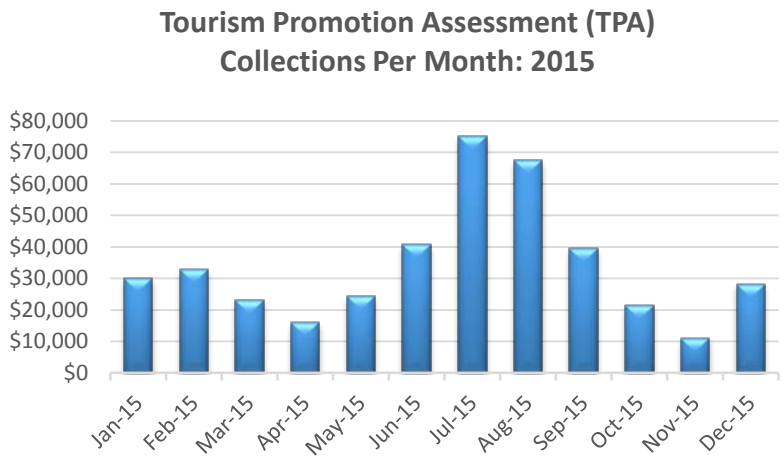
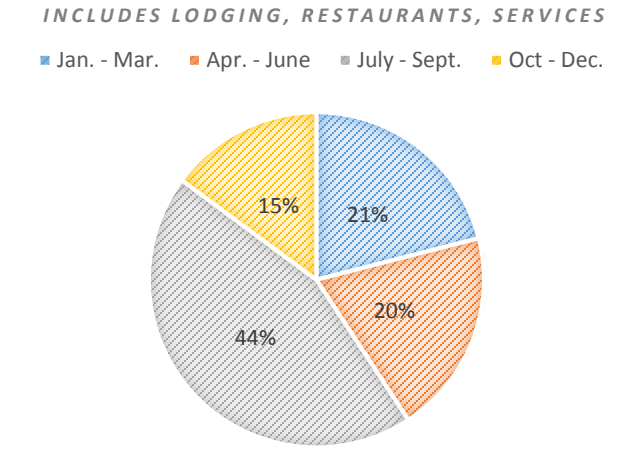
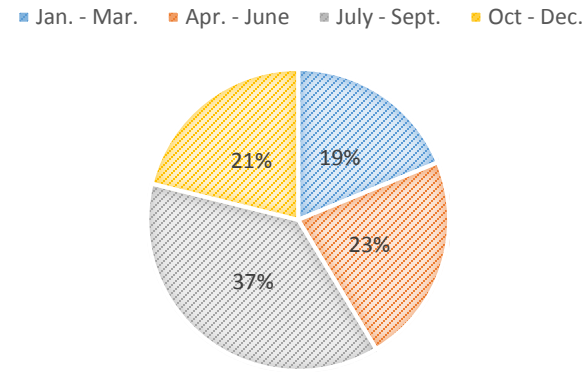
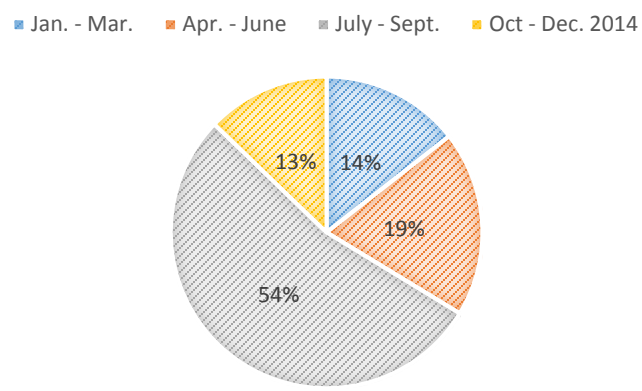








Sources: Amtrak, City of Whitefish, Glacier National Park, FHR, Montana Department of Commerce, Montana Department of Transportation

Lodging Overview

*Total Whitefish Lodging	**1,200**	Guest Rooms/Units
Rooms in Development	**161**	Guest Rooms/Units
Guest Room Increase	**+13.4%**	Increase vs. Current Total

Total is approximate and does not include vacation rentals outside of rental management companies

-1.91%

Lodging Resort Tax Revenue (Only 2%)
July - December 2015

TPA Lodging Collections (Estimate)
July – December 2015

- 7.4%

Overall Collections Year-To-Date (December)

-0.35%

Resort Tax Revenue (Only 2%)
Year To Date

TPA Collections (Estimate)
Year To Date

-1.44%

Glacier National Park Visitation

Month	% Change vs. 2014
October	-1.9%
November	+24.2%
December	+17.5%
Total YTD	**2,351,673 (+0.56%)**

Glacier Park International Airport Passengers

Month	% Change vs. 2014
October	+6.77%
November	+8.57%
December	+7.4%
Total YTD	**470,238 (+11.4%)**

Amtrak Passengers (Whitefish Train Depot)

Month	% Change vs. 2014
October	+20.57%
November	+21.32%
December	+21%
Total YTD	**49,599 (+3%)**

Sources: Amtrak, City of Whitefish, Glacier National Park, TTRR, Montana Department of Commerce, Montana Department of Transportation

PRELIMINARY 2015 Montana Nonresident Traveler Expenditures & Economic Contribution

INSTITUTE FOR TOURISM & RECREATION RESEARCH UNIVERSITY OF MONTANA

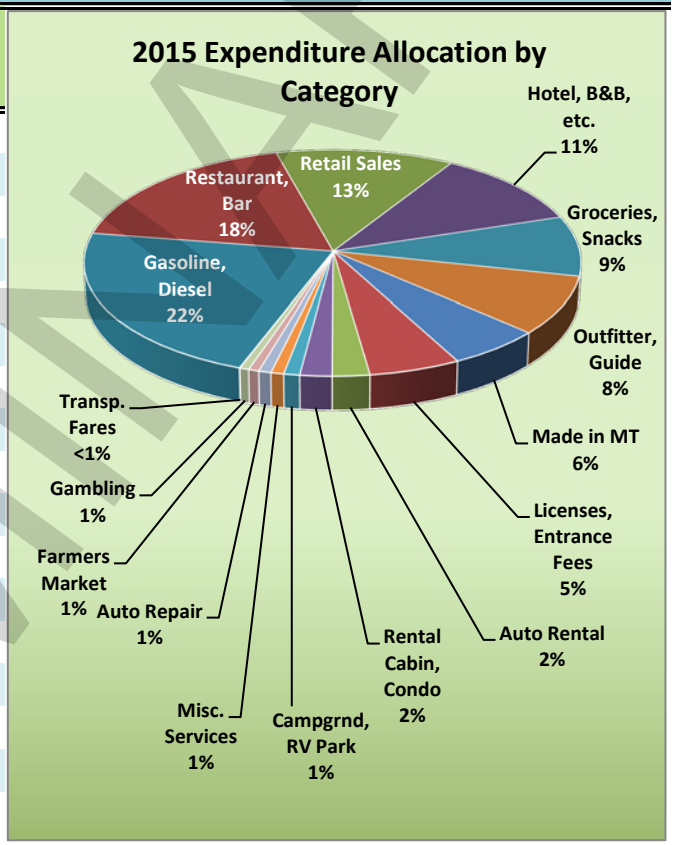
UNIVERSITY OF MONTANA

2015 Contribution of Nonresident Traveler Expenditures to Montana's Economy

- In 2015, nonresident visitors to Montana spent an estimated $3.60 billion in the state. (See Table 1 below)
- This $3.60 billion in local spending directly supports $2.97 billion of economic activity in the state, and supports an additional $1.92 billion of economic activity, indirectly. *(see Table 2, below)*
- The estimated total contribution of nonresident spending to Montana's economy was $4.89 billion in 2015.

Table 1 - 2015 Nonresident Traveler Expenditures[1]

Expenditure Category	Average Daily Per Group[2,3]	Allocation by Category	Total Expenditures[2,4]
Gasoline, Diesel	$31.95	22%	$792,560,000
Restaurant, Bar	$26.80	18%	$660,200,000
Retail Sales	$18.39	13%	$457,500,000
Hotel, B&B, etc.	$16.44	11%	$405,060,000
Groceries, Snacks	$12.58	9%	$310,270,000
Outfitter, Guide	$12.36	8%	$297,860,000
Made in MT	$8.35	6%	$202,810,000
Licenses, Entrance Fees	$8.07	5%	$194,360,000
Auto Rental	$3.21	2%	$79,090,000
Rental Cabin, Condo	$2.80	2%	$67,600,000
Campground, RV Park	$1.37	1%	$33,700,000
Misc. Services	$1.09	1%	$27,370,000
Auto Repair	$1.06	1%	$26,220,000
Farmers Market	$0.93	1%	$22,100,000
Gambling	$0.79	1%	$19,650,000
Transportation Fares	$0.05	<1%	$1,170,000
Estimated Total	**$146.23**		**$3,597,520,000**



[1]Spending data are gathered via on-site surveys of nonresident travelers at airports, gas stations, and rest areas in MT.

[2]Data are collected quarterly. Therefore, avg. daily expenditures are weighted averages of quarterly figures. [3]Expenditures may appear lower than typical costs in these categories because they are averaged across all visitor groups. [4]Expenditure category totals may not add to year total due to rounding.

Table 2 - 2015 Economic Impact

	Direct	Indirect	Induced	Combined
Industry Output	$2,969,290,000	$992,870,000	$931,430,000	$4,893,590,000
Employment (# of jobs)	37,280	7,650	7,820	52,750
Employee Compensation	$855,160,000	$213,410,000	$241,510,000	$1,310,080,000
Proprietor Income	$126,500,000	$58,090,000	$43,690,000	$228,280,000
Other Property Type Income	$321,990,000	$182,270,000	$177,990,000	$682,250,000
State & Local Taxes	–	–	–	$208,350,000 *

Direct impacts result from nonresident traveler purchases of goods and services; **Indirect impacts** result from purchases made by travel-related businesses; and **Induced impacts** result from purchases by those employed in travel-related occupations.

Industry Output is the value of goods & services produced by an industry which nonresidents purchase. **Employment** is full- and part-time average annual jobs. **Other Property Type Income** consists of payments for rents, royalties and dividends.

* CHANGE: The IMPLAN data set *now* incorporates state-level BEA TOPI (taxes on production and imports) data, *rather than* using U.S. data to produce state-level estimates, as was done in previous IMPLAN data sets. Comparison to years prior to 2012 is not advised.

PRELIMINARY

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WHITEFISH CITY COUNCIL
February 1, 2016
7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Barberis, Frandsen, Sweeney, and Williams. Councilor Feury was absent. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Senior Planner Compton-Ring, Planner Minnich, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Dial and Fire Chief Page and Customer Service Clerk Howke. Approximately 35 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld led the audience in the Pledge of Allegiance.

3) PRESENTATION – CITY HALL/PARKING STRUCTURE CONSTRUCTION UPDATE – OWNER'S REPRESENTATIVE MIKE CRONQUIST (p. 58)

Mike Cronquist reported that the installation of the Rammed Aggregate Piers is complete so things are quieter downtown. Construction traffic will pick up though as the first concrete is planned to be laid this Friday in the City Hall section and should start for the Parking Structure in March or April. Site prep continues, it is nearly complete for the City Hall basement then moves over to the Parking Structure. He said all parties are still continuing to process and evaluate ways and means to save costs; however when the concrete work was rebid, there were no new bidders so that cost did not change. There is a break now in monitoring the foundation work that will resume again when needed. Some contaminants have been found and are being studied for mitigation measures. No new press releases have been issued recently; and relations and communications with the local business owners and with the community in general remain positive. City Manager Stearns inserted the contaminants are thought to be from old fuel storage from across the street. Roger Noble has been onsite doing inspections and tests; some water has also showed up so its source is being determined. The underground tank found under the old fire hall has added mitigation costs close to $20,000. These continued new findings increases the projects total cost.

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)

Tom Tornow, 309 Wisconsin Avenue, said he serves on the Government Affairs Committee for the Chamber of Commerce and addressed their concern over parking shortage during the summer season. Parking has been lost with the hotel being constructed on Block 46 and the City Hall/Parking Structure ongoing construction. They would like the City to consider allowing overflow parking on the City's snow lot.

Rebecca Norton, 530 Scott Avenue, commented regarding Agenda Item 8a where the Council would be discussing the 7th Avenue West reconstruction project. She suggested the project get an owner's representative to serve as a go-between the property owners and the contractor. Mayor Muhlfeld said that would be Public Works Director Workman and Ms. Norton disagreed with that as a solution.

Mayre Flowers, Citizens for a Better Flathead (CBF), said at the last County Solid Waste Board Committee meeting the recyclers gave an update. The market is down but the haulers are staying firm with the recycling programs in place. She reminded the public that proper sorting of recyclables makes the business more cost effective. She said new signage is being developed and she will forward the information to Public Works Director Workman. She held up a copy of the newly published "Go Local – Flathead Guide", it can be found on the CBF website.

Jeff Raper, 719 Kalispell Avenue, said he was here on behalf of the Chamber of Commerce, to again address the Chamber's concerns and search for parking alternatives for the summer traffic; and hoped the City's snow lot could be open for overflow parking. The Mayor said it could be discussed by Council at the end of the meeting.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said he attended this morning's Bicycle and Pedestrian Path Advisory Committee meeting. The Committee received a report of WGM regarding their work plan for the Bicycle/Pedestrian Master Plan Update. A representative from the City-County's Health Department was also at this meeting. Councilor Hildner encouraged public attendance at the public meetings held for this update. He also said he sat in on the last Planning Board meeting, but he said nothing more because minutes of the meeting accompany related staff reports in the Council Packet.

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

a) Minutes from the January 19, 2016 City 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)

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

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

Mayor Muhlfeld said with consideration of the next two resolutions that pertain to the Haskill Basin Conservation Easement and project also marks the legacy of Alex Diekmann who passed away this morning after a courageous fight against cancer. He was our friend, colleague and the mastermind behind this community project. Alex will be missed. The Mayor said another friend stated that Alex's legacy will remain forever across the landscape he helped protect from the Madison River Valley to

Haskill Basin and the north end of our own Whitefish Lake. In memory of the gifts he gave to Montana and for generations to come; Mayor Muhlfeld asked for a moment of silence to remember Alex and think of his family.

a) **Resolution No. 16-08; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p. 107)** (CD 17:55)

b) **Resolution No. 16-09; 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 41.68 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p. 155)**

City Manager Stearns reported these two resolutions were on the last agenda, for the January 19th meeting, when the Council approved five other resolutions relating to the Haskill Basin Conservation Easement and project. He said as the two resolutions are related; he will combine the information for both in one report. The two resolutions that are before the Council for their consideration tonight were delayed at the last meeting and moved to tonight while the City was waiting for the appraisal report on the 2.569 acres that the City is proposing to exchange to F.H. Stoltze Land & Lumber Company for 41.68 acres of perpetual easements plus three one-acre parcels at each of our three water sources so the City can access and maintain its municipal water system. The City has received the appraisal report. The City's 2.569 acres (contained in two 'orphan' parcels), is valued at $30,000.00; and the easements and access to our water supply plus the three one-acre tracts, also included, that the City is getting in exchange is valued at $412,125.00 The City is receiving a lot more in value than it is giving up. The first proposed resolution approves the terms of a perpetual easement and access agreement with the three one-acre parcels; and the following resolution authorizes the exchange of the City's two parcels equaling 2.569 acres in exchange for the perpetual easements.

Mayor Muhlfeld opened the public hearing for both Resolutions 16-08 and 16-09.

Rebecca Norton, 530 Scott Avenue, spoke highly of this public process and the people who get involved. She said she has always been concerned about the safety and protection of the City's water supply; and credited Alex Diekmann for getting this project done. She thanked all involved who helped and said "one person really does make a difference."

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

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Resolution No. 16-08; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company. The motion passed unanimously.

Councilor Hildner made a motion, second by Councilor Sweeney, to approve Resolution No. 16-09; 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 41.68 acres of perpetual easements allowing the City to access, maintain and use its municipal water system; and to correct all documents to read the accurate number of acres of easement to be 41.68. The motion, including the correction, passed unanimously.

Mayor Muhlfeld acknowledge that Chuck Roady from Stoltze Land & Lumber Co was in the audience and said Thanks Again, on behalf of all of us – it has been a pleasure.

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 (WCUP 15-20) (p. 165) (CD 28:40)

Planner Minnich said this Conditional Use Permit application is to operate a bar serving beer and wine (no restaurant) within an existing commercial building, is in a location formerly occupied by The Dire Wolf, The Place for Steak, and most recently by the Cowboy Antique Shop. There will be some interior remodeling but no remodeling on the exterior is planned. The project was publically noticed as required. Planner Minnich highlighted a couple of the criteria required for approval; Parking and Landscaping. A total of 46 parking spaces are required to fulfill needs of that size of building that will include the bar, a small retail space, and a small apartment on the second floor. Existing parking is 27 spaces so a condition of approval requires an additional 19 spaces. Landscaping is required for commercial projects in the WB-1 zoning, and additional landscaping is required within the parking lot. The project design includes over 7,000 square feet of landscaping which is over minimal requirements. Per a condition of approval, the applicant must work with the Public Works Department on stormwater requirements and management. They will open their business at 11:00 am each day and close at 9:00 pm except Fridays and Saturdays when they will close at 10:00 pm. The staff and the Planning Board both recommend approval of the application subject to eleven conditions of approval that are provided in the staff report.

Mayor Muhlfeld opened the public hearing.

Mark Johnson, 680 Stone Street in Kalispell, spoke as the applicant's representative and the architect for the project. He said he didn't have anything to add; the staff report is comprehensive, all of the conditions of approval will be met easily. The building is an adequate size for their use, and has a fire-sprinkling system that is operational; and exits meet requirements. There is adequate space for all the parking and landscaping that is required, and room for snow storage.

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

Councilor Sweeney made a motion, second by Councilor Frandsen, 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. The motion passed unanimously.

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) (WZTA 15-01) (p. 200) (CD 37:54)

Senior Planner Compton-Ring said the Staff Report was prepared by Planning and Building Director Taylor but she would give the presentation in his absence. This is a request by the City of Whitefish to amend a portion of the PUD standards to clarify the maximum average density where a PUD overlays more than one underlying zone. The amendment is intended to formalize how PUDs have been implemented and approved by Council for a number of projects over the past ten-plus years. Recently, the method of calculating density has caused concern. Staff was directed to address the issue

and considered an expanded review of PUD regulations but decided to address just this one issue at this time. The Planning Board had an initial public hearing in January of 2015, but postponed action directing staff to the expanded review; however following a work session in June of 2015 the Planning Board directed staff to just do a quick fix of this particular aspect and do a major review at another time.

From packet page 233, the staff report explains the WPUD overlay provides a mechanism allowing a developer flexibility to respond to property characteristics and area housing needs and is allowed to address these by varying standards of the underlying zone. There can be a variety of mutual benefits between the developer and the City if approved by the Council. A PUD is an overlay zone over a land parcel that, when approved, has one set of unified applicable development requirement superseding boundaries and development standards of underlying zoning. The staff report gave examples of 5 projects recently approved with PUDs that span multiple underlying zones and mix density and uses. The amendment proposes new provisions with a formula considering the area of each of the lands with more than one zone and the total area to calculate an average maximum density. The Planning Board held a public hearing on this proposal on January 21, 2016 and the draft minutes are in the packet. Several people spoke to the issue; most of them spoke in opposition and recommended a more comprehensive revision of the PUD process. Following the public hearing the Planning Board denied the proposal on a vote of four to two. Additionally, a motion was made to forward to Council a recommendation to rewrite the entire PUD chapter and recommend a moratorium on density averaging until that is finished. Staff is still recommending approval as brought forward in the staff report; and Director Taylor did note in his staff report that the City Council could also consider directing staff to pursue a more comprehensive rewrite of the PUD chapter per the Planning Board's recommendation.

The Mayor said there is a large audience tonight here to speak during the public hearing. Several letters and emails have been sent in early enough to be included in the packet and he asked if those same people were speaking again, limiting their comments to three minutes would be appreciated; or if they agree with another's comments, if they could limit their comments to agreement instead of restatement, that would be appreciated. Mayor Muhlfeld opened the public hearing.

Tom Tornow, 309 Wisconsin Avenue, said he was here representing Barbara Morris who lives on 1 Rock Creek Court. He spoke in opposition to the proposed text amendment, and in support of the Planning Board's recommendation that the entire PUD ordinance be rewritten, and in support of the moratorium on blending until that rewrite is complete. He also supported a committee of citizens and professionals to spearhead the rewriting of the PUD ordinance. Tornow spoke from his letter starting on packet page 270 and said the WF Zoning Code does not provide for blending or transfer of density between zones; but specifically prohibits it. This text amendment also creates increased conflicts within the city's code and he cited those in his letter. He addressed a letter in the packet from Bruce Boody (packet page 240), wherein Boody supports the text amendment; and Tornow disagrees with him and said Boody refers to different part of the zoning code incorrectly and was misreading it. Tornow said the proposed text amendment would allow, through the PUD process, increased densities potentially in all zones, without the public process that goes with re-zoning properties. Tornow pointed out when zoning was placed on property with specific densities it was based on overall community planning and growth management. That increased density is what could potentially happen to his client who lives in a WR-1 Zone, and the property adjacent to her is zoned WR-1. In front of the neighboring property is a parcel that extends to Hwy 93 S and is zoned WB-2. If a developer is allowed to have a PUD over both properties with the "blended density" as proposed by this text amendment; suddenly the property formerly zoned WR-1 will be developed with increased density. That becomes a direct impact to the adjoining WR-1 properties. When residents buy property, they can check out the zoning of adjacent

properties and should be able to have the assurances with their knowledge and can make assumptions how the adjacent properties can be developed. They would also be aware that there is a public process for rezoning property; but they could not be aware that through a PUD process the density of a development could be greatly increased if this text amendment was approved. Tornow said this text amendment does not include the review criteria required by zone change regulations. Tornow said the City's staff report (on page 233-234) talks about the city getting community benefits such as increased critical area buffering, trails, affordable housing, infill, transportation network improvements, street construction, etc., but none of those benefits are required or tied to the transfer of the density he said. Tornow said David Hunt who is in the audience and will speak later to some models that do. A rewrite of the PUD ordinance could include these provisions. Tornow repeated his position that he stated at the beginning of his testimony.

Don Spivey, 117 Park Knoll Lane, spoke in opposition of the proposed text amendments and in support of the Planning Board's denial of the text amendment and their recommendation to forward to Council a recommendation to rewrite the entire PUD chapter and recommend a moratorium on blending until that is finished. Spivey had written comments in opposition to the text amendment starting on page 274 in the packet; and had additional comments which he submitted to the Council which have been appended to the 2-1-2016 Council Packet as after packet materials. He disagreed with the premises of two Whereas clauses in the proposed ordinance, on page 200 in the packet, regarding the dates February 19, 2015 and June 18, 2015, but instead he thought in both cases staff had been directed to rewrite the PUD ordinance. He said he does not oppose development, PUD's or density transfer – blending; but does feel like the PUD ordinance should be rewritten with specific ground rules; the ordinance needs to be clearer and the legal irregularities cleaned up. Spivey listed some examples in his supplemental letter. Whitefish, since it is a great place to live, will grow, but the growth should be managed for preservation of the character of this community. He said both Flathead County and Kalispell had more effective regulations for PUDs and copies of those regulations were included with his letter in tonight's packet; see page 278. Spivey said the rewrite should better address Affordable Housing to make sure there are mechanisms in place that ensure the goal is realized. He agreed with the narrative from Tornow regarding the serious impact for adjacent homeowners with the proposed blending text amendment. Spivey supported a committee be established representing a cross-section of interests in our community who are concerned and the time to commit as approved by the Council. The committee can put forward a plan to address the rewrite, and on approval by Council, proceed with their plan to establish a draft for review that would eventually move forward through the necessary processes; hopefully a 6 month or less timeframe from beginning to end. Spivey supported a moratorium and said the Council could consider either a moratorium on all PUD activities, or as the Planning Board recommended: a moratorium on blending until the rewrite is finished.

David Hunt, 113 Park Knoll Lane, spoke in opposition to the proposed text amendment, and spoke in support of the Planning Board's recommendation to deny the text amendment and their recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. Hunt spoke from his letter in the packet that starts on page 301. The current PUD ordinance not only has lingering legal questions but allows land to be developed inconsistent with present densities and character of existing neighbors. It is against the first lines of the Vision of the Growth Policy which states: "The citizens of Whitefish value the scale, character, and small town feel of the community and will preserve those values as the community grows. We as a community will preserve and enhance our open spaces, wildlife habitat, scenic vistas and traditional neighborhoods that make Whitefish special." Hunt said elements of the PUD ordinance threaten that vision statement, as evidenced by recent development proposals. The threat to traditional neighborhoods, Hunt said, is mentioned in the Growth Policy on page 50; "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 predominantly single-family area, the threat of erosion of the existing scale and character remain very real." A second example, again from the Growth Policy while discussing affordable housing bonuses on page 113; "…if a developer tried to increase the gross density in a WR-1 or WR-2 project by up to 50%, the resulting PUD would be sufficiently dense that it may be detrimental to the character or the surrounding neighborhood, and therefore, not meet PUD criteria." Similar to what was discussed earlier by Tornow regarding impact to the River's Edge Subdivision, in 2014 there was a proposed PUD on land zoned WLR, normally 2.5 unit density per acre; with a proposed increase to 14.7 unit density per acre, a 6-fold increase. He said this type of an increase would not be within the normal expectations of property owners in lands zoned single family residential. He said in both these instances there was blending proposed between adjacent parcels that had commercial zoning and residential zoning; and there is the potential of similar development being proposed. Hunt referred back to comments from Spivey where he talked about PUD provisions in the County and Kalispell, and Hunt said none of those provisions allowed blending commercial and residential density blending in a residential PUD; and he included examples in his letter in the packet. He said the implied problems are multiple. He repeated his positions that he first stated and agreed with both Spivey's and Tornow's suggestions on a collaborative committee rewrite of the PUD ordinance.

Mayre Flowers, Citizens for a Better Flathead, (CBF) spoke in opposition to the proposed text amendment, and spoke in support of the Planning Board's recommendation to deny the text amendment and their recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. She read from material that she submitted tonight that has been appended to the 2-1-2016 packet as after packet materials. CBF states that a PUD, is a tool offering a developer flexibility while providing public benefit; but the regulations are outdated and causing confusion and problems. In light of testimony from Tornow, Hunt and Spivey giving examples of recent apparent problems in the existing ordinance reflects the need to CBF for an update of the ordinance to address the following:

- 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.

CBF commented the Council will have another large zoning issue before them in two weeks when they consider the implementation of the Westside Corridor Plan; which could lead to more questions and concerns how PUDs could be applied within that corridor. It is another reason to step back from new action at this time and give time for further review. CBF spoke to the committee makeup for the rewrite of the PUD ordinance; no outside consultant is needed. Instead let the committee be made up of self-selected volunteers to work with the City Planning Staff; and either a draft plan or a number of alternatives should be ready for the Council's consideration within 6 months. Mayre Flowers called attention to a letter submitted after the packet from Susan Prillman that has been appended to the 2-1-16 packet and was distributed to the Council before the meeting tonight; who wrote against the passage of the proposed text amendment and for a rewrite of the PUD ordinance.

Judy Spivey, 117 Park Knoll Lane, spoke in support of the recommendation to rewrite the PUD ordinance and establish a moratorium on blending; or, she said, she thought it would be better to place a moratorium on all PUDs until the rewrite is complete. She quoted the same as Hunt did previously from the Growth Policy "The citizens of Whitefish value the scale, character, and small town feel of the community". Spivey said not all development is right for Whitefish, but growth and change are

inevitable but should only move forward with thoughtful and deliberate planning to keep this community special. It is a challenging and difficult task for staff and elected officials.

Barbara Morris, 1 Rock Creek Court, spoke from her letter in the packet starting on page 265, that she said represented her neighboring homeowners at River's Edge Subdivision. She said many of her neighbors wrote emails earlier that are included in the packet and some of them and several others were in attendance tonight and she asked them to raise their hands. She said she was speaking in opposition to the proposed text amendment and in support of the Planning Board's recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. She referred to Tornow's comments the process residents go through when they buy property, they check out the zoning of adjacent properties and have an expectancy that with their knowledge they can make assumptions how the properties adjacent to them can be developed. That process can either make, or possibly break, a deal. So all of her neighbors in the subdivision she lives in were alarmed and concerned when they learned of the possible development next door that could be developed with increased density due to blending. The neighborhood has talked about this development with staff, with the developers, with the Housing Authority, and it has always been their position that they support the affordable housing aspect of the development if it was consistent with existing zoning, which would have meant that the high density would have remained on the commercially zoned property with highway frontage. She said the proposed amendment invites developers to utilize a practice that is clearly to the developer's advantage and a disadvantage and expense to neighboring homeowners without due process. The neighboring residential owners are almost forced to hire professionals to defend their position. For current and future landowners, they need to know how reliable and how predictable the zoning will be. She has always felt Whitefish was respectful of its homeowners' interests and it is their request that respect to homeowners continues; it makes Whitefish a special place. Morris repeated her position that she stated at the beginning of her testimony.

Charles McCarty, 725 Clearwater Drive in the River's Edge Subdivision, said he was in agreement with comments from Mayre Flowers; and he agreed with Barbara Morris' comments that suddenly, the homeowners in their subdivision have found it necessary to become defensive of what they had counted on what was their rights; he wasn't sure why that is happening. His position, and his wife is in agreement, is that they are opposed to the proposed text amendment, and are in support of a complete rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished; but to put a timeline on that rewrite so it doesn't go on forever – a 6-month timeline should be fine. McCarty submitted his letter and it has been appended to the 2-1-16 packet as after packet material.

Wendy Coyne, 3 Rock Creek Court in River's Edge Subdivision, said she has been a homeowner in Whitefish for 16 years; and in River's Edge since 2009. She said she had a letter in the packet (page 258) and she repeated part of that letter where she was relating the story of talking to a potential home buyer who was here from out of town looking for property; but decided against any purchase here because she was told by one of the local realtors that she could not be assured that the residential zoning wouldn't change because the City has been changing zoning laws to suit the needs of a developer. Coyne said that is what has happened to her and her neighbors; they all knew they lived next to land zoned for single family dwellings but suddenly became aware that it could be changed to a development with higher density when they got a letter in the mail and attended a public meeting. Their immediate reaction was that all their property rights had been violated. She said the remainder of her letter in the packet was in agreement with other public comments made here tonight. Coyne read from a letter from neighbors who were not here tonight, Cynthia Klein and John Lowell at 9 Rock Creek Court, and said they are business owners, moved here to bring their business here, and employ local employees. The letter was in opposition to the proposed text amendments and included in their

statement requesting that the City not approve regulations that harm home values or quality of life to an extent that drives away people that have a positive impact to the community.

Peggy Taylor, 722 Clearwater Drive in River's Edge Subdivision, said she was also speaking for her husband Gregory. Her position was that the City Council maintain the integrity of the zoning process and oppose the proposed zoning text amendment. She said they are retirees who purchased their land here as their getaway place, they own a business on the East Side (of Montana); and they chose to live here because they liked both natural and community amenities of Whitefish. They knew Whitefish would continue to grow, but knew there were guidelines and regulations to manage orderly growth. They are not against affordable housing but have concerns about the proposed zone changes that came along with the adjacent proposed development. Taylor said zoning is put in place for good reasons and should not be easily changed. Taylor thought it appropriate to have multifamily in the commercial zone as established; with single family residences as the zoning is established on the property closest to the river.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated she thought it was heart breaking to hear citizens having to defend their property rights to the City. The Growth Policy talks about protection of neighborhood integrity and community character; and people believe that is the guiding document; then they suddenly find themselves in a situation where they have to band together, spend money to hire lawyers, rally all their neighbors to come and defend their way of life. The assumption is that the City will work for them. She asked the Council to put a stake in the ground that this is not how it will continue in Whitefish where there has to be a rally to defend the quality of the place and the things that have been agreed upon about how things will be. There are all sorts of zones that back up to commercial zones because this is such a small town and people have to believe that a commercial zone doesn't suddenly spring up beside their single family home. Fitzgerald said it is not right to have to be constantly fighting the fight, but she knows that the Mayor and Council all know that. She supported a moratorium on PUDs and get it right and she wants to believe that the people doing the planning for this community is on the communities' team.

Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

Councilor Frandsen made a motion, second by Councilor Hildner, to deny the 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.

Councilor Hildner made a motion, second by Councilor Frandsen, to amend the motion to place a 4-month, or so, time frame for completion, or to be done by July 1st, for a rewrite of Article S. WPUD Planned Unit Development District along with a moratorium on blended zoning. Staff and other members of the Council had questions regarding this amendment, after which the amendment was withdrawn by the maker and the second.

Councilor Hildner made a motion, second by Councilor Frandsen, to amend the motion and direct the City Attorney to prepare an ordinance declaring a moratorium on blended density. The amendment passed on a four to one vote, Councilor Barberis voting in the negative.

Councilor Frandsen stated to her original motion that much of tonight's public comment goes back to the issue of not in my back yard; and locations for affordable housing will have to be addressed

and a solution found during a rewrite of the PUD ordinance; as many times affordable housing is provided through the PUD process.

The vote on the motion denying the ordinance amending the Zoning Regulations, as amended, was approved unanimously.

Mayor Muhlfeld called for a recess at 9:10 and the Council reconvened at 9:25 p.m.

e) Ordinance No. 16-04; 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) (WZTA 16-01) (p. 314) (CD 2:00)

Planner Compton-Ring gave the staff report; this is a series of housekeeping text amendments.

1) Updating an outdated term. Changing 'servant quarters' to 'domestic worker quarters' in zoning districts with residential provisions.
2) Adding a definition of domestic worker; and adding a definition of building footprint, a term used in the zoning regulations but not defined.
3) Adding "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" to the Zoning Code, the Subdivision Regulations, the Lakeshore Regulations and the Floodplain Regulations. It had been recently pointed out to the Planning Office this provision relating to the applicant's responsibility to prove they are meeting City regulations; so this is proposed to be included.
4) Address screening of rooftop mechanical equipment in § 11-2-3B(5) with a cross reference to §11-2L-4.
5) Add a new review criterion to §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary, to address instances for very minor subdivisions that meet certain criteria for City administratively issuing a preliminary plat approval after notice to immediate neighbors; with clarification regarding subdivision variances and compliance with the Whitefish Subdivision Regulations.

Planner Compton-Ring reported that the Planning Board held a public hearing on the proposed text amendments on January 21, 2016 and following the hearing voted to approve the Staff recommendation by a five to one vote. As part of the Board's recommendation for approval they directed staff to provide definitions of the terms in § 11-2-3B(5) – (ref: #4 above); and review if terms might be outdated. That list is included in tonight's packet as Exhibit 'B' to the staff report on page 338. 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. There were some questions from Council that Planner Compton-Ring clarified.

Mayor Muhlfeld opened the public hearing. There being no public comment, Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration. Prior to making a motion there were additional questions from Council that Planner Compton-Ring clarified.

Councilor Sweeney made a motion, second by Councilor Williams, to approve Ordinance No. 16-04; 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, on its first reading. The motion passed unanimously.

f) Resolution No. 16-10; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department (p. 361) (CD 2:11:15)

From page 364 in the packet, Planner Compton-Ring gave the staff report; this proposed fee increase is due to a change in State Law. State Law no longer allows Flathead County to provide "address lists" (listed used for notification to neighbors regarding land use permits) to the general public; the request has to come now from the City. The County's fee for address lists is $75. The Planning and Building Fee Schedule included in the packet reflects the additional $75 to cover the additional fee now required to be paid by the City, as Staff's recommendation for approval to the City Council.

Mayor Muhlfeld corrected a typo in the fee schedule; the line for Minor Subdivision (Waiver, referred to Council) will increase from $740 + $75 = $815, not $810 as shown.

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

Councilor Hildner made a motion, second by Councilor Frandsen, to approve Resolution No. 16-10; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department, with the correction of changing $810 to $815 in the fourth line of the fee schedule. The motion passed unanimously.

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) (CD 2:14:14)

Public Works Director Workman said his staff report includes both agenda items a and b. Brandon Theis and Ryan Mitchell from Robert Peccia & Associates (RPA) are here in the audience tonight if Council has questions for them. The W. 7th Street reconstruction is a large capital improvement project, reconstructing W. 7th Street from Baker Avenue to Fairway Drive; a Resort Tax Fund project in FY16 and FY17 with construction scheduled to begin in May and be completed in September. Director Workman referenced Rebecca Norton's earlier comment tonight when she requested an owner's representative be appointed for W. 7th homeowners, because of problems that came up during the W. 6th Street reconstruction project a few years ago. Being aware of those concerns and in early anticipation of improving the process; the City and construction team have held a series of public meetings while planning this project (beginning in December 2014) and involved citizen's in all those meetings who were able to take an active role in designing this project. Citizens were able to give final comments and voted on the final design prior to bringing the design concept to the Council in April 2015. At that same meeting the Council authorized RPA to proceed with the final project designs without burying the existing overhead utilities due to the high additional cost. Director Workman reviewed the design drawings in the packet from pages 373 – 378. Along with the road bed reconstruction will be some sections of curb, gutter and storm drain, an off-street improved bicycle/pedestrian path, and some water and sewer line replacement and extensions as shown on the chart on page 369 in the packet. At Geddes Street the 10'ft asphalt bike path (from Karrow Avenue) goes north through the gully to connect with the W. 6th Street path; then the off-street path that continues east on W. 7th becomes an 8' concrete sidewalk. One of the main objectives of this project is improvement of driver's and pedestrian's safety; including improvement of 'landing areas' at the intersections, by reducing the grade just prior to each intersection. The plan includes making O'Brien

Avenue one-way north from W. 8th Street to W. 7th Street because of limited right-of-way; it was also the preference of the residents in this area. Lighting improvements are included as they have been in other reconstruction projects with the standard decorative lighting. Staff has included provisions in the plans for experimentation to move forward with some LED technology that will hopefully lead to significant energy savings in this and future projects. Within that provision, spacing of fixtures changes from the current standards. Staff is asking Council's permission to have leeway with this experiment. Staff is also asking for Council's permission to have pedestrian scale bollard lighting along the gully path; the design includes wiring for the standard decorative lighting so that either way – conduit and wiring will be in place for whatever the final decision will be. Councilor Sweeney questioned the lighting planned; he thought residents in that area did not support the standard decorative lighting but Director Workman said with the pedestrian features being added, lighting will be mandatory. It has been designed to be minimal but to be sufficient for required safety measures. Further discussion followed about lighting options between Council and staff and the RPA engineers. Director Workman pointed out there is a final public informational meeting scheduled in April where these specifics can be discussed; and he will keep the Council informed. Director Workman addressed the Financial Requirements. The original cost estimates in 2014 were just over $2.4M; that was updated in March 2015 for the Council's April 6, 2015 meeting to $2,817,620 as shown on the chart on page 371 in the packet. Staff feels this is a good time of the year to request bids. Regarding item b on the agenda; staff recommends approval for Manager Stearns to execute Contract Amendment #3 with RPA for this project; it will provide the engineering necessary to see the project through construction.

Responding to a question from Councilor Hildner, Parks and Recreation Director Butts said the path from Karrow to Geddes that continues through the gulley to W. 6th is not part of the main bike path therefore will not be maintained by city personnel, but is privately maintained by property owners. Councilor Barberis supported LED options from Geddes to Baker, but not from Karrow to Geddes.

Councilor Frandsen made a motion, second by Councilor Barberis, to approve the design and cost estimates for the West 7th Street Reconstruction project, a 2016 Resort Tax road reconstruction project, and authorization to proceed to bidding. Councilor Sweeney said he was willing to approve authorization to proceed to bidding; but not willing to approve the design because of issues with lighting. Director Workman said the contract does include some flexibility regarding lighting fixture purchases and hopes that they can minimize any change order costs. **The motion passed on a vote of four to one with Councilor Sweeney voting in opposition.**

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)

Councilor Barberis made a motion, second by Councilor Williams, to 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. The motion passed unanimously.

9) COMMUNICATIONS FROM CITY MANAGER (CD 2:56:13)

a) Written report enclosed with the packet. Questions from Mayor or Council? (p.421)-None

b) Other items arising between January 27th and February 1st

Manager Stearns repeated the information reported during the owner's representative's report from Mike Cronquist that there were no new bids on the concrete rebidding last week so no savings in that area.

c) Consideration of approving the sale of buildings from the James R. Bakke Reserve property (p. 424)

Manager Stearns said the City received only one bid to purchase one of the six buildings at the property that were available. The bid received from Mark Duff of Whitefish was for $300.00 for building #6, a small shed.

Councilor Hildner made a motion, second by Councilor Sweeney, to award the bid to Mark Duff of Whitefish for building #6 from the James R. Bakke Reserve. The motion passed unanimously.

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) (CD 3:00:26)

Manager Stearns said his staff report for this resolution begins on packet page 440. This is a preliminary resolution setting up the terms for action to follow at the Council's next meeting; authorizing the Mayor and staff to execute Bond Purchase Agreements with First Interstate Bank and Glacier Bank for the Tax Increment Bond of $9.8M as part of the financing for the City Hall/Parking Structure Project. The Bond Purchase Agreements will lock in the interest rate which is anticipated to be close to 2.4%, but it provides and allows for up to a maximum of 3.25%. Prior authorization for this financial arrangement was approved by Council at their April 20, 2015 meeting as explained in detail in the staff report. A cash flow report for the TIF fund is on page 446 in the packet.

Councilor Frandsen made a motion, second by Councilor Sweeney, to approve 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. The motion passed unanimously.

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) (CD 3:06:03)

Finance Director Smith gave the staff report from page 498 in the packet, including that two corrections have been made after release of the packet which have been distributed to the Council. The resolution in the packet on page 451, the last Whereas will now read: "Whereas, the DNRC will fund the 2016 Loan with Recycled Money (as hereinafter defined). The second change is on the next page of the resolution, page 452 in the packet, where a definition of Recycled Money has been added: "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). Director Smith said this is the Haskill Basin Water Revenue Bond; related to all of the recent Council actions (including two actions tonight) completed for the provisions of the Haskill Basin Conservation Easement (CE) and Project. Debt service will be paid from a portion of the proceeds of the additional 1% Resort Tax increase approved by voters on April 28, 2015. The $8,219,500 loan through the Montana State Revolving Fund (SRF) loan programs includes the $7.7M purchase price of the CE and related costs as required by the loan program and detailed in the staff report and in Appendix A of the resolution, and on page 487 in the packet. Director Smith called the Council's attention to two provisions in the Resolution; (1) "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," and (2) "no free service shall be provided to any person or corporation." The interest rate on this loan is 2.5% and the final payment is due on January 1, 2025, just before the Resort Tax is set to expire on January 31, 2025. Director Smith reviewed the Financial Requirements as detailed in the staff report, currently no water rate increase is required to issue this bond. Staff recommends approval. Manager Stearns added that "Resort Tax Growth Estimates and Ability to Pay 9-year SRF Loan" is shown on a chart on page 505 in the packet.

Councilor Frandsen made a motion, second by Councilor Hildner, to approve 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, with the two corrections of text in the resolution as distributed and explained by staff. The motion passed unanimously.

f) Review of Mid-year financial report – City Finance Director (p. 506) (CD3:15:34)

Director Smith reported this is an important review of the year to date City Financials, and gives us indications for financial management between now and yearend, (June 30, 2016). In summary of her detailed report, Director Smith said cash in property tax supported funds is a little lower than this time last year but generally tracking as expected; including the General Fund. The Parks & Recreation Fund has a negative cash balance which is typical for this time of year; anticipated payments for Parks Programs, the rink management contract, and other income are expected to offset that a bit; however there will be a loss due to the transition of the ice rink management and unexpected rink equipment repair costs. Good news; The Columbia Falls Building Code Contract revenues are already at 84% at this ½ year point. License and permit revenues in the Building Code is down some compared to last year but the City Hall/Parking Structure/Retail space permit will be coming through soon and it is estimated that will bring the Fund back to expectations. Impact Fee revenue is currently at 71% budgeted; and again with the impact fees from the City Hall/Parking Structure/Retail space permit, along with other projects going on in the city, will bring that fund up higher. The Ambulance Service Charges are down, due to staff still getting caught up with the billing that got delayed due to the preparation, packing, and moving of City Hall and relocating and resetting up in the interim location. Staff has been working diligently to get caught up and the fund should look better by the end of the third quarter. Director Smith said her report includes other details on funds that she continues to monitor. She had questioned Public Works Director Workman regarding an increased expenditure from both Lighting Districts under repair and maintenance and he explained they did a large bulk purchase of supplies to benefit from discounts available; purchases throughout the remainder of the year should be minimal. Enterprise Funds are detailed starting on page 514 and tracking as expected and show stability. A Debt Summary is on page 515. Overall, the City's Financial Status is good; areas that need monitoring are being done so by Administration and Department Directors.

Mayor Muhlfeld thanked Finance Director Smith for her report.

10) COMMUNICATION FROM MAYOR AND CITY COUNCILORS (CD 3:24:30)

Council and Staff discussed the request made during public comments tonight about consideration of rewriting the PUD ordinance and it was decided to place it on the agenda for the next meeting when Planning and Building Director Taylor would be present.

Councilor Barberis spoke in appreciation for Alex Diekmann, and extended condolences to his

family.

Councilor Hildner said he agreed with Councilor Barberis extending condolences to Alex's family.

Mayor Muhlfeld said he would pass along those condolences to the family. Mayor Muhlfeld said dates and locations for the Council Retreat are yet to be determined; it is planned for March.

Councilor Frandsen also offered condolences to Alex's family and hoped something will be done in honor of his gifts to the community. She asked Manager Stearns to have a conversation with the Chamber regarding their request to have the City's snow lot be available next summer for overflow parking. Manager Stearns said he has been talking with the Construction Manager of the City's project about what they need next summer at that location, and discussed it with Director Workman; looks like some of the lot would be available. Manager Stearns asked Director Workman to look into the amount of millings we have available. A caution, he said, is that once parking is offered – it is hard to take it back; and in previous conversations he has said once all available street parking is filled each day, this could be an option. The Council will have to consider and decide about regulations and expenditures for required landscaping; and the time frame for this use.

Councilor Sweeney said we have a request for support from Citizen's for a Better Flathead (CBF) regarding their lawsuit with the Board of County Commissioners, now under appeal, on the Shaw litigation (greenbelt zoning) because it could have implications regarding our city and others in the state on future land use issues. City Attorney Jacobs said she could write a letter to the Montana League of Cities requesting that it submit an amicus brief in support of CBF, if that was supported by Council. Upon clarification that an amicus brief is a 'friends of the court' brief and it can be submitted if allowed by the appellant court; then the brief explains the importance and advice on an issue. In this case it would give weight to the Court on the importance of the issue. All the Council indicated their agreement. Councilor Sweeney said it has been a tough snow and ice season and he asked if there could be more attention paid to code enforcement; especially in some areas of downtown.

11) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
(CD 3:34:42)

Mayor Muhlfeld adjourned the meeting at 10:58 p.m.

_____
Mayor Muhlfeld

Attest:

_____
Necile Lorang, Whitefish City Clerk

ORDINANCE NO. 16-04

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 or Deputy Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 16TH DAY OF FEBRUARY, 2016.

_____
Richard S. Hildner, Deputy 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.

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

RESOLUTION NO. 16-___

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 6260 US Highway 93 South, for which the owner has petitioned for and consented to annexation.

WHEREAS, H. Marie Hedman, has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

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

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

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

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

> That portion of the Southwest one-quarter (SW1/4) of the Southeast one-quarter (SE1/4) of Section One (1), Township Thirty North (T.30 N.), Range Twenty-two West (R.22 W.), Principal Meridian Montana, Flathead County, Montana, more

particularly described as follows:
Beginning at the Northwest corner of Tract 1 of Certificate of Survey No. 16386, a map or plat of which is on file at the Clerk and Recorder's Office, Flathead County, Montana;
thence S05°52'00"E 198.21 feet; thence N89°39'36"W 284.47 feet; thence N03°20'55"W 184.37 feet; thence N87°38'22"E 269.98 feet to the Point of Beginning and containing 1.203 acres of land more or less.

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

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the February 16, 2016 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to §7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 16TH DAY OF FEBRUARY, 2015.

_____
Richard S. Hildner, Deputy Mayor

ATTEST:

_____
Necile Lorang, City Clerk

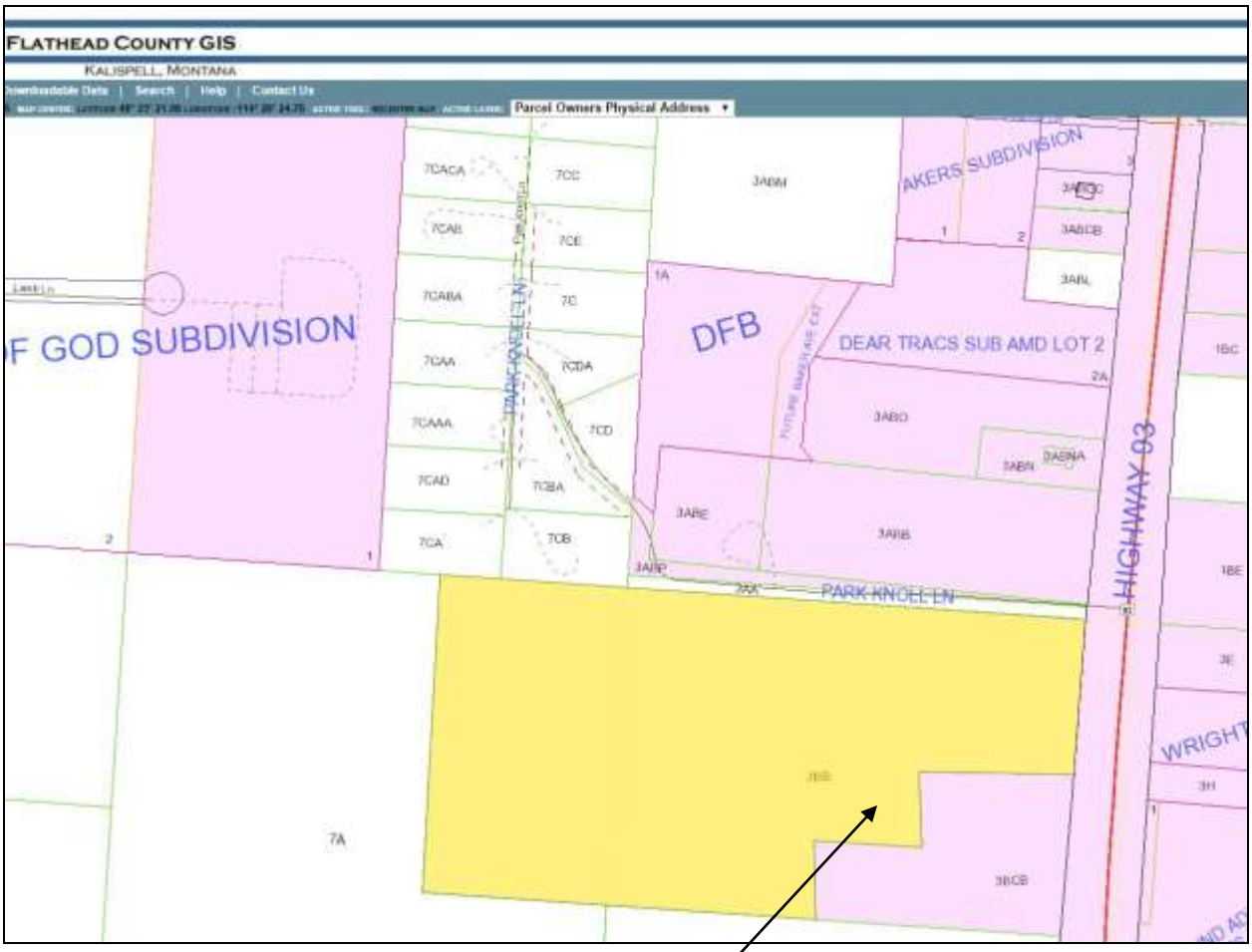
CERTIFICATE AS TO RESOLUTION
AND ADOPTING VOTE

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: "A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 6260 US Highway 93 South, for which the owner has petitioned for and consented to annexation" (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 16, 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, Councilors voted unanimously in favor thereof.

WITNESS my hand and seal officially this 16th day of February 2016.

_____
Necile Lorang, City Clerk



A Portion of 6260 US Highway 93 South
Assessor No. 0595750

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

PETITION

BEFORE THE CITY COUNCIL

OF THE

CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 27 day of January, 2016.

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

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 2nd day of February, 2016.

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

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

SEE ATTACHED EXHIBIT "A"

PROPERTY ADDRESS: 6260 Hwy 93 S Whitefish MT 59937

ZONED AS: WA/SAG 10

H Marie Hedman
H MARIE HEDMAN
[Printed Name]

[Printed Name]

STATE OF MONTANA)
) :ss
County of FLATHEAD)

On this 27 day of January, 2016, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared H. MARIE HEDMAN and _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

Cy Wickham

Notary Public for the State of MONTANA
Print or Type Name of Notary: CRAIG WICKHAM
Residing at WHITEFISH, MT
My Commission expires: May 21, 2017

(SEAL)
CRAIG WICKHAM
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
May 21, 2017

CRAIG WICKHAM NOTARIAL SEAL State of Montana

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

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

THIS AGREEMENT is entered into as of 2nd day of February, 2016, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and H. MARIE HEDMAN ("OWNER"), as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is P.O. BOX 2105 KALISPELL, MT 59903 with respect to the following facts:

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

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

LEGAL DESCRIPTION

SEE ATTACHED EXHIBIT "A"

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

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

E. The parties desire to enter into an Agreement pursuant to MCA §§ 7-13-4312 and 7-13-4314, for the CITY to furnish municipal water and/or sanitary sewer service at rates adopted in accordance with Montana State Law in return for OWNER'S agreement that OWNER'S REAL PROPERTY may be annexed to the corporate limits of the CITY at any time.

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

agreed as follows:

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

(2) Municipal Water and/or Sanitary Sewer Connections: Upon approval by the CITY Public Works Department of the design and construction of all the municipal water and/or sanitary sewer lines and other facilities necessary to serve OWNER'S REAL PROPERTY, and acceptance of all of such water and/or sewer facilities by the CITY, OWNER will be given permission to connect no more than 0 connection to the CITY'S municipal water and/or sanitary sewer system. Any additional water and/or sewer connections shall require a new application for service and approval obtained from the CITY Public Works Department.

Upon approval by the CITY Public Works Department, OWNER will be given permission to extend 0 water and sanitary sewer stubs from the municipal sanitary main to the property line of the property described herein. Any additional water and/or sanitary sewer stubs shall require a new application for CITY water and/or sanitary sewer service. Prior to connecting any residential or commercial building or any other structure to the water and/or sanitary sewer service stub-out(s), a request must be submitted to CITY for municipal water and/or sanitary sewer service describing the use of the building proposed to be connected. Any connections must comply with the Rules and Regulations for the City of Whitefish Water, Wastewater and Garbage Utility. The request is to be reviewed and approved by CITY prior to any connection of a residential or commercial building, or other structure. No residential or commercial building or any other structure shall be allowed to connect to the municipal water and/or sanitary sewer service extension unless approval has first been obtained from the CITY Public Works Department.

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

OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary

sewer extension lines. If any portion of the lateral extension is constructed on land owned by OWNER at the time OWNER transfers their interest in the sanitary sewer extension line to the CITY, they shall also grant the CITY an appropriate easement for construction, repair, and maintenance of the municipal water and/or sanitary sewer extension lines. The CITY shall not be required to accept any previously constructed water or sewer lines unless they are properly located in the right-of-way or a valid easement.

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

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

(6) **Consent to Annexation**: OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA § 7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to and petition for annexation of the tract served by the CITY, and in consideration for the CITY'S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to consent to annexation under the following conditions and in the following manner:

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

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

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

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

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

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

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

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

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

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

all subsequent holders or owners of OWNER'S REAL PROPERTY.

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

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

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

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

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

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

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

CITY OF WHITEFISH

By: Charles C. Stearns
Charles C. Stearns, City Manager

OWNER(S)

H Marie Hedman
H MARIE HEDMAN
[Printed Name]

_____
_____
[Printed Name]

ATTEST:

Necile Lorang

Necile Lorang, City Clerk

STATE OF MONTANA)
) ss.
County of Flathead)

On this 2nd day of February, 2016, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared CHARLES C. STEARNS and NECILE LORANG, known to me to be the City Manager and City Clerk of the City of Whitefish, whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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

KENI HOPKINS NOTARIAL SEAL STATE OF MONTANA

KENI HOPKINS
NOTARY PUBLIC for the
State of Montana
Residing at Columbia Falls, Montana
My Commission Expires
November 06, 2018

Keni Hopkins

Notary Public for the State of Montana

STATE OF MONTANA)
) ss.
County of Flathead)

On this 27th day of January, 2016, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared H. MARIE HEDMAN and —, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

(SEAL)

CRAIG WICKHAM NOTARIAL SEAL State of Montana

CRAIG WICKHAM
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
May 21, 2017

Cy Wickham

Notary Public for the State of MT

CRAIG WICKHAM

[print or type name of Notary]

Residing at Whitefish, MT

My Commission expires: May 21, 2017

EXHIBIT "A"

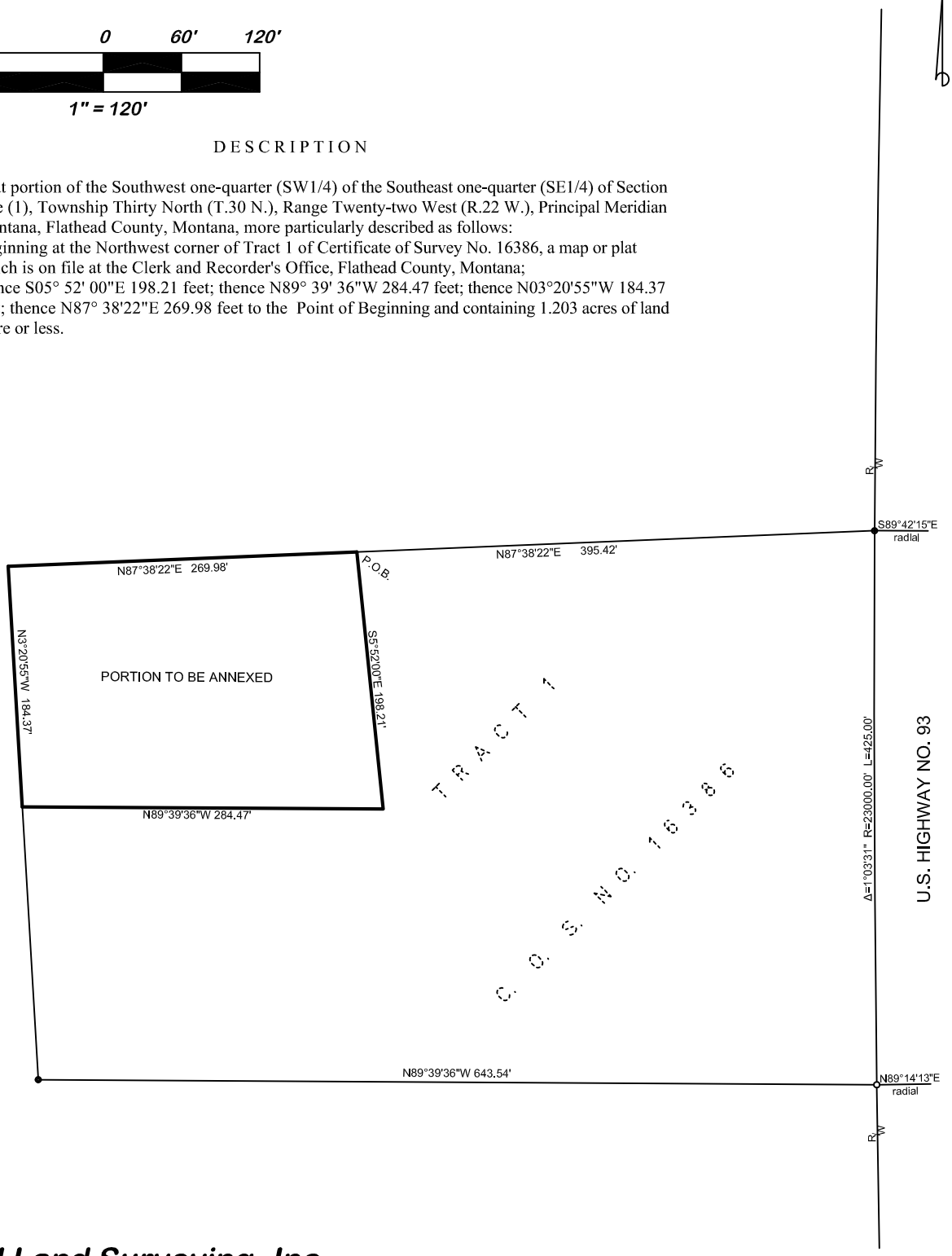
SW 1/4 SE 1/4 Section 1, T.30 N., R.22 W., P.M.,M.
Flathead County, Montana

120' 0 60' 120'

1" = 120'

DESCRIPTION

That portion of the Southwest one-quarter (SW1/4) of the Southeast one-quarter (SE1/4) of Section One (1), Township Thirty North (T.30 N.), Range Twenty-two West (R.22 W.), Principal Meridian Montana, Flathead County, Montana, more particularly described as follows:
Beginning at the Northwest corner of Tract 1 of Certificate of Survey No. 16386, a map or plat which is on file at the Clerk and Recorder's Office, Flathead County, Montana;
thence S05° 52' 00"E 198.21 feet; thence N89° 39' 36"W 284.47 feet; thence N03°20'55"W 184.37 feet; thence N87° 38'22"E 269.98 feet to the Point of Beginning and containing 1.203 acres of land more or less.



F & H Land Surveying, Inc.
144 Second Street East
P.O. Box 114
Whitefish, Mt. 59937
406-862-2386

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ORDINANCE NO. 16-___

An Interim Ordinance of the City Council of the City of Whitefish, Montana, imposing a moratorium on allowing the averaging of residential density across underlying zoning districts when a Planned Unit Development overlays more than one district.

WHEREAS, the City Council has approved Planned Unit Developments ("PUDs") that included the averaging of residential density across multiple underlying zoning districts; and

WHEREAS, questions arose regarding the PUD Chapter in the City Code and lack of clarity with respect to the issue of PUD boundaries spanning multiple underlying zones; and

WHEREAS, in response to the questions, the Whitefish Planning & 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 residential density when a PUD overlays more than one underlying zoning district; and

WHEREAS, in furtherance of the effort 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 January 15, 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 amendments; 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 directed staff to address the confusion regarding residential density averaging when a PUD overlays multiple underlying zones, and to look at later revising the PUD Chapter; and

WHEREAS, in response, the Planning & 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 to City Code §§11-2S-3, and 11-2S-5, and to ask the City Council to direct staff to revise the PUD Chapter as well as place a moratorium on allowing the averaging of residential density across underlying zoning districts when a PUD overlays more than one district; 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, invited public input, and thereafter directed Legal staff to prepare an interim zoning ordinance imposing a moratorium on allowing the averaging of residential density across underlying zoning districts when a PUD overlays more than one district; and

WHEREAS, § 76-2-306, MCA, permits the City to protect public safety, health, and welfare by adopting as a urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering or studying or intends to study within a reasonable time; and

WHEREAS, § 7-2-306, MCA, allows the City to adopt an interim zoning ordinance to protect public safety, health, and welfare without following the preliminary procedures otherwise required to adopt zoning ordinances; and

WHEREAS, in response to significant public input as well as review of the materials presented, the City Council has determined the averaging of residential density across underlying zoning districts when a PUD overlays more than one district within the City of Whitefish could be immediately detrimental to, harmful to, and a threat to the peace, property rights, health, safety, and general welfare of the City and its inhabitants, until such time as the City has had an opportunity to further study such issue and an opportunity to adopt appropriate ordinances, zoning or otherwise, to appropriately address the issue and the entire PUD Chapter; and

WHEREAS, after first having provided lawful public notice, as required by § 76-2-306(2), MCA, the City Council conducted a public hearing on February 16, 2016, with respect to this proposed interim ordinance, and invited public comment.

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: An interim zoning ordinance imposing a moratorium on allowing the averaging of residential density across underlying zoning districts when a PUD overlays more than one district is hereby adopted in order to allow the City an opportunity to further study such issue and to adopt appropriate ordinances, zoning or otherwise, to appropriately address the issue and other issues within the PUD Chapter.

Section 3: This interim zoning ordinance shall remain in effect for six months from the date of its adoption unless, after notice and pursuant to public hearing, the City Council extends the ordinance as allowed by § 76-2-306(3), MCA.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the interim 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 interim ordinance shall take effect immediately upon its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor or Deputy Mayor thereof. No second reading shall be required.

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

CITY OF WHITEFISH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that at its regular meeting on Tuesday, February 16, 2016, at 7:10 PM, in the Whitefish City Council Meeting room, located in City Hall, at 1005 Baker Avenue, Whitefish, Montana, the Whitefish City Council will conduct a public hearing and take public comment regarding the adoption of a proposed Interim Zoning Ordinance that would impose a moratorium on allowing the averaging of residential density across underlying zoning districts when a Planned Unit Development overlays more than one district within the City of Whitefish.

A copy of the proposed Interim Zoning Ordinance, or further information regarding the proposed Interim Zoning Ordinance, can be obtained by contacting the Director of the Planning and Building Department, David Taylor, at 863-2416.

For publication on February 7, 2016, in the Legal Notice Section of the *Daily Inter Lake*, and on February 10, 2016, in the Legal Notices Section of the *Whitefish Pilot*.

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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 to amend Section 11-2, Zoning Districts, to add 11-2W, WT-3 Neighborhood Mixed-Use Transitional District, and 11-2X WI-T Industrial Transitional District, as well as development requirements for Artisan Manufacturing, Micro-Breweries and Micro-Distilleries, and Live/Work Units in Special Provisions 11-3, and new definitions for Artisan Manufacturing, Business Incubators, Coffee Shops/ Sandwich Shops, Live/Work Unit, Micro-Brewery, Micro-Distillery, Mixed-Use Environment, Mixed-Use Building, and Research Facilities in 11-9, as an implementation of the Highway 93 West Corridor Plan.

WHEREAS, on June 1, 2015, the City Council adopted the Highway 93 West Corridor Land Use Plan, and said plan, in the implementation chapter, called for several amendments to the City Code to implement the plan and included sample language of said amendments; and

WHEREAS, at a lawfully noticed public hearing on September 17, 2015, and November 5, 2015, the Whitefish Planning Board received oral reports from Planning staff during work sessions, reviewed the draft transitional zones and other proposed amendments, invited public comment, and thereafter directed staff to move forward with the proposed text amendments; and

WHEREAS, in response to the direction to amend Title 11, Chapters 2, 3, and 9 in the Whitefish City Code, the Planning & Building Department prepared Staff Report WZTA 15-03, 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 15-03, held a public hearing, invited public comment, and thereafter voted to recommend approval of the proposed text amendments to the City Council; and

WHEREAS, at a lawfully noticed public hearing on February 16, 2016, the Whitefish City Council received an oral and written report from Planning staff, reviewed Staff Report WZTA 15-03, and letter of transmittal dated February 9, 2016, 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 15-03 dated January 21, 2016, together with the February 9, 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 11-2W, 11-2X, 11-3-39, 11-3-40, 11-3-41, and 11-9-2, amending the language as provided in the attached Exhibit "A", 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

EXHIBIT "A"

WHITEFISH CITY CODE TITLE 11 – ZONING REGULATIONS

CHAPTER 2 – ZONING DISTRICTS

ARTICLE W. WT-3 NEIGHBORHOOD MIXED-USE TRANSITIONAL DISTRICT

11-2W-1: INTENT AND PURPOSE: The WT-3 District is intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary services to provide a performance-based mixed-use environment with a recreational amenity, a community gateway, and adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The boundary of this district is along the north side of Highway 93 from both sides of north Karrow Avenue to the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

11-2W-2: PERMITTED USES:

- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings and uses.
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
- Residential:
    - Class A manufactured homes
    - Daycare (registered home, 5 to 12 children)
    - Guest and domestic worker quarters
    - Single-family through four-plex dwelling units
    - Sublots (see Special Provisions in subsection 11-3-14C of this title)

11-2W-3: CONDITIONAL USES:

- Accessory apartments.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Caretaker's unit.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs, private and semiprivate recreational facilities.
- Daycare centers (more than 12 individuals).
- Dwelling groups or clusters.
- Guesthouses.

- Hotels and motels and associated uses customarily accessory thereto are permitted within a portion of the Whitefish River frontage area, said frontage area being a strip of land 300 feet wide and lying southwesterly of, and contiguous to, the requisite buffer and setback areas of the Whitefish River north of 1st Street. The width of this area may be modified by the Zoning Administrator if geotechnical analysis reveals the presence of unstable fill material along the bank of the Whitefish River.
- Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title).
- Personal Services (street level only).
- Professional offices (street level only).
- Professional Artist Studio and Gallery (see Special Provisions in section 11-3-15).
- Public golf courses.
- Residential:
    - Boarding houses
    - Five-plex or larger multi-family dwelling units

11-2W-4: PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 3,500 square feet or greater, existing structures where an addition causes the total footprint to be 3,500 square feet or greater, and additions to structures where the footprint is already 3,500 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	n/a
Minimum lot area:	
Single-family dwelling	6,000 square feet
Multi-family dwellings/unit	3,000 square feet
Attached one-family dwelling on a sub-lot	2,400 square feet
Minimum lot width:	50 feet
Minimum yard spaces:	
Front:	25 feet
Side:	10 feet for single-story, 15 feet for two-story
Rear:	20 feet

Maximum height:	35 feet. The maximum building height may be increased up to 42 feet for mixed-use buildings or when the majority of the roof pitch is 7/12 or steeper.
Permitted lot coverage:	50% maximum.
Off-street parking:	See Chapter 6 of this title. 1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both. 2. If a non-residential and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50%. 3. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by Chapter 6 of this title. 4. Shared or leased parking may be located within 300 feet of the site. 5. Required accessible parking spaces (for persons with disabilities) may not be shared and must be located on site.
Hours of operation:	7 am to 8 pm for non-residential uses if within 100 feet of a residential use.
Accessory buildings:	Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front one-half of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.
Landscaping:	See Chapter 4 of this title (single-family uses exempted).

ARTICLE X. WI-T INDUSTRIAL TRANSITIONAL DISTRICT

11-2X-1: INTENT AND PURPOSE: The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the downtown, have existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access. The applicable boundary of this district is along the north side of West 1st Street east of Murray Avenue to the BNSF railway corridor and where a buffer of mixed use zoning shall separate it from the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

11-2X-2: PERMITTED USES:

- Building supply outlets.
- Janitorial services.
- Light industrial manufacturing, fabricating, processing, repairing, packing or storing facilities.
- Live/work units (see Special Provisions in section 11-3-40 of this title).
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
- Parcel delivery services.
- Private railway cars with living accommodations are allowed to park on rail lines for up to 30 days in a calendar year (no short term rentals).
- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings.
- Professional offices.
- Warehousing.
- Wireless transmission facility.

11-2X-3: CONDITIONAL USES:

- Bed and breakfast establishments (see Special Provisions in section 11-3-4 of this title).
- Any use allowed as a permitted use under the WI District not listed above under Permitted Uses.
- Business incubator. The following uses are permitted within a business incubator facility, not to exceed 3,600 square feet of floor area per use:
    - Advanced materials
    - Arts
    - Biosciences/life sciences
    - Computer hardware and software
    - Construction
    - E-business and e-commerce
    - Electronics/micro-electronics

- Energy
- Environment/clean technologies
- Healthcare
- Internet
- Kitchen/food
- Manufacturing
- Media
- Medical devices
- Nano-technology
- Services/professional
- Telecommunications
- Tourism
- Wireless technology
- Wood/forestry

- Coffee shops and sandwich shops (no "formula" businesses), with no more than 2,000 square feet of gross floor area.
- Colleges, business and trade schools.
- Contractors' yards.
- Grocery stores (less than 5,000 square feet of enclosed gross floor area per lot of record).
- Heavy equipment sales, rental and service.
- Manufacturing, artisan (see Special Provisions in section 11-3-38 of this title).
- Micro-breweries and micro-distilleries.
- Nursing and retirements homes, personal care facilities, community residential facilities, types I and II.
- Petroleum products, wholesale.
- Research facilities.

11-2X-4: PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint is already 15,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	5 acres
Minimum lot area:	n/a

Minimum lot width:	50 feet
Minimum yard spaces:	
Front:	25 feet
Side:	10 feet. 20 feet if adjacent to a residential zone or park.
Rear:	20 feet
Maximum height:	35 feet
Permitted lot coverage:	70 percent
Off-street parking:	See Chapter 6 of this title.
Outdoor storage and processes:	No outdoor processes shall be employed in the operation of businesses. Waste and recycle receptacles shall be maintained within an enclosed structure. Limited outdoor storage areas shall be allowed, subject to the following criteria: 1. Outdoor storage areas shall not be located in the front yard setback. 2. Outdoor storage areas shall be screened with a sight obscuring fence at least six feet in height but not to exceed eight feet in height. Fencing shall be located behind the required perimeter landscaping. 3. Equipment, vehicles, materials, containers, and other items located within outdoor storage areas shall be maintained in an orderly fashion. 4. Outdoor storage areas shall not be used to store waste or recycle materials.
Site plan requirements:	1. The site plan, vicinity map and building elevations must be submitted to and approved by the zoning administrator to erect new buildings or structures, make additions exceeding ten percent (10%) of the floor area or existing buildings or structures, or otherwise grade or develop a lot for a permitted use prior to the issuance of a building permit. A comprehensive site plan is required for multiple-tenant projects. Site plans shall include all buildings, structures, parking, driveways, sidewalks, utilities, drainage, hydrants, open space, landscaping and signage. The vicinity map shall include surrounding parcels, buildings, structures, circulation systems and major physical features. The site plan shall demonstrate

	conformance with the zoning regulations and other applicable city regulations. All projects constructed in accordance with an approved site plan shall be permanently maintained as approved. Any desired subsequent changes shall be submitted for approval as an amendment to the site plan. Prior to occupancy, the site shall be inspected for compliance with the site plan. All improvements shall be installed and functioning before occupancy will be allowed. 2. Minor deviations to the site plan shall be allowed which do not involve more than twenty percent (20%) of the building site for a single building. This would include, but is not limited to, the location and/or expansion of the building, parking lot location, signage, number of parking spaces, and landscaping. Minor deviations to the site plan shall be reviewed and approved by the zoning administrator. 3. Substantial modifications to the site plan will be required to be reviewed and approved by the city council. Substantial changes would include, but not be limited to, an increase in the number of buildings, major changes in access or circulation, an increase in building size by more than twenty percent (20%), and major changes to landscaping design and location.
Accessory buildings:	Accessory buildings shall maintain the same yard requirements as the primary use.
Landscaping:	See Chapter 4 of this title. Section 11-4-5-E applies.

CHAPTER 3 – SPECIAL PROVISIONS

11-3-39: ARTISAN MANUFACTURING:

A. Hours of operation for activities or services open to the public shall be limited to 8 am to 8 pm.

B. Uses that create excessive, objectionable byproducts such as dirt, glare, heat, odor, smoke, waste material, dust, gas, atmospheric pollutants, noise or that have the potential for increased danger to life and property by reason of fire, explosion or other physical hazards are prohibited.

C. Shipping and receiving shall be limited to 7 am to 7 pm except for rail-related shipments.

D. All outdoor storage shall be enclosed and screened from adjacent properties and public streets.

E. All outdoor seating and outdoor display shall be screened from adjacent residential uses by fencing or landscaping.

F. All outdoor lighting shall be compliant with 11-3-25: OUTDOOR LIGHTING STANDARDS.

G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).

H. With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises.

11-3-40: MICRO-BREWERIES AND MICRO-DISTILLERIES

A. Hours of operation and maximum servings shall be in accordance with state law.

B. With the exception of pallets and kegs screened by a site obscuring fence, outdoor storage is prohibited.

C. A grain silo may be permitted to be located outside the building where the beverages are manufactured. It may not be located in any required parking space or access way. One sign may be permitted on the grain silo with a maximum size of twelve (12) square feet in addition to any other allowable signs permitted at the site.

D. Shipping and receiving is limited to 7 am to 8 pm when the facility is located within 500 feet of any residential or institutional use.

E. Outdoor seating areas shall be fenced around the perimeter.

11-3-41: LIVE/WORK UNITS

A. The exterior design of live/work buildings shall be compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.

B. Any commercial or industrial use permitted in the zoning district applicable to the property is permitted in the live/work unit, subject to a business license.

C. A live/work unit cannot be used solely for residential purposes, and at least one resident in each live/work unit shall maintain a valid business license for a business on the premises.

D. For live/work units of less than 2,500 square feet, two parking spaces are required for each unit. For live/work units of greater than 2,500 square feet, required parking will be

based on the applicable parking standard for the non-residential use or the closest similar use as determined by the Zoning Administrator.

CHAPTER 9 – DEFINITIONS

11-9-2: DEFINITIONS

BUSINESS INCUBATORS: Facilities that are dedicated to start up and early-stage companies. Business incubators integrate into the community in a number of ways and assist startup companies with such things as:

- Access to angel investors or venture capital.
- Access to bank loans, loan funds and guarantee programs.
- Advisory boards and mentors.
- Business basics.
- Comprehensive business training programs.
- Help with accounting/financial management.
- Help with business etiquette.
- Help with presentation skills.
- Help with regulatory compliance.
- High-speed Internet access.
- Intellectual property management.
- Links to higher education resources.
- Links to strategic partners.
- Management team identification.
- Marketing.
- Networking activities.
- Technology commercialization assistance.

COFFEE SHOPS/ SANDWICH SHOPS: Facilities serving non-alcoholic beverages, pastries, and/or breakfast and lunch.

LIVE/WORK UNIT: A structure or portion of a structure that combines a permitted or conditional use allowed in the zone with a residential living space for the owner of the permitted or conditional use or the owner's employee, and that person's household; and where the resident owner or employee of the business is responsible for the licensed commercial or manufacturing activity performed.

MANUFACTURING, ARTISAN: Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production,

operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing.

MICRO-BREWERY: A facility for the production and packaging of 10,000 barrels a year or less of malt beverages of alcoholic content for on- or off-premises distribution, retail or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as growlers, t-shirts, and hats.

MICRO-DISTILLERY: A facility for the limited production of distilled spirits, making 25,000 gallons per year or less, for on- or off-premises distribution, retail, or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as t-shirts and hats.

MIXED-USE ENVIRONMENT: Neighborhoods where different types of land uses such as residential, office, or institutional are in close proximity.

MIXED-USE BUILDING: A building that houses residential uses in combination with non-residential uses.

RESEARCH FACILITIES: A laboratory facility that is primarily used for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. This use does not involve the fabrication, mass manufacture, or processing of the products.

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

February 18, 2016

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

Re: Zoning Text Amendment: WZTA 15-03

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the City of Whitefish to amend Section 11-2, Zoning Districts, to add 11-2W, WT-3, Neighborhood Mixed-Use Transitional, and 11-2X, the WI-T, Industrial Transitional zoning districts, as well as development requirements for Artisan Manufacturing, Micro-breweries, Micro-distilleries, and Live-work units in Special Provisions 11-3, and new definitions for Business Incubators, Coffee Shops/Sandwich Shops, Live/work units, Artisan Manufacturing, Micro-brewery, Micro-Distillery, Mixed-Use Environment, Mixed-use Building, and Research Facilities in 11-9 as an implementation of the Highway 93 West Corridor Plan.

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

Public Hearings: Planning Board workshops was held on these items on September 17, 2015 and November 5, 2015, and a Public Hearing was held on January 21, 2016.

Public Comment from January 21, 2016 Public Hearing:
At the January 21, 2016 public hearing, the following people spoke:

- Ryan Zinke, 409 W Second, said he'd followed a five year process and every hoop asked for to be allowed to do a small micro-brewery on the river, that the corridor study agreed it was appropriate, and asked that the Planning Board recommend the WT-3 zone language include micro-breweries as a Conditional Use.
- Doug Wise, 1000 Birch Point Drive, supported more commercial growth on Highway 93 West as it was similar to Wisconsin and Highway 93 South.
- Doug Reed, 520 Somers Avenue, chairman of the Highway 93 West Steering Committee, said the Code Amendments capture the spirit of what the committee decided, and said that breweries/distilleries were appropriate in the WT-3 and the WI-T.
- Hunter Homes, 216 Midway Drive in Columbia Falls, steering committee member and representative of the owner of Idaho Timber, said his client needs the code recommendations adopted to move forward on their development, asked that they be approved.

- Mayre Flowers, Citizens for a Better Flathead, handed out two pages of written comments (included). She also brought up the need for the area to accommodate affordable housing.
- Anne Moran, 432 W 3rd, steering committee member, supported the amendments, but also supported Mayre Flowers concerns. Was not in support of a micro brewery in the WT-3.
- Barbara Palmer, W 3rd St, said people who supported a brewery don't live near it. She read a letter from Susan Prilliman that did not support alcohol related businesses.
- Rhonda Fitzgerald, said the council was very clear about their previous decisions with regard to breweries, thought everything needed a CUP, and that no formula retail should apply to everything in the new zones. She was concerned with short term rentals in live/work units, and that buildings 7,500 square feet and over in the industrial zone should need a CUP.
- Lola Zinke didn't feel people giving public comments were being respectful and courteous, and that people were spreading fiction, and that the original corridor study should be honored.
- Andrea Beatty, 245 Diamond Court, supported the Zinke's and their micro-brewery on the river proposal.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended unanimous approval (Ellis/Norton) of the proposed amendments. Additionally, a motion was passed unanimously (Meckel/Ellis) to add "and no larger than 2,000 square feet of gross floor area" under Conditional Uses on Page 8 of 14 following "Coffee Shops and sandwich shops (no "formula" businesses)" under the WI-T, and strike "with no more than 2,000 square feet of gross floor area" form the definition of Coffee Shops and Sandwich Shops on page 12". An additional motion (Meckel/Ellis) was passed unanimously to strike the work "open" in the WI-T Outdoor Storage requirements number 4, so that it now read "Outdoor storage areas shall not be used to store waste or recycle materials".

Proposed Motion:

> I move to approve WZTA 15-03 along with the Findings of Fact in the staff report

This item has been placed on the agenda for your regularly scheduled meeting on February 16, 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, Planning Board proposed zoning text amendment, 2-21-16
Minutes of 1/21/16 Planning Board Meeting
Public Comment Letter from Citizens for a Better Flathead 1/21/16
Staff Report WZTA 15-03 from 1/21/16 Planning Board Packet

Other Exhibits

1. Staff Work Session Memos, 9/17/15, 10/15/15

c: w/att Necile Lorang, City Clerk

EXHIBIT 'A'
Planning Board Recommendation
WZTA 15-03
FEBRUARY 16, 2016

ARTICLE W, WT-3 NEIGHBORHOOD MIXED-USE TRANSITIONAL DISTRICT

The WT-3 District is intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary services to provide a performance-based mixed-use environment with a recreational amenity, a community gateway, and adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The boundary of this district is along the north side of Highway 93 from both sides of north Karrow Avenue to the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

PERMITTED USES:

- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings and uses.
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
- Residential
    - Class A manufactured homes.
    - Daycare (registered home, 5 to 12 children).
    - Guest and domestic worker quarters.
    - Single-family through four-plex dwelling units
    - Sublots (see Special Provisions in subsection 11-3-14C of this title).

CONDITIONAL USES:

- Accessory apartments.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Caretaker's unit.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs, private and semiprivate recreational facilities.
- Daycare centers (more than 12 individuals).
- Dwelling groups or clusters.
- Guesthouses.
- Hotels and motels and associated uses customarily accessory thereto are permitted within a portion of the Whitefish River frontage area, said frontage area

being a strip of land 300 feet wide and lying southwesterly of, and contiguous to, the requisite buffer and setback areas of the Whitefish River north of 1st Street. The width of this area may be modified by the Zoning Administrator if geotechnical analysis reveals the presence of unstable fill material along the bank of the Whitefish River

- Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title).
- Personal Services (street level only).
- Professional offices (street level only).
- Professional Artist Studio and Gallery (see Special Provisions in section 11-3-15)
- Public golf courses.
- Residential:
    - Boarding houses.
    - Five-plex or larger multi-family dwelling units

PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 3,500 square feet or greater, existing structures where an addition causes the total footprint to be 3,500 square feet or greater, and additions to structures where the footprint is already 3,500 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	n/a
Minimum lot area:	
Single-family dwelling	6,000 square feet
Multi-family dwellings/unit	3,000 square feet
Attached one-family dwelling on a sub-lot	2,400 square feet
Minimum lot width:	50’
Minimum yard spaces:	
Front:	25 feet
Side:	10 feet for single-story, 15 feet for two-story
Rear:	20 feet

Maximum height:	35 feet. The maximum building height may be increased up to 42 feet for mixed-use buildings or when the majority of the roof pitch is 7/12 or steeper.
Permitted lot coverage:	50% maximum.
Off-street parking:	See Chapter 6 of this title. 1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both. 2. If a non-residential and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50%. 3. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by Chapter 6 of this title. 4. Shared or leased parking may be located within 300 feet of the site. 5. Required accessible parking spaces (for persons with disabilities) may not be shared and must be located on site.
Hours of operation:	7 am to 8 pm for non-residential uses if within 100 feet of a residential use.
Accessory buildings:	Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front one-half of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.
Landscaping:	See Chapter 4 of this title (single-family uses exempted).

ARTICLE X, WI-T INDUSTRIAL TRANSITIONAL DISTRICT

The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the

downtown, have existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access. The applicable boundary of this district is along the north side of West 1st Street east of Murray Avenue to the BNSF railway corridor and where a buffer of mixed use zoning shall separate it from the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

PERMITTED USES:

- Building supply outlets
- Janitorial services
- Light industrial manufacturing, fabricating, processing, repairing, packing or storing facilities.
- Live/work units (see Special Provisions in section 11-3-40 of this title).
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens
- Parcel delivery services
- Private railway cars with living accommodations are allowed to park on rail lines for up to 30 days in a calendar year (no short term rentals).
- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings
- Professional offices
- Warehousing
- Wireless transmission facility.

CONDITIONAL USES:

- Bed and breakfast establishments (see Special Provisions in section 11-3-4 of this title).
- Any use allowed as a permitted use under the WI District not listed above under Permitted Uses.
- Business incubator. The following uses are permitted within a business incubator facility, not to exceed 3,600 square feet of floor area per use:

    - Advanced materials
    - Arts
    - Biosciences/life sciences
    - Computer hardware and software
    - Construction
    - E-business and e-commerce
    - Electronics/micro-electronics
    - Energy
    - Environment/clean technologies
    - Healthcare
    - Internet

- Kitchen/food
- Manufacturing
- Media
- Medical devices
- Nano-technology
- Services/professional
- Telecommunications
- Tourism
- Wireless technology
- Wood/forestry

- Coffee shops and sandwich shops (no “formula” businesses), <u>with no more than 2,000 square feet of gross floor area</u>.
- Colleges, business and trade schools.
- Contractors' yards
- Grocery stores (less than 5,000 square feet of enclosed gross floor area per lot of record).
- Heavy equipment sales, rental and service.
- Manufacturing, artisan (see Special Provisions in section 11-3-38 of this title).
- Micro-breweries and micro-distilleries
- Nursing and retirements homes, personal care facilities, community residential facilities, types I and II
- Petroleum products, wholesale.
- Research facilities.

PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint is already 15,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	5 acres
Minimum lot area:	n/a
Minimum lot width:	50

Minimum yard spaces:

Front:	25 feet
Side:	10 feet. 20 feet if adjacent to a residential zone or park.
Rear:	20 feet
Maximum height:	35 feet.
Permitted lot coverage:	70 percent
Off-street parking:	See Chapter 6 of this title.
Outdoor storage and processes:	No outdoor processes shall be employed in the operation of businesses. Waste and recycle receptacles shall be maintained within an enclosed structure. Limited outdoor storage areas shall be allowed, subject to the following criteria: 1. Outdoor storage areas shall not be located in the front yard setback. 2. Outdoor storage areas shall be screened with a sight obscuring fence at least six feet in height but not to exceed eight feet in height. Fencing shall be located behind the required perimeter landscaping. 3. Equipment, vehicles, materials, containers, and other items located within outdoor storage areas shall be maintained in an orderly fashion. 4. ~~Open~~ O~~o~~utdoor storage areas shall not be used to store waste or recycle materials.

Site Plan Requirements:

1. The site plan, vicinity map and building elevations must be submitted to and approved by the zoning administrator to erect new buildings or structures, make additions exceeding ten percent (10%) of the floor area or existing buildings or structures, or otherwise grade or develop a lot for a permitted use prior to the issuance of a building permit. A comprehensive site plan is required for multiple-tenant projects. Site plans shall include all buildings, structures, parking, driveways, sidewalks, utilities, drainage, hydrants, open space, landscaping and signage. The vicinity map shall include surrounding parcels, buildings, structures, circulation systems and major physical features. The site plan shall demonstrate conformance with the zoning regulations and other applicable city regulations. All projects constructed in accordance with an approved site plan shall be

permanently maintained as approved. Any desired subsequent changes shall be submitted for approval as an amendment to the site plan. Prior to occupancy, the site shall be inspected for compliance with the site plan. All improvements shall be installed and functioning before occupancy will be allowed.

2. Minor deviations to the site plan shall be allowed which do not involve more than twenty percent (20%) of the building site for a single building. This would include, but is not limited to, the location and/or expansion of the building, parking lot location, signage, number of parking spaces, and landscaping. Minor deviations to the site plan shall be reviewed and approved by the zoning administrator.
3. Substantial modifications to the site plan will be required to be reviewed and approved by the city council. Substantial changes would include, but not be limited to, an increase in the number of buildings, major changes in access or circulation, an increase in building size by more than twenty percent (20%), and major changes to landscaping design and location.

Accessory buildings:	Accessory buildings shall maintain the same yard requirements as the primary use.
Landscaping:	See Chapter 4 of this title. Section 11-4-5-E applies.

11-3 SPECIAL PROVISIONS

11-3-39 ARTISAN MANUFACTURING:

A. Hours of operation for activities or services open to the public shall be limited to 8 am to 8 pm.
B. Uses that create excessive, objectionable byproducts such as dirt, glare, heat, odor, smoke, waste material, dust, gas, atmospheric pollutants, noise or that have the potential for increased danger to life and property by reason of fire, explosion or other physical hazards are prohibited.
C. Shipping and receiving shall be limited to 7 am to 7 pm except for rail-related shipments.
D. All outdoor storage shall be enclosed and screened from adjacent properties and public streets.
E. All outdoor seating and outdoor display shall be screened from adjacent residential uses by fencing or landscaping.
F. All outdoor lighting shall be compliant with 11-3-25: OUTDOOR LIGHTING STANDARDS.
G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).
H. With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises.

11-3-40 MICRO BREWERIES AND MICRO DISTILLERIES

A. Hours of operation and maximum servings shall be in accordance with state law.
B. With the exception of pallets and kegs screened by a site obscuring fence, outdoor storage is prohibited.
C. A grain silo may be permitted to be located outside the building where the beverages are manufactured. It may not be located in any required parking space or access way. One sign may be permitted on the grain silo with a maximum size of twelve (12) square feet in addition to any other allowable signs permitted at the site.
D. Shipping and receiving is limited to 7 am to 8 pm when the facility is located within 500 feet of any residential or institutional use.
E. Outdoor seating areas shall be fenced around the perimeter.

11-3-41 LIVE/WORK UNITS

A. The exterior design of live/work buildings shall be compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.
B. Any commercial or industrial use permitted in the zoning district applicable to the property is permitted in the live/work unit, subject to a business license.
C. A live/work unit cannot be used solely for residential purposes, and at least one resident in each live/work unit shall maintain a valid business license for a business on the premises.
D. For live/work units of less than 2,500 square feet, two parking spaces are required for each unit. For live/work units of greater than 2,500 square feet, required parking will be based on the applicable parking standard for the non-residential use or the closest similar use as determined by the zoning administrator

11-9-2 Definitions

BUSINESS INCUBATORS – Facilities that are dedicated to start up and early-stage companies. Business incubators integrate into the community in a number of ways and assist startup companies with such things as:

- Access to angel investors or venture capital.
- Access to bank loans, loan funds and guarantee programs.
- Advisory boards and mentors.
- Business basics.
- Comprehensive business training programs.
- Help with accounting/financial management.
- Help with business etiquette.
- Help with presentation skills.
- Help with regulatory compliance.
- High-speed Internet access.
- Intellectual property management.

- Links to higher education resources.
- Links to strategic partners.
- Management team identification.
- Marketing.
- Networking activities.
- Technology commercialization assistance.

COFFEE SHOPS/SANDWICH SHOPS – Facilities serving non-alcoholic beverages, pastries, and/or breakfast and lunch ~~with no more than 2,000 square feet of gross floor area~~

LIVE/WORK UNIT - A structure or portion of a structure that combines a permitted or conditional use allowed in the zone with a residential living space for the owner of the permitted or conditional use or the owner's employee, and that person's household; and where the resident owner or employee of the business is responsible for the licensed commercial or manufacturing activity performed.

MANUFACTURING, ARTISAN - Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production, operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing.

MICRO-BREWERY - A facility for the production and packaging of 10,000 barrels a year or less of malt beverages of alcoholic content for on- or off-premises distribution, retail or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as growlers, t-shirts, and hats.

MICRO-DISTILLERY – A facility for the limited production of distilled spirits, making 25,000 gallons per year or less, for on- or off-premises distribution, retail, or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as t-shirts and hats.

MIXED-USE ENVIRONMENT – Neighborhoods where different types of land uses such as residential, office, or institutional are in close proximity.

MIXED-USE BUILDING - A building that houses residential uses in combination with non-residential uses.

RESEARCH FACILITIES - A laboratory facility that is primarily used for scientific research. This use can include the design, development, and testing of biological,

chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing.
This use does not involve the fabrication, mass manufacture, or processing of the products.

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.

PUBLIC HEARING 4: AMENDMENT OF WHITEFISH CITY CODE TITLE 11, ZONING REGULATIONS
8:40 pm

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

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part of the implementation of the Highway 93 West Corridor Plan.

STAFF REPORT WZTA 15-03 (Taylor)

This matter was continued from the December 17, 2015 Whitefish Planning Board Meeting.

Director Taylor reviewed his staff report and findings.

Staff recommended adoption of the findings of fact within staff report WZTA 15-03 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

John asked what a "Class A manufactured home" is (listed as a permitted use). Dave replied a type of a mobile home built to certain building code standard, such as the manufactured homes you see along Highway 2 in Kalispell. Class B is an old-style trailer or pull trailer. Class A homes are built to modern building code standards offsite, and then moved onto a site and put on a permanent foundation. John also asked if there is any reason that in the WT-3 zone the language is continued about up to 42' height, with a roof pitch of 7/12 but is was taken out of WI-T. Taylor said we have talked about it here and in the Industrial District and there is opportunity as we are seeing if someone is going to develop a hotel a lot of times they want to go a little taller than 35', so we are seeing a lot of PUDs just because they want to go up a little higher but do not want to necessarily go to the Board of Adjustment for a height variance. One of the things that adding that does is encourages more attractive buildings as people will do a flat roof building right at 35' so they can get three floors.

Rebecca referred to Page 11 of WZTA 15-03 about requiring two parking spaces for the live/work units. She recalled Mayre Flower talking about the possibility of considering reducing that to one space in the future, as some communities do in urban areas. Taylor replied some of the parking will be very dependent on what the building is used for, and that could be considered. He does not think we will necessarily see live/work units in the Transitional Zone.

APPLICANT / AGENCIES

None.

PUBLIC COMMENT

Congressman Ryan Zinke, 409 West Second Street in Whitefish, where his family has been for over 75 years, gave a history of the five-year process they have gone through. They did a PUD with Planning staff to convert the two houses on their property into a B&B, which was approved by this Board. The PUD project included a microbrewery on the south side to include 300' of public access to the River and 150' of setback to make sure the Whitefish public could enjoy Whitefish River. They decided to go with

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paddleboard and kayak manufacturing to make a light footprint and build a microbrewery on the property because the hours are limited. Congressman Zinke does not think a microbrewery is a backdoor for a bar. They are not selling gallons of beer, the law is very clear - three beers in a 24-hour period. The Chairman of the Corridor Study is right here, and the Corridor Study said that a microbrewery is exactly appropriate. He wants the River to be used by families, and with his project that part of the River can be used in perpetuity, which would not be the case if condos were put in. He sat through all these little hearings and feels there is not one credible reason why his project should not be approved. What he has seen is intimidation. When people intimidate the Board volunteers or professional staff, or ask the Board members to recuse themselves because they are sitting on a board, that is a concern. He asked that we honor the Corridor Study's intent, and the years that they went through it. He agrees to a Conditional Use Permit, but the area on the north side of the Highway is bounded by a highway, an industrial park and a railroad. It is not residential. He will work with the neighbors and make sure the project is appropriate and he will work with the Planning Board and staff to make sure that it is a win-win. That is his promise and intent. A Conditional Use Permit does that. It makes sure that the design is appropriate. The lot is large, he said he would give public access to down to the River and connect to the bike paths. His family runs the largest park in Whitefish, the Great Northern Peace Park on 20 acres. It is free for kids who sled and he provides that because he cares about Whitefish. Whether approved or not, he is done. Five years is a long time to go through a project, and he has tried to make this a win-win for Whitefish. He has compromised, looked at different things, brought professionals in and talked to everyone. What he is asking is that WT-1 should include a microbrewery under the conditions of a Conditional Use Permit. That is what the Corridor Study said. That is what the public hearings said and there is no argument against it that has any bearing. He then thanked the Board for their judgment and hard work.

Doug Wise, 1000 Birch Point Drive in Whitefish, bought a house here twenty years ago on Birch Point, which leads to Ramsey, which leads to Highway 93 and has lived here permanently for last eight years, so drives that Corridor every day. He is very excited that the construction has finished after three years. What an opportunity for that part of town to come alive. He is happy for the safety the sidewalks offer for pedestrians. It is exciting to see that Corridor turn into a vibrant part of Whitefish. The noise is really a factor due to the upwards of 40 trains a day, resulting in 180 whistles a day, and it being a state highway. We have an opportunity to develop 8/10ths of a mile, which has been improved and will continue to improve. He asked us to ask ourselves if 93 West is any different than

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93 coming into Whitefish. Is 93 West any different than Wisconsin. Is that section any different? He hopes that we will see the opportunity to develop a part of town that has been underdeveloped for years. Mr. Wise agrees with Rebecca that City has grown and they have done a phenomenal job downtown to keep the heart of Whitefish what it is today.

Doug Reed, 520 Somers Avenue in Whitefish, is the operator of the restaurant at the Whitefish Lake Golf Club and also the Chair of Highway 93 Corridor Study. He thanked everyone here tonight who participated in that Study, which took a couple of years. Mr. Reed thought the Planning staff did a good job on the Code amendments, and captured the spirit of what the Committee that met over the past couple of years was these Transitional Zones, the WI-T and the WT-3. They were looking for flexibility into the future; looking to entertain ideas that would still be protected by the Conditional use Permit and the Architectural Review Committee. He knows the brewery/distillery part is what had been talked about tonight and believes it belongs in the WT-3 and WI-T.

Hunter Homes, 216 Midway Drive in Columbia Falls, was on the Corridor committee, and has been on the trail committee for probably eight years. He came onto Corridor committee about mid-way through. His client bought the Idaho Timber site and there are people who are interested in that site but they cannot do anything without knowing exactly what they can do. They are looking at a project that will be so beneficial to the City as far as job base, taxes and TIF funds, but their hands are tied right now as they are not going to step forward unless they know what they can do. The 93 Corridor is beautiful and the sidewalks, but either side of the highway a mess. Not one homeowner is doing and improvement to their residential house on the north side. There are "For Sale" signs all along there. Right next to Karrow at Idaho Timber there is a lot where they have already been approved he believes for ten townhomes. Further down toward the River there is about seven lots that are on the market. The hairdresser moved out. Across the street, the vet moved out. Another home has been torn down. Everything is just stagnating and it looks terrible. It is not a corridor that looks great for a vacation village. This was a template to work off. Lots of hours and time was put in, with late night meetings. The public was involved, and now it is just being micromanaged and dissected to death. It is good plan to work off, but it is discouraging to volunteers like Mr. Hunter, Mr. Reed, Mr. Zinke, and everybody else. We are going to have another corridor plan, Wisconsin Avenue, coming up soon. Who is going to volunteer for that if all the hard work, time and money, the money paid to the company that came out of Missoula that spent a lot of time coming up here to the public meetings, the work

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sessions. Why even go through all that process when it is being dissected item by item, letter by letter. This is a template to work off and everyone who comes before them with a development plan will have to go through the process and work off this plan. It has been here three times he thinks, and before the City Council three times. Every time it is on the agenda it is the last thing on the agenda. At City Council it did not come up until 11:00 at night. Everybody has jobs, kids, families, and then when it was put off until the next meeting, John Anderson, who was on the Council put it three months out. That was a slap in the face to everybody. This plan needs to come to fruition; it is a plan to work off so people can start to improve the Corridor into Whitefish. He saw in a statement that Idaho Timber would be a great place for affordable housing. That is not the highest and best use for affordable housing. The owner is in it to make a dollar. Everybody is in it to make a dollar. When someone's residence is for sale, they hope to make a dollar. All these properties need to be the highest and best use and they are all going to generate income for the City, especially along Highway 93 because it is not a neighborhood. No families are going to move in there; they are not going to let their kids run out in the street. Mr. Hunter thinks the Planning Board should approve this plan. No plan is perfect. He Appreciates everyone's hard work on this plan, but it has to move forward and cannot be dragged out any longer.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West in Kalispell, handed out and discussed a two-page series of comments, questions and suggestions as follows:

1. Consistent with other zone changes you are considering tonight remove the term Servant Quarters from these zones and replace with Domestic Workers. (page 4 of staff report)
2. Under the WI-T District it is appropriate for the identified conditional to uses remain conditional as this allows in this relatively small district of approximately 45 acres in a residential corridor for the city council to appropriately condition or if warranted deny a proposed use.
3. Under the WT-3 District it is appropriate that Artisan Manufacturing and the other identified conditional uses remains conditional as this allows in this relatively small district of approximately 45 acres in a residential corridor for the city council to appropriately condition or if warranted deny a proposed use.
4. Add to the definitions for the three proposed zoning districts the clarification that: "No formula retail, restaurant, or hotel/lodging is permitted under this plan or in zoning districts created to implement this plan." Commercial development in this area that adjoins the downtown should be consistent with similar limitations in the downtown core area. This is also more

appropriate for a largely residential corridor.

5. In a memo by Dave Taylor to the city council on June 1, 2015 he outlined changes he had made to the plan based on public comment, which included listing Artisan Manufacturing (no alcohol production) as such. We would ask that the (no alcohol production) reference be retained in the wording for this zone change before you tonight.

6. We continue to have concerns that conditions for shared parking should not be allowed to be temporary (see page 6 of staff report) as building site development may preclude the addition of necessary parking should a shared parking agreement fail at any point. Conditions should be added to provide that space be reserved for all on site parking should a shared parking agreement fail.

7. The uses proposed to be permitted with a business incubator should be defined so that the public can better comment on the appropriateness of such uses in this district. Are on site retail sales permitted in this sector? Please clarify the total square footage allowances for a Business Incubator. What standards govern this? It only states that 3,600 square feet are allowed per use.

8. Given potential electromagnetic issues with a wireless transmission facility this should likely be considered a conditional use.

9. Why are there no minimum lot areas for the WI-T? How can you have permitted lot coverage of 70% when there is no minimum lot area? Should greater buffers be considered with such uses adjoin residential uses?

10. Under outdoor storage on page 9, if under #2 outdoor storage areas shall be screened, what is meant by "open outdoor storage areas" under #4?

11. Is an increase in building size only determined by building footprint or also by adding additional stories? (top of page 10)

12. We feel that the following standard for accessory retail base are excessive and should be reduced. To the greatest extent possible retail uses should be directed toward the downtown core area and not compete with permitted uses in the downtown core. Text should be added to assure this occurs. While H. may provide some guidance in this respect it does not seem sufficient.

> "G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).
>
> H. With the exception of minor accessory items directly

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related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises." (page 10)

13. What standards for accessory retail and food and beverage sales are established for Breweries and Distilleries. What the % of building space may be devoted indoor or outdoor for such uses? Definitions for Breweries and Distilleries should not necessarily be tied to state standards. As I understand testimony at the recent city council meeting indicated that the Great Northern Brewery produces only ½ of the allowed 10,000 barrels. It may be a wise now to add a separate definition for nano-breweries.

14. The definition of Coffee Shops/Sandwich Shops should state that (no "formula" businesses) are allowed. This restriction should also apply to hotels, motels, and other similar uses in these two districts.

15. The definition of Artisan Manufacturing should include the statement that alcohol production is NOT* included in this definition. *[*NOTE: The word "NOT" was inadvertently left out of Ms. Flowers' written comments; however, it was included when she read her comments into the record and corrected by Ms. Flowers in her written comments following the meeting.]*

16. Under Research Facilities the scope of permitted uses that would be considered testing biological and chemical should be more clearly defined and perhaps limited given the residential character of this corridor.

Additionally, Ms. Flowers said at the time this Study was being conducted the issue of affordable housing was raised in the need to retain the existing residential housing, and she would like it if there was some way to make sure there are opportunities for affordable housing, and provide an opportunity to come back and look at this with fresh eyes.

Anne Moran, 432 West 3rd Street in Whitefish, generally supports what has been put forth tonight, with the recognition that she supports the specific comments that Ms. Flowers has made, including a few of the technical aspects of the draft. She strongly supports that a microbrewery remains a conditional use in the Industrial Zone, and she strongly supports that artisan manufacturing continue to require a Conditional Use Permit and have the specific statement that it not include alcohol production. Looking at the history of this situation, it initiated when a use was proposed for land when the zoning did not support that use. A microbrewery was proposed for a piece of land that was zoned WR-3, which does not allow microbreweries. So a PUD was proposed which met three of the City's 11 criteria for a PUD, but it moved forward regardless.

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The neighbors exercised their right by statue. Montana law recognizes that rezoning property within a certain proximity of a neighbor or another landowner is perhaps one of the most impactful things you can do to that original landowner. The statutes allow for landowners to petition to require a two-thirds majority vote for the zone change. That is what occurred on the microbrewery and what initiated the Corridor Study. If she were to look back as a member of that Corridor Study group and say there was one area where the whole process was flawed that she hopes the City and the Planning Board can learn from, it is that the end result of that Corridor Study has had impacts very similar to a neighborhood plan on the area, which is significant, it is not just along Highway 93. However, the representation of the people on the Committee did not reflect the usual representation of residents within an area for a neighborhood plan. Consequently, the people who had concerns had to bring them back to the Planning Board and the City Council through subsequent meetings. A great deal of thought went into the City Council's determinations that artisan manufacturing should not include microbreweries, should require CUPs and microbreweries should require CUPs. The City's current Industrial Zoning requires a CUP for a microbrewery, so she cannot imagine why we would not require that in the Transitional Industrial. A couple of the specific directives to the Corridor Study Committee from the Council were that the area continue to maintain its residential flavor in recognition of the fact that it had unusually close proximity to residential neighbors with lack of alleys and different zones in the area. A very specific directive that came through several times was that the intent was that this not be developed like Highway 93 South. She is very heartened to see that this is moving forward and agrees with Mr. Homes that it is time to get it taken care of. She hopes the Planning Board will continue to recognize that the residential investors are significant investors in the economics of this community and just like Idaho Timber, they want to know when they buy into an area that the City has zoned a certain way they can count on some predictability relative to that to protect their investments as well.

Barbara Palmer, West 3rd Street in Whitefish, one thing she noticed tonight is the people speaking very much in favor of the brewery do not live within a few hundred feet of the proposed brewery. It makes a big difference when you are that close. If she lived somewhere else, she might be standing here tonight. She read a letter from Susan Prilliman who lives a few hundred from Highway 2 on West 3rd Street, and is ill tonight. Ms. Prilliman is concerned that lines are getting blurred and zoning issues jumbled and confused. Zoning standards should not be reworked and massaged in ways that obfuscate with their language and their intention to point where their citizens have trouble deciphering the

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potential long-term effect on their neighborhoods and communities. She is concerned that efforts are being made to support the interests of developers who want to get their foot in the back door by way of some confusing language or technicality that can be interpreted to their advantage. Our development standards need to benefit the whole community and need to be fair and predictable and understandable and to respect and protect the preservation of our neighborhoods and property owners. In regards to the Highway 93 West Corridor, specifically, very concrete decisions have been made by our City Council to disallow short-term rentals and alcohol-related businesses in Area B with the clear intention of guiding this Corridor in a way that will protect the surrounding neighborhoods and the character of the entrance into Whitefish. Our zoning needs to reflect these decisions and limit the scale of other retail uses whose potential impact could be far greater on this area. On the Idaho Timber site, microbreweries have been allowed as a conditional use. She thinks it is very important for such a high-impact use to go through the CUP process which will allow for the only real chance to mitigate some of the issues surrounding this type of use. Ms. Moran expressed how she feels very clearly.

Rhonda Fitzgerald thought the decision had been made about the uses in the zones and that this was just about definitions and clarity, so she is surprised by some of the conversation tonight because the City Council was very clear in that decision. It is very exciting that we have a WR-3, which is a denser residential zone where we can get some more modest-priced housing, close to town. She is glad that a lot of this Plan honors that residential aspect. She has been very excited in the last year and a half to see a lot of projects going in that are tasteful triplexes and more units, and some office remodeling up against the Highway. She thinks the most positive outcome for the community is unfolding there. Developers are investing in that property and building housing which she thinks is great. Artisan manufacturing is a brand new idea in Whitefish and she thinks it is very appropriate to have a Conditional Use Permit associated with it because we do not know what it is exactly. It would be really great if there was some review of what is proposed as these come forward. To just to make it an allowable use without conditioning is a path fraught with peril, so she hopes that will be kept as a conditional use in both zones. She also hopes they will add the requirement that "no formula retail" (bar, restaurant, retail, lodging) be applied to these zones because they are right next door to downtown and that would maintain the character of our community. Something like a McDonald's would qualify as a coffee shop/sandwich shop and she is not sure that is our vision for this mixed-use zone. Since short-term rentals are not allowed in these zones, she hopes in regard to the live/work units that would be

emphasized that it is clearly not a short-term rental because those are such potential illegal Air B&B type things, which are proliferating all over the country, and it will be just like the accessory apartments. Every accessory apartment in Whitefish is potentially an Air B&B and it is hard to control. She also suggested separating tasting rooms (which can be 49% of floor space) from the manufacture of liquor as she thinks that is a back door to obtaining a liquor license. She thinks the square footage allowable in the Industrial Transition zone should be limited to 7,500 square feet without a Conditional use Permit because that is a darn big building in Whitefish, Montana and she thinks we should know what is going in if it is bigger than that. Thanked everyone for their hard work.

Lola Zinke, 409 West 2nd Street, Whitefish, picked up an agenda on the way in and read the Principles for a Civil Dialogue. She thought that was very interesting because the second bullet point says, "… the respectful and courteous dialogue and participation." The last time she was here she was appalled and surprised by the lack of respect that many of the people in this room showed to the members of this Committee. She was unprepared for the type of feeling that she got from it. She thought it was disgusting. On the fifth bullet point, it says that you also "… encourage creative approaches to engage public participation." When she looks at that, she thinks about maybe the use of diagrams or building models, or plans or different things like that, but creative to her does not mean fiction. A lot of the dialogue that was presented was fiction and was like "Harry Potter". It was an alternate universe that she stepped in when she heard a lot of the discussion. She was unprepared for that. She presented what her husband and she have been trying to do for the past five years in an open, honest way. She hopes that we honor the intent of the original Corridor Study. What they are trying to do is something that will impact Whitefish in a positive way and improve Highway 93. So far, she feels like everything that they have done has improved Whitefish. When people come up and say "it's a backdoor to a bar", that "hundreds of gallons of liquor are going to be consumed there every night" or all these things, it is incorrect and disingenuous. Quite frankly, she does not think it is the right tenor for a small town to have because tomorrow everybody has to get up and they go to the grocery store and the run into each other at stoplights, and hopefully everybody can still say "hello" and be civil about it, but it should start here.

Andrea Beatty, 245 Diamond Court in Whitefish, has been a business owner for 13 years here in Whitefish. She is here to support Lola and Ryan. Looking down Highway 93 towards Canada, it is a mess. They own the property and want to do what they want to do. She is a fifth generation Montanan and grew up on the east side of Montana and feels

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we are lucky to have the problems we have here because they are looking for business and people to invest over there. A brewery has limited hours. Ryan and Lola are not asking other than what the state already says is legal and she requested the Planning Board take that into consideration.

MOTION / BOARD DISCUSSION

John made a motion to approve staff report WZTA 15-03. Rebecca seconded.

Rebecca asked Taylor if there was a way to fix the shared parking (from Mayre Flowers' comments). Taylor replied within our parking standards for commercial businesses, we allow people to have a percentage of their parking off-site if it is within a certain distance. They have to have a signed lease agreement. Once the lease agreement expires, we expect them to meet their parking standard on-site, so that is something that we already do in our Code. The anticipation is there might end up being a facility, for instance on the Idaho Timber site, where there is a large parking area not necessarily completely being utilized. If there were a business nearby that needed additional parking, it would give them an opportunity if it is within 300' to make up some of their parking. Those lots are so big in what is anticipated to be the WT-3 that Taylor does not perceive it being an issue. There is enough room for people to provide their off-street parking. Having the opportunity if there are some environmental constraints, such as having to go closer to the River or whatever, to use a nearby lot that has a bigger parking area is an option. It is not necessarily easy to enforce those agreements, but we do require them to be notarized and filed. There have been instances where someone sold their business and did not want to honor that so the property owner either has to find someone else within 300' who will help and sign an Agreement to do that parking or their permit to do that use, which is a Conditional Use, is revoked. It is a Condition on their Conditional Use Permit if they choose to do that. Rebecca asked if it goes with the property or only with the Conditional Use Permit. Taylor said they will have to go through a Conditional Use Permit process and that would be the mechanism that would be used to enforce it.

Rebecca asked about the comment regarding live/work units not being allowed as short-term rentals and Taylor said the district does not allow short-term rentals, so it is already covered. Rebecca said another comment was for business incubators there is 3,600 square feet for total square footage but there is no standard. Taylor said you do not necessarily want to set a standard on how large a business incubator can be; it is hard to say what is adequate until someone comes with an idea. Rebecca asked about the Industrial zone being 7,500 square feet unless there is a CUP to go above it. Taylor replied it is one thing to have

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constraints on large buildings and it is another thing to be an impediment to someone who wants to bring jobs into the community. It is a fine line deciding at what point is a building so big that it is going to be an issue. The Idaho Timber site already as a 29,000 square foot building on it. Rebecca asked if there is anywhere else in town that the do not have to get a Conditional Use Permit above 7,500 square feet and Taylor replied the WB-2 Highway District is 15,000. The only place that is 7,500 is the B-3 in downtown. Rebecca said it would be congruent with our downtown look and everything to keep it at 7,500. Taylor replied except we are not in the downtown, we are talking about an industrial site that is five acres. Taylor said the B-4 light industrial zone does not require any kind of conditional use for large buildings. Rebecca asked about research activities, the definitions and standards of biological and chemical agents being used. Taylor replied he would be in favor of striking those two and would not want one of those next to his house. Those are just different things that research facilities do. As a community we could decide that biological research, germ warfare research and things like that may not be wanted in our town since it's a Conditional Use. Rebecca asked if there is any way to talk about affordable housing in this. Taylor said the only thing in our Code that does anything to encourage affordable housing is our PUD standards right now. Obviously, a multifamily district may have some affordable housing built in. The condos that are being developed right now are not affordable for most people. But then again you are next to an amenity, the River, so it is not going to be that affordable there. The other side of the street, which is WR-3, on a highway, probably has more opportunity for affordable housing than the Transitional Zones.

Richard got the impression listening to everyone this evening that generally speaking most folks are if not content, accepting of the proposed amendments in the Transitional Zones for Highway 93 West, with the one exception which is the gorilla in the closet. It is here and we have discussed it and it is really the microbrewery that the Zinkes have proposed. He comes back to as he things about this certainly there are some things that may need some clarification which we can do as we move along but it is his belief and understanding that City Council twice has denied the idea of the brewery that has been proposed and he thinks for us to include it now, it would end up coming back to Council as a decision that has already been made. He would like to put it to rest now rather than put it to rest one more time later at Council. That is his one concern, but generally speaking as he listens to the concerns that everyone else had on all the other items, we are generally right there. We are at the point where it could go to Council for their consideration and deliberation. He looked at all the comments people made tonight and made notes on the comments that were provided and feels with that one

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exception he would be comfortable and so would make a friendly amendment to delete the microbrewery/distillery proposal in the WT-3 Transition. Taylor said it is not in the WR-3, it is only in the Industrial Transition as a conditional use. Taylor said there are two different zonings, the Industrial Zone and the Mixed-Use Transitional Zone, and the Mixed-Use Transitional does not have microbreweries listed. In the Industrial Transitional, it is a conditional use in the draft.

Rebecca said one person brought up under the WT-3 artisan manufacturing that we need to have a CUP, as stated with no alcohol production. Taylor replied it is currently a Conditional Use Permit already for artisan manufacturing. What they asked for was possibly putting at the end of it saying "no alcohol production" as a further clarification and we could do that but anything that has alcohol production would fall under the microbrewery or micro-distillery definition, which would then trigger is it allowed in that zone or is it not?

Rebecca wanted to add some things and discussed that it seems a little dangerous not to have biological and chemical production more defined, but that could probably be flushed out more through the Council. There was also a comment about the electromagnetic issues, too. The third thing would be the formula retail bar/restaurant/hotel/lodging. Taylor told her it was already we already limited coffee shops and sandwich shops there to no formula. He suggested that the definition presented needed to be amended though, because definitions apply to the whole zoning district that would apply everywhere in the whole City limits. We shouldn't say no formula retail under the definition because we do allow formula retail everywhere in town except in the WB-3. Melissa asked about the possibility of limiting it in this Corridor. Taylor said we are limiting coffee shops and sandwich shops and there are not really any other types of retail listed in the allowed uses. You could put no formula hotels, which would require a boutique hotel, which might severely limit what could be done on the site period.

Rebecca made a motion to add to research facilities on the bottom of Page 12 that there be listed definitions and standards for biological and chemical agents. Melissa seconded the motion. John asked for clarification of the motion. Rebecca said maybe we could add, "if allowed by City standards" to the end of the definition of "Research Facilities" on Page 12 of WZTA-15-03, but what she really wanted to try to do was limit health impacts and asked the Planning staff and Board if they had any suggestions. Chairman Meckel said he thought that would be part of the hearings and the conditional uses on the facility itself and he thinks maybe we are getting a little into the weeds here in his opinion. Rebecca offered

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to withdraw her motion. Taylor said it is a conditional use so if someone proposes something they will have an opportunity to explain what they are doing and how they will protect the public health. Rebecca asked if we have any standards concerning that already. Taylor said only building code standards and the health department would probably have some through the State. Rebecca withdrew her motion and Melissa withdrew her second.

Richard asked where we are as far as formula businesses. Chairman Meckel said in this document we do have it for grocery stores and coffee shops. Melissa pointed out that we only have it for coffee shops and sandwich shops. She wondered if we could somehow just say no formula businesses.

Rebecca made an amendment to the proposal that on Page 4 under Conditional Uses, ninth bullet point regarding hotels and motels that we add "No formula hotels or motels are allowed in this district." Melissa seconded the motion. Chairman Meckel understands the issue but he thinks we need to be careful about limiting opportunities.

Rebecca, Richard and Melissa voted in favor of adding "no formula" to hotels and motels, and Chairman Meckel, John and Jim were opposed, so the motion failed. Ms. Flowers brought up as a point of order that it was her understanding that Jim was not voting on this matter because he owns property in the district. Congressman Zinke brought up as a point of order that Ms. Flowers was out of order. Richard said whether or not a person recuses himself is not germane to the motions that we are dealing with right now, and it becomes Mr. Laidlaw's decision. Jim did not recuse himself under these circumstances and felt he had the best interests of the community in mind.

Melissa made a motion to amend WZTA-15-03 under the Property Development Standards beginning on Page 5 that we attempt a sentence that puts a blanket against formula businesses within this Transitional Zoning (WT-3 Zone). She thinks it is a very Important part of Whitefish, the entrance to Whitefish, and one of the things we have done really well so far is to keep it very inviting and beautiful and she would like to see it happen there as well. Rebecca seconded. Taylor asked that the board consider what businesses might be allowed within the list of permitted or conditional uses that might have a formula opportunity, within that mostly residential district that allowed professional offices. Taylor said potentially it could be personal services, a hair salon, H&R Block, consulting firm, professional office, or a nationwide mortgage company. Following discussion, Melissa rescinded her motion and Rebecca withdrew her

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second.

Taylor suggested we add "and no larger than 2,000 square feet of gross floor area" under Conditional Uses on Page 8 following "Coffee shops and sandwich shops (no "formula" businesses)", and strike “no formula businesses” and "with no more than 2,000 square feet of gross floor area" from the definition of Coffee Shops/Sandwich Shops on Page 1. Chairman Meckel made that motion and John seconded the motion.

The motion passed unanimously.

Rebecca wanted to make sure that the word "servant" under Permitted Uses in the WT-3 Zone be changed to "domestic worker" and Chairman Meckel said that was already going to be changed and an amendment was not necessary.

Chairman Meckel said walkable neighborhoods are important, too, and he remembers in many neighborhoods there are grocery stores and coffee shops in a residential zone and in his opinion they create quite a favorable atmosphere. So, like Taylor was asking a question on Point 3 on Page 2, WI-T Permitted Uses, "[c]offee shops and grocery stores are also not typically found as conditional uses …" he actually thinks that in line with the work that was done by the Highway 93 Committee that it be considered that coffee shops and grocery stores be a conditional use in WT-3. He brought it up as an amendment for discussion that they be considered a conditional use is the WT-3 Zone. Richard thought that was the Council's direction, but Chairman Meckel said it was not. Taylor said the WI-T Zone was the Council's direction. Chairman Meckel said it was recognized in the Corridor Study as a possible use and the concept he is trying to bring up is coffee shops and grocery stores in that Zone as recognized by the Committee. He brought it up to see if we could get some input to the City Council. Chairman Meckel made a motion to allow coffee shops and grocery stores under conditional use in the WT-3 Zone and no formula as proposed by the Corridor Study. Melissa seconded. Rebecca liked his idea but thought they might be pretty big.

The motion failed with all voting in opposition except Chairman Meckel.

Taylor brought up what Ms. Flowers said regarding striking the word "open" in No. 4 under "outdoor storage and processes", so the sentence would read "Outdoor storage areas shall not be used to store waste or recycle materials. He thought that should be addressed. Chairman Meckel made a motion to strike "open" and John seconded the motion.

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The motion passed unanimously.

VOTE

There being no further discussion, the motion passed unanimously. The matter is scheduled to go before the Council on February 16, 2016.

NEW BUSINESS
10:52 pm

None.

GOOD AND WELFARE
10:52 pm

1. Matters from Board. Rebecca asked Taylor about the fee Resolution mentioned in the Legal Notices section of the *Whitefish Pilot*. Taylor explained in the past applicants were required to go to Flathead County and pay $75 to obtain adjacent property owner lists. State law recently changed and Flathead County will no longer provide the list to the public, but will supply it to an agency, so we will need to get the property list and charge the $75 to applicants for items requiring a property owner list.

2. Matters from Staff. Compton-Ring distributed the Planning & Building Annual Report showing activity for the past year.

3. Poll of Board members available for the next meeting on February 18, 2016. All indicated they thought they would be available.

ADJOURNMENT

Jim made a motion and Richard seconded to adjourn the meeting at approximately 10:55 p.m. The motion passed unanimously. The next regular meeting of the Whitefish Planning Board will be held on February 18, 2016, at 6:00 pm, at 1005 Baker Avenue.

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Ken Meckel, Chair of the Board

Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED / CORRECTED: _____

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 TRANSITIONAL ZONES FOR HIGHWAY 93 WEST STAFF REPORT #WZTA-15-03

Date: Jan. 21, 2016

Citizens for a Better Flathead having reviewed the staff report offers the following comments:

1. Consistent with other zone changes you are considering tonight remove the term Servant Quarters from these zones and replace with Domestic Workers. (page 4 of staff report)

2. Under the WI-T District it is appropriate for the identified conditional to uses remain conditional as this allows in this relatively small district of approximately 45 acres in a residential corridor for the city council to appropriately condition or if warranted deny a proposed use.

3. Under the WT-3 District it is appropriate that Artisan Manufacturing and the other identified conditional uses remains conditional as this allows in this relatively small district of approximately 45 acres in a residential corridor for the city council to appropriately condition or if warranted deny a proposed use.

4. Add to the definitions for the three proposed zoning districts the clarification that: No formula retail, restaurant, or hotel/lodging is permitted under this plan or in zoning districts created to implement this plan." Commercial development in this area that adjoins the downtown should be consistent with similar limitations in the downtown core area. This is also more appropriate for a largely residential corridor.

5. In a memo by Dave Taylor to the city council on June 1, 2015 he outlined changes he had made to the plan based on public comment, which included listing Artisan Manufacturing (no alcohol production) as such. We would ask that the (no alcohol production) reference be retained in the wording for this zone change before you tonight.

6. We continue to have concerns that conditions for shared parking should not be allowed to be temporary (see page 6 of staff report) as building site development may preclude the addition of necessary parking should a shared parking agreement fail at any point. Conditions should be added to provide that space be reserved for all on site parking should a shared parking agreement fail.

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8. Given potential electromagnetic issues with a wireless transmission facility this should likely be considered a conditional use.

9. Why are there no minimum lot areas for the WI-T? How can you have permitted lot coverage of 70% when there is no minimum lot area? Should greater buffers be considered with such uses adjoin residential uses?

10. Under outdoor storage on page 9, if under #2 outdoor storage areas shall be screened, what is meant by "open outdoor storage areas" under #4?

11. Is an increase in building size only determined by building footprint or also by adding additional stories? (top of page 10)

12. We feel that the following standard for accessory retail base are excessive and should be reduced. To the greatest extent possible retail uses should be directed toward the downtown core area and not compete with permitted uses in the downtown core. Text should be added to assure this occurs. While H. may provide some guidance in this respect it does not seem sufficient.

    "G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).
    H. With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises." (page 10)

13. What standards for accessory retail and food and beverage sales are established for Breweries and Distilleries. What the % of building space may be devoted indoor or outdoor for such uses? Definitions for Breweries and Distilleries should not necessarily be tied to state standards. As I understand testimony at the recent city council meeting indicated that the Great Northern Brewery produces only ½ of the allowed 10,000 barrels. It may be a wise now to add a separate definition for nano-breweries.

14. The definition of Coffee Shops/Sandwich Shops should state that (no "formula" businesses) are allowed. This restriction should also apply to hotels, motels, and other similar uses in these two districts.

15. The definition of Artisan Manufacturing should include the statement that alcohol production is included in this definition.

16. Under Research Facilities the scope of permitted uses that would be considered testing biological and chemical should be more clearly defined and perhaps limited given the residential character of this corridor.

PROPOSED CODE AMENDMENTS
TRANSITIONAL ZONES FOR HIGHWAY 93 WEST
STAFF REPORT #WZTA-15-03
JANUARY 21, 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 11-2, Zoning Districts, to add 11-2W, WT-3, Neighborhood Mixed-Use Transitional, and 11-2X, the WI-T, Industrial Transitional zoning districts, as well as development requirements for Artisan Manufacturing and Micro-breweries/distilleries in Special Provisions 11-3, and several new definitions to 11-9 as an implementation of the Highway 93 West Corridor Plan.

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 16, 2016. Draft regulations are below for Board review and action.

BACKGROUND INFORMATION

This zoning text amendment is one of the implementation priorities of the approved Highway 93 West Corridor Plan. The plan called for the creation of two new 'transitional' zoning districts by the City, a mixed use neighborhood multi-family zone, and a light industrial type zone. Through the public input and planning process, the plan identified the types of uses that would be appropriate in the two new zoning districts, and then crafted two 'sample' zones in the appendix that would be the baseline for future zoning text amendments.

These proposed zoning districts are specific to the Highway 93 West area, with the WT-3 Mixed Use zone identified in the adopted Growth Policy Future Land Use Map appropriate for adoption on lots along Highway 93 West on the north side of the highway in what the plan called Area B, as well as a finger of land along the river on the Idaho Timber property. The WI-T Industrial Transitional zone was deemed appropriate for a future zoning change to the remainder of the former Idaho Timber industrial site, which is currently zoned WI, Whitefish Industrial and Warehousing.

The permitted and conditional uses proposed in these two zones, which are based on the sample zones included in the appendix of the Corridor Plan, were heavily vetted through the Steering Committee, Planning Board, and City Council. They were also the most controversial part of the plan. After review and further consideration, there are a couple of additional changes suggested herein by staff. The sample zones did not include development requirements for the industrial transition zone, so draft development language has been added

to the proposed zoning district outlined below. Staff also added a couple of new definitions and special provisions.

Below are some notes on the proposed changes:

1. WT-3 development requirements.
   a. Added a minimum lot area requirement. If such property develops as multi-family residential, which is now the predominant use, minimum lot area is important so the number of units/lot is defined by area similar to the previous WR-3 zoning.
   b. With regard to the front yard setback, WGM proposed the landscaped greenbelt to match our resort residential zoning requirements. Staff feels that a 25' standard setback is more appropriate. All lots in the proposed district will front the highway, landscaping is already required, and parking is not allowed in front setbacks per the parking chapter, so the prior language would be in conflict.

2. WI-T intent. Staff added language to make the district geographically specific to the Idaho Timber site similar to the WT-3. It gets a little confusing because the Future Land Use Map calls for the Idaho Timber property to be split between the WI-T and the WT-3 districts.

3. WI-T Permitted Uses.
   a. If industrial manufacturing, packing, and storing are permitted uses, should artisan manufacturing also be a permitted use rather than a conditional use on an industrial zoned property? Staff kept it in conditional uses per the council's direction, but it is something to further consider. Coffee shops and grocery stores are also not typically found as conditional uses, as they have minimal impact compared to the various possible permitted industrial type uses.

4. WI-T development requirements. The corridor plan did not contain WI-T development standards. Staff crafted recommended standards as a hybrid between the existing WI, WB-4, and WBSD districts, and added additional outdoor storage standards.

5. Artisan manufacturing Special Provisions. Staff is suggesting adding an additional condition that limits what can be sold in an artisan manufacturing business to items made on site or directly related to the items manufactured.

6. Micro-breweries and micro-distilleries Special Provisions. Staff recommends that we add further conditional use development requirements for these uses as a housekeeping item. While previously

issued conditional use permits covered all the concerns addressed based on the existing code, further clarification seems warranted, especially with regard to outdoor storage. The only ongoing concern we have ever heard with regard to such uses has to do with off-street parking, and those standards are addressed elsewhere in 11-6, the Parking chapter. Staff reviewed the additional materials on zoning for micro alcohol production submitted by Citizens for a Better Flathead, and though the sample codes are predominantly for large cities, we noted that our draft contains some of the pertinent suggestions found therein.

7. Special provisions for Live/Work units. Staff researched how these are applied, and came up with some standards to address issues that typically arise.

8. Definitions of Micro-brewery and Micro-distillery. Staff is recommending defining these items as a housekeeping item. We crafted the definitions based on how the State of Montana defines such uses. It should be noted that 1 barrel = 31 gallons, and a typical beer keg is ½ barrel. For micro-breweries, no more than 10,000 barrels a year is the state standard. That is about what Great Northern Brewing produces. For comparison, Samuel Adams produces 3.5 million gallons per year (considered a craft-brewery), and Budweiser produces over 6 million barrels (a macro-brewery). Bonsai Brewing in Whitefish produces 450 barrels a year, which puts it in a nano-brewery category. Staff considered creating separate standards and a definition for nano-breweries (1000 barrels a year or less), as they have much less impact than Micro-breweries, but decided that for now it didn't seem like there was a need to differentiate them.

Once the new transitional zones are adopted, then it is assumed that property owners who desire that zoning could pursue a rezone through a zoning map amendment as needed, creating a gradual transition. Alternately, the City Council could direct staff to pursue the zoning map amendments if they felt that it was in the best interest of the City to make sure those areas change to the transitional zoning more immediately.

RECOMMENDED CODE AMENDMENTS

Staff is presenting the drafts as voted on by the City Council. Where staff is proposing changes to the Council's draft, or new sections, they are underlined, and proposed deletions are ~~struck out~~.

ARTICLE W, WT-3 NEIGHBORHOOD MIXED-USE TRANSITIONAL DISTRICT

The WT-3 District is intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary

services to provide a performance-based mixed-use environment with a recreational amenity, a community gateway, and adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The boundary of this district is along the north side of Highway 93 from both sides of north Karrow Avenue to the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

PERMITTED USES:

- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings and uses.
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
- Residential
    - Class A manufactured homes.
    - Daycare (registered home, 5 to 12 children).
    - Guest and servant quarters.
    - Single-family through four-plex dwelling units
    - Sublots (see Special Provisions in subsection 11-3-14C of this title).

CONDITIONAL USES:

- Accessory apartments.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Caretaker's unit.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs, private and semiprivate recreational facilities.
- Daycare centers (more than 12 individuals).
- Dwelling groups or clusters.
- Guesthouses.
- Hotels and motels and associated uses customarily accessory thereto are permitted within a portion of the Whitefish River frontage area, said frontage area being a strip of land 300 feet wide and lying southwesterly of, and contiguous to, the requisite buffer and setback areas of the Whitefish River north of 1st Street. The width of this area may be modified by the Zoning Administrator if geotechnical analysis reveals the presence of unstable fill material along the bank of the Whitefish River
- Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title).
- Personal Services (street level only).
- Professional offices (street level only).
- Professional Artist Studio and Gallery (see Special Provisions in section 11-3-15)
- Public golf courses.

- Residential:
  - Boarding houses.
  - Five-plex or larger multi-family dwelling units

PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 3,500 square feet or greater, existing structures where an addition causes the total footprint to be 3,500 square feet or greater, and additions to structures where the footprint is already 3,500 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	n/a
Minimum lot area:	
Single-family dwelling	6,000 square feet
Multi-family dwellings/unit	3,000 square feet
Attached one-family dwelling on a sub-lot	2,400 square feet
Minimum lot width:	50'
Minimum yard spaces:	
Front:	~~20 feet, except when fronting on a public right of way where there shall be a front yard setback of not less than~~ 25 feet ~~of landscaped green belt area. Sidewalks, vehicle access and parking may be allowed in this area up to a maximum of 40 percent of the green belt area~~.
Side:	10 feet for single-story, 15 feet for two-story
Rear:	20 feet
Maximum height:	35 feet. The maximum building height may be increased up to 42 feet for mixed-use buildings or when the majority of the roof pitch is 7/12 or steeper.
Permitted lot coverage:	50% maximum.
Off-street parking:	See Chapter 6 of this title.

	1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both. 2. If a non-residential and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50%. 3. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by Chapter 6 of this title. 4. Shared or leased parking may be located within 300 feet of the site. 5. Required accessible parking spaces (for persons with disabilities) may not be shared and must be located on site.
Hours of operation:	7 am to 8 pm for non-residential uses if within 100 feet of a residential use.
Accessory buildings:	Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front one-half of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.
Landscaping:	See Chapter 4 of this title (single-family uses exempted).

ARTICLE X, WI-T INDUSTRIAL TRANSITIONAL DISTRICT

The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the downtown, have existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access. The applicable boundary of this district is along the north side of West 1st Street east of Murray Avenue to the BNSF railway corridor and where a buffer of mixed use zoning shall separate it from the Whitefish River. This zoning classification is not intended for general application throughout the Whitefish area.

PERMITTED USES:

- Building supply outlets
- Janitorial services
- Light industrial manufacturing, fabricating, processing, repairing, packing or storing facilities.
- Live/work units (see Special Provisions in section 11-3-40 of this title).
- Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens
- Parcel delivery services
- Private railway cars with living accommodations are allowed to park on rail lines for up to 30 days in a calendar year (no short term rentals).
- 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 of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings
- Professional offices (street level only)
- Warehousing
- Wireless transmission facility.

CONDITIONAL USES:

- Bed and breakfast establishments (see Special Provisions in section 11-3-4 of this title).
- Any use allowed as a permitted use under the WI District not listed above under Permitted Uses.
- Business incubator. The following uses are permitted within a business incubator facility, not to exceed 3,600 square feet of floor area per use:

    - Advanced materials
    - Arts
    - Biosciences/life sciences
    - Computer hardware and software
    - Construction
    - E-business and e-commerce
    - Electronics/micro-electronics
    - Energy
    - Environment/clean technologies
    - Healthcare
    - Internet
    - Kitchen/food
    - Manufacturing
    - Media
    - Medical devices
    - Nano-technology
    - Services/professional
    - Telecommunications

- Tourism
- Wireless technology
- Wood/forestry

- Coffee shops and sandwich shops (no "formula" businesses)
- Colleges, business and trade schools.
- Contractors' yards
- Grocery stores (less than 5,000 square feet of enclosed gross floor area per lot of record).
- Heavy equipment sales, rental and service.
- Manufacturing, artisan (see Special Provisions in section 11-3-38 of this title).
- Micro-breweries and micro-distilleries
- Nursing and retirements homes, personal care facilities, community residential facilities, types I and II
- Petroleum products, wholesale.
- Research facilities.

PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint is already 15,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	5 acres
Minimum lot area:	n/a
Minimum lot width:	50
Minimum yard spaces:	
Front:	25 feet
Side:	10 feet. 20 feet if adjacent to a residential zone or park.
Rear:	20 feet

Maximum height:	35 feet.
Permitted lot coverage:	70 percent
Off-street parking:	See Chapter 6 of this title.
Outdoor storage and processes:	No outdoor processes shall be employed in the operation of businesses. Waste and recycle receptacles shall be maintained within an enclosed structure. Limited outdoor storage areas shall be allowed, subject to the following criteria: 1. Outdoor storage areas shall not be located in the front yard setback. 2. Outdoor storage areas shall be screened with a sight obscuring fence at least six feet in height but not to exceed eight feet in height. Fencing shall be located behind the required perimeter landscaping. 3. Equipment, vehicles, materials, containers, and other items located within outdoor storage areas shall be maintained in an orderly fashion. 4. Open outdoor storage areas shall not be used to store waste or recycle materials.

Site Plan Requirements:

1. The site plan, vicinity map and building elevations must be submitted to and approved by the zoning administrator to erect new buildings or structures, make additions exceeding ten percent (10%) of the floor area or existing buildings or structures, or otherwise grade or develop a lot for a permitted use prior to the issuance of a building permit. A comprehensive site plan is required for multiple-tenant projects. Site plans shall include all buildings, structures, parking, driveways, sidewalks, utilities, drainage, hydrants, open space, landscaping and signage. The vicinity map shall include surrounding parcels, buildings, structures, circulation systems and major physical features. The site plan shall demonstrate conformance with the zoning regulations and other applicable city regulations. All projects constructed in accordance with an approved site plan shall be permanently maintained as approved. Any desired subsequent changes shall be submitted for approval as an amendment to the site plan. Prior to occupancy, the site shall be inspected for compliance with the site plan. All improvements shall be installed and functioning before occupancy will be allowed.
2. Minor deviations to the site plan shall be allowed which do not involve more than twenty percent (20%) of the building site for a single building. This would include, but is not limited to, the location and/or expansion of the building, parking lot location, signage, number of parking spaces, and landscaping. Minor deviations to the site plan shall be reviewed and approved by the zoning administrator.

3. Substantial modifications to the site plan will be required to be reviewed and approved by the city council. Substantial changes would include, but not be limited to, an increase in the number of buildings, major changes in access or circulation, an increase in building size by more than twenty percent (20%), and major changes to landscaping design and location.

Accessory buildings:	Accessory buildings shall maintain the same yard requirements as the primary use.
Landscaping:	See Chapter 4 of this title. Section 11-4-5-E applies.

11-3 SPECIAL PROVISIONS

11-3-38 ARTISAN MANUFACTURING:

A. Hours of operation for activities or services open to the public shall be limited to 8 am to 8 pm.
B. Uses that create excessive, objectionable byproducts such as dirt, glare, heat, odor, smoke, waste material, dust, gas, atmospheric pollutants, noise or that have the potential for increased danger to life and property by reason of fire, explosion or other physical hazards are prohibited.
C. Shipping and receiving shall be limited to 7 am to 7 pm except for rail-related shipments.
D. All outdoor storage shall be enclosed and screened from adjacent properties and public streets.
E. All outdoor seating and outdoor display shall be screened from adjacent residential uses by fencing or landscaping.
F. All outdoor lighting shall be compliant with 11-3-25: OUTDOOR LIGHTING STANDARDS.
G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).
H. With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises.

11-3-39 MICRO BREWERIES AND MICRO DISTILLERIES

A. Hours of operation and maximum servings shall be in accordance with state law.
B. With the exception of pallets and kegs screened by a site obscuring fence, outdoor storage is prohibited.
C. A grain silo may be permitted to be located outside the building where the beverages are manufactured. It may not be located in any required parking space or access way. One sign may be permitted on the grain silo with a

maximum size of twelve (12) square feet in addition to any other allowable signs permitted at the site.

D. Shipping and receiving is limited to 7 am to 8 pm when the facility is located within 500 feet of any residential or institutional use.
E. Outdoor seating areas shall be fenced around the perimeter.

11-3-40 LIVE/WORK UNITS

A. The exterior design of live/work buildings shall be compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.
B. Any commercial or industrial use permitted in the zoning district applicable to the property is permitted in the live/work unit, subject to a business license.
C. A live/work unit cannot be used solely for residential purposes, and at least one resident in each live/work unit shall maintain a valid business license for a business on the premises.
D. For live/work units of less than 2,500 square feet, two parking spaces are required for each unit. For live/work units of greater than 2,500 square feet, required parking will be based on the applicable parking standard for the non-residential use or the closest similar use as determined by the zoning administrator

11-9-2 Definitions

BUSINESS INCUBATORS – Facilities that are dedicated to start up and early-stage companies. Business incubators integrate into the community in a number of ways and assist startup companies with such things as:

- Access to angel investors or venture capital.
- Access to bank loans, loan funds and guarantee programs.
- Advisory boards and mentors.
- Business basics.
- Comprehensive business training programs.
- Help with accounting/financial management.
- Help with business etiquette.
- Help with presentation skills.
- Help with regulatory compliance.
- High-speed Internet access.
- Intellectual property management.
- Links to higher education resources.
- Links to strategic partners.
- Management team identification.
- Marketing.
- Networking activities.
- Technology commercialization assistance.

COFFEE SHOPS/SANDWICH SHOPS – Facilities serving non-alcoholic beverages, pastries, and/or breakfast and lunch with no more than 2,000 square feet of gross floor area.

LIVE/WORK UNIT - A structure or portion of a structure that combines a permitted or conditional use allowed in the zone with a residential living space for the owner of the permitted or conditional use or the owner's employee, and that person's household; and where the resident owner or employee of the business is responsible for the licensed commercial or manufacturing activity performed.

MANUFACTURING, ARTISAN - Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production, operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing.

MICRO-BREWERY - A facility for the production and packaging of 10,000 barrels a year or less of malt beverages of alcoholic content for on- or off-premises distribution, retail or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as growlers, t-shirts, and hats.

MICRO-DISTILLERY – A facility for the limited production of distilled spirits, making 25,000 gallons per year or less, for on- or off-premises distribution, retail, or wholesale in conformance with Montana State law. The facilities typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as t-shirts and hats.

MIXED-USE ENVIRONMENT (performance based) – Neighborhoods where different types of land uses such as residential, office, or institutional are in close proximity.

MIXED-USE BUILDING - A building that houses residential uses in combination with non-residential uses.

RESEARCH FACILITIES - A laboratory facility that is primarily used for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing.
This use does not involve the fabrication, mass manufacture, or processing of the products.

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. These new zones implement the Highway 93 West Plan, which is part of the Growth Policy as well as compatible infill.
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, and provides opportunities for new up and coming ones in order to spur economic development.
Security from Fire, Panic, and Disasters	Not applicable.
Promote Health and General Welfare	Health and general welfare are subjective, but the amendment creates a zoning district that promotes general health and welfare.
Provide Adequate Light and Air	The new zoning districts have setback requirements so as to provide adequate light and air between buildings
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	The new zoning districts are transitional districts designed with development standards and restrictions that maintain sensitivity to neighboring properties and uses
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	The new zoning districts were designed in consideration with the specific area of application with an eye to the peculiar suitability of those property for the particular uses permitted

Conserve the Value of Buildings	Not applicable.
Encourage the Most Appropriate Use of the Land throughout the Municipality	The zoning districts were created to especially encourage the most appropriate use of the land throughout the municipality

FINDINGS:

1. Whereas the city council added the Highway 93 West Corridor Plan to the Growth Policy in June of 2015;

2. Whereas the implementation chapter of the Highway 93 West Corridor Plan calls for the creation of a mixed-use transitional zone and an industrial transitional zone; and

3. Whereas adding the proposed amendments create new zoning districts, development standards, and definitions modeled on the sample districts approved by the Council;

4. We find that it is in the best interest of the City of Whitefish to amend Section 11-2, 11-3, and 11-9 of the zoning code to add two new zoning districts, development standards for Artisan Manufacturing, and new definitions.

OVERALL RECOMMENDATION

Staff recommends that the Whitefish City Planning Board make a recommendation to ***approve*** the code changes as set forth in this staff report, subject to the above findings, and transmit same to the Whitefish City Council for further action.

Area B

Character - Area B encompasses the area along the north side of US Highway 93 West from the Whitefish River west to Ramsey Avenue. A portion of Area B adjoins the Idaho Timber property. The land uses in Area B are primarily residential. Non-residential uses in Area B include professional office buildings and personal services. The land has been subdivided into lots, some of which front the highway while others front on Karrow Avenue and Murray Avenue. Most of the lots that front US Highway 93 West are of a size and depth that could accommodate multiple buildings. Generally, there are no alleys in Area B. Area B is 23.6 acres and 10.5% of the total area in the corridor.

Public Input Summary

Character
Residential character
Single front lots onto US Highway 93 West
Generally no alleys exist

Concerns Relative to Land Uses
Traffic, noise, light, hours of operation
Architectural character of non-residential uses
For-rent impacts to residential character
Commercial uses outside of downtown
Appropriate timing of transitional uses

Existing Zoning
WR-3

Recommended Land Uses
Residential Uses
Resort Residential
Artisan Manufacturing
Coffee Shops and Sandwich Shops
Permitted and conditional uses in the current zoning including:
- Professional Offices
- Personal Services

Area B is gradually ***transitioning*** from single-family residential to other uses such as professional offices and personal services allowed in the current WR-3 zoning as a conditional use. These uses are appearing in Area B because the larger size and depth of the lots can accommodate these uses. There was discussion during the public process that the area will ***continue*** to transition away from single-family residential to allow additional uses beyond those allowed in the WR-3 zoning which would require a zoning change.

Public Input – During the planning process, the public indicated Area B forms the entry sequence into the downtown which is the historic heart of Whitefish. The entry sequence should reflect the scale of the residential neighborhood, complement the open space uses along the river, preserve views to the mountains and accommodate non-residential uses allowed in the current WR-3 zoning. The residents in the Murray Avenue area were concerned about the transition of uses along the highway frontage proximate to the residences on Murray Avenue. The public ***liked*** the professional office buildings or personal services that have:

- Appropriate hours of operation.
- Parking located along the street front to limit noise and light pollution to existing residential uses.
- Architecture that suggests traditional residential character like steeper pitched roofs.

PERTINENT SECTION OF HWY 93 W PLAN

The public *concerns* raised during the planning process were:

- Protecting river vegetation.
- Protecting views to the north.
- Impacts from traffic generated by land uses.
- Impacts from light spilling from land uses adjacent to residential areas.
- Noise generated by land uses.
- Impact from hours of operation that extend longer than normal daytime uses.
- Impact of commercial uses outside of downtown area.
- Architectural character of non-residential uses.
- For-rent impacts to residential character.
- Appropriate timing of transitional non-residential uses.

Existing Zoning - The existing zoning is WR-3. This district is intended for residential purposes to provide for one-family, duplex, triplex, fourplex and attached single-family residential uses in an urban setting connected to all municipal utilities and services. In addition to permitted uses, the zoning allows for conditional uses with specific performance standards and for Planned Unit Developments (PUD).

Recommended Land Uses - The public, while noting Area B as the gateway to the downtown, with some frontage against the Idaho Timber site, also noted ***the potential*** of the area for other specific non-residential uses as the area continues to transition naturally from its current residential character. From the survey and public input during the planning process the following land uses were recommended. These can occur as standalone uses or as part of a mixed-use pattern.

- Residential Uses
- Professional Offices
- Personal Services
- Artisan Manufacturing
- Professional Artist Studio and Gallery

Recommended Guidelines - The vision for Area B is similar to Area A in that the potential land uses in this area must be sensitive to the existing residential character of the neighborhood. However, Area B has larger lots and frontage on both sides of the highway and along the Idaho Timber site. This sets up the area to gradually transition to new uses through the WT-3 zoning district. The transition will be initiated by the landowner or the City at a suitable time to remain sensitive to existing uses. Through the progression of thought in the planning process, it was determined that the lots fronting on US Highway 93 West between Murray Avenue and Ramsey Avenue remain High Density Residential as opposed to Neighborhood Mixed-Use Transitional. See the Proposed Future Land Uses Map on p. 67. The area along Murray Avenue will remain in the WR-3 zoning district to preserve the residential character of the area. Concerns from the public input process are addressed in the new zoning district. Refer to Appendix D for the complete WT-3 zoning district.

Implementation Steps

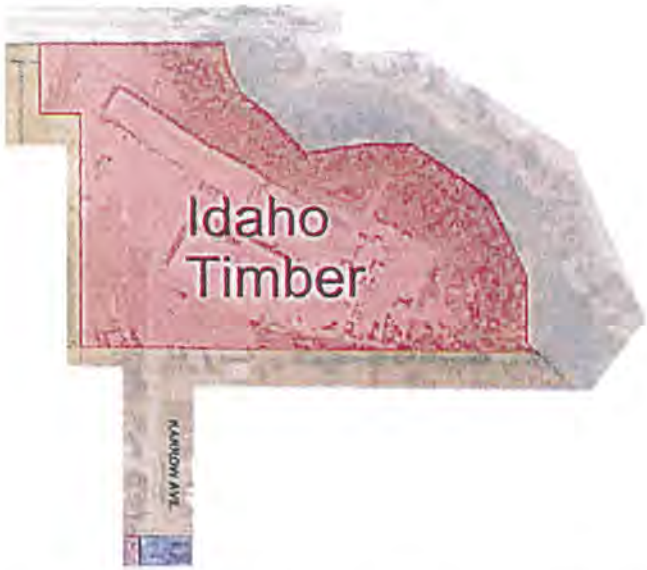
1. Adopt new Neighborhood Mixed-Use Transitional land use designation.
2. The City will initiate the process of developing the WT-3 zoning district. At such a time as the WT-3 are incorporated in to the Whitefish Zoning Code, the new WT-3 zoning district may be processed in Area B at the request of the City or the property owner.

Final Recommended Land Uses	Growth Policy Land Use	Zoning
Residential Uses Artisan Manufacturing* Permitted and conditional uses allowed in the current zoning including: Professional Offices* Personal Services* Professional Artist Studio and Gallery*	Current Designation: High Density Residential	Existing Zoning: WR-3
	Recommended Designation: Neighborhood Mixed-Use Transitional and High Density Residential	Recommended Zoning: WT-3 and WR-3

*Recommended as a conditional use.

Idaho Timber Area

Character-The Idaho Timber Area is the site of the closed Idaho Timber lumber mill. The area is located southerly of the Burlington-Northern main line railroad tracks and has rail access. It is bordered on the west by the proposed Great Northern Veterans Peace Park and to the east by the Whitefish River. To the south is the right-of-way for 1st Street West and is directly accessed by Karrow Avenue. The site is in private ownership and is occupied by industrial buildings and hard surface paving while supporting riparian vegetation along the Whitefish River frontage. The site also has a small pond in the southwesterly portion of the site that may be traded to the Great Northern Veterans Peace Park. The Idaho Timber area is 14.18 acres and 6.3% of the total area of the corridor.



Public Input Summary

Character
Vacant industrial site
Adjoins RR main line
Whitefish River frontage
Adjoins GNVPP WI zoning
Karrow Avenue direct access

Concerns Relative to Land Uses
Riverfront parks/trails/wildlife
Complement & protect river
Connectivity to the community
Sustainable development
Access
Screening/buffering of manufacturing
Traffic associated with land uses

Existing Zoning
WI

Recommended Land Uses
Recreational Facilities
Artisan Manufacturing
Multi-Family Residential
Resort Residential
Permitted and conditional uses allowed in the current zoning

Public Input -Historically, this site has had an industrial use, but Steering Committee members indicated, on the survey, that it is not important to maintain the historical industrial character of this area. The site can accommodate a wide-variety of adaptive uses or redevelopment options. While the existing potential of the site includes a heavy industrial use or a combination of heavy and light industrial uses, the community envisions an adaptive use or redevelopment of the site beyond its potential for industrial uses. This vision

includes land uses that could be of a lower intensity including manufacturing or an industrial component at a reduced scale to allow for additional uses on the site. The tax increment financing in place could be used to advance the economic development and industrial opportunities of the site.

The Idaho Timber Area has extensive frontage along the Whitefish River. The Idaho Timber Area would benefit from increased community connectivity. One of the visions brought forward was a riverfront trail on the west side of the Whitefish River to connect to the proposed Skye Park bridge north of the railroad tracks with the sidewalk system on the north side of US Highway 93 West. This would better connect businesses and residences on both sides of the river to shopping, work and recreation. The public *liked* several aspects of the site:

- Potential employment center.
- Whitefish River frontage.
- Potential for adaptive use.
- Direct access from Karrow Avenue.
- Rail access.
- Utilities available for manufacturing.
- Potential riverfront parks/trails/wildlife protection.
- Potential for development that complements and protects river.
- Potential connectivity to the community.
- Potential sustainable development.

The public *concerns* raised during the planning process were:

- Noise.
- Hours of operation.
- The impacts to the surrounding area.
- Access.
- Screening/buffering of manufacturing.
- Traffic associated with land uses.

Existing Zoning – The existing zoning is WI. The zoning allows a range of industrial uses that would be congruent with the historic use of the site by the railroad. The WI (Industrial and Warehousing) district is intended to provide for light industrial and service uses in which a reasonable degree of control is desirable for the general well-being of the community area.

Recommended Land Uses - The public, while noting the Idaho Timber Area is a valuable industrial site under the current zoning, also noted ***the potential*** of the area for other uses as the area may transition away from industrial uses. At such time that a re-zoning of the property may be appropriate, the new zoning would restrict heavy industrial uses with their associated impacts of noise, odor, or smoke.

From the survey and public input during the planning process, the following land uses were recommended for the transition of the site. These can occur as standalone uses or as part of a mixed-use pattern.

- Artisan Manufacturing.
- Recreational facilities, including parks and playgrounds along the Whitefish River.
- Multi-Family Residential.
- Microbreweries.
- Coffee Shops and Sandwich Shops (no "formula" businesses).
- Assisted Living Facilities.
- Private Railcar Storage (no short term rentals).
- Small Grocery Stores.
- Limited Hotels.

Recommended Guidelines - The vision for the Idaho Timber Area is to gradually transition away from heavy manufacturing to adaptive, clean industries and a mixed-use environment while developing the Whitefish River as a recreational amenity. Two new zoning districts, WI-T and WT-3, will be used to accomplish this transition. The transition will be initiated by the landowner or the City at a suitable time to remain sensitive to existing uses. Concerns from the public input process are addressed in the new zoning districts. Refer to Appendix D for the complete WI-T and WT-3 zoning districts.

Implementation Steps

1. Incorporate two new land use designations, Industrial Transitional & Neighborhood Mixed-Use Transitional, into the Growth Policy.
2. The City will initiate the process of developing the WT-3 and WI-T zoning districts. At such a time as the WT-3 and WI-T are incorporated in to the Whitefish Zoning Code, the new WT-3 and WI-T zoning districts may be processed in Idaho Timber at the request of the City or the property owner.

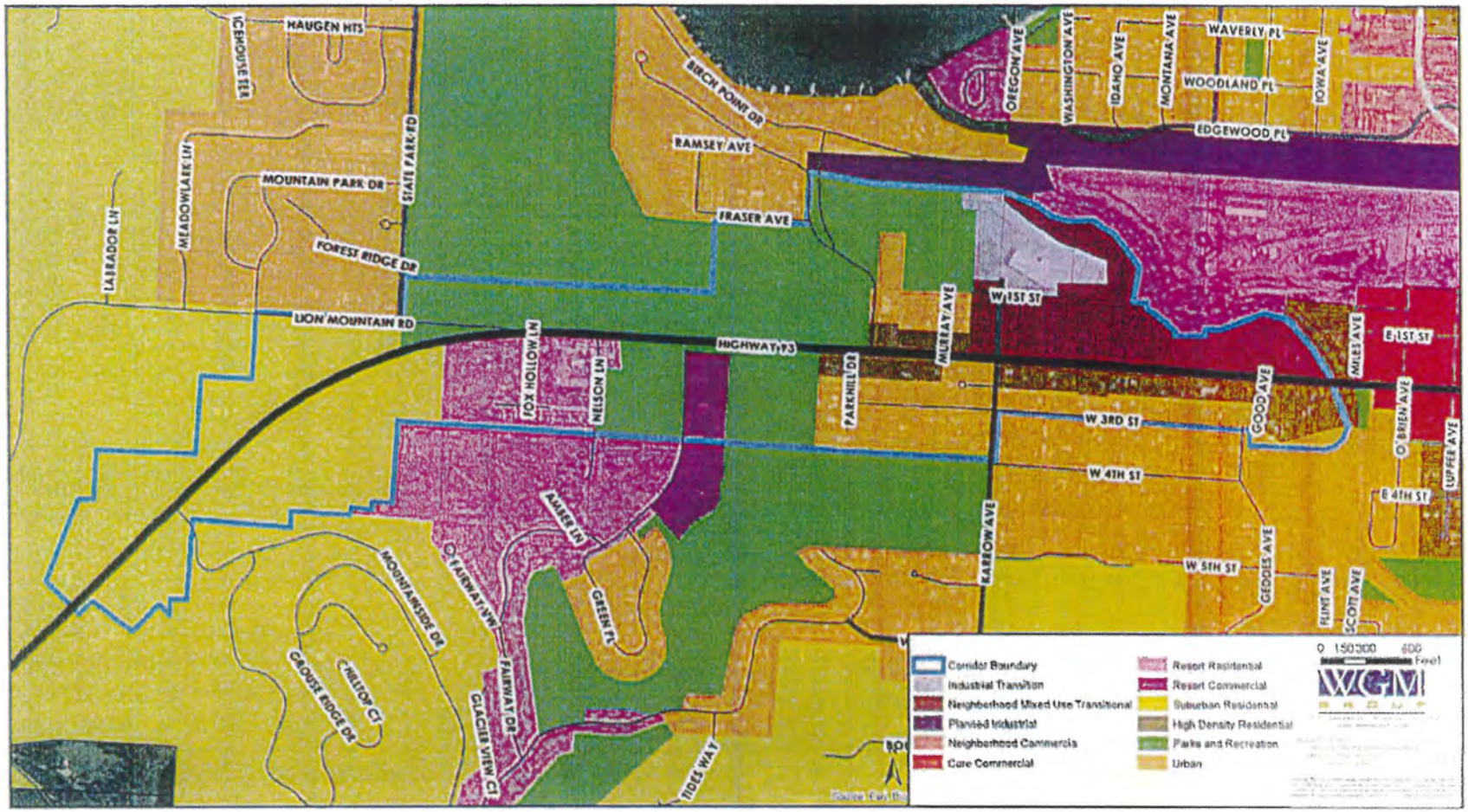
Final Recommended Land Uses	Growth Policy Land Use	Zoning
Permitted or conditional uses and uses allowed through the PUD process in the current zoning Recreational Facilities Artisan Manufacturing* Multi-Family Residential Assisted Living Facilities* Small Grocery Store* Private Residential Railcar Storage* Limited Hotel* Microbreweries* Coffee Shops and Sandwich Shops*	Existing Designation: Planned Industrial	Existing Zoning: WI
	Recommended Designation: Industrial Transitional & Neighborhood Mixed-Use Transitional	Recommended Zoning: WT-3 & WI-T

*Recommended as a conditional use.

Growth Policy Land Use Designations

Proposed Future Land Uses Map

The land use recommendations for the Highway 93 West Corridor are shown in the Proposed Future Land Uses Map below.



Proposed Land Use Designations

Three proposed land use designations are recommended as part of the corridor plan. These include Neighborhood Mixed-Use Transitional, Industrial Transitional, and Resort Commercial.

Neighborhood Mixed-Use Transitional:

- This designation is applied to neighborhoods near downtown Whitefish and along major transportation routes that have a strong historic character that varies across a range of uses from manufacturing to residential workforce housing. Key characteristics of the neighborhood include being a community gateway, frontage along the Whitefish River, employment and recreational uses close to homes, opportunity for adaptive use or zoning that allows for a variety of uses and within walking distance of shopping in downtown. These characteristics create opportunities for the transition from historic uses to more contemporary uses. As new, diverse uses appear in these traditional neighborhoods a land use trend is created where professional uses and higher density residential uses appear. Densities generally range from 2 to 16 units per acre. Townhomes, apartments and condominiums are also acceptable. The neighborhood may include single-use or mixed-use buildings. The applicable zoning districts are WR-3, WR-4, and WT-3 with appropriate conditional uses and PUD options as well as Architectural Review Standards.

Industrial Transitional:

- This designation is for areas that are proximate to the downtown and have traditionally been used for heavy manufacturing. These areas are either vacant or underutilized and have opportunities for a gradual transition to adaptive, clean industries and business incubators. There are existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access in these areas. Transitional areas can be the catalyst that generates new jobs and new economic development as businesses achieve success and relocate appropriately in the community. These areas have easy access to the downtown where the new workforce creates additional demand for goods and services and existing police and fire services can be utilized. The applicable zoning district is WI-T.

Resort-Commercial:

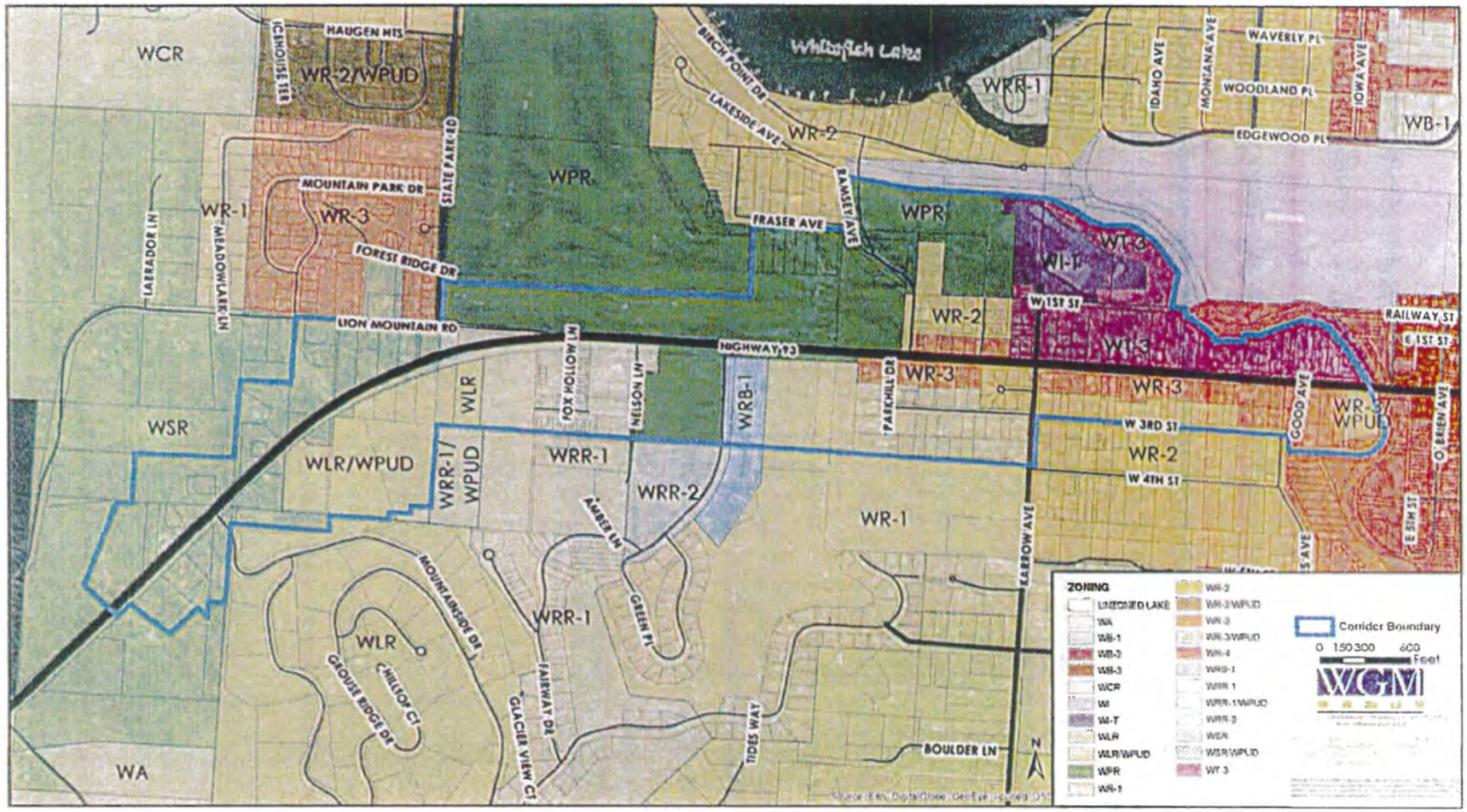
- This designation accommodates commercial and residential uses oriented towards tourism and resort activities. The lodging can include hotels and motels including restaurants, bars, and retail as accessory uses to hotels and motels. Applicable zoning districts are WRB-1 and WRB-2.

In addition to the proposed land use designations, it is recommended that the Peace Park Sub-District land use designation be changed from Planned Industrial to Parks & Recreation to reflect the vision for this area.

Zoning Changes

Proposed Future Zoning Map

The zoning recommendations for the Highway 93 West Corridor are shown in the Proposed Future Zoning Map below.



Proposed Zoning Districts

Three proposed zoning districts are recommended as part of the corridor plan. These include the WT-3 Neighborhood Mixed-Use Transitional District, the WI-T Industrial Transitional District, and the WPR Parks & Recreation District. Refer to Appendix D for the complete WT-3 and WI-T Sample Districts.

WT-3 Neighborhood Mixed-Use Transitional District:

- The WT-3 District is intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary services to provide a performance-based mixed-use environment with the recreational amenity of the Whitefish River along the western community gateway where adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The boundary of this district is along the north side of Highway 93 from both sides of north Karrow Avenue to the Veteran's Bridge. This zoning classification is not intended for general application throughout the Whitefish area.

WI-T Industrial Transitional District:

- The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the downtown, have existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access.

WPR Parks & Recreation District:

- The WPR District is intended for parks and recreational uses. As the plans for the GNVPP develop, it is recommended that the Peace Park Sub-District develop a management plan including their intended uses and hours of operation to assist the City in developing an appropriate zoning district for the area with permitted uses and conditional uses.

Future Investment

With the appropriate regulatory tools in place, the vision for the future corridor development is implemented through public investment and public-private partnerships.

Appendix D: Proposed Sample Zoning Districts

Proposed New Sample Zoning Districts

Sample zoning district language is provided for Area B and for the Idaho Timber Site. As samples for potential new zoning, the actual language of any proposed new zoning would be given appropriate scrutiny, appropriate language modifications and have to be taken through public hearings before the Planning Board and City Council. Any new zoning would be subject to the protest provisions provided by state statute.

ARTICLE WT-3 SAMPLE NEIGHBORHOOD MIXED-USE TRANSITIONAL DISTRICT

The WT-3 District is intended for transitional development including high density residential, professional offices, light manufacturing, light assembly and ancillary services to provide a performance-based mixed-use environment with a recreational amenity, such as the Whitefish River, a community gateway, or adaptive use areas which are transitioning from their traditional uses and lots that primarily border either the Whitefish River or industrial zoned property. The boundary of this district is along the north side of Highway 93 from both sides of north Karrow Avenue to the Veteran's Bridge. This zoning classification is not intended for general application throughout the Whitefish area.

PERMITTED USES:

* 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 of landscaped area shall surround such a building or structure.
* Publicly owned or operated buildings and uses.
* Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
* Residential
    - Class A manufactured homes.
    - Daycare (registered home, 5 to 12 children).
    - Guest and servant quarters.
    - Single-family through fourplex dwelling units
* Sublots (see Special Provisions in subsection 11-3-14C of this title).

CONDITIONAL USES:

* Accessory apartments.
* Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
* Caretaker's unit.
* Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.

* Clubs, private and semiprivate recreational facilities.
* Daycare centers (more than 12 individuals).
* Dwelling groups or clusters.
* Guesthouses.
* Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title).
* Personal Services (ground level to street level only).
* Professional offices (ground level to street level only).
* Professional Artist Studio and Gallery (see Special Provisions in section 11-3-15)
* Public golf courses.
* Residential:
    - Boarding houses.
    - Fiveplex or larger multi-family dwelling units
* Hotels and motels and uses accessory thereto are permitted within a portion of the Whitefish River frontage area, said frontage area being a strip of land 300 feet wide and lying southwesterly of, and contiguous to, the requisite buffer and setback areas of the Whitefish River north of 1st Street. The width of this area may be modified by the Zoning Administrator if geotechnical analysis reveals the presence of unstable fill material along the bank of the Whitefish River.

PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

Bulk and scale:	All new structures with a building footprint of 3,500 square feet or greater, existing structures where an addition causes the total footprint to be 3,500 square feet or greater, and additions to structures where the footprint is already 3,500 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.
Minimum district size:	n/a
Existing zoning requirements:	Applies only in zoning districts allowing residential density up to 10 dwelling units per acre.
Minimum lot area:	n/a
Minimum lot width:	n/a

Minimum yard spaces:	
Front:	20 feet, except when fronting on a public right of way where there shall be a front yard setback of not less than 25 feet of landscaped green belt area. Sidewalks, vehicle access and parking may be allowed in this area up to a maximum of 40 percent of the green belt area.
Side:	10 feet for single-story, 15 feet for two-story
Rear:	20 feet, (refer to section 11-3-29).
Maximum height:	35 feet: The maximum building height may be increased up to 42 feet as follows: 1. When the majority of the roof pitch is 7/12 or steeper; or 2. For mixed-use buildings.
Permitted lot coverage:	50% maximum.
Off-street parking:	See Chapter 6 of this title. 1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both. 2. If a non-residential and a residential use share off-street parking, the parking requirement for the residential use may be reduced by up to 50%, provided that the reduction does not exceed the minimum parking requirement for the office use. 3. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by Chapter 6 of this title. 4. Shared parking may be located within 300 feet of the site. 5. Required accessible parking spaces (for persons with disabilities) may not be shared and must be located on site.
Hours of operation:	7 am to 8 pm for non-residential uses if within 100 feet of a residential use.

Accessory buildings:	Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front one-half of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.
Landscaping:	See Chapter 4 of this title (single-family uses exempted).

DEFINITIONS:

MANUFACTURING, ARTISAN - Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production, operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing.

MIXED-USE ENVIRONMENT (performance based) – Neighborhoods where different types of land uses such as residential, office, or institutional are in close proximity.

MIXED-USE BUILDING - A building that houses residential uses in combination with non-residential uses.

ARTICLE SAMPLE WI-T INDUSTRIAL TRANSITIONAL DISTRICT

The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators. These sites are generally proximate to the downtown, have existing high capacity utility services and existing multi-modal transportation opportunities such as rail and highway access.

PERMITTED USES:

* Light industrial manufacturing, fabricating, processing, repairing, packing or storing facilities.
* Parcel delivery services.
* Janitorial services.
* Wireless transmission facility.
* 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 of landscaped area shall surround such a building or structure.
* Building supply outlets.
* Warehousing.
* Publicly owned or operated buildings.
* Open space for active or passive, public or private, outdoor space, including such uses as parks, plazas, greens, playgrounds, community gardens.
* Live/work units
    - The exterior design of live/work buildings shall be compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.
* Professional offices (ground level to street level only).
* Private railway cars with living accommodations are allowed to park on rail lines for up to 30 days in a calendar year, but cannot be used for short term rentals.

CONDITIONAL USES:

* Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title).
* Bed and breakfast establishments (see Special Provisions in section 11-3-4 of this title).
* Any use allowed as a permitted use under the WI District.
* Business incubator

- Inside a business incubator facility, the following uses are permitted not to exceed 3,600 square feet of floor area:
  - Computer software
  - Services/professional
  - Manufacturing
  - Internet
  - Biosciences/life sciences
  - Electronics/microelectronics
  - Telecommunications
  - Computer hardware
  - Medical devices
  - Creative industries
  - eBusiness and eCommerce
  - Wireless technology
  - Healthcare technology
  - Advanced materials
  - Defense/homeland security
  - Energy
  - Environment/clean technologies
  - Media
  - Nanotechnology
  - Construction
  - Arts
  - Aerospace
  - Kitchen/food
  - Wood/forestry
  - Tourism

* Coffee shops and sandwich shops (no "formula" businesses)
* Nursing and retirements homes, personal care facilities, community residential facilities, types I and II
* Research facilities.
* Contractors' yards.

* Petroleum products, wholesale.
* Heavy equipment sales, rental and service.
* Colleges, business and trade schools.
* Grocery stores (less than 5,000 square feet of enclosed gross floor area per lot of record).
* Microbreweries and microdistilleries.

DEFINITIONS:

BUSINESS INCUBATORS – Facilities that are dedicated to start up and early-stage companies. Business incubators integrate into the community in a number of ways and help startup companies:

- Help with business basics.
- Networking activities.
- Marketing assistance.
- High-speed Internet access.
- Help with accounting/financial management.
- Access to bank loans, loan funds and guarantee programs.
- Help with presentation skills.
- Links to higher education resources.
- Links to strategic partners.
- Access to angel investors or venture capital.
- Comprehensive business training programs.
- Advisory boards and mentors.
- Management team identification.
- Help with business etiquette.
- Technology commercialization assistance.
- Help with regulatory compliance.
- Intellectual property management.

COFFEE SHOPS/SANDWICH SHOPS – Facilities serving non-alcoholic beverages, pastries, and/or breakfast and lunch with no more than 2,000 square feet of gross floor area.

LIVE/WORK UNIT - A structure or portion of a structure:

(a) That combines a permitted or conditional use allowed in the zone with a residential living space for the owner of the permitted or conditional use or the owner's employee; and

(b) Where the resident owner or employee of the business is responsible for the commercial or manufacturing activity performed.

RESEARCH FACILITIES - A laboratory facility that is primarily used for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. This use does not involve the fabrication, mass manufacture, or processing of the products.

Special Provisions

11-3-38 ARTISAN MANUFACTURING:

A. Hours of operation for activities or services open to the public shall be limited to 8 am to 8 pm.

B. Uses that create excessive, objectionable byproducts such as dirt, glare, heat, odor, smoke, waste material, dust, gas, atmospheric pollutants, noise or that have the potential for increased danger to life and property by reason of fire, explosion or other physical hazards are prohibited.

C. Shipping and receiving shall be limited to 7 am to 7 pm except for rail-related shipments.

D. All outdoor storage shall be enclosed and screened from adjacent properties and public streets.

E. All outdoor seating and outdoor display shall be screened from adjacent residential uses by fencing or landscaping.

F. All outdoor lighting shall be compliant with 11-3-25: OUTDOOR LIGHTING STANDARDS.

G. No more than 40% of gross floor area shall be used for accessory retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).

Anne Shaw Moran
P.O. Box 4472
Whitefish, MT 59937

November 5, 2015

Dear Planning Board Members:

There are numerous people in this room tonight who represented various types of property in the Highway 93 Corridor Study Committee; I was one of them. It was a good-faith effort on the vast majority of Committee members' part; unfortunately, the process had some flaws:

- It was not clear at the outset that the corridor study results would ultimately be implemented similarly to a Neighborhood Plan. Neighborhood Planning typically accommodates a majority of resident representation to insure the buy-in of those most affected.

- Corridor residents were under-represented in this process. Active representation of residents in the study area was limited to one of 13 committee members. Only 2 of the committee members actually resided in the area, however over 90% of the properties within the boundaries of the entire study area are residential, with the mix immediately contiguous to the highway corridor being over 80% residential.

- There was a sincere effort to secure public opinion early-on, however, those efforts were completed long before the consultants'/staffs' recommendation for new zoning classifications surfaced, which occurred near the end of the corridor study group's working meetings, typically held during daytime business hours. Consequently, residents had to respond to those proposals through the Planning Board and Council hearing processes, with the Council ultimately implementing mitigations to address the residents' concerns through plan modifications and zoning classification directives.

- The "transitional" zoning classification proposals were characterized as being modeled off other communities' recent zoning classifications, but it was not disclosed that those communities limited their implementation to areas where the pre-existing zoning was "business" or "industrial." Such neighborhoods are of very different character than a Whitefish WR3 zone. Area B--where Ryan proposes a brewery—is currently WR3-zoned, which allows multi-family residences as well as numerous zoning-compliant uses such as professional offices, etc., which fit well in the neighborhood and location, providing a healthy, comfortable mix of uses.

- The remaining flaw in this process is why we are here tonight: the specific results, and Council's very specific implementation direction as the ultimate Decision-Makers at the culmination of an extended public process, are being challenged in the recommendations you have received. No one questions the appropriateness of running a proposed zoning classification through its appropriate public process. However, to revise what the Council has twice directed for those classifications--as the culmination of an extended public hearing process which citizens participated in in good faith--is not appropriate and makes a mockery of the Council's careful effort and direction.

The residents in the area involved have consistently supported zoning-compliant uses in their area—including Ryan Zinke's bed and breakfast as well as a number of affordable housing projects. But, prior to the corridor study process, during the process, and all the way up through the Council's hearings on same, these neighbors have consistently opposed zone changes to allow commercial alcohol establishments in their neighborhood. "Micro-" or "nano-" is beside the point; they've petitioned against them and undoubtedly would again. To say that revisiting the proposed Area B Transitional zoning classification is not a problem because "it's not an actual zone change" is a straw-man argument. It also sets the neighborhood up for conflict, and is unfair to those who invested heavily based on existing zoning as well as those who might gamble on changing it. An extended public process resulted in the Council's direction to draft zoning classifications that do not permit alcohol use in Area B. Undermining that direction opens the opportunity for it to occur, with the intent apparently being that the neighbors will get weary of turning out to raise their objections for the hundredth or so time. That has raised some brows in our neighborhood and it does not reflect well on the City.

The other thing I would point out is a "forest-for-the-trees" issue. Has no one noticed that WR3 zoning is typically a Whitefish arena of affordable housing? There are both owner- and long-term renter-occupied residences in Area B of the corridor study. My newest neighbors are a young couple who happily purchased one of the many residences located along Highway 93 this spring—it was the first home they found after a year of looking in Whitefish that they liked and could afford, and they were thrilled to get it. They have settled in, making numerous improvements. Their neighbors are a young family who has happily rented there for 3+ years. Having been a neighborhood landlord for 25 years, I can confirm that the area supports a very healthy residential rental market. As well, there are new, multi-family structures being constructed in that very area—projects that have been publicly supported at both Planning Board and Council hearings by neighborhood residents and nearby property owners. How often do you see that in Whitefish? This area is already functioning perfectly to meet one of Whitefish's greatest concerns. It would be a shame to sacrifice that by implementing zoning opportunities that increasingly appear to be intended to favor one brewery project.

Thank you for your consideration of these comments. I request that this letter be included in the City Council packet for any forthcoming agenda item pertaining to Hwy. 93 Transitional Zoning proposals.

Sincerely,

Anne Shaw Moran

Anne Shaw Moran

October 14, 2015

To: Whitefish Planning Board

Cc: Whitefish City Council
Whitefish City Attorney

I am a 15- year resident of Third Street West in Whitefish.

I am exceptionally disappointed that the Planning Board continues to try to undermine and change the approved zoning plan for the Westside Corridor. This issue has been voted on twice by the Whitefish City Council.

How many times is the Planning Board going to rehash this issue because the outcome is not what some Planning Board Members desire?

For those who may need additional guidance on this issue I have a hint for you: The zoning must be consistent with the approved plan.

And the most outrageous issue is the planning director suggesting that they (the Planning Board) may want to consider allowing breweries in areas the council has not approved. Ryan Zinke may want it but the majority of people who still live in the area that would be impacted by a brewery do not support a zoning exemption or conditional use permit.

Furthermore, Planning Board Members who may have any interest in the Westside Corridor should recuse themselves from making any decision on this issue.

Thoughtful board members of any organization should have the best interest of the community at large as their foremost focus, not personal gain or accommodating the desire of a single individual.

Most sincerely,

Barbara Palmer

September 17, 2015

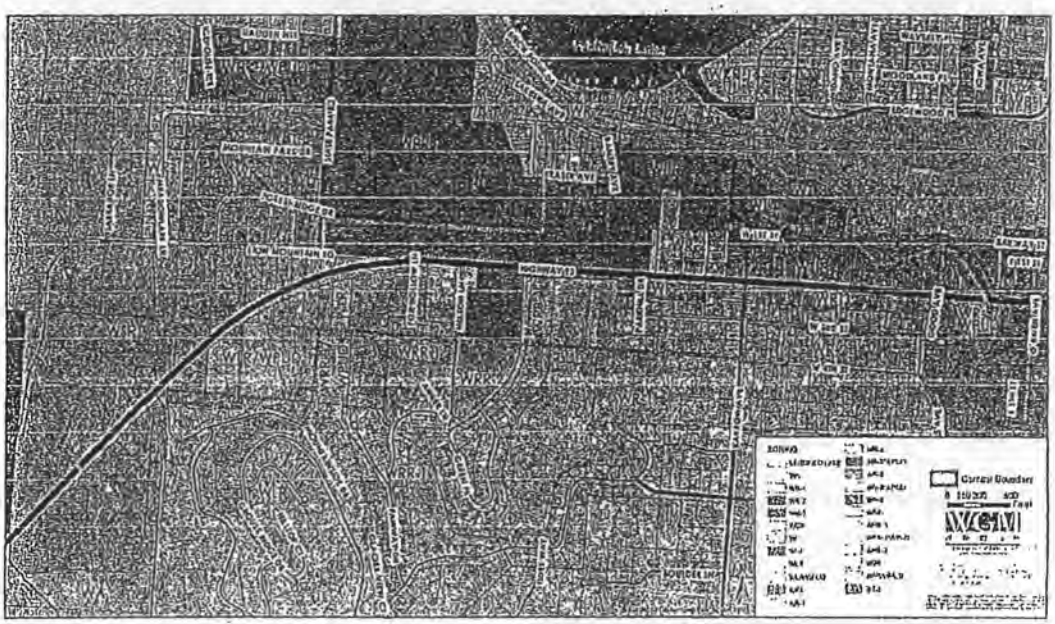
TO: Whitefish Planning Board

RE: Hwy 93 West Highway Corridor Plan Proposed Zoning

Citizens for a Better Flathead would like to ask that you take additional time to consider the following issues in a workshop session to better inform the public and your decision about proposed zoning in this corridor.

This new Highway 93 West Corridor Plan area is shown in the map below outlined in blue. The corridor is approximately 1.5 miles in length beginning at the Whitefish Veteran's Bridge and extending just past Mountainside Drive. The area where unlimited bars, taverns and retail/commercial/light manufacturing are proposed is on the North side of the highway within the blue line, labeled WT-3 and WI-T & is colored here in two shades of purple. (click here for a larger version, see page 69) Zoning for the remainder of the area is proposed to remain unchanged.

The zoning recommendations for the Highway 93 West Corridor are shown in the Proposed Future Zoning Map below.



▶The areas proposed to be changed (shown in purple) represent about 43 acres. **One important issue that has not received adequate consideration before zoning for this area is revised is this: How much more commercial is viable in Whitefish without harming the currently economically healthy and vibrant downtown core area?**

The recently approved update to the Whitefish Downtown Master Plan allows the capacity to add 200,000 sq. ft. of new retail and commercial, and 90,000 sq. ft. of lodging. That's a lot! Do we really need more? Although the proposed corridor plan is **required** to be compatible and consistent with the downtown plan, the corridor plan does not provide a review of this critical factor. Before zoning in this corridor moves forward this needs to be considered.

 based parking stds.?

▶The corridor plan is loosely written proposal that fails to address some important issues. The **Highway 93 Corridor Plan leaves the "barn door" wide open for potential lot consolidations and for planned unit developments (PUDs) and other large-scale development.** Homes in this area are generally less than 1,000 sq ft, and yet the plan does not address potential lot consolidation and large scale footprints of buildings under a PUD.

▶**The scope and nature of the expanded commercial and retail proposed for this corridor are "disguised" by fancy new names** and are buried in ambiguity. The term "Artisan Manufacturing," for example, is used to allow for unlimited bars (distilleries and taverns) and is so broadly defined that it could include almost any retail use in this area. Other nonresidential uses that could be included under the plan are described in vague terms such as "Live/Work Units," "Creative Industries," "Business Incubators" and "Research Facilities." Coffee and sandwich shops would also be allowed without limit. Please note that professional offices are already a conditional use in much of this area. As noted above the zoning for this area should not undermine the goals and commercial and retail capacity of the downtown plan. As proposed, we believe the zoning before you includes an excess of retail commercial capacity.

▶**It is our understanding that shortly after this corridor plan was approved the owner of the Idaho timber property who had supported the proposed changes to potential future zoning for this property, placed this property on the market for sale.** The status of this property should be understood before moving forward with this zoning process. Further more proposed zoning should be evaluated based on what is good for the overall community, what pattern of uses best retain the neighborhood character of this corridor, and not the potential whims of future developers or owners of this property.

▶**Additionally this board should review the proposed final zoning the county is recommending replace the current interim zoning** for the industrial land that is now under county jurisdiction in this plan area. How might uses in that plan conflict with uses in this plan area?

▶As proposed the corridor plan lacks **standards and other goals and policies** that would limit a pattern of strip development. The proposed corridor plan **invites commercial buildout, which would degrade the neighborhood and conflict with character of existing residential uses along the corridor.**

The overall effect would seriously undermine the 35-year history of directing commercial and retail uses to the downtown core area of Whitefish and would start a process of draining development away from the downtown core area.

▶We would ask that the planning staff provide this board a study that was submitted for the hearing record as part of the corridor plan review. This is a report from the American Planning Association, "Zoning for Micro-Alcohol Production" published in 2014. This report finds that to date, relatively few communities have defined and regulated low-volume alcohol production facilities as distinct uses in their zoning codes. The growing interest in craft brewing and distilling, as well as small-batch wine production, the APA report points out, is prompting

communities, however, to update zoning regulations to address the appropriate location and impacts that these facilities can have.

> "Without clear definitions and use permissions, planning staff or public officials are forced to make ad hoc use interpretations that can delay or even prevent otherwise desirable development. This regulatory silence creates uncertainty for business owners looking to make location decisions and secure financing, and it may have the effect of scaring away potential applicants. **Finally, explicit definitions, use permissions, and use-specific standards allow communities to proactively address the potential negative effects of brewpubs and microproducers on surrounding areas, thereby minimizing future conflicts with neighbors."**

We would respectfully suggest that it is time for the City of Whitefish to step back and look at a more comprehensive policy for where and where not microbreweries are appropriate within the city limits and what standards need to be in place to address impacts this use can create. Please do not adopt this use into the Hwy 93 Corridor Plan before you tonight for consideration.

We would emphasize that we do not find in the research that we have reviewed that such uses are appropriate in a residential area. This is supported by this APA report I am providing you. You will find in sample regulations cited in this APA report that minimum setbacks of 300 to 400 feet are recommend from residential areas for microbreweries. While there may be a limited area for microbreweries in certain areas, zoning proposals that allow unlimited numbers of such uses within these proposed zoned should be reconsidered and conditioned.

Your own city regulations have no definitions for microbreweries or distilleries or standards that define how to limit the potential impacts to adjoining properties. The only reference that we have found in the City of Whitefish regulations remove requirements found in state law as to the distance between bars and taverns if the use is within the WB-3 (a business not residential zone for Whitefish). That reference seems to provide yet another indication that such uses are more appropriate in a business district, and not in a residential area. I would encourage you to step back and review and revise that your current regulations before you even consider expanding brewery uses to other zones.

Here is an example of some of the standards for microbreweries that were included in the APA report that demonstrate the ability and need for the City of Whitefish to more carefully examine standards needed to avoid impacts to adjoining properties.

"13. Craft breweries, distilleries and wineries.

a. No outdoor storage shall be permitted;

b. All malt, vinous or distilled liquor production shall be within completely enclosed structures;

c. Loading areas shall not be oriented toward a public street, nor shall loading docks be located on the side of any building facing an adjacent zone district primarily for residential or office uses. Where these districts or streets abut all sides of the property, the loading areas shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer.

d. Service doors facing a public street or an adjacent zone district primarily for residential uses shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to any required landscape buffer.

e. By-products or waste from the production of the malt, vinous or distilled liquor shall be properly disposed of off the property." APA Report p 43

Within the Whitefish Highway 93 West Corridor Plan a microbrewery would fall under the category of "Artisan Manufacturing" – a term which the consultant for this plan has noted that he adapted from the Bozeman zoning code. The implication is that since Bozeman has this kind of zone it is appropriate for Whitefish and in this case in a residential neighborhood corridor. But there are very important differences between how Bozeman (and Missoula who has a similar zone--attached at the end of my comments) has defined and applied this code and how it is being defined and applied in the Whitefish Highway 93 Corridor plan. Below is the Bozeman definition.

"Sec. 38.42.1865. - Manufacturing, artisan.

Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires no outdoor operations or storage, and where the production, operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, production of alcohol, or food processing.

(Ord. No. 1874, § 2, 12-2-2013)" City of Bozeman

Important differences to note from the Bozeman and Missoula Artisan Manufacturing zones and what is being proposed for the Highway 93 West Corridor Plan and yet still called Artisan Manufacturing include:

- Artisan Manufacturing is only allowed in industrial zoned areas in Missoula. In Bozeman it may also be allowed outside of an industrial zone with a conditional use permit but only in business districts. (Note that Helena also only allows microbreweries in business districts).

- There is NO provision for "ancillary retail" in Bozeman or Missoula in this Artisan Manufacturing zone. (Thus these zones are designed not to compete with downtown retail or to generate excess traffic in a residential area.)
- There is no out door storage or operation allowed in the Artisan Manufacturing Districts in Bozeman and Missoula. Everything must occur in an enclosed building.

Allowing outdoor storage even with screening, as the proposed Highway 93 West Corridor plan does, will further degrade the character of the neighborhood and existing homes. As the APA report notes;

> " The two basic rationales for storage restrictions are aesthetics and public health. Outdoor storage can be an uninviting eyesore, especially in pedestrian-oriented areas. And left unattended, production waste may produce foul odors and attract vermin."

The lack of comprehensive standards in Whitefish zoning regulation to limit impacts to adjoining properties specific to the uses proposed for Artisan Manufacturing or even any analysis of this in this planning process is unacceptable. The neighbors have raised real and important reservations about the potential impacts to the character of their neighborhood areas and the potential impacts to their property values and quality of life. What assurances are there that these uses won't be sought by other developers, in other areas of this corridor once this barn door is opened?

▶**Parking and traffic are additional concerns.** Within the draft Whitefish Highway 93 West Corridor Plan and now this proposed zoning, Artisan Manufacturing as proposed and defined is so broad that almost anything could be construed to fit into the category including many business uses currently located in the downtown Whitefish core business area. This is in conflict with the goals and intent of the Whitefish Growth Policy and the recently updated 2015 Whitefish Downtown Neighborhood Plan.

Adding retail sales to uses within the corridor including Artisan Manufacturing will greatly increase traffic impacts within Whitefish Highway 93 West Corridor Plan area. Looking at the Whitefish regulations for parking requirements for bars and taverns it appears that the 10 spaces per 1000 sq ft is the standard, but in Bozeman for breweries it is 16 spaces per 1000 sq ft and in Helena it is 14 spaces per 1000 sq ft. ---what should the requirements be---there is little to no guidance in this plan or in the city regulations for the specific and unique uses called for in this corridor plan. Combining retail with manufacturing further begs the question of what the traffic generation will be.

Citizens for a Better Flathead encourages this board to devote additional workshop time to continue to refine and improve the proposed zoning for this plan area. We hope you will hold additional workshops on this proposed zoning and give the public and yourselves additional time study this area. Please take the time to get this right.

Missoula definition/zoning code for Artisan Manufacturing

(Ord. 3511, 2013; Ord. 3471, 2011; Ord. 3410, 2009)

20.105.050 Industrial Use Group

The industrial use group includes uses that produce goods from extracted materials or from recyclable or previously prepared materials, including the design, storage and handling of these products and the materials from which they are produced. It also includes uses that store or distribute materials or goods in large quantities. The industrial use group includes the following use categories:

A. Junk/Salvage Yard An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles. A junk or salvage yard includes an auto wrecking yard, but does not include waste-related uses or recycling facilities.

B. Auto Wrecking

The collecting and dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles or their parts.

C. Manufacturing, Production and Industrial Services

1. Artisan

On-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage, and occupying no more than 3,500 square feet of gross floor area. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts or very small scale manufacturing uses that have no negative external impacts on surrounding properties.

Breweries and Distilleries have a separate definition in Missoula, also under Industrial Uses:

D. Microbrewery/Microdistillery

A brewery (for malt beverages) that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels. A distillery that produces 25,000 proof gallons or less of liquor annually in accordance with MCA 16-4-310 through 312.

Received at Council Meeting 10-5-15

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10/5/2015

To: Whitefish City Council
Whitefish City Attorney
Whitefish Planning Office

Re: The Whitefish Planning Board Process and the Whitefish Planning Director's Guidance on the future proposed zoning for the Westside Corridor Plan

Citizens for a Better Flathead would like to formally request that you postpone and reschedule the proposed Whitefish City Planning Board Work Session on October 15, 2015 until such time as the following items can be reviewed and necessary direction be provided by this city council to ensure:

1. **Adequate and legal notice** of this planning board work session can be provided the public in accordance with the Montana Public Participation Act and in keeping with the council's long history of supporting broad and meaningful public participation. Neither the September 17th or the October 15th legal notice, or the Agency and Interested Party Advisory Notice of September 25, 2015 included notice of the Planning Board Work Session on the zoning for the Westside Neighborhood Plan. The agenda for the original Oct. 15 workshop for the planning board did not include notice of this work session, until we raised concerns about this. As Montana requires that all meetings be open to the public and a legal notice is the "legal" notice for a meeting, it doesn't make sense that a legal notice would not include a work session scheduled at the same meeting. This is confusing and misleading for the public.

2. **Clarification and resolution of non public record *ex parte* communications**, meetings, or discussions avoiding *ex parte* communications by the planning board with respect to pending land use decisions related to subdivision or zoning and in this case specifically the proposed zoning for the land within the West Side Corridor Plan. At the close of the last planning board work session the board concluded and advised the public that any lobbying of or meeting with planning board members outside of the planning board meetings was permitted on this proposed zoning. After further researching this issue we do not agree. We have provided a legal opinion from the Missoula City Attorney that we feel provides important guidance on this issue for the council. We have attached this for your review.

3. **Clarification, disclosure, and resolution of potential conflicts of interest** of planning board members who own property or have interests in property in this proposed zone area. A review of the last Planning Board workshop tape will show that at least one planning board member has a direct property interest in this area and is not pleased with the proposed zoning. Other members of the planning board expressed that they do not support council action on this Corridor Plan and have strong opinions about future zoning for this area.

4. **Identification of the scope of changes that the planning board has been asked by this council to consider in proposing zoning for this area.** The Planning Director advised the planning board at their last work session that since some votes by this council on the approved plan were

split votes, the planning board could propose zoning changes that were not consistent with the approved plan. It is our understanding that zoning must be consistent with the approved plan. The council should at this time clarify their direction for the planning staff and planning board for complying with prior council decisions on this corridor plan.

5. **Direction on steps needed to avoid the potential of "spot zoning" to meet the interests of a single or small group of individuals in this area over the interest of the city as a whole in this zoning process.** In a memo to and in discussion with the planning board at the September 17th work session on the Westside Corridor Plan zoning, the planning director advised the board that they "may" want to consider allowing breweries in areas the council had not approved and specifically for one property owner. A quote from that memo read, "WT-3. Should micro-breweries be added as a Conditional Use? This was fairly controversial during the 93 West Plan. The council was fairly split on the issue but ultimately voted to remove it. Ryan Zinke would still like to see it in there. The Board should discuss this and make a recommendation."

6. **Given that the Idaho Timber Property has been recently placed on the market for sale, it may be timely for the council to reconsider the importance of this plan area for meeting affordable housing needs that have been the focus of a recent conference and media.** Additionally, no review of the Westside Corridor Plan and the retail and commercial capacity within the recently approved Whitefish Downtown Master Plan has been completed to identify the potential excess commercial capacity proposed in the Westside Corridor Plan, and if this excess potential might more appropriately limited and this area be reviewed for affordable housing development.

7. Priority should be given to scheduling work sessions on issues of significant importance to the public at times other than the end of a lengthy planning board meeting. The last work session did not begin until 10am.

8. **Finally, we would like the council to reconsider the overall policies of the Planning Office, the City Manager, and the Council of providing adequate and consistent notice for hearings that rise to the level of excellence and fairness that the public expects of the city.** We urge you to review your legal obligations as well as best practices that will invite and encourage meaningful public participation in decisions that come before this council. This can be accomplished in part by providing generous public notice simultaneous with the provision of proposed regulations, applications, staff reports that are the subject of hearings. We believe that this is what state laws governing meeting notice provision require. To provide notice without access to such documents until a much later date is a hollow opportunity for public participation given the complex nature of the materials that come before you and the limited time the public has to study such documents or gather additional information. Public hearings and workshops that are continued should also be re-noticed. Additionally, we would urge you to review the make up of sub committees that you establish to advise you on planning and zoning issues like the Westside Corridor Plan. We would suggest that the make up of such committees should be more impartial.

We would welcome the opportunity to meet with the city to further present our concerns or to answer questions that this memo may have raised in a public workshop. Please advise us as to the best method or format to ensure that the issues that we have raised are considered and addressed. Meanwhile we would again ask that you postpone the proposed city planning board meeting on the Westside Corridor plan zoning.

Submitted by CFBF

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2014-023

TO: Mayor John Engen; City Council; Bruce Bender; Ginny Merriam; Marty Rehbein; Kelly Elam; Ellen Buchanan; Chris Behan; Donna Gaukler; Anne Guest; Kevin Slovarp; Ron Regan; Don Verrue; Mike Brady; Scott Hoffman; Jason Diehl

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE August 11, 2014

RE: Any committee or subcommittee appointed by a City Council must abide by Montana's right to know and public participation open meeting constitutional provisions and state laws.

FACTS:

During a recent city council committee of the whole meeting questions arose concerning a subcommittee/task force needing to comply with Montana public participation laws. A city council committee appointed task force is a sub-committee. Any city council appointed subcommittee must be open to the public and must comply with Montana's public notice and public participation laws.

ISSUE:

Are sub-committees of a city council committee required to comply with Montana's public meeting, participation and record keeping laws?

CONCLUSION:

Yes, pursuant to subsection 2-3-202(6) MCA and Montana's Constitution, generally all meetings of government bodies including municipal city council committee appointed subcommittees must be conducted in public pursuant to Montana's right to know, public notice and public participation open meeting and public record keeping laws.

LEGAL DISCUSSION:

Mont. Code Ann. § 2-3-203(6) of Montana's open meeting laws expressly provides that "[a]ny committee or subcommittee appointed by a public body . . . for the purpose of conducting business that is within the jurisdiction of that agency-is subject to the requirements of this section."

Mont. Code Ann. § 2-3-212 provides that appropriate minutes of all public meetings must be kept and made available for public discussion. This state law also sets forth minimum requirements for what must be included in the minutes.

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).
(2) Minutes must include without limitation:
(a) the date, time, and place of the meeting;
(b) a list of the individual members of the public body, agency, or organization who were in attendance;
(c) the substance of all matters proposed, discussed, or decided; and
(d) at the request of any member, a record of votes by individual members for any votes taken.
(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

Montana's constitutional right of participation and right to know provisions expressly establish rights of citizens to participate in as well as to observe the deliberations of all public bodies including boards, committees and commissions as well as their committees and subcommittees. Mont. Const. art. II, §§ 8 and 9 provide:

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (Emphasis added.)

Local governments are political subdivisions of state government. All boards, committees, sub-committees and commissions are a public body of local municipal government. Any city council committee or subcommittee is subject to Montana's public participation, notice, meeting and record keeping laws.

Montana's open meeting law, pursuant to Mont. Code Ann. § 2-3-201 provides:

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. (Emphasis added.)

Mont. Code Ann. § 2-3-203 of Montana's public participation open meeting law provides:

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.
(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency. (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2). (5) The Supreme Court may close a meeting that involves judicial deliberations in an adversarial proceeding.
(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section. (Emphasis added).

Pursuant to Mont. Code Ann. § 2-3-103, public participation includes allowing at each public meeting public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the public entity conducting the meeting.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.
(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.
(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request. (Emphasis added).

CONCLUSION:

Yes, pursuant to subsection 2-3-202(6) MCA and Montana's Constitution, generally all meetings of government bodies including municipal city council committee appointed subcommittees must be conducted in public pursuant to Montana's right to know, public notice and public participation open meeting and public record keeping laws.

OFFICE OF THE CITY ATTORNEY

/s/ _____
Jim Nugent
City Attorney

JN:tfa

Submitted by CFBF

MISSOULA

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Legal Opinion 2008-015

TO: John Engen, Mayor; City Council; Bruce Bender, CAO; Roger Millar; OPG Director; Cindy Wulfekuhle, OPG; Mike Barton, OPG; Denise Alexander, OPG; Mary McCrea, OPG; David Loomis, OPG; Jennie Dixon, OPG; Tom Zavaritz, OPG; Mark Landkammer, OPG; Zachary Brandt, OPG; Jen Gress, OPG; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Carla Krause, Public Works; Linda Dunn, Pubic Works Office Manager

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE October 30, 2008

RE: Non public record *ex parte* communications, meetings, or discussions should be avoided by City Council and Mayor with respect to specific subdivision and/or zoning land use projects.

FACTS:

The City has four (4) new City Council members since the last time this topic was a subject of a written legal opinion. Currently a controversial proposed subdivision and zoning application is before the City Council. Thus, it seems appropriate to provide City elected officials a reminder about avoiding *ex parte* communications with respect to pending land use decisions related to subdivision or zoning.

ISSUE:

With respect to pending land use subdivision or zoning applications, should City elected officials responsible for making final decisions avoid non-public record communications and/or discussions with interested parties or concerned citizens pertaining to the land use project prior to the city council making a final decision as the governing body?

CONCLUSION:

City Council members and the Mayor who are responsible for making final decisions with respect to subdivision and zoning applications should avoid non-public record communications, meetings, and/or discussions with interested parties or concerned citizens pertaining to the land use proposal prior to a final decision being made.

LEGAL DISCUSSION:

Montana's Constitutional and statutory right to participate and right to know are very important citizen rights associated with any proposed subdivision or zoning applications.

In order to avoid potential invalidation of a City Council decision pertaining to a specific land use subdivision or zoning proposal or land use project, as well as to protect constitutional due process for interested parties, and avoid even the appearance of bias or prejudgment of the land use issues, elected City decision makers should avoid non-public record communications meetings and/or discussions with interested parties or concerned citizens that are not open to the public that occur prior to a final decision being made. It is elementary basic fairness to adhere to both the public right to know as well as the public right to reasonably participate prior to a final decision being made by City elected officials. It also is important for land use decision makers to avoid weakening public confidence or undermining a sense of security of individual property owner rights as well as to an impartial, fair public process with respect to land use decision making for specific subdivision and zoning application proposals or projects.

City elected official decision making with respect to a property owner zoning or subdivision application is often generally considered to be a quasi-judicial function where *ex parte* contacts on the merits of the zoning or subdivision application could be held to violate constitutional rights to due process, right to know, right to participate, etc.

Zeigler, in *Rathkopf's The Law of Zoning and Planning*, section 32.10, when discussing *ex parte* contacts, states:

> II. *EX PARTE* CONTACTS § 32:10 Generally
>
> Political pressure and lobbying are a routine part of the zoning process. However, secret meetings and *ex parte* (off the record) discussions between interested parties and members of a zoning body may be held to violate statutory provisions requiring that meetings be noticed and open to the public. Also, while lobbying and *ex parte* discussions concerning the merits of a zoning proposal generally are held to be permissible and lawful with respect to purely legislative matters, where a zoning body performs quasi-judicial or administrative functions, *ex parte* contacts on the merits of an application may be held to violate procedural due process where an interested party's rights to notice and affair opportunity to be heard are prejudicial thereby. (Emphasis added.)

Ziegler in *Rathkopf's The Law of Zoning and Planning*, section 32.13 addresses legal concerns pertaining to denial of a fair hearing stating:

§32:13 Denial of fail hearing: Administrative action

When a zoning body takes administrative action affecting a person's property rights with respect to the use of a specific tract of land, procedural due process requires that the affected person be given notice and a fair opportunity be heard. This due process right to a "fair hearing on the issues involved clearly prohibits any use of secret evidence or secret reports that have the effect of denying the person involved a fair opportunity to proffer rebuttal testimonial and evidence. *Ex parte* contacts and communications related to the merits of an administrative zoning decision are considered highly improper and may be held sufficient to prejudice the affected person's procedural due process rights to a "fair hearing" or a similar statutory right to a "public hearing."

Courts in some cases have extended the right to a fair opportunity to be heard to not only applicants for zoning relief but to persons such as neighboring owners, who are objecting to the relief sought by an applicant. However, courts generally hold that *ex parte* contacts will invalidate an administrative zoning decision only where the contacts or communications involved are such as to substantially prejudice the affected party's right to notice and a fair hearing.

[. . .]

Washington courts have developed an "appearance of fairness" doctrine whereby administrative or quasi-judicial decisions by a legislative body may be held invalid where the cumulative impact of *ex parte* communications causes the proceedings to appear unfair to the general public. [Emphasis added.]

Ziegler, in *Rathkopf's The Law of Zoning and Planning*, discusses land use decision making bias, conflict of interest and the appearance of fairness doctrines:

BIAS AND CONFLICTS OF INTEREST

§ 32:14 Generally

Conflict of interest or bias on the part of a legislative or administrative decisionmaker may be alleged in litigation seeking to overturn a zoning enactment or decision. With respect to adjudicative or quasi-judicial zoning action (the grant of a variance or special permit, approval of a site plan, subdivision plat, or special exception, and in some states, the rezoning of a particular parcel of land), procedural due process generally prohibits bias or conflict of interest on the part of zoning officials involved in the decision process. Courts hold that when a public official functions in an adjudicative capacity special due process standards apply. Concern for the impartial exercise of quasi-judicial authority, in appearance as well as fact, requires that decisionmakers disqualify themselves where bias or conflicts of interest can be shown.

[. . .]

Administrative tribunals must be unbiased and must avoid even the appearance of bias to be in accordance with the principles of due process. As stated by the Supreme Court of Pennsylvania:

> [A] predilection to favor one side over the other is not required in order to vitiate a judicial proceeding as being violative

of due process. Merely, a possible temptation to the average man as judge . . . not to hold the balance nice, clear, and true' is sufficient.

Generally, conflict of interest or bias affecting the appearance of impartiality in zoning proceedings may be shown by: (1) a personal or financial interest that may be directly or indirectly affected by the zoning decision; (2) partiality or prejudice stemming from associational ties, familial relationships, friendships, employment or previous business dealings or conduct during the proceeding; or (3) prejudgment of the issues, which is usually revealed by pre-hearing statements. (Emphasis added.)

§ 32:17 Appearance of fairness doctrines

Court decisions in a number of states have developed "appearance of fairness" doctrines that attempt to restrict and prohibit conflicts of interest and bias that may undermine public confidence in the integrity of the zoning decisionmaking process. These doctrines may be based on state public policy, the spirit of statutory restrictions, the right to a statutorily required fair hearing, or simply judicial interpretation of the special due process standards governing adjudicatory action. While these doctrines generally are not strictly applied to purely legislative action, they may well be applied in conflict situations to members of local legislative bodies when acting in a quasi-judicial or administrative capacity and when the action of the public official involved is not expressly prohibited by statue.

Early Connecticut court decisions established conflicts of interests principles governing disqualification of members of zoning bodies. Courts in that state have reaffirmed the principle "that public policy requires that members of such public boards cannot be permitted to place themselves in a position in which personal interest may conflict with public duty." The evil against which the policy is directed "lies not in influence improperly exercised but rather in the creation of a situation tending to weaken public confidence and to undermine the sense of security of individual rights which the property owner must feel assured will always exist in the exercise of zoning power. It is "the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest."

2 Ziegler, *Rathkopf's The Law of Zoning and Planning* §§ 32:14 and 32:17.

Montana's Constitution and state statues constitutionally and statutorily guarantee citizen public participation and public right to know prior to final decision making. Montana's Constitution and State statutes require that decision making occur in public meetings based on public record. City Council member discussion about proposed subdivision, zoning, or other land use projects or proposals that the City Council will determine should be discussed among city council members only at public meetings prior to a final decision.

Montana's Constitution Article II, Sections 8 and 9, creates constitutional rights for public participation in government operations prior to a final decision being made as well as public rights to know, to examine documents and observe the deliberations of all public bodies. These constitutional provisions provide:

> **Section 8.** Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law. *(Emphasis added.)*

> **Section 9.** Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. *(Emphasis added.)*

These constitutional rights are also statutorily established in Title 2, Chapter 3, parts 1 and 2, Montana Code Annotated, pertaining to public participation, notice, opportunity to be heard and open meetings as well as in Montana's municipal government operation statutes §§ 7-1-4141 through 7-1-4143:

> **7-1-4141. Public meeting required.** (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.
>
> (2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

> **7-1-4142. Public participation.** Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public. *(Emphasis added.)*

> **7-1-4143. Participation.** In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision. *(Emphasis added.)*

City Council land use decisions pertaining to a specific zoning or subdivision proposal or other use of land in a certain manner clearly directly significantly affect specific individual property owner rights as well as potential community interests. City Council/Mayor governing body land use decisions potentially involve several constitutional issues including equal protection, due process, procedural due process fairness and takings of property requiring just compensation. Constitutional due process requires notice as well as a reasonable, fair and impartial opportunity to be heard. Fairness and impartiality to be heard also require that the process is impeccably a public record process pursuant to law.

Local government land use decisions must be considered on their merits based on public record evidence and information and not on *ex parte*, non-public record, discussion, meeting, or lobbying efforts. *Black's Law Dictionary* 472-473 (7th ed. 2000) defines the term "*ex parte*" as:

> *ex parte* adv. On or from one party only, usu. without notice to or argument from the adverse party.
>
> *ex parte* adj. Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested.
>
> ***ex parte* communication.** A generally prohibited communication between counsel and the court when opposing counsel is not present.
>
> Also see *Black's Law Dictionary*, Eighth Edition, pages 616-617 and page 296.

CONCLUSION:

City Council members and the Mayor who are responsible for making final decisions with respect to subdivision and zoning applications should avoid non-public record communications, meetings, and/or discussions with interested parties or concerned citizens pertaining to the land use proposal prior to a final decision being made.

OFFICE OF THE CITY ATTORNEY

Jim Nugent, City Attorney

JN: mdg

MONTANA STATUTES ON THE RIGHT OF THE PUBLIC TO KNOW AND PARTICIPATE

Constitution of Montana – Article II Declaration of Rights

Section 8. **Right to Participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. **Right to Know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

--

Montana Code Annotated (2013)
Title 2. GOVERNMENT STRUCTURE AND ADMINISTRATION
CHAPTER 3. PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS
Part 1. Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, Section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative

proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

2-3-105. Supplemental notice by radio or television. (1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.

(2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.

(3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views -- public hearings. (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not

limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
(3) a decision involving no more than a ministerial act.

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the petitioner learns, or reasonably should have learned, of the agency's decision.

Part 2. Open Meetings

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

(b) a list of the individual members of the public body, agency, or organization who were in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce the plaintiff's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

Part 3. Use of Electronic Mail Systems

2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency; or

(d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to 2-6-102, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

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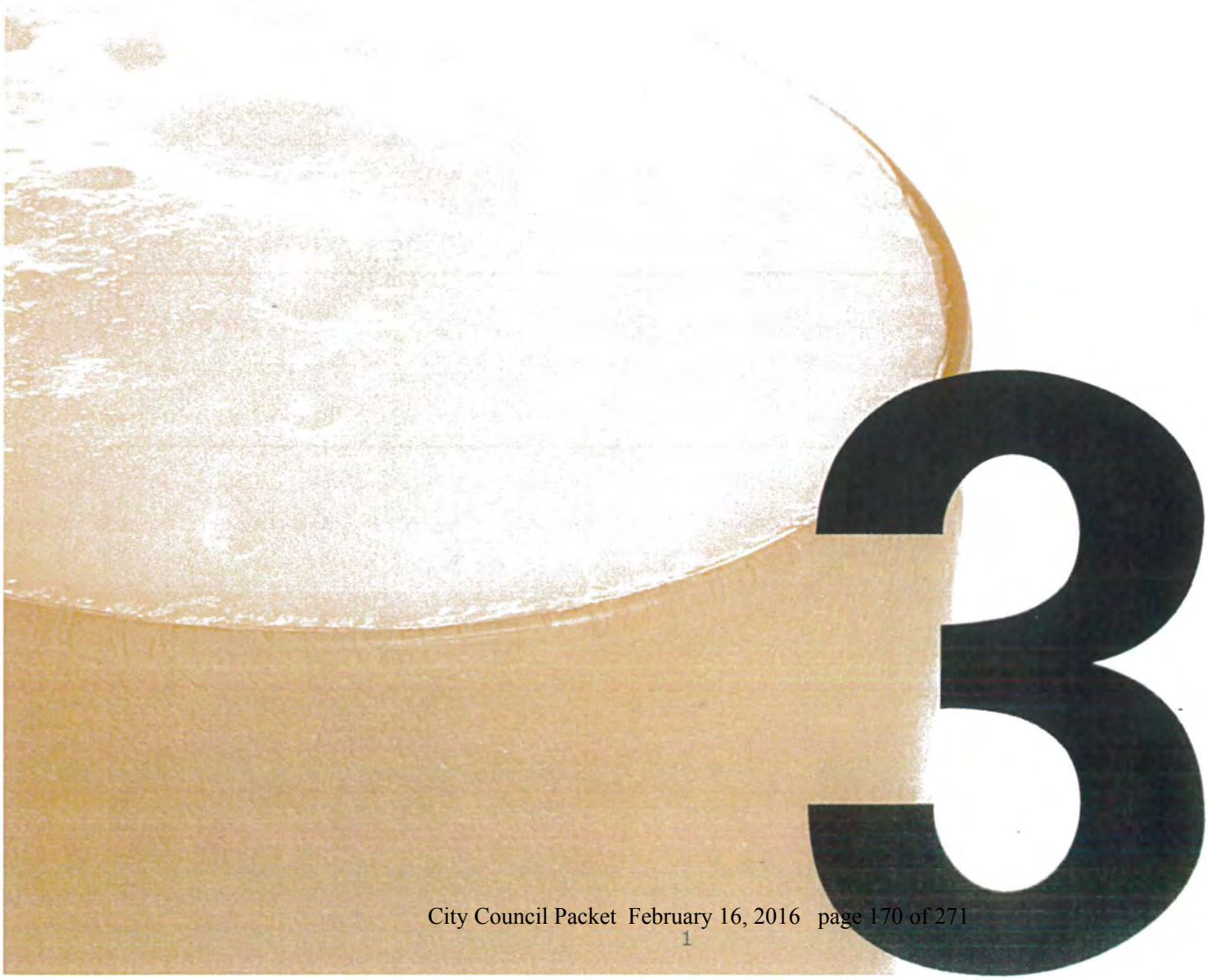

Background

- Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries

By David M. Morley, AICP

In communities across the country, beer titans like St. Louis-based Anheuser-Busch and Chicago-based MillerCoors are facing stiff competition from a host of locally owned and operated craft breweries.

The number of brewers is higher today than at any point during the 20th century.

Brewers Association, Boulder, Colorado

Meanwhile, there is parallel growth in craft distilleries and small-volume wineries. While renewed interest in small-scale alcohol production is just one facet of the buy-local movement, it has special relevance for planning and zoning practitioners.

Historically, few communities have used zoning to draw distinctions between alcohol production facilities of different types and sizes. More recently, though, numerous localities have added provisions to their zoning codes that acknowledge the variety of alcohol producers. The primary motivation for these regulatory changes is a desire to make space for smaller producers to operate outside of industrial districts.

The two most common small-scale alcohol production uses to receive special zoning attention are brewpubs (restaurants combined with breweries) and microbreweries (small-volume brewers with or without on-site sales). But references to microdistilleries (small-volume distilleries with or without on-site sales) and microwineries (small-volume wineries without on-site vineyards) are also on the rise.

The purposes of this article are to highlight why the growth in small-scale alcohol production may merit zoning changes and to summarize how communities have amended their codes to add definitions, use permissions, and, in some cases, additional standards to sanction brewpubs and microproducers.

THE BOOM IN SMALL-SCALE ALCOHOL PRODUCTION

According to the Brewers Association, the trade group for small brewers, as of June 2013 there were 1,165 brewpubs and 1,221 microbreweries in the United States. By way of comparison, in the late 1970s there were only 89 commercial brewers of any type (Brewers Association 2013). This boom in small-scale production has spread to spirits and wine too. In April 2012 *Time* reported a 400 percent surge in microdistilleries in the U.S. between 2005 and 2012 (Steinmetz 2012). And according to statistics maintained by trade publisher *Wines & Vines*, the number of wineries producing between 1,000 and 5,000 cases per year grew 16.5 percent between August 2011 and January 2014 alone.

These trends have significant economic development implications for localities across the country. In addition to satisfying demand for locally produced beer, wine, and spirits, microproducers often distribute their product regionally or nationally, bringing new money into their host communities. Furthermore, successful brewpubs and microproducers can help enliven commercial and mixed use districts that would otherwise clear out after conventional retail and office hours. It's no surprise, then, that some communities are actively trying to lure high-profile microbreweries from other states (McConnell 2012).

THE TROUBLE WITH REGULATORY SILENCE

Despite the explosive growth in brewpubs and microproducers, surprisingly few communities explicitly sanction small-scale alcohol pro-

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Go online during the month of March to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *David Morley, AICP, will be available to answer questions about this article. Go to the* Zoning Practice *section of the APA website at www.planning.org/zoningpractice and follow the links to the Ask the Author discussion board. From there, just submit your questions about the article to the active forum. After each forum closes at the end of the month, the archived questions and answers will be available through the Ask the Author discussion board.*

About the Author

David Morley, AICP, is a senior research associate with the American Planning Association, as well as APA's Planning Advisory Service (PAS) coordinator and coeditor of *Zoning Practice*. Since 2007 he has contributed to APA research projects on topics including brownfields redevelopment, complete streets, urban agriculture, shrinking cities, solar energy, and disaster recovery. Apart from his contributions to research projects and APA publications, Morley provides customized research on a daily basis for PAS subscribers.

duction facilities through their zoning codes. Without clear definitions and use permissions, planning staff or public officials are forced to make ad hoc use interpretations that can delay or even prevent otherwise desirable development. This regulatory silence creates uncertainty for business owners looking to make location decisions and secure financing, and it may have the effect of scaring away potential applicants. Finally, explicit definitions, use permissions, and use-specific standards allow communities to proactively address the potential negative effects of brewpubs and microproducers on surrounding areas, thereby minimizing future conflicts with neighbors.

DEFINING USES

Clear zoning standards for small-scale alcohol production facilities begin with clear use definitions. Generally speaking, there are two basic schools of thought about defining uses in zoning codes. Some communities try to define every conceivable potential use, while others rely on use groups (or categories) with similar operational requirements and attendant community effects.

The first method can bring clarity and avoid some legal disputes over specific uses, but it may create unnecessarily complex regulations. The second method is part of larger trend away from proscriptive use regulations, as many communities focus more on a prescriptive approach to the form of development. In practice, most conventional new zoning codes use a hybrid of these approaches, with broad use categories, such as household living or general retail, and specific use definitions for a small subset of higher-impact or more contentious uses under each category.

Steve Morgan/Creative Commons 3.0

Since 2008 the federally landmarked G.G. Gerber building in Portland, Oregon's Pearl District has housed a brewpub.

Mirroring this broader conversation about the best approach to classifying and defining uses, communities that have added specific definitions for small-scale alcohol production facilities to their zoning codes generally take one of two approaches. Either they define brewpubs, microbreweries, microdistilleries, and microwineries as distinct uses, or they define an umbrella term that encompasses multiple types of production facilities.

Communities that define microbreweries, microdistilleries, or microwineries as distinct uses often rely on a production volume threshold to distinguish between the "micro" and "conventional" version of a particular use. For microbreweries, 15,000 barrels per year is a common threshold, which corresponds to the American Brewers Association's defined limit for a microbrewery. Given that there are no corresponding industry definitions for microdistillery and microwinery, it is perhaps unsurprising that thresholds for these uses seem to vary more from place to place.

When communities define brewpubs as a distinct use, the intent is usually to distinguish between accessory- and primary-use brewing facilities. Most communities stipulate that beer production in a brewpub must be accessory to a bar or restaurant, and many cap the volume of beer produced annually (usually less than 15,000 barrels). Furthermore, some jurisdictions quantify this subordinate relationship by limiting the percentage of floor area or sales attributable to the brewery component of the business.

Definitions for brewpubs, microbreweries, microdistilleries, and microwineries often include an acknowledgment that the alcohol produced will be consumed both on- and off-site. For "micro" facilities, the presumption is typically that on-site consumption will be

Examples of Use Definitions

Brewpub:

- A retail establishment that manufactures not more than 9,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A restaurant-brewery that sells 25 percent or more of its beer on-site. The beer is brewed primarily for sale in the restaurant and bar. The beer is often dispensed directly from the brewery's storage tanks. Where allowed by law, brewpubs often sell beer "to go" or distribute to off-site accounts. (Brewers Association)

A restaurant with facilities for the brewing of beer for on-site consumption and retail sale at the restaurant. A brewpub must derive at least 40 percent of its gross revenue from the sale of food. (Goodyear, Arizona)

- A restaurant featuring beer that is brewed on-site. (Memphis-Shelby County, Tennessee)
- A restaurant that brews beer as an accessory use, either for consumption on-site or in hand-capped, sealed containers in quantities up to one-half barrel sold directly to the consumer. Production capacity is limited to 5,000 barrels of beverage (all beverages combined) per year. The area used for brewing, bottling, and kegging shall not exceed 30 percent of the total floor area of the commercial space. A barrel is equivalent to 31 gallons. (Plainfield, Illinois)

Microbrewery:

- A small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site. (Asheville, North Carolina)
- Any establishment where malt liquors are manufactured and packaged on- or off-premises, manufacturing more than 9,000 but less than 60,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A brewery that produces less than 15,000 barrels of beer per year with 75 percent or more of its beer sold off-site. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carryouts or on-site taproom or restaurant sales. (Brewers Association)
- A brewery (for malt beverages) that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels. (Missoula, Montana)
- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 5,000 barrels per month, with a barrel containing 31 U.S. liquid gallons. (Nashville-Davidson, Tennessee)

Nanobrewery:

- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 1,250 barrels per month. (Nashville-Davidson, Tennessee)

Microdistillery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves alcoholic spirits or food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 15,000 gallons per year of spirituous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A facility that produces alcoholic beverages in quantities not to exceed 35,000 gallons per year and includes an accessory tasting room. A tasting room allows customers to taste samples of products manufactured on-site and purchase related sales items. Sales of alcohols manufactured outside the facility are prohibited. (Evanston, Illinois)

(continued on page 5)

subordinate to off-site consumption. For brewpubs, the opposite is true.

Communities that define an umbrella term for multiple "micro" facilities tend to stress spatial or operational features over production volume limits. In some instances this means a square footage limit on facility size or the proportion of a facility that can be used for alcohol production. In other instances, there are no defined size limits, and the use definition simply describes a set of operational characteristics (e.g., alcohol production and sales for on- and off-site consumption).

USE PERMISSIONS

Defining and regulating small-scale alcohol production facilities allows communities to permit small breweries, distilleries, and wineries in locations that would be inappropriate for conventional, large-scale facilities. Typically, this translates to permitting brewpubs, microbreweries, microdistilleries, and microwineries in one or more commercial or mixed use districts, either by right, with ministerial approval, or subject to a discretionary use permit.

Permitting a use by right sends a clear signal to potential developers and business owners that the use is desirable in a certain zoning district. This approach presents applicants with the fewest hoops to jump through before obtaining zoning approval, but it is important to note that most small-scale production facilities will still be subject to state or local licensing or permitting laws that govern the production or sale of alcoholic beverages.

Requiring a ministerial approval for a use communicates that the community is generally supportive of the use in a certain zoning district, but this support is conditional upon compliance with objective standards intended to minimize negative impacts on proximate uses. This approach gives planning staff an opportunity to review an application before the planning director or zoning administrator issues an "over-the-counter" permit. Often, communities use ministerial approval processes to confirm that a particular application conforms to use-specific standards (see additional standards discussion below).

Permitting a use subject to a discretionary use permit (often referred to as a conditional, special, or special exception use permit) indicates that the community is potentially supportive of the use in a certain zoning district, provided the specific spatial and operational characteristics of the use do not pose compatibility problems. Discretion-

ary approval processes involve one or more public hearings before the local legislative body, planning commission, or zoning board renders a final decision on an application. Because the longer approval time frame and a greater degree of uncertainty can discourage some applicants, it is important for communities to reserve discretionary use permissions for locations or circumstances where objective standards are likely to be insufficient to ensure compatibility.

Since a brewpub typically has more in common with a restaurant than a factory, many communities permit brewpubs either by right or with ministerial approval in a wide range of commercial and mixed use districts. Meanwhile, use permissions for microbreweries, microdistilleries, and microwineries vary considerably from place to place. With that said, though, many cities do permit microproduction facilities either by right or with ministerial approval in at least one commercial or mixed use district. Furthermore, it is relatively common to permit microbreweries, microdistilleries, or microwineries by right in more intense commercial or mixed use districts and subject to a discretionary use permit in less intense districts. (See the table on page 6.)

ADDITIONAL STANDARDS

Many contemporary zoning codes limit use permissions with use-specific development or operational standards. By codifying additional standards for specific uses, the community can permit a wider range of uses without relying on discretionary use permits to ensure compatibility. In some cases, use-specific standards apply only in certain zoning districts, while in other cases the standards apply community-wide.

So far, relatively few communities have adopted additional development or operational standards for small-scale alcohol production facilities. Among those that have, the most common provisions relate to outdoor storage, the size of the facility or volume of production, loading and unloading, and proximity either to sensitive uses or to other similar producers.

Outdoor Storage

Perhaps the most prevalent type of additional standards for brewpubs and microproducers are screening requirements or limitations on the amount of space business owners can use to store equipment, production waste, or product. In some cases these standards take the form of an outright prohibition on outdoor storage.

To illustrate, Covington, Kentucky, flatly prohibits all outdoor equipment and storage for brewpubs and microbreweries (§§6.28.02–03). Meanwhile, Dallas permits microbreweries and microdistilleries to store spent grain outside in silos or containers, provided the storage is screened from view (C51A-4.210(b)(4)(E)(ii)(cc)). And Novi, Michigan, prohibits all outdoor storage for brewpubs and microbreweries, with the exception of storage in tractor trailers for a period less than 24 hours (§§1501.11.b and 1501.12.b).

The two basic rationales for storage restrictions are aesthetics and public health. Outdoor storage can be an uninviting eyesore, especially in pedestrian-oriented areas. And left unattended, production waste may produce foul odors and attract vermin.

Use Definitions *(continued from page 4)*

- Any place or premises wherein any wines or liquors are manufactured for sale, not to exceed 5,000 gallons per year, generally referred to as a craft, boutique, or artisan distillery. Microdistilleries may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply, including but not limited to TCA Title 57 and Memphis Code of Ordinances Title 7. For on-site sales by manufacturer compliance with TCA 57-3-204 applies. (Memphis-Shelby County, Tennessee)

Microwinery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves wine and food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 100,000 gallons per year of vinous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A small wine producer that does not have its own vineyard, and instead sources its grape production from outside suppliers. Microwineries produce wine for sale on- or off-site. For the purposes of this chapter, a microwinery is limited to a production of no more than 2,000 barrels per year. On-site consumption is not allowed, other than sample tasting by customers shopping on-site. (Glenville, New York)

Microbrewery/microdistillery/microwinery:

- A facility with no more than 3,000 square feet of floor area, for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises and which meets all alcohol beverage control laws and regulations. (Newport News, Virginia)
- An establishment for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages with a floor area of 10,000 square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a microbrewery, microdistillery, or winery use. (Dallas)
- A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption, and which possesses the appropriate license from the State of Maryland. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on the premises. (Denton, Maryland)
- An establishment with a primary use as a table service restaurant where beer, liquor, wine, or other alcoholic beverage is manufactured on the premises in a limited quantity subordinate to the primary table service restaurant use. The gross floor area utilized in a microbrewery, microdistillery, or microwinery for the production of beer, liquor, wine, or other alcoholic beverage shall be no greater than the gross floor area utilized for the associated table service restaurant. A microbrewery, microdistillery, or microwinery may include some off-site distribution of its alcoholic beverages consistent with state law. A tasting room or taproom may exist in a microbrewery, microdistillery, or microwinery where patrons may sample the manufacturer's products. (Wooster, Ohio)

EXAMPLES OF DEFINED USES AND PERMISSIONS

					Permitted in One or More Mixed Use or Commercial Districts		
Community	State	2010 Population	Density (pop./square mile)	Defined Uses	By Right or Ministerial Approval	Subject to Discretionary Use Permit	Subject to Additional Standards
Asheville	NC	83,393	1,856	microbrewery	X	X	§7-16-1(c)(43)
Bismarck	ND	61,272	1,986	brewpub	X		§14-03-08.4.u
				microbrewery		X	
Bloomington	IN	80,405	3,472	brewpub	X		§20.05.089
Burlington	VT	42,417	4,116	microbrewery	X	X	
Columbia	SC	129,272	978	microbrewery	X		§17-290
Covington	KY	40,640	3,079	brewpub	X		§6.28
				microbrewery		X	§6.28
				microdistillery		X	§6.28
Dallas	TX	1,197,816	3,518	microbrewery/ microdistillery/ winery		X	§51A-4.210(b)(4)
Denton	MD	4,418	837	microbrewery/ microwinery/ microdistillery		X	
Fort Collins	CO	143,986	2,653	microbrewery	X	X	
				microdistillery	X	X	
				microwinery	X	X	
Glenville	NY	29,480	580	microbrewery	X		
				microwinery	X		
Goodyear	AZ	65,275	341	brewpub	X		§4-2-15
				microbrewery	X		§4-2-16
Memphis-Shelby	TN	646,889	2,053	brew pub	X	X	§2.6.3.G
				microbrewery	X	X	§2.6.4.F
				microdistillery	X	X	§2.6.4.F
Missoula	MT	66,788	2,428	microbrewery		X	
Modesto	CA	201,165	5,457	microbrewery	X	X	§10-3.203
Newport News	VA	180,719	2,630	microbrewery/ microdistillery/ microwinery	X		
Novi	MI	55,224	1,825	brewpub	X	X	§1501.11
				microbrewery	X	X	§1501.12
Port Townsend	WA	9,113	1,306	microbrewery	X	X	
				microdistillery	X		
				microwinery	X		
St. Petersburg	FL	244,769	3,964	brewpub	X	X	§16.50.045
				microbrewery	X	X	§16.50.045
Wooster	OH	26,119	1,601	microbrewery/ microdistillery/ microwinery	X		

Facility Size or Volume of Production

Some communities use additional standards to restrict the size of the facility, scale of production, or the relationship between the alcohol production facility and collocated food or beverage service. This is most common in codes where the use definition does not stipulate a specific production limit or the nature of the relationship between primary and accessory uses. However, communities can also use this type of operational standard to modify defined limits or relationships in lower-intensity zoning districts.

For example, Asheville, North Carolina, limits microbreweries to 4,000 square feet of floor area in two specific office districts (§17-16-1(c)(43)a.3). Columbia, South Carolina, limits microbrewery production to 1,000 barrels per year in three lower-intensity commercial and mixed use districts (§17-290(2)). And Novi, Michigan, stipulates that no more than 50 percent of the gross floor space in a brewpub shall be used for brewing (§1501.11.e).

Loading and Unloading

A few communities have adopted additional standards stipulating the provision or location of loading spaces or prohibiting deliveries during certain hours. Both of these types of delivery restrictions can help brewpubs and microproducers be better neighbors by minimizing traffic congestion or limiting noise during certain times of the day. Still, it's important to note that in some pedestrian-oriented districts it may be infeasible or undesirable to require dedicated loading spaces due to premiums on space or urban design goals.

As one example, Asheville, North Carolina, stipulates that all microbreweries must have an off-street or alley-accessible loading dock (§17-16-1(c)(43)a.4). Meanwhile, St. Petersburg, Florida, discourages microbrewery access and loading from streets and requires any street-facing loading bays to keep their doors closed at all times, except when actively in use. The city also restricts service truck loading and unloading to the hours between 8 a.m. and 8 p.m., Monday through Saturday, and between 11 a.m. and 7 p.m. on Sundays and national holidays (§§16.50.045.4–6).

Distancing Requirements

A small number of communities have adopted distancing requirements that either limit the proximity of small-scale alcohol production facilities to sensitive uses, such as schools or churches, or require a minimum separation between similar uses. For the first type of distancing requirement, the rationale is to limit potential spillover effects on properties where children congregate. The rationale for the second type of requirement is to prevent an over-concentration of brewpubs or microproducers in a specific district.

To illustrate, Novi, Michigan, requires microbreweries to be separated from one another by at least 2,500 feet (§1501.12.h). And Bismarck, North Dakota, requires property owner consent as a condition of approval for microbreweries located within 300 feet of a lot line for any school, church, library, or hospital (§14-03-08.4.u.1).

CONCLUSIONS

When localities choose to define and regulate small-scale alcohol production facilities as one or more distinct uses, it allows them to permit these uses in locations that would be inappropriate for major industrial operations. By doing so, communities can set the stage to capitalize on the economic and placemaking benefits of brewpubs and microproducers.

With that said, the preceding discussion only hints at the variety of approaches localities have taken to regulate brewpubs, microbreweries, microdistilleries, and microwineries. Furthermore, a number of communities with thriving craft brewing and distilling scenes, such as Chicago and Portland, Oregon, have yet to single out small-scale alcohol production facilities for special zoning treatment. Others have made a conscious decision to minimize use-based restrictions in favor of prescriptive standards for the form of development. However, communities that don't thoughtfully consider regulatory alternatives for brewpubs and microproducers run the risk of being caught "flat-footed" by an application for a new facility that may be beneficial to the community but is inconsistent with current zoning.

Finally, as with any significant potential zoning change, it can be helpful to talk to other communities that have taken a similar approach to see what's working and what might need further attention. And, of course it's always important to review both new provisions and the intent behind those provisions with residents, business owners, and other community stakeholders before recommending or taking action.

REFERENCES

- Brewers Association. 2013. "Number of Breweries." Available at www.brewersassociation.org/pages/business-tools/craft-brewing-statistics/number-of-breweries.
- McConnell, J. Katie. 2012. "Cities Court Craft Breweries." CitiesSpeak.org, August 9. Available at http://citiesspeak.org/2012/08/09/cities-court-craft-breweries.
- Steinmetz, Katy. 2012. "A Booze of One's Own: The Micro Distillery Boom." *Time*, April 6. Available at http://business.time.com/2012/04/06/craft-distillers.
- *Wines & Vines*. 2014. "Wine Industry Metrics." Available at www.winesandvines.com/template.cfm?section=widc&widcDomain=wineries.

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PLANNING & BUILDING DEPARTMENT
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To: Whitefish City-County Planning Board
From: David Taylor, AICP, Director of Planning & Building
Date: November 5, 2015
RE: Transitional Zones Work Session

This is continuation of the work session the Planning Board began on September 17th. The Highway 93 West Corridor Plan called for the creation of two new 'transitional' zoning districts by the city, a mixed use neighborhood multi-family zone, and a light industrial type zone. Through the public input and planning process, the plan identified the types of uses that could be appropriate in the two new zoning districts, and then two 'sample' zones were added to the appendix that would be the baseline for future zoning text amendments to create the new zones. Attached is a draft of two new zoning districts that were called for as implementation priorities of the Highway 93 West Corridor Plan.

The Highway 93 West Plan was adopted as part of the Growth Policy, and as such, is not regulatory but rather defines general types of appropriate future land use such as 'commercial' or 'industrial' rather than specific uses. The sample zones adopted in the appendix were highly contested place holders to start from, and the actual new zoning districts adopted are subject to refinement on the specifics. Staff plans to hold a public hearing on proposed language for these districts in a future meeting, so we would like additional feedback from the Planning Board to fine tune and perfect the language before passing a recommendation on to the City Council.

The Council wanted these two zoning districts geographically specific to the Highway 93 West area, with the WT-3 Mixed Use zone identified in the adopted Growth Policy Future Land Use Map appropriate for adoption on lots along Highway 93 West in what the plan called Area B (north side of Highway 93 West from Murray Avenue to the Veterans Bridge, as well as a finger of land along the river on the Idaho Timber property). The WI-T Industrial Transitional zone was deemed appropriate for a future zoning change to the remainder of the former Idaho Timber industrial site, which is currently zoned WI, Whitefish Industrial and Warehousing.

The sample permitted and conditional uses proposed in these two proposed zones were heavily vetted through the Steering Committee, Planning Board, and City Council. They were also the most controversial part of the plan. After review and consideration, there are a couple of changes suggested by staff. The sample zones did not include development requirements for the industrial transition zone, so draft development language has been added to the proposed zoning district outlined below. Staff also added a couple of new definitions and special provisions. Staff is presenting the drafts as voted on by the city council. Where staff is proposing changes to the council's draft, or new sections, they are <u>underlined</u>, and proposed deletions are ~~struck out.~~

Here are several points of review to consider to provide staff feedback during the work session:

1. **WT-3**. Review proposed development requirements
    a. Addition of a minimum lot requirement. If such property develops as multi-family residential, which is now the predominant use, minimum lot area is important so the number of units/lot is defined by area.
    b. WT-3. Front yard spaces – WGM proposed the landscaped greenbelt, but staff feels that a 25' standard setback is more appropriate, as all lots in the proposed district will front the highway, landscaping is already required, and parking is not allowed in front setbacks.

2. **WT-3**. What incentives are there to encourage people to change their zoning to WT-3? As it stands as drafted, the WT-3 is more restrictive development wise than the existing WR-3. The only advantage is that the WT-3 offers artisan manufacturing as a conditional use (apart from the sliver of Idaho Timber property allowing a hotel). Unless someone really wants to do artisan manufacturing, realistically it's highly unlikely any property in that district would pursue a zoning change. The trend we are seeing is all offices and high end multi-family condos.

3. **WT-3**. Further discussion should probably be had on alcohol production. The issue was fairly controversial during the 93 West Plan. The council was split on the issue of whether a micro-brewery might be appropriate in the WT-3 transitional zone but ultimately voted to remove alcohol production from the sample definition of 'artisan manufacturing' mostly due to concerns about appropriateness and parking issues in the neighborhood transitional zone. The council members present felt that micro-breweries would be more appropriate in the WI-T zone as a conditional use since that property is currently industrial (and micro-breweries are currently an allowed CUP). Ryan Zinke has continued to lobby for the new WT-3 zoning to allow a small brewery. One thing to consider is that while a micro-brewery is perhaps too intensive for the WT-3 zoning, a nano-brewery could be more in line with a neighborhood or an artisan scale if the board deems to recommend that any alcohol production is appropriate there. A nano-brewery is typically under 1,000 barrels/year compared to up to 15,000 barrels/year for a micro-brewery. A new definition of that would need to be added (see discussion under definitions below).

4. **WI-T**. Review Permitted Uses.
    a. If Light Industrial manufacturing, packing, and storing is a permitted use, why would Artisan Manufacturing be a conditional use?
    b. Business Incubator. Should those permitted uses added be moved to the definition?
    c. Coffee shops and sandwich shops and even grocery stores are not typical things found in 'Conditional Uses', which generally are things with major impacts to adjacent properties. A small coffee shop would have less impact than the majority of permitted uses listed. Should those be moved to permitted uses?

5. **WI-T**. Property Development Standards. Discuss. There were not WI-T development standards drafted for the sample district in the plan. Staff crafted standards as a hybrid between the existing WI, WB-4, and WBSD for discussion, and added outdoor storage standards.

6. **Special provisions, Micro-breweries and micro-distilleries**. Staff added this at the request of Citizens for a Better Flathead, although for the most part all these issues have historically been addressed through standard CUP conditions.

7. **Special provisions for Live/Work units**. Staff researched how these are applied, and come up with some standards to address some issues that typically arise.

8. **Artisan Manufacturing special provisions**. Staff suggests adding the following as provision H to limit the types of accessory retail uses.
   H. With the exception of minor accessory items related to the use of the primary product (i.e., bike helmets and brake pads at a custom bicycle shop), only items manufactured or assembled on site may be sold on the premises.

9. **Definition of Business Incubator**. Seems overly detailed. Please advise.

10. **Definitions of Micro Brewery and Micro distillery**. Review. For reference, here are the standard sizes of brewery types:

    a. Macro-brewery: Over 6,000,000 barrels a year (think Coors or Budweiser)
    b. Craft-brewery: Less than 6,000,000 barrels a year (i.e., Samuel Adams, at 3.5 million barrels/year)
    c. Micro-brewery: Less than 10,000 barrels a year (it is 10,000 under Montana law, but 15,000 nation-wide) (Great Northern Brewing)
    d. Nano-brewery: Not officially defined, but typically defined as: Maximum four barrel brewing system or less (or under 1000 barrels/year). (Bonsai brewing made 180 barrels per year when they were at the mall, but have since upped their capacity at their new location and will make around 450 barrels this year)

       1 barrel = 31 gallons. A typical beer keg you all saw at high school or college parties is ½ barrel, or roughly 15 gallons.

    Right now nano-breweries fall under the same definition as a micro-brewery. The board could consider adding a definition of nano-brewery.

    NANO-BREWERY – A facility for the limited production of alcoholic malt beverages of no more than 1000 barrels a year for on-site sales and consumption with limited off-premises distribution (kegs only).

11. Other issues?

Some notes on Citizens for a Better Flathead comments from 9-17-15.

- As proposed, the WT-3 does not allow 'unlimited bars, taverns, and retail/commercial/light manufacturing'. That is a considerable exaggeration. Artisan manufacturing does not list alcohol production as an allowed item to be manufactured. Micro-breweries and micro-distilleries are not listed as an allowed or conditional use in the draft of the WT-3, only in the WI-T (where they are currently allowed). Even if they did, a microbrewery is a considerably different use than a bar or tavern since microbreweries have a 48 oz limit per person and must close by 8 pm. Retail would only be allowed as an accessory use to artisan manufacturing, and only items made or assembled on site could be sold, or items directly accessory to their use. That is a far cry from 'unlimited retail and commercial'. As far as the light manufacturing goes, artisan manufacturing is much more limited than traditional

manufacturing, and will require a conditional use permit as proposed, so it is also not 'unlimited'.

- As far as commercial creep, the proliferation of professional offices and personal services with multi-family as a 'mixed use' in the corridor is the predominant new land use, as allowed under the current zoning. Other than artisan manufacturing and the potential for a hotel on the Idaho timber site, there is no other commercial being proposed in the zoning beyond what is currently available under the WR-3.

- The Downtown Master Plan was focused on the downtown, and gave no consideration to land uses in other mixed use areas such as Wisconsin Avenue, Highway 93 South, or Highway 93 West. The zoning in all these other areas (including the proposed) severely limits retail sales, protecting downtown businesses. Any future uses will only compliment the downtown core while provide some limited services for the Highway 93 North neighborhood within walking distance, lessening congestion and parking issues downtown.

- Every area in the city limits is open to lot consolidation and potential PUD's. That is the nature of development. PUD's are subject to considerable public standards and review.

- The Idaho Timber was for sale by the Idaho Timber Corporation when the corridor plan was begun. The fact that it is for sale again doesn't change the ideas for future land use to transition away from predominantly heavy industrial uses.

- The adjacent 'Peace Park' has a County I-2 designation. A copy of that is attached. Parks are a permitted use. The I-2 isn't significantly different from the properties' previous zoning of WI. Development of that property, and the adjacent BNSF property, is out of the city's jurisdiction.

- Conditional Use standards for micro-breweries and distilleries are provided in the draft.

- Language has been provided that limits the type of accessory retail that 'artisan manufacturing' can provide on-site.

- Highway 93 West is a highway, and as such it is designed to handle large volumes of traffic. Parking is regulated under the zoning code, and can be further refined for intensive uses as all of them are 'conditional uses' and must meet strict standards and review.

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    c. WT-3. Should micro-breweries be added as a Conditional Use? This was fairly controversial during the 93 West Plan. The council was fairly split on the issue but ultimately voted to remove it. Ryan Zinke would still like to see it in there. The Board should discuss this and make a recommendation.
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6. Definition of Business Incubator. Seems overly detailed. Please advise.
7. Definition of Micro Brewery/Micro distillery. Review.
8. Other issues?

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MANAGER REPORT

February 10, 2016

RESORT TAX COLLECTIONS

On an equivalent basis of the 2% Resort Tax this year compared to last year, Resort Tax collections in December were down by 9.2% or $18,482. For the year-to-date, the comparative 2% Resort Tax is down 0.35% or $4,505.

Retail collections were especially down in December, by 15.3% or $16,240, possibly because of less Canadian tourism during the period. Delinquencies are up somewhat in frequency and I recently sent 10 certified letters for starting the civil citation process on ten vendors, which was a monthly record for me. I typically will send 2-3 certified letters each month to start the civil citation process for collecting Resort Tax delinquencies. I think U.S. summer tourism will be good with low gas prices, but it may be a tight winter, especially for retail vendors.

Overall, with the additional 1% Resort Tax that voters approved, the 3% Resort Tax was up by 36.48% or $73,483 for December compared to the 2% Resort Tax in December, 2014. There are comparative figures and charts attached to this report in the packet.

CONTRACTING OUT AMBULANCE BILLING

Because of the upcoming changes in the City Clerk's office and to avoid training two different employees on Ambulance Billing in the event that the Fire Department gets some administrative help in the FY17 budget, we are planning to contract out the Ambulance Billing function to a Missoula firm which does contract ambulance billing for Evergreen and some other area ambulance services.

Although we haven't seen a final contract proposal yet, we estimate that the annual cost for this service will be in the area of $41,000 per year which is a little more expensive than our estimated staff cost of around $32,000. Joe Page has worked for ambulance services in the past where ambulance billing was done in-house and contracted out and he would like to try contracting out, at least during this transitional period of staff changes. The minimum contract is for one year. We also think that this service may help us improve our collection rate which would more than offset the higher cost.

SINK HOLE IN ALLEY EAST OF WASABI SUSHI BAR

Last week a sink hole developed in the alley east of the Wasabi Sushi Bar. A picture of the sink hole is shown below. The cause of the sink hole was that a clay sanitary sewer main collapsed and a clay storm sewer pipe in the same area also collapsed, causing the sink hole. No sewage got into the groundwater because it was only the top of the clay pipe that collapsed, so gravel and clay got into the sewer pipe. There were no sewer backups into the adjoining property and both pipes have been repaired and the hole was filled in.

MEETINGS

MLCT, MMIA Regional Meeting (2/3) – Five staff members and I attended the district training workshops in Polson put on by the Montana League of Cities and Towns (MLCT), the Montana Municipal Interlocal Authority (MMIA – our insurance provider), and the MSU Local Government Center. An agenda for the meeting is attached. It was especially good training for new and incoming Department Directors.

USFS Meeting on proposed Fuels Reduction Project in the Whitefish Face of the Whitefish Range

I attended the USFS Tally Lake Ranger District meeting on their proposed fuels reduction project for the Whitefish Face of the Whitefish Range – the front face overlooking the City. As the attached agenda, map, and pictures show, they are proposing some timber harvesting on 264 acres of land and fuel reduction, primarily prescribed burns, on 880 acres. The schedule would have a Record of Decision occurring possibly in September, 2016 and prescribed burns would occur as early as the fall of 2017, weather conditions permitting. The setbacks for the burns and other treatments from riparian areas, including 2nd and 3rd Creeks range from 50 feet to 300 feet. I suggested increasing the 50 feet to a minimum of 100 feet. The prescribed burns would occur as budgets allow over the next 10-15 years and would not occur all at one time.

UPCOMING SPECIAL EVENTS

REMINDERS

Monday, February 15, 2016 – City Hall closed for Presidents Day state holiday

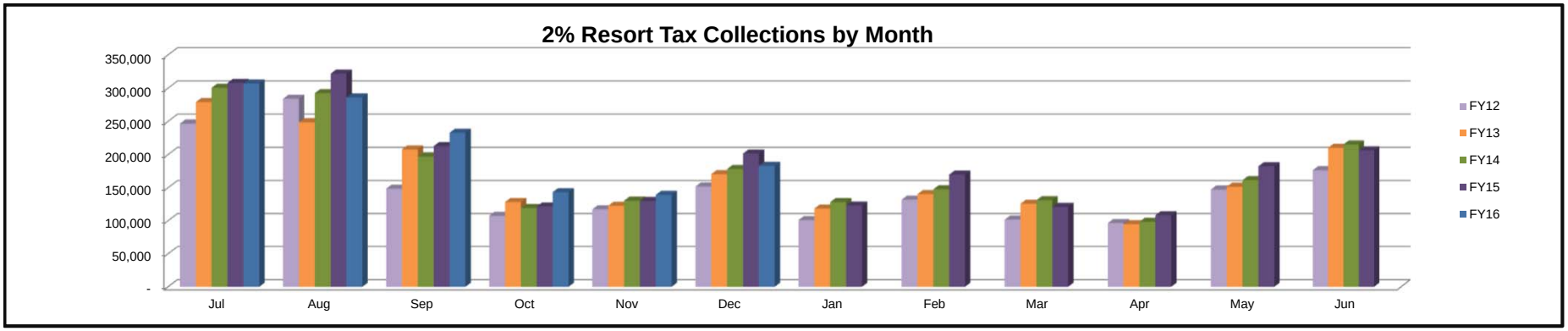
Chuck

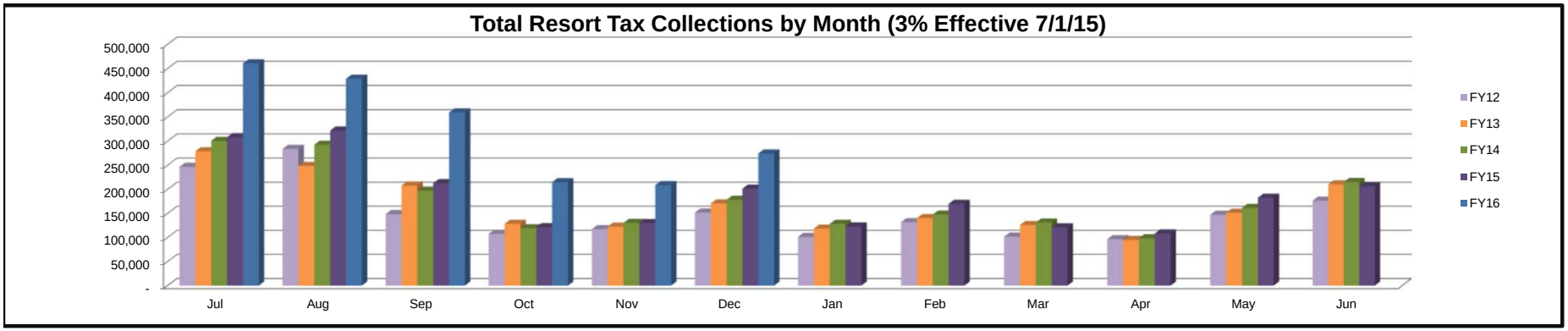
Respectfully submitted,
Chuck Stearns, City Manager

Resort Tax Report
Reported in the Month Businesses Paid Tax

Month/Year	Lodging	Bars & Restaurants	Retail	Collected	% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Additional 1% Resort Tax Effective July 1, 2015: Lodging	Bars & Restaurants	Retail	Collected	Total Collected (3% Resort Tax for FY16)	Interest	Total
Jul-13	81,828	98,642	120,028	300,497	7.7%		-	-	-	-	300,497	496	300,993
Aug-13	77,809	108,131	106,422	292,362	17.6%		-	-	-	-	292,362	434	292,796
Sep-13	50,377	77,416	69,328	197,120	-5.1%	7.4%	-	-	-	-	197,120	434	197,554
Oct-13	16,851	48,015	54,271	119,137	-7.1%		-	-	-	-	119,137	434	119,571
Nov-13	6,831	47,701	75,780	130,312	6.3%		-	-	-	-	130,312	2654	132,966
Dec-13	21,782	64,884	91,585	178,251	4.6%	1.5%	-	-	-	-	178,251	404	178,655
Jan-14	16,848	54,481	56,839	128,169	8.2%		-	-	-	-	128,169	404	128,573
Feb-14	22,323	58,758	66,487	147,568	5.3%		-	-	-	-	147,568	404	147,972
Mar-14	15,770	64,178	51,114	131,061	4.2%	5.8%	-	-	-	-	131,061	409	131,470
Apr-14	10,065	41,894	46,458	98,417	4.0%		-	-	-	-	98,417	455	98,872
May-14	18,993	58,791	83,683	161,467	6.6%		-	-	-	-	161,467	455	161,922
Jun-14	44,865	69,190	101,053	215,107	2.4%	4.1%	-	-	-	-	215,107	455	215,562
					YTD Compared to Last Year								
Total FY14	**$ 384,342**	**$ 792,081**	**$ 923,047**	**$ 2,099,470**	or	**5.12%**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,099,470**	**$ 7,438**	**$ 2,106,908**
FY13 vs FY14	11.2%	4.5%	3.3%	5.1%	$	102,265	n/a	n/a	n/a	n/a	5.1%	TaxableSalesFY14 $	110,498,402
Jul-14	84,053	104,935	118,876	307,864	2.5%		-	-	-	-	307,864	440	308,304
Aug-14	93,049	117,674	111,016	321,739	10.0%		-	-	-	-	321,739	498	322,236
Sep-14	49,804	84,149	78,813	212,767	7.9%	6.6%	-	-	-	-	212,767	246	213,013
Oct-14	18,589	50,665	52,266	121,519	2.0%		-	-	-	-	121,519	604	122,123
Nov-14	8,530	43,076	78,311	129,917	-0.3%		-	-	-	-	129,917	359	130,276
Dec-14	20,944	74,617	105,885	201,446	13.0%	5.9%	-	-	-	-	201,446	293	201,739
Jan-15	15,285	52,940	54,543	122,768	-4.2%		-	-	-	-	122,768	281	123,049
Feb-15	25,805	74,286	69,705	169,795	15.1%		-	-	-	-	169,795	166	169,961
Mar-15	16,336	51,183	53,368	120,887	-7.8%	1.6%	-	-	-	-	120,887	227	121,114
Apr-15	11,755	50,637	45,835	108,227	10.0%		-	-	-	-	108,227	263	108,490
May-15	23,911	61,756	96,773	182,441	13.0%		-	-	-	-	182,441	288	182,728
Jun-15	39,483	78,394	88,316	206,194	-4.1%	4.6%	-	-	-	-	206,194	301	206,495
					YTD Compared to Last Year								
Total FY15	**$ 407,543**	**$ 844,313**	**$ 953,707**	**$ 2,205,564**	or	**5.05%**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,205,564**	**$ 3,966**	**$ 2,209,529**
FY14 vs FY15	6.04%	6.59%	3.32%	5.05%	$	106,094	n/a	n/a	n/a	n/a	5.1%	Taxable Sales FY15 $	116,082,301
Jul-15	78,513	111,068	117,342	306,922	-0.3%		39,256	55,534	58,671	153,461	460,383	377	460,760
Aug-15	69,374	114,956	101,484	285,814	-11.2%		34,687	57,478	50,742	142,907	428,722	375	429,097
Sep-15	75,699	74,806	82,265	232,770	9.4%	-2.0%	37,850	47,403	41,133	126,386	359,156	410	359,566
Oct-15	19,169	63,939	60,111	143,219	17.9%		9,584	31,970	30,056	71,610	214,829	545	215,373
Nov-15	8,611	43,585	86,861	139,057	7.0%		4,306	21,793	43,430	69,529	208,586	527	209,113
Dec-15	18,343	74,975	89,645	182,964	-9.2%	2.7%	9,172	37,488	44,823	91,482	274,446	484	274,929
Jan-16				-						-	-		-
Feb-16				-						-	-		-
Mar-16				-						-	-		-
Apr-16				-						-	-		-
May-16				-						-	-		-
Jun-16				-						-	-		-
					YTD Compared to Last Year								
Total FY16	**$ 269,709**	**$ 483,330**	**$ 537,708**	**$ 1,290,747**	or	**-0.35%**	**$ 134,855**	**$ 251,665**	**$ 268,854**	**$ 655,374**	**$ 1,946,121**	**$ 2,717**	**$ 1,948,837**
FY15 vs FY16	-1.91%	1.73%	-1.37%	-0.35%	$	(4,505)	n/a	n/a	n/a	n/a	77.9%	Taxable Sales FY16 $	102,427,402
FY16 % of Collections	21%	37%	42%				21%	38%	41%				
Grand Total	**$ 5,032,173**	**$ 10,520,563**	**$ 12,637,523**	**$ 28,190,259**			**$ 134,855**	**$ 251,665**	**$ 268,854**	**$ 655,374**	**$ 28,845,632**	**$ 762,476**	**$ 29,608,659**
% of Total Collections	18%	37%	45%				21%	38%	41%			2.6%	Average since '96

Resort Tax Report
Reported in the Month Businesses Paid Tax





Total Taxable Sales Since 1996
$ 1,518,191,183

Total Collected
$ 30,363,824

5% Admin
$ 1,518,191

Public Portion
$ 28,845,632

2016 Regional Training/District Meeting Agenda

Introductions

MLCT Update

Tim Burton, Executive Director - MLCT

Municipal Government

Dan Clark, Director – MSU LGC

Blake Christensen, Associate Director – MSU LGC

Good Governance

Dan Clark, Director – MSU LGC

Blake Christensen, Associate Director – MSU LGC

Roles & Responsibilities – Mayors and Council

Dan Clark, Director – MSU LGC

Blake Christensen, Associate Director – MSU LGC

Open Meeting Laws

Dan Clark, Director – MSU LGC

Blake Christensen, Associate Director – MSU LGC

Lunch & Networking

Advancing Collaboration – MMIA, MLCT and MSU LGC

Alan Hulse, CEO – MMIA

Tim Burton, Executive Director – MLCT

Dan Clark, Director – MSU LGC

Limiting Risk: Best Practices for Employee Discipline

Angela Simonson, HR/Employment Practices Specialist - MMIA

Self-Audit: Tools and Resources for Enhancing Workplace Safety

Britani Laughery, Internal Operations Manager - MMIA

Thom Danenhower, Risk Management Specialist - MMIA

File Code: 1950
Date: January 29, 2016

Greetings,

Tally Lake District employees will be having a collaborative meeting to discuss the Whitefish Municipal Watershed Fuels Reduction Project. This project is located approximately four miles north and east of Whitefish and within the town's municipal watershed. The meeting will occur on Monday February 8th, from 5 PM to 6:30 PM at the Tally Lake Ranger District and Supervisors Office located at 650 Wolfpack Way in Kalispell. Our resource specialists will present the draft proposed action and provide further information. Interested members of public are encouraged to attend and provide input on the proposed action before the project goes out for scoping.

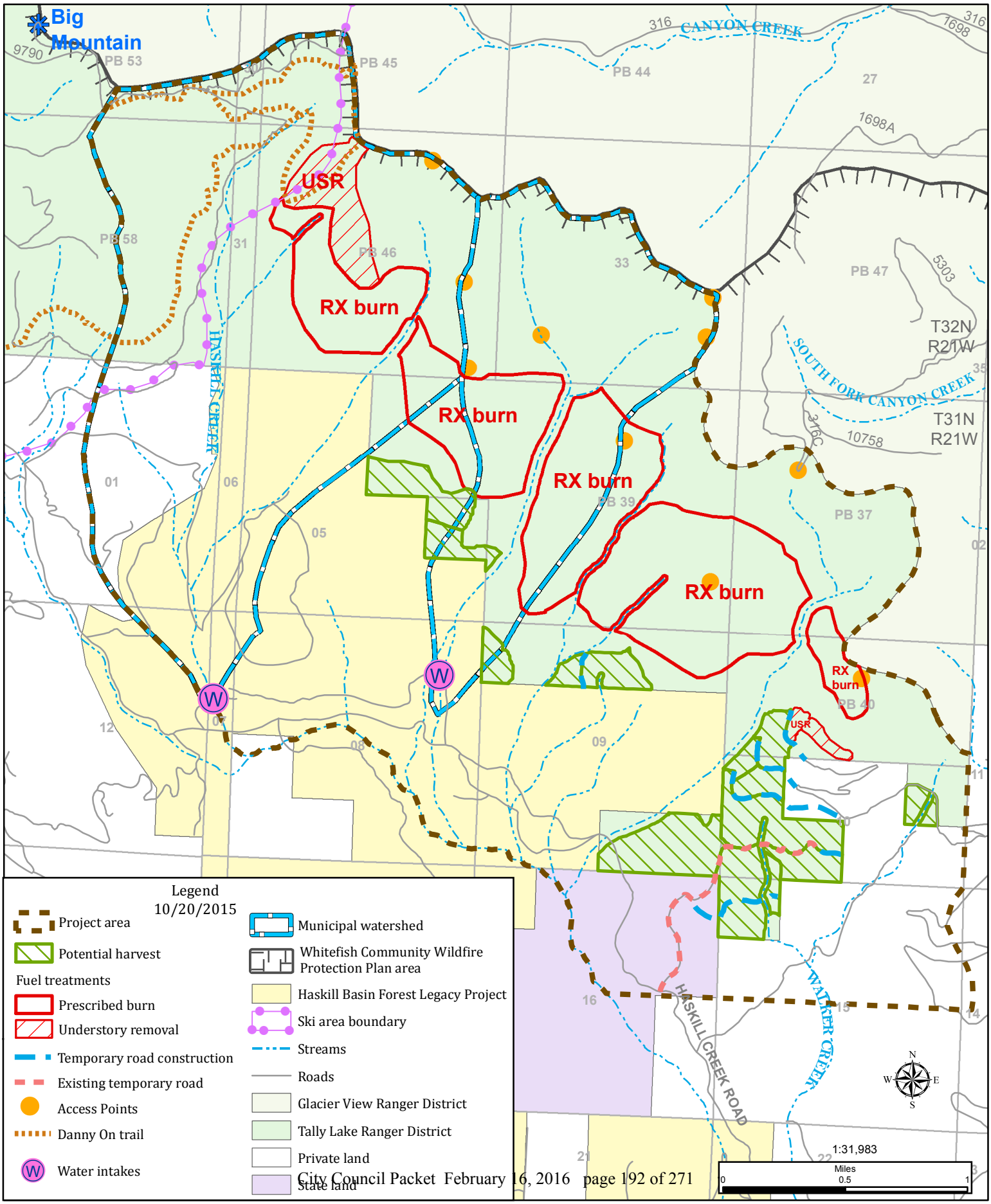
Lands within the proposed project area were designated by Governor Bullock in 2014 as a priority landscape under Section 602 of the Farm Bill. Section 602 also provides authority to implement projects using the Healthy Forest Restoration Act (HFRA). The proposed action includes timber harvest on approximately 260 acres of forestlands and fuel treatment, primarily prescribed burning, on approximately 880 acres. This project is in the Wildland Urban Interface (WUI), within the municipal watershed adjacent to the residential urban community of Whitefish and the Whitefish Mountain Resort ski area. For further information, visit the forest's website at **www.fs.usda.gov/projects/flathead/landmanagement/projects**, or contact Planning Team leader, Deb Bond at 406 758-5318.

Sincerely,

MELISSA JENKINS
Acting District Ranger

Whitefish Municipal Watershed

Fuel Reduction Project
Draft Proposed Action
October 2015



Sorry about the blurred picture.

Carver Bay
Monks Bay
hitefish Lake
Google Earth Image Legend
Yellow boundary -- Proposed Fuels Treatment
Blue boundary -- Commercial Thinning
Red boundary -- Seed Tree
Green line -- Fuel Break
The Island
Dog Bay

PROJECT REVIEW

DATE: 09 February, 2016

NEW CITY HALL and PARKING STRUCTURE
CITY OF WHITEFISH
REPORT TO CITY COUNCIL and STAFF

ACTIVITIES COMPLETED – THIS PERIOD

- The first concrete pour was completed on Friday, January 29th. Approximately 55 CY.s were placed for the footings in the SE corner of the City Hall.
- The second installment was completed on Tuesday, February 2. 25+- CY.s were placed.
- Several shipments of reinforcing steel have been received and stored onsite.

ACTIVITIES IN PROGRESS

- Concrete work will continue, now, into the summer months.
- Martel is planning to expand the concrete effort into the Parking Structure areas as soon as foundation locations can be prepared.
- Site prep is still concentrated within the City Hall limits.
- The next concrete is scheduled for the City hall south & east wall foundations, and for foundations in the basement area. A pour is scheduled for the 17th/18th of February.
- The first concrete for the PS will be along the alley.

ACTIVITIES PLANNED (3 WEEK LOOK AHEAD)

- Site backfill and grading will continue.
- The concrete foundation effort will also continue as described above.
- Under slab mechanical piping and electrical conduit will be installed prior to the start of slab work in the City Hall – still planned for March.
- There will be an increase in material ordering and delivery. Deliveries for the next 3 – 4 weeks will most likely be limited to reinforcing steel.

CONTRACT ACTIVITES

- Cost cutting opportunities, while becoming more limited, are still being investigated.
- Martel will proceed with concrete activities as before, since there were no respondents on the re-bid.
- CMG has been hired to perform the independent inspection work onsite. This will include concrete sampling and testing, structural steel inspection, post tensioned concrete and post tensioning tendons.

- Martel has contract documents drafted for all remaining approved work.

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 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

- There were no press releases for the week of 2/1, although one had been planned. It will most likely be printed on 2/17.
- Relations and communications with the local business owners, and the community in general, remains positive.

AREAS OF CONCERN

- Soils issues:
  Contaminated material has been removed as prescribed by Applied Water Consulting, who provides guidance for DEQ related activities. New structural fill is currently being placed.
  Soils test results are not yet in, at this writing. Further remedial work will be defined as the test results become available and are analyzed.
  All work is being performed in compliance with DEQ guidelines.

Mike Cronquist
Owners Representative

SITE PHOTOS

STRUCTURAL FILL BEING PLACED IN THE CITY HALL BASEMENT. CONCRETE FOUNDATIONS PLACED ON JAN 29 CAN BE SEEN IN THE BACKGROUND

419
Bobcat

FOUNDATION PLACED ON FEB 2nd

RESOLUTION NO. 16-11

RESOLUTION RELATING TO $9,800,000 TAX INCREMENT URBAN RENEWAL REVENUE BONDS, CONSISTING OF $4,900,000 SERIES 2016A BOND AND $4,900,000 SERIES 2016B BOND; AUTHORIZING AND DIRECTING THE ISSUANCE, CONFIRMING THE SALE AND PRESCRIBING THE FORM AND TERMS THEREOF AND THE SECURITY THEREFOR

BE IT RESOLVED by the City Council (the "Council") of the City of Whitefish, Montana (the "City"), as follows:

Section 1.

1.01. Authorization. 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. Prior City Actions. Pursuant to the Act and Ordinance No. 87-3, adopted on May 4, 1987 (the "Original Ordinance"), the Council created an urban renewal district (as amended from time to time, the "District") and approved the City of Whitefish Urban Renewal Plan (as amended, the "Plan") for the District containing a tax increment financing provision, all as set forth in the Ordinance (as defined below). The Original Ordinance, as amended by Ordinance Nos. 89-3, 93-2, 95-06, 95-10, 96-14, 99-04, 99-15, 01-16, 03-25, 03-34, 04-08, 08-02, 08-19, 12-05 and 15-18, adopted on May 15, 1989, April 19, 1993, May 15, 1995, September 5, 1995, December 16, 1996, June 21, 1999, January 3, 2000, November 19, 2001, September 15, 2003, December 1, 2003, May 3, 2004, February 4, 2008, July 21, 2008, February 21, 2012 and December 7, 2015, respectively, is referred to herein as the "Ordinance." The Plan provides for the segregation and collection of Tax Increment with respect to the District. The District and the Plan providing for the segregation and collection of Tax Increment have been duly and validly created and adopted, respectively, in strict accordance with applicable provisions of the Act and are in full force and effect.

Pursuant to the Act and Resolution No. 15-14, adopted by the Council on June 1, 2015 (the "Original Resolution"), the City issued its Tax Increment Urban Renewal Revenue Refunding Bonds, consisting of $3,591,500 Series 2015A Bond and $3,591,500 Series 2015B Bond (collectively, the "Series 2015 Bonds"). Proceeds of the Series 2015 Bonds were used to refund the City's Tax Increment Urban Renewal Revenue Refunding Bonds, Series 2009, to fund a deposit to the Reserve Account for the Series 2015 Bonds, and to pay costs of issuing the Series 2015 Bonds and of the refunding. The Series 2015 Bonds are payable from Tax Increment. Capitalized terms used herein but not otherwise defined shall have the meanings set

forth in the Original Resolution. The Original Resolution, as amended and supplemented by this supplemental resolution, are together referred to herein as the "Resolution."

In the Plan, the City noted the need for a new City Hall facility and the need to develop additional public parking in the District. To address these deficiencies, the City has proposed to design and construct 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 to design and construct 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").

Following a duly noticed public hearing and pursuant to Ordinance No. 15-18, the City affirmed the approval of the City Hall Project and the Parking Structure Project (together, the "Projects"), and designated the Projects as urban renewal projects under the Act. The Projects are eligible for tax increment financing under Section 7-15-4288 of the Act.

1.03. Additional Bonds. The City proposes to issue its Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond (the "Series 2016A Bond") and $4,900,000 Series 2016B Bond (the "Series 2016B Bond" and, together with the Series 2016B Bond, the "Series 2016 Bonds") to pay a portion of the costs of the Projects, to fund a reserve for the Series 2016 Bonds and to pay costs of issuance of the Series 2016 Bonds. Pursuant to Sections 5.01 and 5.02 of the Original Resolution, the City reserved the right to issue City Hall/Parking Structure Project Bonds as Additional Bonds, payable and secured ratably and equally and on a parity with Outstanding Bonds, upon compliance with the provisions of Sections 5.01 and 5.02 of the Original Resolution. There are no other bonds or other obligations of the City payable from the Tax Increment, other than the Series 2015 Bonds.

1.04. Estimated Sources and Uses of Funds. Estimated sources and uses of funds for the Projects are as follows:

Sources	
Proceeds of Series 2016 Bonds	$9,800,000.00
Available Tax Increment	6,476,495.90
Net Proceeds of SID Bonds to be issued in 2017	750,000.00
Impact Fees	135,055.00
Total	$17,161,550.90
Uses	
Deposit to Construction Account*	$16,041,550.90
Deposit to Reserve Account	980,000.00
Costs of Issuance of Series 2016 Bonds*	140,000.00
Total	17,161,550.90

*Costs of issuance shall not exceed $140,000. Any amounts budgeted for costs of issuance in excess of actual costs of issuance shall be contributed to the construction account and used for costs of the Projects. A final sources and uses table will be set forth in closing documents for the Series 2016 Bonds.

1.05. Authorization and Sale of Series 2016 Bonds. This Council determined by Resolution No. 16-06, adopted on February 1, 2016, that it is in the best interests of the City to issue its Series 2016 Bonds, as authorized by Section 7-15-4301(1)(a) of the Act and the Resolution, for the purpose of paying a portion of the costs of the Projects, funding a deposit to the Reserve Account, and paying costs of issuance of the Series 2016 Bonds; and authorized the Mayor, City Manager and the City Finance Director to enter into a Bond Purchase Agreement with Glacier Bank with respect to the Series 2016A Bond and a Bond Purchase Agreement with First Interstate Bank with respect to the Series 2016B Bond, subject to the terms and limitations of Resolution No. 16-06. Pursuant to such Bond Purchase Agreements, dated February 8, 2016, Glacier Bank agreed to purchase the Series 2016A Bond at the aggregate purchase price of $4,900,000 (representing the principal amount of the Series 2016A Bond) and First Interstate Bank agreed to purchase the Series 2016B Bond at the aggregate purchase price of $4,900,000 (representing the principal amount of the Series 2016B Bond), subject to the terms and conditions of the Bond Purchase Agreement and the Resolution. The terms of the sale and purchase of the Series 2016A Bond and the Series 2016B Bond, as set forth in the Bond Purchase Agreements and the Resolution, are consistent with the terms and limitations of Resolution No. 16-06. In the case of any conflict between the provisions of the Resolution and the Bond Purchase Agreements, the provisions of the Resolution shall control. Glacier Bank and First Interstate Bank are referred to collectively herein as the "Original Purchasers."

1.06. Adequacy of Tax Increment. The City estimates that Tax Increment to be received from the District will be at least $4,951,640 per year (based on Tax Increment from the District of $4,951,640 received by the City in Fiscal Year 2015). The maximum aggregate Principal and Interest Requirements on the Series 2015 Bonds and the Series 2016 Bonds will occur in the last Fiscal Year that the Series 2015 Bonds and Series 2016 Bonds will be outstanding (unless earlier prepaid); therefore the amounts on hand in the Reserve Account allocable to each of the Series 2015 Bonds and Series 2016 Bonds will be applied to pay a portion of the Principal and Interest Requirements on the Series 2015 Bonds and the Series 2016 Bonds in that Fiscal Year. The maximum aggregate Principal and Interest Requirements on the Series 2015 Bonds and the Series 2016 Bonds equals $5,846,317.50. There are no other debt obligations of the City payable from Tax Increment received in the District. Accordingly, the estimated Tax Increment to be received by the City, plus amounts to be contributed from the Reserve Account ($1,698,300), is expected to be sufficient to pay the maximum Principal and Interest Requirements on the Series 2015 Bonds and the Series 2016 Bonds.

1.07. Satisfaction of Additional Bonds Test. The Council hereby determines that the City has satisfied or will satisfy by the time of delivery of the Series 2016 Bonds the conditions set forth in the Original Resolution for the issuance of the Series 2016 Bonds as Additional Bonds, recognizing that the Series 2016 Bonds are City Hall/Parking Structure Project Bonds and therefore need not satisfy the conditions for issuance of Additional Bonds set forth in Section 5.03 of the Original Resolution.

1.08. Whitefish School District Interlocal Agreement. The City has entered into an Interlocal Agreement with the Whitefish School District dated as of March 16, 2009 (the "Interlocal Agreement") pursuant to which Tax Increment received by the City in respect of single-family residential properties and multi-unit residential buildings will be transferred by the

City to the Whitefish School District after receipt of such by the City on a semi-annual basis, subordinate to and after the City's payment of the principal and interest on the Series 2015 Bonds, Series 2016 Bonds and other debt obligations payable from the Tax Increment, if any.

1.09. Findings and Determinations. It is hereby found, determined and declared by this Council as follows:

(a) the conditions precedent to the issuance of the Series 2016 Bonds under the Act, the Ordinance and the Resolution have or shall be met prior to the issuance of the Series 2016 Bonds;

(b) the estimated Tax Increment to be received by the City, as set forth in Section 1.06, and pledged to the payment of the Series 2015 Bonds and the Series 2016 Bonds will be sufficient to pay the principal thereof and interest thereon when due;

(c) it is in the best interests of the City to issue and sell the Series 2016 Bonds for the purpose of paying a portion of the costs of the Projects, funding a deposit to the Reserve Account, and paying costs of issuance of the Series 2016 Bonds, as provided in the Resolution; and

(d) all acts, conditions and things required by the Constitution and laws of the State, including the Act, in order to pledge the Tax Increment to the payment of the Series 2016 Bonds, to make the Series 2016 Bonds valid and binding special, limited obligations of the City in accordance with their terms and with the terms of the Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Series 2016 Bonds.

2.01. Payment Terms. The Series 2016A Bond shall be issued in the principal amount of $4,900,000, shall be dated, as originally issued, and be registered as of or about March 1, 2016, shall be payable in semi-annual installment payments due on each January 15 and July 15, commencing July 15, 2016, with the initial installment payment being interest-only and the subsequent 8 semi-annual installment payments being principal and interest, and concluding July 15, 2020, unless earlier prepaid or redeemed, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 2.21% per annum; except as otherwise provided in Section 2.03 hereof. The Series 2016B Bond shall be issued in the principal amount of $4,900,000, shall be dated, as originally issued, and be registered as of or about March 1, 2016, shall be payable in semi-annual installment payments due on each January 15 and July 15, commencing July 15, 2016, with the initial installment payment being interest-only and the subsequent 8 semi-annual installment payments being principal and interest, and concluding July 15, 2020, unless earlier prepaid or redeemed, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 2.21% per annum; except as otherwise provided in Section 2.03 hereof. Interest on the Series 2016 Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months. The Series 2016 Bonds are neither Serial Bonds nor Term Bonds.

2.02 Interest Payment Dates. Interest on the Series 2016 Bonds shall be payable to the Owners of record thereof as such appear on the Bond Register (as hereinafter defined) as of the close of business on the first day of the month immediately preceding each principal and interest payment installment date (or, in the case of the first Payment Date, each interest payment installment date), whether or not such day is a business day.

2.03. Determination of Taxability. The definition of "Determination of Taxability" set forth in the Original Resolution is hereby amended to include the Series 2016 Bonds in addition to the Series 2015 Bonds and all references in such definition to "either of them" are hereby replaced with "any of them." In addition, the definition of "Taxable Rate" set forth in the Original Resolution is hereby amended to mean 3.51% with respect to the Series 2016 Bonds. In the event that the interest on the Series 2016 Bonds, or either of them, becomes includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability, the rate of interest then payable under the Series 2016 Bonds, or applicable Bond, shall automatically be increased retroactively effective from and after the Date of Taxability, to an annual rate equal to the Taxable Rate (for the Series 2016 Bonds, 3.51%). The City shall, upon demand by the Owner, immediately pay to the Owner and to each prior Owner since the Date of Taxability, an amount equal to the amount, if any, by which the interest accrued retroactively, at the Taxable Rate from the Date of Taxability to the date of payment, exceeds the amount of interest paid to the Owner and any such prior Owner during said period, and all penalties and interest payable by such Owners as a result of such change in taxable status. Thereafter, interest on the Series 2016 Bonds shall accrue at the Taxable Rate and shall be payable to the Owner on the Payment Dates specified in the Series 2016 Bonds. The obligations of the City under this paragraph shall survive for three years following repayment of the Series 2016 Bonds in full.

The Owner shall permit the City to contest, litigate or appeal any notice, ruling or decision that would, with the lapsing of time, constitute a Determination of Taxability, at the City's sole expense; provided that any such contest, litigation or appeal is, in the reasonable opinion of the Owner, being undertaken and carried forward in good faith, diligently and with reasonable dispatch. The expenses of any contest or appeal of such a notice, ruling or decision shall be paid by the party initiating the contest and neither the City nor the Owner shall be required to contest or appeal any such notice, ruling or decision. In the event that any such contest, litigation or appeal is undertaken, interest on the Series 2016A Bond or the Series 2016B Bond or the Series 2016 Bonds, as the case may be, at the Taxable Rate from the Date of Taxability (assuming the occurrence of a Determination of Taxability) shall, nevertheless, be payable by the City and shall be held by the Owner in escrow pending final disposition of such contest, litigation or appeal. The additional funds collected as a result of the interest rate adjustment shall be placed in escrow by the Owner in an interest-bearing account, bearing interest at a yield not exceeding the yield of the Series 2016A Bond or the Series 2016B Bond or the Series 2016 Bonds, as the case may be. In the event the contest is resolved in favor of the Owner and the City, and no Determination of Taxability occurs, the funds held in such escrow account shall be returned to the City. If the contest is resolved against the Owner and the City and a Determination of Taxability occurs, the amount on deposit in the escrow account shall be applied to the additional payments then due pursuant to the Series 2016A Bond or the Series 2016B Bond or the Series 2016 Bonds, as the case may be, and this Section 2.03, with any excess returned to the City; provided, however, that in any event the City shall indemnify the

Owner and each prior Owner from and against any and all penalties, interest or other liabilities which they may incur on account of any such contest, litigation or appeal.

2.04. System of Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent for the Series 2016 Bonds and such person may be an officer or employee of the City (the "Bond Registrar"). This Section 2.04 shall establish a system of registration for the Series 2016 Bonds as defined in the Model Public Obligations Registration Act of Montana, and shall govern in the event provisions of the Resolution relating to registration, transfer or exchange of Series 2016 Bonds are inconsistent herewith. The effect of registration and the rights and duties of the City and the Bond Registrar with respect thereto shall be as follows:

(a) Bond Register. The Bond Registrar shall keep at its principal office a bond register in which the Bond Registrar shall provide for the registration of ownership of Series 2016 Bonds and the registration of transfers and exchanges thereof.

(b) Transfer. Upon surrender for transfer of any Series 2016 Bond duly endorsed by the registered Owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Bond Registrar, duly executed by the registered Owner thereof or by an attorney duly authorized by the registered Owner in writing, the Bond Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Series 2016 Bonds of the same series and a like aggregate principal amount, interest rate and maturity as requested by the transferor. The Bond Registrar may, however, close the books for registration of the transfer of any Series 2016 Bond or portion thereof selected or called for redemption.

(c) Exchange. Whenever any Series 2016 Bond is surrendered by the registered Owner for exchange, the Bond Registrar shall authenticate and deliver one or more new Series 2016 Bonds of the same series and a like aggregate principal amount, interest rate and maturity, as requested by the registered Owner or the Owner's attorney in writing.

(d) Cancellation. All Series 2016 Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Bond Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Series 2016 Bond is presented to the Bond Registrar for transfer, the Bond Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Series 2016 Bond or separate instrument of transfer is legally authorized. The Bond Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Bond Registrar may treat the person in whose name any Series 2016 Bond is at any time registered in the bond register as the absolute Owner of such Series 2016 Bond, whether such Series 2016 Bond shall be overdue or not, for the purpose of receiving payment of, or on account of,

the principal of, premium, if any, and interest on such Series 2016 Bond and for all other purposes, and all such payments so made to any such registered Owner or upon the Owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Series 2016 Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Series 2016 Bonds (except upon a partial redemption of a Series 2016 Bond pursuant to Section 2.06), the Bond Registrar may impose a charge upon the Owner thereof sufficient to reimburse the Bond Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Series 2016 Bonds. In case any Series 2016 Bond shall become mutilated or be lost, stolen or destroyed, the Bond Registrar shall deliver a new Series 2016 Bond of the same series and a like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Series 2016 Bond or in lieu of and in substitution for any such Series 2016 Bond lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Bond Registrar in connection therewith; and, in the case of a Series 2016 Bond lost, stolen or destroyed, upon filing with the Bond Registrar of evidence satisfactory to it that such Series 2016 Bond was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Bond Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Bond Registrar shall be named as obligees. All Series 2016 Bonds so surrendered to the Bond Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Series 2016 Bond has already matured or such Series 2016 Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Series 2016 Bond prior to payment.

2.05. Initial Bond Registrar. The City hereby appoints the City Finance Director as the initial Bond Registrar for the Series 2016 Bonds. The City reserves the right to appoint a bank, trust company or financial institution as successor registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana, and the City agrees to pay the reasonable and customary charges of the Bond Registrar for the services performed.

2.06. Optional Redemption of Series 2016 Bonds. The Series 2016 Bonds are subject to prepayment and redemption at the option of the City on 30 days' prior written notice to the registered Owners of the Series 2016 Bonds, in whole or in part, at a price of the principal amount being prepaid and redeemed plus interest thereon through the date of prepayment or redemption, without premium or penalty.

2.07. Execution and Delivery. The Series 2016 Bonds shall be forthwith prepared for execution under the direction of the City Finance Director, at the expense of the City, and shall be executed on behalf of the City by the signatures of the Mayor, City Manager and the City Finance Director; provided that said signatures may be printed, engraved or lithographed facsimiles thereof. The seal of the City need not be affixed to or imprinted on any Series 2016 Bond. In case any officer whose signature or a facsimile of whose signature shall appear on the

Series 2016 Bonds shall cease to be such officer before the delivery of any Series 2016 Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Series 2016 Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution unless and until a certificate of authentication on such Series 2016 Bond has been duly executed by the manual signature of an authorized representative of the Bond Registrar. Certificates of authentication on each Series 2016 Bond need not be signed by the same representative. The executed certificate of authentication on each Series 2016 Bond shall be conclusive evidence that it has been authenticated and delivered under the Bond Resolution and in accordance with the provisions hereof. When the Series 2016 Bonds have been fully executed and authenticated, they shall be delivered by the Bond Registrar to the applicable Original Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Original Purchasers shall not be obligated to see to the application of the purchase price.

2.08. Form of Series 2016 Bonds. The Series 2016A Bond shall be in substantially the form set forth in Exhibit A hereto (which is hereby incorporated herein and made a part hereof), with such appropriate variations, omissions and insertions as are permitted or required by the Resolution. The Series 2016B Bond shall be in substantially the form set forth in Exhibit B hereto (which is hereby incorporated herein and made a part hereof), with such appropriate variations, omissions and insertions as are permitted or required by the Resolution.

2.09. Transcript Certification. The officers of the City are directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings and information in their official records relevant to the authorization and issuance of the Series 2016 Bonds, and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and security of the Series 2016 Bonds, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

2.10. Ongoing Disclosure. The City will provide to the Owners of the Series 2016 Bonds, on or before 270 days after the end of each fiscal year, commencing with the fiscal year ending June 30, 2016, (i) audited financial statements of the City for such fiscal year (provided that if audited financial statements are not available by such date, the City shall provide unaudited financial statements to the Owners of the Series 2016 Bonds on or before 270 days after the end of the fiscal year, and shall provide audited financial statements to the Owners of the Series 2016 Bonds within 10 days after they become available) and (ii) operating data for the District, including taxable market value, taxable value and incremental taxable value of the District, property tax levy figures of taxing jurisdictions in the District, tax increment collection figures, updated financial results for the District and updated estimated debt service coverage information.

In addition, the City will provide to the Owners of the Series 2016 Bonds in a timely manner, notice of the occurrence of any of the following events:

(1) Principal and interest payment delinquencies with respect to the Series 2016 Bonds;

(2) Non-payment related defaults under the Series 2016 Bonds or the Resolution;

(3) Unscheduled draws on debt service reserves for the Series 2016 Bonds reflecting financial difficulties;

(4) Adverse tax opinions or events affecting the tax-exempt status of the Series 2016 Bonds;

(5) Modifications to rights of Owners of the Series 2016 Bonds;

(6) Series 2016 Bond calls; and

(7) Defeasances of the Series 2016 Bonds.

Nothing herein shall be construed to subject the City or the Owners of the Series 2016 Bonds to the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended (the "Rule"), with respect to such Bond, or any procedures, rules, regulations, or initiatives promulgated by the SEC or the Municipal Securities Rulemaking Board under or in connection with the Rule.

Section 3. Tax Covenants.

3.01. Security for the Series 2016 Bonds. The City shall not enter into any lease, use or other agreement with any non-governmental Person relating to the security for the payment of the Series 2016 Bonds which might cause the Series 2016 Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Code. No "impermissible agreement" as defined in Treasury Regulations, Section 1.141-4(e)(4)(ii), has been or will be entered into by the City in respect of the Tax Increment or otherwise to secure the Series 2016 Bonds.

3.02. General Covenant. The City covenants and agrees with the Owners from time to time of the Series 2016 Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2016 Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations promulgated thereunder (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Series 2016 Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

3.03. Arbitrage Certification. The Mayor, City Manager and the City Finance Director, being the officers of the City charged with the responsibility for issuing the Series 2016 Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Original Purchasers of the Series 2016 Bonds a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2016 Bonds, it is reasonably expected that the proceeds of the Series 2016 Bonds will be used in a

manner that would not cause the Series 2016 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

3.04. Arbitrage Rebate. The City acknowledges that the Series 2016 Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2016 Bonds from gross income for federal income tax purposes, unless the Series 2016 Bonds qualify for the spending exceptions from the rebate requirement under Section 148(f)(4)(B) of the Code and the Treasury Regulations and no "gross proceeds" of the Series 2016 Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the sale proceeds thereof. In furtherance of the foregoing, the City Finance Director is hereby authorized and directed to execute a Rebate Certificate, substantially in the form of the Rebate Certificate prepared by Bond Counsel and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

3.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than May 15, 2016, a statement concerning the Series 2016 Bonds containing the information required by Section 149(e) of the Code.

3.06. "Qualified Tax-Exempt Obligations." Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Series 2016 Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2016 under Section 265(b)(3). The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including "qualified 501(c)(3) bonds" but excluding other "private activity bonds," as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all "subordinate entities" of the City in 2016 in an amount greater than $10,000,000.

Section 4. Effective Date. This resolution shall be in full force and effect from and after its final passage and approval according to law.

PASSED AND APPROVED by the City Council of the City of Whitefish, Montana, this 16th day of February, 2016.

_____
Deputy Mayor

Attest: _____
City Clerk

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF FLATHEAD

CITY OF WHITEFISH

TAX INCREMENT URBAN RENEWAL REVENUE BOND
SERIES 2016A

No. R-1 $4,900,000.00

Interest Rate	Stated Maturity	Date of Original Issue
2.21%	July 15, 2020	March 1, 2016

REGISTERED OWNER: GLACIER BANK

PRINCIPAL AMOUNT: FOUR MILLION NINE HUNDRED THOUSAND DOLLARS AND NO/100

FOR VALUE RECEIVED, THE CITY OF WHITEFISH (the "City"), a duly organized and validly existing municipal corporation located in Flathead County, Montana, acknowledges itself to be specially indebted and hereby promises to pay to the registered owner specified above or registered assigns, solely from the Tax Increment Debt Service Fund, on each Payment Date specified on the attached Schedule I, the dollar amount corresponding to that Payment Date as set forth on such Schedule I, all subject to the provisions hereinafter described relating to the redemption of this Bond prior to maturity. This Bond bears interest at the rate per annum specified above from the date of original issue specified above, or from such later date to which interest hereon has been paid or duly provided for, until the final installment payment date specified above or an earlier date on which this Bond shall have been duly called for redemption, subject to a Determination of Taxability. Principal of and interest on this Bond are payable in semi-annual installments due on each January 15 and July 15, commencing July 15, 2016, with the initial installment payment consisting of interest-only and the subsequent semi-annual installments consisting of principal and interest, in accordance with the payment installment schedule attached hereto as Schedule I. The owner of record of this Bond is the owner appearing as such in the bond register as of the close of business on the 1st day (whether or not a business day) of the month immediately preceding a Payment Date. Interest on and principal of this Bond are payable by check or draft drawn by the Bond Registrar. Interest on this Bond shall be calculated on the basis of a 360-day year composed of twelve 30-day months. The City Finance Director shall initially serve as the Bond Registrar for this Bond.

In the event that the interest on this Bond becomes includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability, the rate of interest then

payable under this Bond shall automatically be increased retroactively effective from and after the Date of Taxability, to an annual rate equal to the Taxable Rate (3.51%). The City shall, upon demand by the Owner, immediately pay to the Owner and to each prior Owner since the Date of Taxability, an amount equal to the amount, if any, by which the interest accrued retroactively, at the Taxable Rate from the Date of Taxability to the date of payment, exceeds the amount of interest paid to the Owner and any such prior Owner during said period, and all penalties and interest payable by such Owners as a result of such change in taxable status. Thereafter, interest on this Bond shall accrue at the Taxable Rate and shall be payable to the Owner on the Payment Dates specified in Schedule I. The obligations of the City under this paragraph shall survive for three years following repayment of this Bond in full.

This Tax Increment Urban Renewal Revenue Bond, Series 2016A (this "Series 2016A Bond") is one of a duly authorized issue of Bonds of the City designated as "Tax Increment Urban Renewal Revenue Bonds" (collectively, the "Bonds"), issued and to be issued in one or more series under, and all equally and ratably secured by Resolution No. 15-14, adopted by the City Council on June 1, 2015, as amended and supplemented by Resolution No. 16-11, adopted by the City Council on February 16, 2016 (as so amended and supplemented, the "Resolution"), to which Resolution, copies of which are on file with the City, reference is hereby made for a description of the nature and extent of the security, the respective rights thereunder of the Owners of the Bonds and the City and the terms upon which the Bonds are to be issued and delivered. Capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Resolution. This Bond constitutes an issue that evidences a loan from the Original Purchaser to the City in the principal amount of $4,900,000, for the purpose of paying a portion of the costs of the design and construction of a new City Hall facility and a new parking structure to be constructed on Baker Avenue adjacent to the new City Hall facility, to fund a deposit to the Reserve Account and to pay costs of issuing the Series 2016A Bond. The City is issuing simultaneously herewith its Tax Increment Urban Renewal Revenue Bond, Series 2016B (the "Series 2016B Bond" and, together with the Series 2016A Bond, the "Series 2016 Bonds").

This Series 2016A Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Montana and the home rule charter of the City, particularly Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), and pursuant to the Resolution. This Series 2016A Bond is payable solely from Tax Increment received by the City, equally and ratably and on a parity with the City's Tax Increment Urban Renewal Revenue Refunding Bonds, consisting of Series 2015A Bond (the "Series 2015A Bond") and Series 2015B Bond (the "Series 2015B Bond" and, together with the Series 2015A Bond, the "Series 2015 Bonds"), the Series 2016B Bond and any additional parity Bonds hereafter issued pursuant to the Resolution. Tax Increment results from the extension of ad valorem taxes levied by certain Taxing Bodies against the incremental taxable value of taxable property within the District pursuant to the Act and includes payments in lieu of taxes and any replacement revenues received from the City for the benefit of the District as reimbursements for lost tax increment attributable to changes in rates of taxation on classes of property or any payments received by the City designated as replacement revenues for lost tax revenues in the District. By the Resolution, the City has pledged the Tax Increment received by the City to the Tax Increment Debt Service Fund. The Series 2016A Bond and other Bonds then Outstanding are also payable from the Reserve Account established and maintained therefor.

The Series 2016A Bond is not a general obligation of the City and the City's general credit and taxing powers are not pledged to the payment of the Series 2016A Bond or the interest thereon. The Series 2016A Bond shall not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitations.

The Series 2016A Bond is subject to redemption, at the option of the City, at any time and from time to time, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed with interest accrued to the date of redemption. Notice of redemption will be mailed at least 30 days before the redemption date to the registered owner of the Series 2016A Bond to be redeemed; provided that any defect in or failure to give such mailed notice shall not affect the validity of the proceedings for the redemption of any Series 2016A Bond not affected thereby. The Series 2016A Bond or portions thereof so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption have been duly deposited and, except for the purpose of payment, shall no longer be secured by the Resolution and shall not be deemed Outstanding under the Resolution. Upon partial redemption of any Series 2016A Bond, a new Series 2016A Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount Outstanding.

If provision is made for the payment of principal of and interest on this Series 2016A Bond in full in accordance with the Resolution, this Series 2016A Bond shall no longer be deemed Outstanding under the Resolution, shall cease to be entitled to the benefits of the Resolution, and shall thereafter be payable solely from the funds provided for payment.

The Resolution permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the Owners of the Bonds at any time with the consent of the Owners of two-thirds in aggregate principal amount of the Bonds at the time Outstanding (as defined in the Resolution) which are affected by such modifications. The Resolution also contains provisions permitting Owners of a majority in aggregate principal amount of the Bonds of all series at the time Outstanding, on behalf of all the Owners of all Bonds, to waive compliance by the City with certain provisions of the Resolution and certain past defaults under the Resolution and their consequences. Any such consent or waiver by the Owner of this Bond shall be conclusive and binding upon such Owner and on all future Owners of this Bond and of any Bond issued in lieu hereof, whether or not notation of such consent or waiver is made upon this Bond.

The Owner of this Bond shall have no right to enforce the provisions of the Resolution, or to institute action to enforce the covenants therein or take any action with respect to a default under the Resolution or to institute, appear in or defend any suit or other procedure with respect thereto except as provided in the Resolution.

As provided in the Resolution and subject to certain limitations set forth therein, this Series 2016A Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series 2016A Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Series 2016A Bond or Bonds to be issued in the name of the transferee or

registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Series 2016A Bond is registered as the absolute owner hereof, whether this Series 2016A Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

The City has designated the Series 2016A Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND DECLARED that all acts, conditions and things required by the Constitution and laws of the State of Montana and the home rule charter and ordinances and resolutions of the City to be done, to exist, to happen and to be performed in order to make this Series 2016A Bond a valid and binding special, limited obligation of the City in accordance with its terms have been done, do exist, have happened and have been performed as so required; that this Series 2016A Bond has been issued by the City in connection with urban renewal projects (as defined in the Act); that the City, in and by the Resolution has validly made and entered into covenants and agreements with and for the benefit of the Owners from time to time of all Bonds issued thereunder including covenants that it will pledge, appropriate and credit the Tax Increment derived from the District to the Tax Increment Debt Service Fund of the City; that Additional Bonds may be issued and made payable from the Tax Increment Debt Service Fund on a parity with the Series 2015 Bonds and the Series 2016 Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Tax Increment unless the lien thereof shall be expressly made subordinate to the lien on the Tax Increment of the Series 2015 Bonds and the Series 2016 Bonds; that all provisions for the security of the Owners of the Bonds as set forth in the Resolution will be punctually and faithfully performed as therein stipulated; and that the issuance of the Series 2016 Bonds does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by the manual signature of an authorized representative.

IN WITNESS WHEREOF, the City of Whitefish, Flathead County, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor, the City Manager and the City Finance Director and attested to by the City Clerk.

CITY OF WHITEFISH, MONTANA

_____
Mayor

_____
City Manager

_____
City Finance Director

Attest:

_____
City Clerk

Dated:

CERTIFICATE OF AUTHENTICATION

This is the Series 2016A Bond delivered pursuant to the Resolution mentioned within.

CITY OF WHITEFISH, MONTANA
as Bond Registrar, Transfer Agent
and Paying Agent

By_____
City Finance Director

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA.....Custodian..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act..... (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUED RECEIVED the undersigned hereby sells, assigns and transfers unto

_____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

enlargement _____
/_____/

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration, or any change whatsoever.

SIGNATURE GUARANTEE

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE I

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
01/15/2017	385,000.00	2.210%	54,145.00	439,145.00
07/15/2017	390,000.00	2.210%	49,890.75	439,890.75
01/15/2018	460,000.00	2.210%	45,581.25	505,581.25
07/15/2018	465,000.00	2.210%	40,498.25	505,498.25
01/15/2019	540,000.00	2.210%	35,360.00	575,360.00
07/15/2019	550,000.00	2.210%	29,393.00	579,393.00
01/15/2020	625,000.00	2.210%	23,315.50	648,315.50
07/15/2020	1,485,000.00	2.210%	16,409.25	1,501,409.25
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

EXHIBIT B

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF FLATHEAD

CITY OF WHITEFISH

TAX INCREMENT URBAN RENEWAL REVENUE BOND
SERIES 2016B

No. R-1 $4,900,000.00

Interest Rate	Stated Maturity	Date of Original Issue
2.21%	July 15, 2020	March 1, 2016

REGISTERED OWNER: FIRST INTERSTATE BANK

PRINCIPAL AMOUNT: FOUR MILLION NINE HUNDRED THOUSAND DOLLARS AND NO/100

FOR VALUE RECEIVED, THE CITY OF WHITEFISH (the "City"), a duly organized and validly existing municipal corporation located in Flathead County, Montana, acknowledges itself to be specially indebted and hereby promises to pay to the registered owner specified above or registered assigns, solely from the Tax Increment Debt Service Fund, on each Payment Date specified on the attached Schedule I, the dollar amount corresponding to that Payment Date as set forth on such Schedule I, all subject to the provisions hereinafter described relating to the redemption of this Bond prior to maturity. This Bond bears interest at the rate per annum specified above from the date of original issue specified above, or from such later date to which interest hereon has been paid or duly provided for, until the final installment payment date specified above or an earlier date on which this Bond shall have been duly called for redemption, subject to a Determination of Taxability. Principal of and interest on this Bond are payable in semi-annual installments due on each January 15 and July 15, commencing July 15, 2016, with the initial installment payment consisting of interest-only and the subsequent semi-annual installments consisting of principal and interest, in accordance with the payment installment schedule attached hereto as Schedule I. The owner of record of this Bond is the owner appearing as such in the bond register as of the close of business on the 1st day (whether or not a business day) of the month immediately preceding a Payment Date. Interest on and principal of this Bond are payable by check or draft drawn by the Bond Registrar. Interest on this Bond shall be calculated on the basis of a 360-day year composed of twelve 30-day months. The City Finance Director shall initially serve as the Bond Registrar for this Bond.

In the event that the interest on this Bond becomes includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability, the rate of interest then

payable under this Bond shall automatically be increased retroactively effective from and after the Date of Taxability, to an annual rate equal to the Taxable Rate (3.51%). The City shall, upon demand by the Owner, immediately pay to the Owner and to each prior Owner since the Date of Taxability, an amount equal to the amount, if any, by which the interest accrued retroactively, at the Taxable Rate from the Date of Taxability to the date of payment, exceeds the amount of interest paid to the Owner and any such prior Owner during said period, and all penalties and interest payable by such Owners as a result of such change in taxable status. Thereafter, interest on this Bond shall accrue at the Taxable Rate and shall be payable to the Owner on the Payment Dates specified in Schedule I. The obligations of the City under this paragraph shall survive for three years following repayment of this Bond in full.

This Tax Increment Urban Renewal Revenue Bond, Series 2016B (this "Series 2016B Bond") is one of a duly authorized issue of Bonds of the City designated as "Tax Increment Urban Renewal Revenue Bonds" (collectively, the "Bonds"), issued and to be issued in one or more series under, and all equally and ratably secured by Resolution No. 15-14, adopted by the City Council on June 1, 2015, as amended and supplemented by Resolution No. 16-11, adopted by the City Council on February 16, 2016 (as so amended and supplemented, the "Resolution"), to which Resolution, copies of which are on file with the City, reference is hereby made for a description of the nature and extent of the security, the respective rights thereunder of the Owners of the Bonds and the City and the terms upon which the Bonds are to be issued and delivered. Capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Resolution. This Bond constitutes an issue that evidences a loan from the Original Purchaser to the City in the principal amount of $4,900,000 for the purpose of paying a portion of the costs of the design and construction of a new City Hall facility and a new parking structure to be constructed on Baker Avenue adjacent to the new City Hall facility, to fund a deposit to the Reserve Account and to pay costs of issuing the Series 2016B Bond. The City is issuing simultaneously herewith its Tax Increment Urban Renewal Revenue Bond, Series 2016A (the "Series 2016A Bond" and, together with the Series 2016B Bond, the "Series 2016 Bonds").

This Series 2016B Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Montana and the home rule charter of the City, particularly Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), and pursuant to the Resolution. This Series 2016B Bond is payable solely from Tax Increment received by the City, equally and ratably and on a parity with the City's Tax Increment Urban Renewal Revenue Refunding Bonds, consisting of Series 2015A Bond (the "Series 2015A Bond") and Series 2015B Bond (the "Series 2015B Bond" and, together with the Series 2015A Bond, the "Series 2015 Bonds"), the Series 2016A Bond and any additional parity Bonds hereafter issued pursuant to the Resolution. Tax Increment results from the extension of ad valorem taxes levied by certain Taxing Bodies against the incremental taxable value of taxable property within the District pursuant to the Act and includes payments in lieu of taxes and any replacement revenues received from the City for the benefit of the District as reimbursements for lost tax increment attributable to changes in rates of taxation on classes of property or any payments received by the City designated as replacement revenues for lost tax revenues in the District. By the Resolution, the City has pledged the Tax Increment received by the City to the Tax Increment Debt Service Fund. The Series 2016B Bond and other Bonds then Outstanding are also payable from the Reserve Account established and maintained therefor.

The Series 2016B Bond is not a general obligation of the City and the City's general credit and taxing powers are not pledged to the payment of the Series 2016B Bond or the interest thereon. The Series 2016B Bond shall not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitations.

The Series 2016B Bond is subject to redemption, at the option of the City, at any time and from time to time, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed with interest accrued to the date of redemption. Notice of redemption will be mailed at least 30 days before the redemption date to the registered owner of the Series 2016B Bond to be redeemed; provided that any defect in or failure to give such mailed notice shall not affect the validity of the proceedings for the redemption of any Series 2016B Bond not affected thereby. The Series 2016B Bond or portions thereof so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption have been duly deposited and, except for the purpose of payment, shall no longer be secured by the Resolution and shall not be deemed Outstanding under the Resolution. Upon partial redemption of any Series 2016B Bond, a new Series 2016B Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount Outstanding.

If provision is made for the payment of principal of and interest on this Series 2016B Bond in full in accordance with the Resolution, this Series 2016B Bond shall no longer be deemed Outstanding under the Resolution, shall cease to be entitled to the benefits of the Resolution, and shall thereafter be payable solely from the funds provided for payment.

The Resolution permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the Owners of the Bonds at any time with the consent of the Owners of two-thirds in aggregate principal amount of the Bonds at the time Outstanding (as defined in the Resolution) which are affected by such modifications. The Resolution also contains provisions permitting Owners of a majority in aggregate principal amount of the Bonds of all series at the time Outstanding, on behalf of all the Owners of all Bonds, to waive compliance by the City with certain provisions of the Resolution and certain past defaults under the Resolution and their consequences. Any such consent or waiver by the Owner of this Bond shall be conclusive and binding upon such Owner and on all future Owners of this Bond and of any Bond issued in lieu hereof, whether or not notation of such consent or waiver is made upon this Bond.

The Owner of this Bond shall have no right to enforce the provisions of the Resolution, or to institute action to enforce the covenants therein or take any action with respect to a default under the Resolution or to institute, appear in or defend any suit or other procedure with respect thereto except as provided in the Resolution.

As provided in the Resolution and subject to certain limitations set forth therein, this Series 2016B Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Series 2016B Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Series 2016B Bond or Bonds to be issued in the name of the transferee or

registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Series 2016B Bond is registered as the absolute owner hereof, whether this Series 2016B Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

The City has designated the Series 2016B Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND DECLARED that all acts, conditions and things required by the Constitution and laws of the State of Montana and the home rule charter and ordinances and resolutions of the City to be done, to exist, to happen and to be performed in order to make this Series 2016B Bond a valid and binding special, limited obligation of the City in accordance with its terms have been done, do exist, have happened and have been performed as so required; that this Series 2016B Bond has been issued by the City in connection with urban renewal projects (as defined in the Act); that the City, in and by the Resolution has validly made and entered into covenants and agreements with and for the benefit of the Owners from time to time of all Bonds issued thereunder including covenants that it will pledge, appropriate and credit the Tax Increment derived from the District to the Tax Increment Debt Service Fund of the City; that Additional Bonds may be issued and made payable from the Tax Increment Debt Service Fund on a parity with the Series 2015 Bonds and the Series 2016 Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Tax Increment unless the lien thereof shall be expressly made subordinate to the lien on the Tax Increment of the Series 2015 Bonds and the Series 2016 Bonds; that all provisions for the security of the Owners of the Bonds as set forth in the Resolution will be punctually and faithfully performed as therein stipulated; and that the issuance of the Series 2016 Bonds does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by the manual signature of an authorized representative.

IN WITNESS WHEREOF, the City of Whitefish, Flathead County, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor, the City Manager and the City Finance Director and attested to by the City Clerk.

CITY OF WHITEFISH, MONTANA

_____
Mayor

_____
City Manager

_____
City Finance Director

Attest:

_____
City Clerk

Dated:

CERTIFICATE OF AUTHENTICATION

This is the Series 2016B Bond delivered pursuant to the Resolution mentioned within.

CITY OF WHITEFISH, MONTANA
as Bond Registrar, Transfer Agent
and Paying Agent

By_____
City Finance Director

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA.....Custodian..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act..... (State)

Additional abbreviations may also be used.

_____

ASSIGNMENT

FOR VALUED RECEIVED the undersigned hereby sells, assigns and transfers unto

_____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

enlargement _____
/_____/

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration, or any change whatsoever.

SIGNATURE GUARANTEE

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE I

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016B

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
01/15/2017	385,000.00	2.210%	54,145.00	439,145.00
07/15/2017	390,000.00	2.210%	49,890.75	439,890.75
01/15/2018	460,000.00	2.210%	45,581.25	505,581.25
07/15/2018	465,000.00	2.210%	40,498.25	505,498.25
01/15/2019	540,000.00	2.210%	35,360.00	575,360.00
07/15/2019	550,000.00	2.210%	29,393.00	579,393.00
01/15/2020	625,000.00	2.210%	23,315.50	648,315.50
07/15/2020	1,485,000.00	2.210%	16,409.25	1,501,409.25
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

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 $9,800,000 TAX INCREMENT URBAN RENEWAL REVENUE BONDS, CONSISTING OF $4,900,000 SERIES 2016A BOND AND $4,900,000 SERIES 2016B BOND; AUTHORIZING AND DIRECTING THE ISSUANCE, CONFIRMING THE SALE AND PRESCRIBING THE FORM AND TERMS THEREOF AND THE SECURITY THEREFOR" (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 16, 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 16th day of February, 2016.

_____
City Clerk

MEMORANDUM

#2015-017

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Resolution No. 16-11; A Resolution relating to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond And $4,900,000 Series 2016B Bond; authorizing and directing the issuance, confirming the sale and prescribing the form and terms thereof and the security therefor

Date: February 9, 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.

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).

On February 1, 2016, the City Council adopted Resolution No. 16-06 which was the "parameters" resolution. This "parameters" resolution authorized 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 planned 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. A 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.

Current Report

On February 8th, we priced the interest rate of the bond issue. Rates had come down even more since January 22, 2016 and they even decreased between 8:00 a.m. and 10:00 a.m. on February 8th – we set our pricing time for 10:00 a.m. on February 8th. The interest rate at that time was set at 2.21%. All other parameters in the Resolution were met. A copy of the parameters Resolution, Resolution No. 16-06 is attached to this report in the packet for your review. A copy of the final bond sizing and debt service schedules are also included with this report. The pricing sheet is also included and the pricing for a 4 ½ year bond was 1.11% (interpolated between the 4 and 5 year bonds) plus 110 basis points (1.1%) for the margin above the Des Moines index being the original price quotes from the banks, so the final interest rate is 2.21%.

Our Bond Counsel of Dorsey and Whitney of Missoula, MT and Minneapolis, MN has prepared the final bond resolution with all of the details of the $9,800,000 Tax Increment Refunding Bonds, Series 2016 (A and B) for the final Council action on the TIF "New Money" Bonds for the City Hall/Parking Structure project. Important points to note in the resolution are:

- The cost and allocation of sources and uses are shown on page 2 in Section 1.04.
- In Section 1.07, the City Council finds that the terms of the "parameters" Resolution were met.

- Other City Council findings are contained in Section 1.09 and the City Council should review those carefully.
- On page 3 of the Resolution, the Original Purchaser of the 2016 Bonds are identified as Glacier Bank (Series 2016A) and First Interstate Bank (Series 2016B).
- Within the bond (top of pages A-3 in each bond), it clearly states that these bonds are not General Obligation Bonds and our taxing powers to levy taxes are not pledged to repay the bonds. The bonds are called Revenue Bonds and the source of revenues are Tax Increment Revenues, not new or additional property taxes.
- In Section 2.01 on page 4, the interest rate is shown as 2.21% and each bank gets one-half of the total bond issue or $4,900,000.00 each.
- Section 2.06 on page 7 allows us to redeem or prepay the bonds as we want. However we do not want to retire all of the principal amount of the bonds before July, 2020 because as soon as all of the 2015 and 2016 bonds are retired, we will no longer collect any tax increment from our 1987 Tax Increment District.
- On page A-4, the bond allows us to issue additional bonds in the future (before July, 2020) if we meet certain conditions and tests.
- There are some important tax covenants in Section 3 on page 9 that the City Council should be aware of.

Financial Requirement

The interest rate of 2.21% is an excellent rate and is even lower than the 2.62% we received last summer on the 5 year TIF refunding bonds. The Tax Increment Fund will be able to make the payments on this bond on and before July, 2020 when the Tax Increment District expires. A copy of the latest TIF pro-forma statement is included with the packet.

Recommendation

Staff respectfully recommends the City Council approve Resolution No. 16-11; A Resolution relating to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, consisting of $4,900,000 Series 2016A Bond And $4,900,000 Series 2016B Bond; authorizing and directing the issuance, confirming the sale and prescribing the form and terms thereof and the security therefor

attachments

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: Barberis, Williams, Frandsen, Hildner, and Sweeney; voted against the same: none; abstained from voting thereon: none; or were absent: Feury.

WITNESS my hand officially this 1st day of February, 2016.

Nicole Loring
City Clerk

CITY OF WHITEFISH CORPORATE SEAL MONTANA

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

Springsted

Springsted Incorporated
380 Jackson Street, Suite 300
St. Paul, MN 55101-3002

Tel: 651.223.3000
Fax: 651.223.3002
www.springsted.com

February 8, 2016

Mr. Chuck Stearns, City Manager
Ms. Dana Smith, Finance Director
418 2nd Street East, PO Box 158
Whitefish, MT 59937

Re: Recommendation on pricing of $9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016 A (the "Issue")

Chuck Dana

Dear ~~Mr.~~ Stearns and Ms. Smith,

This letter confirms our verbal recommendation this morning to proceed on the pricing of the Issue.

Early last year the City conducted a selection process of local financial institutions to purchase this Issue and a related refunding bond, which was completed in mid-2015. The two institutions selected as co-purchasers were Glacier Bank and First Interstate Bank. Their selection resulted in a formula being developed for the pricing of each of the two issues. The formula is to take the 'day of pricing' interest rate from the FHLB of Seattle or Des Moines and add 110 bps. Since the refunding sale the only now available rate comes from the FHLB of Des Moines. As the Issue had a term of between 4-5 years, it was decided to use the average of the two indexed rates.

The FHLB of Des Moines rate sheet for today, February 8th is attached. This sheet shows the rate for the 4-year term is 1.05%, and for the 5-year term 1.17%. The average rate is 1.11%, to which is added the 110 bps to yield the borrowing rate of 2.21%. Our call this morning at 10:00 MT confirmed this rate.

Certain financial parameters were established under City Resolution 16-06 permitting execution of the bond purchase agreement. These four parameters are:

1. The maximum aggregate principal amount cannot exceed $9,800,000. The principal amount is $9,800,000.
2. The interest rate cannot exceed 3.25%. The interest rate is 2.21%.
3. The purchase price cannot exceed 100% of the principal. The purchase price is 100%.
4. The Issue cannot mature later than July 15, 20120. The last maturity is July 15, 2020.

The final pricing satisfies all four parameters.

The 2.21% is an extremely low rate. It reflects the present significant decline in interest rates across fixed-income markets. This rate is far lower than the interest rates used in planning for the issuance. Therefore the cost of the financing is substantially below prior estimates.

We welcome any discussion on this process, its result and our recommendation.

We congratulate the City on a very successful sale process.

Respectfully,

David MacGillivray
Chairman

Straight Line Amortizing Advance

Indications as of: **2/8/2016**

Rates Summary

Advance Term/Amortization	Payment Type	Payment Frequency	Advance Rates	
			CIA	<$15 Million
2Y/2Y	Level Principal	Monthly	0.81%	0.96%
3Y/3Y	Level Principal	Monthly	0.92%	1.09%
4Y/4Y	Level Principal	Monthly	1.05%	1.22%
5Y/5Y	Level Principal	Monthly	1.17%	1.34%
7Y/7Y	Level Principal	Monthly	1.41%	1.59%
10Y/10Y	Level Principal	Monthly	1.79%	1.97%
15Y/15Y	Level Principal	Monthly	2.28%	2.48%
20Y/20Y	Level Principal	Monthly	2.62%	2.82%
30Y/30Y	Level Principal	Monthly	3.04%	3.24%

Notes:

1. Maximum advance term of 30 years
2. Fully amortized at maturity
3. Level principal payment schedules
4. Eligible for Community Investment Advance and symmetrical prepayment pricing
5. Interest calculated on an actual/360 basis

Comments

Indications are for amortizing advances < $15 million.
For advances ≥ $15 million or for structures not listed above, please contact the Money Desk at 800.544.3452, ext. 1013. Other terms and conditions may apply.

Contacts	
Main Number	800.544.3452
Advances and Letters of Credit	ext. 1013
Community Investment	ext. 1173
Safekeeping	ext. 5415
Capital Stock	ext. 1424
eAdvantage	ext. 1029

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Final Pricing and Size

Sources & Uses

Dated 03/01/2016 | Delivered 03/01/2016

Sources Of Funds	
Par Amount of Bonds	$4,900,000.00
TIF Collections on hand	1,774,064.44
Project Costs Spent to Date	1,009,629.67
City Hall/Parking Structure Cash on hand	454,553.84
SID Net Proceeds	375,000.00
Impact Fees	67,527.50
Total Sources	**$8,580,775.45**
Uses Of Funds	
Deposit to Project Construction Fund	8,020,775.45
Deposit to Debt Service Reserve Fund (DSRF)	490,000.00
Costs of Issuance	70,000.00
Total Uses	**$8,580,775.45**

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
07/15/2017	775,000.00	2.210%	104,035.75	879,035.75
07/15/2018	925,000.00	2.210%	86,079.50	1,011,079.50
07/15/2019	1,090,000.00	2.210%	64,753.00	1,154,753.00
07/15/2020	2,110,000.00	2.210%	39,724.75	2,149,724.75
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

SIGNIFICANT DATES

Dated Date	3/01/2016
Delivery Date	3/01/2016
First Coupon Date	7/15/2016

Yield Statistics

Bond Year Dollars	$15,153.89
Average Life	3.093 Years
Average Coupon	2.2100000%
Net Interest Cost (NIC)	2.2100000%
True Interest Cost (TIC)	2.2103876%
Bond Yield for Arbitrage Purposes	2.2103876%
All Inclusive Cost (AIC)	2.6978994%

IRS Form 8038

Net Interest Cost	2.2100000%
Weighted Average Maturity	3.093 Years

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
01/15/2017	385,000.00	2.210%	54,145.00	439,145.00
07/15/2017	390,000.00	2.210%	49,890.75	439,890.75
01/15/2018	460,000.00	2.210%	45,581.25	505,581.25
07/15/2018	465,000.00	2.210%	40,498.25	505,498.25
01/15/2019	540,000.00	2.210%	35,360.00	575,360.00
07/15/2019	550,000.00	2.210%	29,393.00	579,393.00
01/15/2020	625,000.00	2.210%	23,315.50	648,315.50
07/15/2020	1,485,000.00	2.210%	16,409.25	1,501,409.25
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

SIGNIFICANT DATES

Dated Date	3/01/2016
Delivery Date	3/01/2016
First Coupon Date	7/15/2016

Yield Statistics

Bond Year Dollars	$15,153.89
Average Life	3.093 Years
Average Coupon	2.2100000%
Net Interest Cost (NIC)	2.2100000%
True Interest Cost (TIC)	2.2103876%
Bond Yield for Arbitrage Purposes	2.2103876%
All Inclusive Cost (AIC)	2.6978994%

IRS Form 8038

Net Interest Cost	2.2100000%
Weighted Average Maturity	3.093 Years

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016B

Final Pricing and Size

Sources & Uses

Dated 03/01/2016 | Delivered 03/01/2016

Sources Of Funds	
Par Amount of Bonds	$4,900,000.00
TIF Collections on hand	1,774,064.44
Project Costs Spent to Date	1,009,629.67
City Hall/Parking Structure Cash on hand	454,553.84
SID Net Proceeds	375,000.00
Impact Fees	67,527.50
Total Sources	**$8,580,775.45**
Uses Of Funds	
Deposit to Project Construction Fund	8,020,775.45
Deposit to Debt Service Reserve Fund (DSRF)	490,000.00
Costs of Issuance	70,000.00
Total Uses	**$8,580,775.45**

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016B

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
07/15/2017	775,000.00	2.210%	104,035.75	879,035.75
07/15/2018	925,000.00	2.210%	86,079.50	1,011,079.50
07/15/2019	1,090,000.00	2.210%	64,753.00	1,154,753.00
07/15/2020	2,110,000.00	2.210%	39,724.75	2,149,724.75
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

SIGNIFICANT DATES

Dated Date	3/01/2016
Delivery Date	3/01/2016
First Coupon Date	7/15/2016

Yield Statistics

Bond Year Dollars	$15,153.89
Average Life	3.093 Years
Average Coupon	2.2100000%
Net Interest Cost (NIC)	2.2100000%
True Interest Cost (TIC)	2.2103876%
Bond Yield for Arbitrage Purposes	2.2103876%
All Inclusive Cost (AIC)	2.6978994%

IRS Form 8038

Net Interest Cost	2.2100000%
Weighted Average Maturity	3.093 Years

$4,900,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016B

Final Pricing and Size

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
07/15/2016	-	-	40,307.94	40,307.94
01/15/2017	385,000.00	2.210%	54,145.00	439,145.00
07/15/2017	390,000.00	2.210%	49,890.75	439,890.75
01/15/2018	460,000.00	2.210%	45,581.25	505,581.25
07/15/2018	465,000.00	2.210%	40,498.25	505,498.25
01/15/2019	540,000.00	2.210%	35,360.00	575,360.00
07/15/2019	550,000.00	2.210%	29,393.00	579,393.00
01/15/2020	625,000.00	2.210%	23,315.50	648,315.50
07/15/2020	1,485,000.00	2.210%	16,409.25	1,501,409.25
Total	$4,900,000.00	-	$334,900.94	$5,234,900.94

SIGNIFICANT DATES

Dated Date	3/01/2016
Delivery Date	3/01/2016
First Coupon Date	7/15/2016

Yield Statistics

Bond Year Dollars	$15,153.89
Average Life	3.093 Years
Average Coupon	2.2100000%
Net Interest Cost (NIC)	2.2100000%
True Interest Cost (TIC)	2.2103876%
Bond Yield for Arbitrage Purposes	2.2103876%
All Inclusive Cost (AIC)	2.6978994%

IRS Form 8038

Net Interest Cost	2.2100000%
Weighted Average Maturity	3.093 Years

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B
Combined Issues - Final Pricing and Size

Total Issue Sources And Uses

Dated 03/01/2016 | Delivered 03/01/2016

	2016A TIF Rev	2016B TIF Rev	Summary
Sources Of Funds			
Par Amount of Bonds	$4,900,000.00	$4,900,000.00	$9,800,000.00
TIF Collections on hand	1,774,064.44	1,774,064.44	3,548,128.88
Project Costs Spent to Date	1,009,629.67	1,009,629.67	2,019,259.34
City Hall/Parking Structure Cash on hand	454,553.84	454,553.84	909,107.68
SID Net Proceeds	375,000.00	375,000.00	750,000.00
Impact Fees	67,527.50	67,527.50	135,055.00
Total Sources	**$8,580,775.45**	**$8,580,775.45**	**$17,161,550.90**
Uses Of Funds			
Deposit to Project Construction Fund	8,020,775.45	8,020,775.45	16,041,550.90
Deposit to Debt Service Reserve Fund (DSRF)	490,000.00	490,000.00	980,000.00
Costs of Issuance	70,000.00	70,000.00	140,000.00
Total Uses	**$8,580,775.45**	**$8,580,775.45**	**$17,161,550.90**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B

Combined Issues - Final Pricing and Size

Aggregate Debt Service

DATE	2016A TIF Rev	2016B TIF Rev	TOTAL
07/15/2016	40,307.94	40,307.94	80,615.88
07/15/2017	879,035.75	879,035.75	1,758,071.50
07/15/2018	1,011,079.50	1,011,079.50	2,022,159.00
07/15/2019	1,154,753.00	1,154,753.00	2,309,506.00
07/15/2020	2,149,724.75	2,149,724.75	4,299,449.50
Total	$5,234,900.94	$5,234,900.94	$10,469,801.88

Par Amounts Of Selected Issues

2016A TIF Rev	4,900,000.00
2016B TIF Rev	4,900,000.00
TOTAL	**9,800,000.00**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B

Combined Issues - Final Pricing and Size

Aggregate Debt Service

DATE	2016A TIF Rev	2016B TIF Rev	TOTAL
07/15/2016	40,307.94	40,307.94	80,615.88
01/15/2017	439,145.00	439,145.00	878,290.00
07/15/2017	439,890.75	439,890.75	879,781.50
01/15/2018	505,581.25	505,581.25	1,011,162.50
07/15/2018	505,498.25	505,498.25	1,010,996.50
01/15/2019	575,360.00	575,360.00	1,150,720.00
07/15/2019	579,393.00	579,393.00	1,158,786.00
01/15/2020	648,315.50	648,315.50	1,296,631.00
07/15/2020	1,501,409.25	1,501,409.25	3,002,818.50
Total	$5,234,900.94	$5,234,900.94	$10,469,801.88

Par Amounts Of Selected Issues

2016A TIF Rev	4,900,000.00
2016B TIF Rev	4,900,000.00
TOTAL	**9,800,000.00**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B

Combined Issues - Final Pricing and Size

Aggregate Net Debt Service

DATE	2016A TIF Rev	2016B TIF Rev	TOTAL
07/15/2016	1,466,991.01	1,466,991.01	2,933,982.02
07/15/2017	2,415,947.95	2,415,947.95	4,831,895.90
07/15/2018	2,550,918.70	2,550,918.70	5,101,837.40
07/15/2019	2,689,523.60	2,689,523.60	5,379,047.20
07/15/2020	2,476,209.75	2,476,209.75	4,952,419.50
Total	$11,599,591.01	$11,599,591.01	$23,199,182.02

Par Amounts Of Selected Issues

2016A TIF Rev	4,900,000.00
2016B TIF Rev	4,900,000.00
TOTAL	**9,800,000.00**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B

Combined Issues - Final Pricing and Size

Aggregate Net Debt Service

DATE	2016A TIF Rev	2016B TIF Rev	TOTAL
07/15/2016	1,466,991.01	1,466,991.01	2,933,982.02
01/15/2017	1,207,673.00	1,207,673.00	2,415,346.00
07/15/2017	1,208,274.95	1,208,274.95	2,416,549.90
01/15/2018	1,275,703.75	1,275,703.75	2,551,407.50
07/15/2018	1,275,214.95	1,275,214.95	2,550,429.90
01/15/2019	1,342,553.00	1,342,553.00	2,685,106.00
07/15/2019	1,346,970.60	1,346,970.60	2,693,941.20
01/15/2020	1,416,146.70	1,416,146.70	2,832,293.40
07/15/2020	1,060,063.05	1,060,063.05	2,120,126.10
Total	$11,599,591.01	$11,599,591.01	$23,199,182.02

Par Amounts Of Selected Issues

2016A TIF Rev	4,900,000.00
2016B TIF Rev	4,900,000.00
TOTAL	**9,800,000.00**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A and Series 2016B

Combined Issues - Final Pricing and Size

Aggregate Principal Payments

DATE	2016A TIF Rev	2016B TIF Rev	TOTAL
01/15/2017	385,000.00	385,000.00	770,000.00
07/15/2017	390,000.00	390,000.00	780,000.00
01/15/2018	460,000.00	460,000.00	920,000.00
07/15/2018	465,000.00	465,000.00	930,000.00
01/15/2019	540,000.00	540,000.00	1,080,000.00
07/15/2019	550,000.00	550,000.00	1,100,000.00
01/15/2020	625,000.00	625,000.00	1,250,000.00
07/15/2020	1,485,000.00	1,485,000.00	2,970,000.00
Total	$4,900,000.00	$4,900,000.00	$9,800,000.00

Par Amounts Of Selected Issues

2016A TIF Rev	4,900,000.00
2016B TIF Rev	4,900,000.00
TOTAL	**9,800,000.00**

Original Term Proposal Sheet for Refunding and New Money Issues from 2015

First Interstate Bank
306 Spokane Avenue
Whitefish, MT 59937

GLACIER BANK
319 2nd St
Whitefish, MT 59937-0100

March 30, 2015

City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Bond Proposals

Dear Chuck:

First Interstate Bank and Glacier Bank have reviewed your request to Refund the 2009 City of Whitefish Bond Issue as well as purchase additional Bonds to fund construction of the new Whitefish City Hall and Parking Garage. The Banks are pleased to provide you with the proposal outlined below which is subject to final underwriting and approval by each bank.

Refunding:

Amount: $7,200,000.00

Term: Four or five years.

Rate: 2.38% for four years or 2.57% for five years. Rates represent the net interest cost, inclusive of fees, and are subject to change up until the closing date. Rate to be spread off the four or five year Federal Home Loan Bank of Seattle or Des Moines (5/31/15 merger) Amortizing Index + 110bp.

Rate quote is dependent on the issuance being designated as a qualified tax exempt obligation (bank qualified) by the issuer. Failure to designate the issue as bank qualified would result in the rate quote increasing by 15 bp.

Rate quote is dependent on the issuance being tax exempt. Failure for the issue to be tax exempt would result in the rate quotes increasing to 3.59% for four years and 3.88% for five years. The spread will increase to the four or five year Federal Home Loan Bank of Seattle or Des Moines Amortizing Index + 240 bp.

Fee: Bond counsel, document preparation and other issuance costs will be paid by the City of Whitefish.

New Bond Issue:

Amount: $11,240,000.00

Term: Four or five years

Advance: Issue can be drawn upon for 18 months after issuance.

Fully Advanced At Issuance:

Rate: 2.38% for four years or 2.57% for five years. Rates are subject to change up until the closing date. Rate to be spread off the four or five year Federal Home Loan Bank of Seattle or Des Moines (5/31/15 merger) Amortizing Index + 110bp.

Rate quote is dependent on the issuance being designated as a qualified tax exempt obligation (bank qualified) by the issuer. Failure to designate the issue as bank qualified would result in the rate quote increasing by 15 bp.

Rate quote is dependent on the issuance being tax exempt. Failure for the issue to be tax exempt would result in the rate quotes increasing to 3.59% for four years and 3.88% for five years. The spread will increase to the four or five year Federal Home Loan Bank of Seattle or Des Moines Amortizing Index + 240 bp.

Fee: Bond counsel, document preparation and other issuance costs will be paid by the City of Whitefish. Issuance fee will be waived if funds are fully advanced at issuance.

Multiple Advances:

Rate: 2.38% for four years or 2.57% for five years in addition to an $80,000 issuance fee. Rates are subject to change up until the closing date. Rate to be spread off the four or five year Federal Home Loan Bank of Seattle or Des Moines (5/31/15 merger) Amortizing Index + 110bp.

one time

Rate quote is dependent on the issuance being designated as a qualified tax exempt obligation (bank qualified) by the issuer.

Draws at max - 1 per month
or a minimum $ amount

Failure to designate the issue as bank qualified would result in the rate quote increasing by 15 bp.

Rate quote is dependent on the issuance being tax exempt. Failure for the issue to be tax exempt would result in the rate quotes increasing to 3.59% for four years and 3.88% for five years. The spread will increase to the four or five year Federal Home Loan Bank of Seattle or Des Moines Amortizing Index + 240 bp.

Fee: $80,000.00 issuance fee, Bond counsel, document preparation and other issuance costs will be paid by the City of Whitefish. Issuance fee will be waived if funds are fully advanced at issuance.

Refunding and New Bond Issue Requirements:

Payments:
Principal and interest payments due semi-annually.

Security:
Special Limited Obligations of the Whitefish Tax Increment Urban Renewal District secured by a senior lien on all tax increment revenue generated by the district and amounts held in all accounts established in relation to this issuance, including but not limited to the Debt Service Reserve Account.

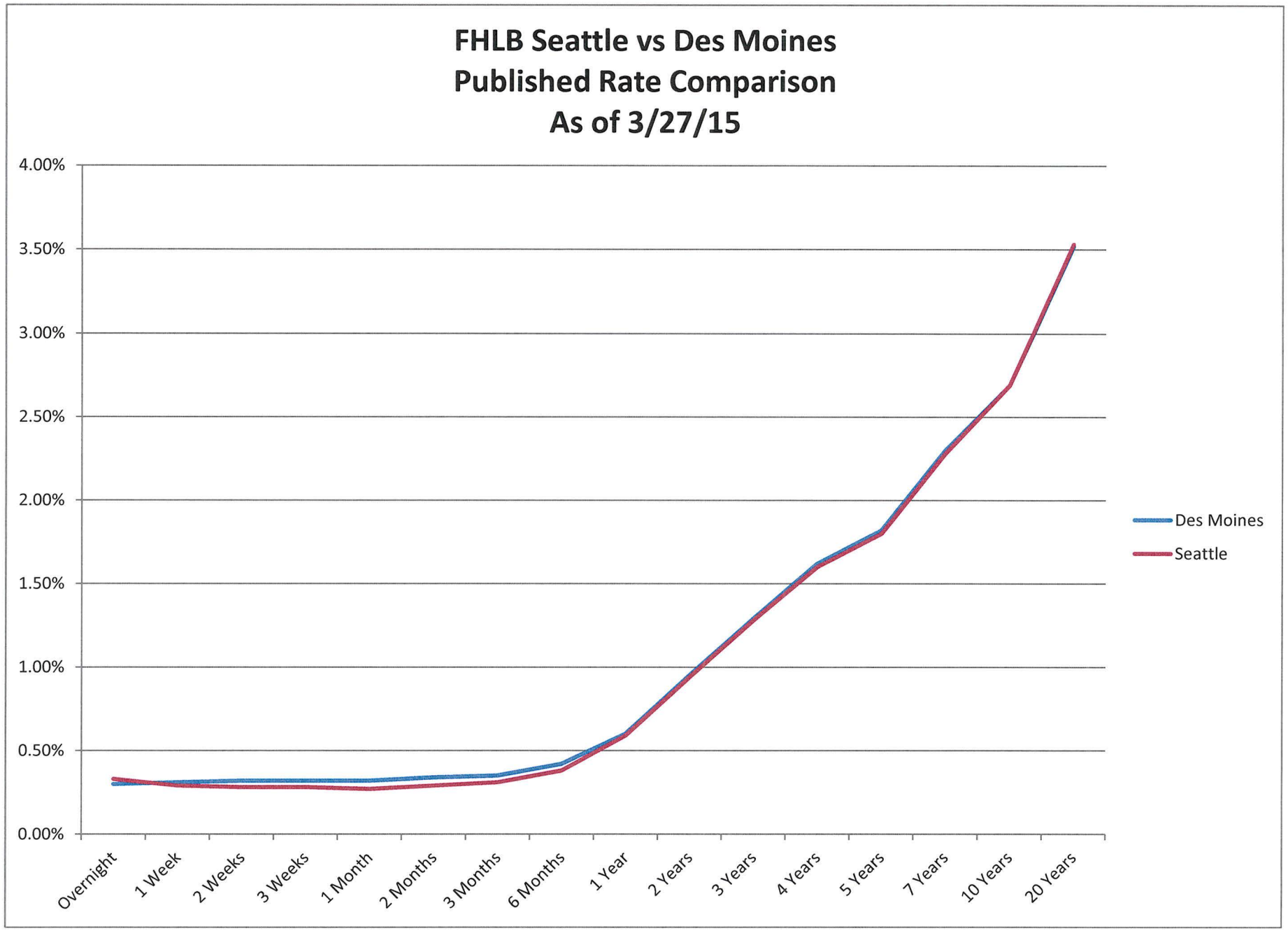
Financial Covenants and Financial Reporting Requirements:
Commensurate with outstanding 2009 issue. No Cusip, no registrar

Legal Matters:
Issuer's bond counsel is to provide a legal opinion on the tax status of the issuance. If tax exempt, the issuer must designate the bonds as a qualified tax-exempt obligations (BQ). Should the tax exempt status of the issue be compromised at or after issuance, the interest rate to be paid on the debt shall revert to the equivalent taxable rate to the bank as of the issuance date.

Sincerely,

David Dittman
President, First Interstate Bank

Dennis Beams
Chief Credit Officer, Glacier Bank


FHLB Seattle vs Des Moines
Published Rate Comparison
As of 3/27/15
4.00%
3.50%
3.00%
2.50%
2.00%
1.50%
1.00%
0.50%
0.00%
Overnight
1 Week
2 Weeks
3 Weeks
1 Month
2 Months
3 Months
6 Months
1 Year
2 Years
3 Years
4 Years
5 Years
7 Years
10 Years
20 Years
Des Moines
Seattle

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	$ 539,425	$ 1,733,681	$ 1,884,905	$ 3,928,755		
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]				$ 958,906	$ 1,890,944	$ 2,161,717	$ 2,455,417	2,022,819		9,489,802
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	$ 5,597,756	$ 4,883,960	$ 6,209,760	$ 4,596,040	$ 617,334		$ 29,607,067
81	Revenues less Expenditures		$ (2,058,972)	$ (2,080,697)	$ 115,158	$ 1,194,256	$ 151,224	$ 2,043,850	$ (617,334)		$ 806,458
82	**Ending Cash Balance**		$ 445,992	$ 424,267	$ 539,425	$ 1,733,681	$ 1,884,905	$ 3,928,755	$ 3,311,422		

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 @ 2.21% - debt service schedule prepared 2/8/16) 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: 02/08/16

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SPOTTED BEAR SPIRITS LLC

406-730-2436
lauren@spottedbearspirits.com

503 Railway Street
Whitefish, MT
59937

February 1, 2016

Dear Mayor and City Counselors,

I am writing to voice concern over the current parking shortage affecting downtown. The development of the new downtown hotel and construction of the new City Hall/Parking Structure complex has eliminated more than 100 parking spots from the downtown area. These are spots that we depend on for patrons and employees.

The proposed solutions include using the parking lot at Whitefish Middle School for public parking during summer months—using the 'snow storage lot' two blocks east of Depot Park for downtown overflow parking during peak summer months—and using the lots at Whitefish High School for downtown employee parking during the summer months. We are in favor of all these solutions and feel they would serve to alleviate the parking shortage sure to impact all downtown businesses the next few summers.

Thank you for your attention to this matter.

Sincerely,

Lauren Oscilowski

Owner/Spotted Bear Spirits LLC

Chuck Stearns

From: Heather Mull <heather@aboutmontana.net>
Sent: Sunday, February 07, 2016 4:21 PM
To: nlorang@cityofwhitefish.org
Cc: Chuck Stearns
Subject: City Walking Paths

Please pass this letter along to the Whitefish City Council

Dear City of Whitefish;

Yesterday, looking forward to watching the Winter Carnival Parade downtown and knowing the parking would be a big problem, a group of us decided to walk from our neighborhood near City Beach to town along the wonderful biking/walking path along the River. We didn't get too far along before we realized that the ice on the path was going to be a scary problem. But, we were already near the Railroad Bridge, and it would have been just as scary to turn around and try to return. So we carried on. In order to stay upright on sheet of glare ice , we had to, when possible, 'post hole' on the bank in the deep snow which wasn't easy, or to hold one another up hoping we didn't all go down. We made it downtown, but after dinner found the only 'safe' non-icy place to walk was down the middle of the street on our way back to City Beach. Is that the new recommendation? It was dark and we had to pull aside for cars or get hit.

In a few words, the paths were very dangerous to walk – a scattering of salt or gravel would have been of great help.

I think the paths and sidewalks(also un cleared of snow and ice). which are meant to be used by pedestrians, should be maintained for a reasonable degree of safety if we are to encourage people on foot to use them – especially on a major event weekend such as the Winter Carnival. The paths I am speaking about are not in front homes, and are a part of our city biking/walking system. Maintenance is the responsibility of the City of Whitefish.

Sincerely,

Heather Mull

Whitefish

REQUEST FOR PROPOSALS

Engineering Design Services for:

- **Parking Lot at 55 Woodland Place**
- **Tennis Court Reconstruction at Riverside Park**

CITY OF WHITEFISH, MONTANA

Proposals Due: Friday 2/26/2016, 4pm
Contact: Maria Butts
Parks & Recreation Director
Phone Number: 406-863-2471
Email Address: parksadm@cityofwhitefish.org

ANNOUNCEMENT

In accordance with Title 18, Chapter 8 (MCA) and adopted City policy for consultant selection, The City of Whitefish, Montana (City) is seeking Proposals from qualified consulting engineering firms to provide design, bidding, and construction administration services for two City projects. One project involves the design of an overflow parking lot for City Beach, and the other project involves the reconstruction of a tennis court. It will be determined by the City during the design process whether the two elements of this RFP will be bid out as one overall project, or two separate ones. The design of each location will need to be reviewed by the City of Whitefish Park Board of Commissioners and may eventually be recommended for approval by the Whitefish City Council. Proposals are due by Friday, February 26, 2016.

PROJECT OVERVIEWS

Parking Lot at 55 Woodland Place

The City acquired the property at 55 Woodland Place in 2015. The property is located at the corner of Woodland Place and Oregon Ave and is approximately 0.15 acres in size. The home that previously occupied the lot was razed last year in anticipation of constructing a parking lot to serve the overflow parking needs of City Beach.

The scope of the engineering services for the parking lot at 55 Woodland Ave will include surveying, preliminary parking lot layout and design, landscape architectural design, final paving, striping plans and specs, projects estimating, bidding, and construction related services.

Tennis Court Reconstruction at Riverside Park

Riverside Park is one of the most popular "Neighborhood Parks" in the City of Whitefish and encompasses approximately 4 acres of land. In addition to providing Whitefish River access, this park also has 3 existing tennis courts. The courts are in a state of disrepair and have been slated for improvement for several years. The courts are known to be underlain by poor soils and various types of fill. In addition, the easternmost court is situated above an 18" gravity sanitary sewer main, which requires an additional level of consideration. Court reconstruction is slated to begin June 2016.

The scope of the engineering services for the tennis courts at Riverside Park will include surveying, preliminary evaluation of playing surface conditions, geotechnical evaluation, presentation of remedial alternatives with cost estimation, final project plans and specs, bidding, and construction related services.

REQUIRED SERVICES

Parking Lot at 55 Woodland Place

The work to be performed by consultant shall include, but is not limited to, the following services:

- Work closely with city staff as requested in order to confirm design criteria. Discussion and presentation of the project to the Park Board may be required.
- Produce a topographical survey of the property depicting important features, lot corners, and utilities.
- Conduct soil investigations to determine soil type, condition and suitability.
- Prepare preliminary design drawings for discussion, including a site plan and cross sections sufficient to depict the proposed parking lot and landscaping elements.
- Prepare preliminary estimates of construction costs for the project.
- Upon approval of the final design, the selected firm shall produce a complete set of construction documents including, but not necessarily limited to, construction-grade drawings, written specifications, and final cost estimates.
- Administration of the public bidding process.
- Provide construction administration services necessary to confirm that the project complies with the plans and specifications of the bid.
- Provide the City with electronic copies of documents generated during the design and construction of the project along with an as built survey of the completed parking lot.

Tennis Court Reconstruction at Riverside Park

The work to be performed by consultant shall include, but not be limited to, the following services:

- Work closely with city staff as requested in order to confirm design criteria. Discussion and presentation of the project to the Park Board may be required.
- Evaluation of existing tennis court conditions and site specific conditions.
- Produce a topographical survey of the area in the vicinity of the tennis court depicting important site features and utilities.
- Conduct soil investigations to determine soil type, condition and suitability.
- Evaluation of various tennis court surfaces, including, but not limited to asphalt resurfacing and post-tensioned concrete.
- Provide recommendations for final project design based on existing site conditions, budgetary constraints, and desired final outcome.

- Prepare preliminary design drawings for discussion including a site plan and cross sections sufficient to depict the proposed tennis courts.
- Prepare preliminary estimates of construction costs for the project.
- Upon approval of the final design, the selected firm shall produce a complete set of construction documents including, but not necessarily limited to, construction-grade drawings, written specifications, and final cost estimates.
- Administration of the public bidding process.
- Provide construction administration services necessary to confirm that the project complies with the plans and specifications of the bid.
- Provide the City with electronic copies of documents generated during the design and construction of the project along with an as built survey of the completed tennis courts.

FORMAT AND CONTENT OF SUBMITTAL

Five (5) copies of the firm's proposal shall be submitted to the Whitefish Parks & Recreation Director, Maria Butts, 510 Railway Street, Whitefish, MT 59937, no later than **4:00 PM Friday, February 26, 2016**. Proposals shall be delivered in a sealed envelope marked "Proposal for Whitefish Parks & Recreation Engineering Design Services "in the lower left-hand corner of the envelope. Faxed proposals will not be considered.

In order to be responsive, all proposals must follow the format and contain information listed in this section. Unnecessarily elaborate brochures and other presentations beyond those sufficient to present a complete and effective response to the solution are not desired.

1. **Cover Letter** – Provide a letter of transmittal introducing your firm.
2. **Overview** - Provide an abstract of your firm's submittal summarizing the nature of the proposal and demonstrating your understanding of the projects.
3. **Key Personnel** – Include brief resumes of the staff who will be assigned to the project. Discuss experience and how experience will be applied to this project.
4. **Experience** – Provide details of up to three (3) prior projects your firm has completed which relate to this assignment.
5. **References** - Provide names and telephone numbers of three (3) references who will attest to your firm's ability to undertake and complete projects similar to this on time and within budget.

EVALUATION, SELECTION PROCESS AND CONTRACT NEGOTIATIONS

Proposals will be ranked by a Selection Committee and the three highest ranked engineering firms will be invited to present their proposal to the committee. Contract negotiations will begin with the highest ranked firm as soon as possible following the interviews. If the City determines acceptable terms cannot be reached, the City will terminate negotiations and continue with the next highest ranked firm. The City may choose to expand an engineering contract resulting from this selection process to include similar or related work.

Each Proposal will be ranked according to the following criteria.

35% - Qualifications of personnel who would be assigned to the project and the project team's experience, as a group, with design and construction oversight of municipal parks

25% - The firm's past work for the City of Whitefish or references for similar work with other communities

20% - Capability to meet time and project budget requirements and manage current workload

10% - Office location for personnel who would be assigned to the project

10% - Clarity of submittal and responsiveness to the Request for Proposals

Questions may be referred to the Whitefish Parks, Recreation and Community Services Director, Maria Butts, by telephone at 406-863-2471 or by email at mbutts@cityofwhitefish.org.

ADDITIONAL CONSIDERATIONS

- City reserves the right to reject any or all proposals.
- City reserves the right to request clarification of information submitted and to request additional information from the firm(s).
- If a contract and fee cannot be successfully negotiated with the selected firm, the City may choose to enter into negotiations with another prospective firm, or it may re-advertise for new proposals.
- The successful consultant shall provide and maintain professional liability, worker's compensation, property damage, errors and omissions, and any additional lines of coverage required by the City.

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.

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

February 16, 2016

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

RE: PUD Chapter Revisions

Mayor Muhlfeld and councilors,

At your last meeting, there was discussion about directing staff to begin a major revision of the PUD chapter of the zoning code. Staff has some suggestions on how to accomplish that in the timeframe suggested by the Council.

We recommend that the council advertise and appoint a small ad-hoc committee to study the issue and bring back recommendations to the Planning Board and Council within three months. The committee would ideally be comprised of no more than five or six people all well-versed in zoning laws/PUD's in order to work quickly and efficiently. Those individuals could be (1), a staff person, (2) a representative of the development community, (3) volunteer private planner/planning consultant (i.e., Bob Horne has offered his services), (4) a city resident at large, (5) a Planning Board member, and/or (6) a City Council member.

Part of the task of the group would be to hold some public outreach/education to determine what specific issues there are that we are trying to remedy with the revision, then look at how other communities address those issues, and then craft specific recommendations based on our unique Whitefish situation. The committee would meet weekly or every other week from March to May, provide monthly updates to the Planning Board and Council, and have their recommendations to the Planning Board by June or July. If the Council has some specific direction with regard to PUD issues that they would like addressed, that would greatly assist the process. Some of the items that have been mentioned in public comments include:

- Density averaging where PUD has more than one underlying zone
- More specific criteria and definitions for public benefit
- Better address affordable housing/desirable product types
- Greater predictability for adjacent neighborhoods
- Bonuses/incentives for cluster developments/open space
- Separating commercial/residential PUD's by zoning like Kalispell (would preclude any future residential development in the WB-2)

Staff will gladly try to answer any other questions you may have on this issue at the meeting.

David Taylor, AICP

City Council policy from 1990 and amended in 1996 for selection process for Architectural, Engineering, and Land Surveying services

CITY OF WHITEFISH

CITY COUNCIL POLICY MANUAL

Consultant Selection Policy and Procedures

The City of Whitefish hereby establishes a policy that it will publicly announce requirements for architectural, engineering, and land surveying services for projects upon which it is estimated the total cost of such services will exceed $10,000. The City will negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required, and at fair and reasonable prices.

Selection Process

Upon determining the need for a design professional, the City shall make a public announcement in accord with Section 18-8-203, MCA, and the City's policy, that architectural, engineering, or surveying services are needed. The department staff will prepare a Request for Proposals (RFP).

The requirement for professional services and the availability of the RFP shall be formally advertised for at least two consecutive weeks. A longer advertising period may be necessary. The form of announcement will include paid advertisements in local newspapers and/or letters to firms listed in professional and yellow pages telephone directories, as well as to those whom the City knows are interested. Care will be taken to make sure local vendors receive the Request for Proposal.

Each RFP will describe the location, nature of work, nature of the project, time constraints for the work to be done, the requested form of response, deadline for submittal, and primary selection criteria to qualify for the contract.

Information will be requested on:

1. Qualifications of proposed professional staff members, their supervisors, and availability for the project;

2. The capability of the firm to meet time and project budget requirements;

3. The proposed technical approach for completing the scope of work; and

4. The capability of the firm to complete the work, given existing and future workloads;

5. The experience of the firm in doing comparable work for other clients;

6. Work the firm has performed for the City recently or is currently performing;

7. The location of the firm in relationship to the project;

8. Other criteria, as appropriate.

For smaller, non-complex projects selection may be made from submittals in response to the Request for Qualifications. In larger projects, interviewing or requesting written technical proposals from the highest ranking firms will be considered appropriate. Generally, no more than five firms will be selected for more detailed submittals or interviews.

Rating Panel (Initial review)

A consultant Rating Panel made up of City staff, and other individuals approved by the City Council, will review the consultant proposals and compile a short list of highly qualified firms. The short list should include not less than three firms. The firm's request for proposal will be comparatively ranked by each individual proposal grader based on the criteria listed above. Each grader shall assign a numerical ranking to the proposals. A rating of 100 shall be applied to the first ranked firm; each successively ranked firm shall receive five points less than the preceding proposal. The average ranking for these proposals will then be used to select the top three ranked firms for the final selection process. If the numerical averages do not present a clear selection, the consultant Rating Panel will meet to resolve the issue.

The Rating Panel will notify the firms that are on the short list and schedule an interview. The factors that will be used in making the final selection, and the relative importance and ranking weight of each, will be summarized in the notice.

Selection Committee (Final review)

A selection committee will be established for each project to make the final selection in accord with the City's selection criteria. The Selection Committee will be comprised of the City Manager or Public Works Director, and one individual chosen from a list of professionals with current experience in the area of the specific project or a related professional field, and two individuals selected by the City Council. The Selection Committee will choose its own chairman. The final selection will

require an affirmative vote of at least three of the four Selection Committee members. One or more members of the City Council will be invited to participate as "ex officio" members of the Committee. As such, they will participate in the interviews, but will not vote on the final selection.

Selection Criteria

Criteria for evaluating the firms shall be provided within the RFP or interview, and shall include, but not be limited to:

1. Qualifications of the personnel. The Committee will examine the background of the proposed professional personnel to be assigned to the project to determine that each key person is qualified to perform the kind of work required. The overall supervision to be exercised by the firm's management will be an important factor in this criterion.

Any professional services firm proposing to contract with the City shall provide evidence of professional qualification, licensing by the State of Montana, and proof of insurance as required by the City.

2. Capability to meet time and project budget requirements. Previous clients of each firm may be called to ascertain their record in completing assignments on time and within budget.

3. Technical and administrative approach. If appropriate, a discussion of the tasks or steps the firm proposes to follow to accomplish the work described in the City's RFP may take place. Responsiveness of the firm in understanding the work to be performed as demonstrated in the proposed technical process will be an important criterion. Updating and reporting progress and problems to the City is also an important evaluation criterion.

4. Present and projected workloads. The Committee will evaluate the capability of the firm to undertake the City's project considering its current and projected workload.

5. Related experience on similar projects. Comments from previous clients as to the similarity of other projects will be solicited to ascertain whether the firm's past performance is in line with the City's needs, regarding timeliness, experience, responsiveness, budget compliance, and general overall project success.

6. Recent and current work for the City. The Committee will evaluate the work the firm has done or is doing for the City. Consideration will be given to the City's policy with respect to equitable distribution of work, if any.

7. Location. Familiarity with the proximity to the geographic location of the project. A consideration in selection will be the firm's knowledge of the City and its infrastructure, topography, soils, geography, and other circumstances pertinent to the project. Preference shall be given first to firms maintaining a permanent office in Whitefish, second to firms maintaining a permanent office in Flathead County, and third to those firms located elsewhere within the State of Montana. Offices opened under the pretext of qualifying as a local firm shall not qualify for this degree of preference.

8. Other. Other criteria appropriate to the project.

Making the Selection

1. The firms selected for final review will be evaluated and ranked by the Selection Committee using the criteria published in the RFP, information from the interview, and any other pertinent information made available to all members of the Selection Committee. The Selection Committee will rank the interviewed firms establishing the order for negotiating a service contract.

2. Staff, with other members of the Selection Committee, as appropriate, will attempt to enter into negotiations with the most qualified firm at a price that is within the project's budget and fair to the City and to the firm. If negotiations with the number one ranked firm are unsuccessful, staff will formally terminate negotiations with the number one ranked firm and will attempt to negotiate a contract with the second ranked firm, continuing until a contract has been agreed upon, or the City decides to continue the proposal evaluation and interview process or start the process anew.

3. This negotiating Committee will select a compensation plan mutually acceptable to the City and to the firm. The compensation plan will reflect the conditions and value of the assignment and may provide for any of the customary fee arrangements, including:

a. lump sum;
b. percent of construction;
c. cost reimbursable, plus fixed fee; or
d. time and materials (with ceiling, if appropriate);

The negotiating Committee and the consultant will also establish milestone dates and completion dates for the service work. If appropriate, the negotiating Committee will include a recommendation to the City Council concerning the use of a completion date bonus or a completion date penalty to be included in the final contract produced by the City Attorney.

4. When negotiated, the contract will be submitted to the City Council for approval.

5. To establish a list of firms interested in City work, annual statements of interest will be accepted from interested firms. All qualified firms are welcome and encouraged to submit proposals regardless of whether then are currently included on the list of interested firms.

Other Contract Services for Major Projects

Other professional services in excess of $10,000, including but not limited to auditing, accounting, and management consulting, will use the above process with the following exception:

Price should be included in proposals and should be a significant factor, along with the other criteria, in making a final selection.

All Contract Services Under $10,000

All contract services under $10,000 will use the standard purchase order process rather than the consultant selection process. Where practicable, the City will make an effort to informally rotate such jobs among qualified local firms. The City Clerk will keep track of who has received small jobs and will make the information available to the departments so work can be rotated. Jobs will not be artificially split to avoid the consultant selection process.

Adopted: 20FEB90
Amended: 18MAR96

Montana Code Annotated laws for selection of Architects, Engineers, and Land Surveyors

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

History: En. Sec. 1, Ch. 51, L. 1987.

18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

(1) "Agency" means a state agency, local agency, or special district.

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government.

History: En. Sec. 2, Ch. 51, L. 1987; amd. Sec. 49, Ch. 51, L. 1999; amd. Sec. 5, Ch. 449, L. 2007.

18-8-203. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

(1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or

(2) announcing generally to the public its projected requirement for any category or type of professional services.

History: En. Sec. 3, Ch. 51, L. 1987.

18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 4, Ch. 51, L. 1987; amd. Sec. 5, Ch. 192, L. 2003; amd. Sec. 1, Ch. 56, L. 2007; amd. Sec. 1, Ch. 188, L. 2007.

18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 5, Ch. 51, L. 1987; amd. Sec. 6, Ch. 192, L. 2003; amd. Sec. 2, Ch. 56, L. 2007.

18-8-206 through 18-8-209 reserved.

18-8-210. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

18-8-211. Coordination with other statutes. (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

History: En. Sec. 6, Ch. 51, L. 1987; amd. Sec. 19, Ch. 443, L. 1997.

18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $20,000 may contract for those professional services by direct negotiation.

(2) An agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

History: En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993; amd. Sec. 1, Ch. 162, L. 2003.

CHAPTERS 9 AND 10
RESERVED

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.

Rec'd at Council Meeting 2-16-16

February 16, 2016

City Council and staff

Comments on Planning Staff's recommendations

Council members and Staff

Procedurally, it appears that we must comment on the Planning Staff's WPUD rewrite recommendations in this public comment period as the recommendations are included under the Communications from the Mayor and City Council near the end of tonight's meeting, i.e., no public hearing.

I am speaking for myself and others who have been involved in this issue for more than a year. We are all pleased to be finally moving forward on the rewrite process, a year after the Planning Board first directed Staff to do a rewrite.

We agree that the City should advertise for people interested and knowledgeable to participate in the rewrite. We also agree that all sectors of the community affected by these regulations should be represented. However we would recommend the size and actual composition of the group not be decided in advance—rather after you have the applications before you.

We are concerned that the Staff's recommendations for the makeup of this committee included only one City resident at large as a participant.

Circumstantially, that would exclude most of us who have been involved and have identified problems and helped trigger this rewrite process. Some of us actually reside in what was the "doughnut area", but have certainly had standing at the two planning board meetings, workshop and city council meeting earlier this month.

Citizens for a Better Flathead has also been actively involved with this issue and are interested in being represented on this committee. To the extent feasible, we would encourage you to be open to including those who are knowledgeable and express an interest in this process.

We also feel the group selected should decide how to proceed on an expedited schedule and that would include the timing of meeting and nature of the process. Depending on the makeup of the committee, it might be possible to have the staff act in more of a consulting role, freeing more of their time to address their already busy work schedule.

We have stated and still believe that when the actual rewrite process begins it should be able to be completed quickly. However, one never knows where and if problems could arise. Thus we recommend consideration of establishing a "must be completed by date" to coincide with the 6 month density transfer moratorium you will be considering later this evening.

As to the items to consider, the public record contains several documents from our group that list issues we believe deserve attention. As the process begins, the rewrite group may well find other issues and should include all in the rewrite process.

I would clarify Staff's comment about the Kalispell PUD process and impact on the WB-2 zoning district as their comments appear somewhat absolute.

There are numerous ways to deal with that issue within the rewrite process if residential development in the WB-2 zone is a desired outcome in Whitefish.

We think the goal of this committee should be to prepare a report representing a consensus of the best ideas for improving the WPUD Regulations including a revised WPUD text. It should also allow for the inclusion of alternatives for which there may not be a consensus.

Again, thanks for moving forward on this challenge and we as a group and as individuals are ready to help with the rewrite process.

Respectfully submitted,

Don Spivey

117 Park Knoll Lane, Whitefish

Received at Council meeting 2-16-16

Petition Concerning Streetlights on West 7th Street from Karrow Ave to Geddes Ave.

Whereas:
Adding streetlights would disrupt the current open, quiet character of this neighborhood.
The current level of lighting has served the neighborhood well for decades.
Artificial light, especially the bluish-white light from new LED's, has been shown to disrupt wildlife and affect human health.
Many studies have shown that streetlights don't reduce accidents or crime.
Each streetlight costs several thousand dollars.

We, listed below, petition the Whitefish City Council:
Please do not place streetlights on 7th street from Karrow Ave to Geddes Ave.

Dee Blank

Dave Streeter

Bob and Cora Bedley

Donna Hopkins

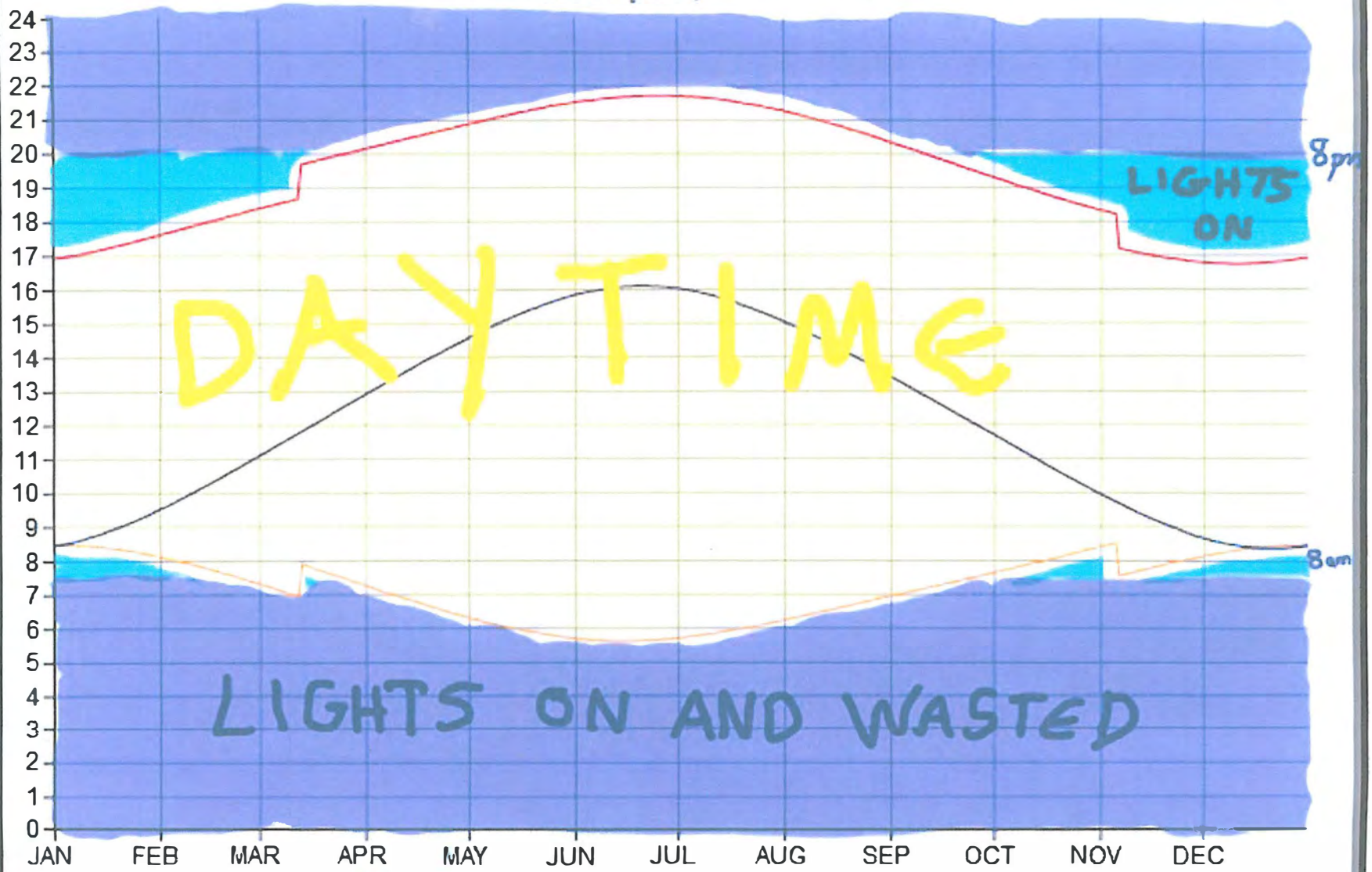
Judy Hessellund

John Ashley

Craig Baugh

Sunrise, sunset and time of light

Hours for Kalispell, Montana, USA



Kalispell, Montana, USA
Coordinates: 48°11'42"N 114°18'46"W
Timezone: -7.0 UTC
- Sunrise (Today: 07:46)
- Sunset (Today: 17:57)
- Daylight (Today: 10:11)

Streetlights mostly shine on empty streets and sidewalks

2016-02-14

Read at City Council Meeting
2-16-16

February 16, 2016

City Council members and staff

Comments on Interim Ordinance on Density transfer Moratorium

Mr. Mayor, council members and staff,

My comments will be brief and again I represent several of us who have been involved for some time. We support the Ordinance before you tonight for the following reasons:

1. You unanimously voted to request this moratorium following extensive discussion and recommendation in the January Planning Board meeting and in the City Council meeting earlier this month..
2. The current WPUD Regulations, which will remain in force until a rewrite is complete, has some legal questions about whether Density Transfers (Blending) is actually supported in that document.
3. How Density Transfers can and should be applied in Whitefish is a fundamental question to be addressed in the WPUD rewrite you are considering later this evening. A moratorium clearly seemed appropriate until that work is completed.
4. Some of you have expressed concern about whether this would impact an Affordable Housing proposal being discussed along US 93 South of the Mall. It is my understanding from staff that this project is moving forward and may be before you later this Spring. More importantly, I was also told by the Planning Staff that the project **does not** include the use of Density Transfers.

Again, we are in support of this moratorium and I thank you for your consideration of my comments.

Respectfully,

Don Spivey

117 Park Knoll Lane, Whitefish, MT

Rec'd at Council Mtg 2-16-16

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 Planning Board

Re: PROPOSED CODE AMENDMENTS TRANSITIONAL ZONES FOR HIGHWAY 93 WEST STAFF REPORT #WZTA-15-03

Date: Feb. 16, 2016

Citizens for a Better Flathead having reviewed the staff report and council packet offers the following comments (red highlighting is used to indicate sections we recommend be corrected or changed):

1. We have done a detailed review of the proposed two new zones before you and have provided comments with specific recommendations for minor but important changes we believe are needed before final adoption. While we believe that given your efforts to date to improve this plan there is a growing consensus in the final plan for this area, there is still some basic house-keeping that needs to be done to clean up inconsistencies and thus we ask once again that you give the text of these proposed zones your careful review and consider this handful of amendments we have identified before adoption.

2. Artisan Manufacturing is a conditional use in both of the proposed new zones (WT-3 Neighborhood Mixed Use Transitional District and WI-T Industrial Transitional District) before you for consideration.

    - In the text for both districts it refers to "special provisions " for Artisan Manufacturing as being found in section 11-3-38 of this title, but there is no such section and this needs to be corrected. There is a section 11-3-39 that sets forth "special provisions" for Artisan Manufacturing

    - Artisan Manufacturing in section 11-9-2 is defined as "Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing"

    - Under standards for development, Section 11-3-39 H limits retail uses in Artisan Manufacturing to "With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises."

- Under standard for development again, Section 11-3-39 G , however is inconsistent and allows for any artisan manufacturing use to devote 40% to 49% to retail and food and beverage consumption. What we believe happened here is that standard section was never cleaned up when the council voted earlier this summer to remove micro breweries and micro distilleries as conditional uses under Artisan Manufacturing. Micro breweries and micro distilleries are now conditional uses limited to the WI-T Industrial Transitional District and are defined to allow that these uses each "typically include a tasting room and may include accessory food preparation and sales, as well as sales of promotional merchandise such as growlers, t-shirts, and hats." To the greatest extent possible retail uses should be directed to the down town core area and these new zoning districts should be used to focused on non-retail economic growth and small scale manufacturing as well as retention of existing affordable/attainable housing and residential uses close to downtown.

- Section 11-3-39 G and H should be amended and combined as followed to removed uses that are no longer needed or appropriated under artisan manufacturing:

  ~~"G. No more than 40% of gross floor area shall be used for retail sales, no more than 49% of the gross floor area shall be used for food and beverage consumption (outdoor seating areas not included in calculation).~~

  ~~H.~~ G. With the exception of minor accessory items directly related to the use of the primary product (i.e., paddles or life preservers at a paddle board manufacturer) only items manufactured or assembled on site may be sold on the premises. No more than 10% of gross floor area shall be used for retail sales"

3. **We support the classification of proposed uses as conditional within the WI-T District and the WT-3 District.** We strongly feel that it is appropriate for the identified conditional uses to remain conditional as this allows in this relatively small district of approximately 45 acres in a residential corridor for the city council to appropriately condition or if warranted deny a proposed use.

4. **In keeping with the direction this council has taken to date to retain the unique character of Whitefish by restricting where formula retail can locate we ask that you add to the definitions for the two proposed zoning districts the clarification that: No formula retail, restaurant, or hotel/lodging is permitted under this plan or in zoning districts created to implement this plan.** Commercial development in this area that adjoins the downtown should be consistent with similar limitations on formula retail in the downtown core area. This limitation on formula retail is also more appropriate for a largely residential corridor. **We recommend the following changes:**

   11-2W-3 Conditional Uses as follows:

- "Hotels and motels[1] and associated uses customarily accessory thereto with the exception of "formula retail" for these uses (see definition in section 11-9-2 of this title) are permitted

[1] It is important to confirm that the definition of "formula retail" (see definition in section 11-9-2 of this title) does not need to be clarified to clearly include hotels and motels as retail uses.

within a portion of the Whitefish River frontage area, said frontage area being a strip of land 300 feet wide and lying southwesterly of, and contiguous to, the requisite buffer and setback areas of the Whitefish River north of 1st Street. The width of this area may be modified by the Zoning Administrator if geotechnical analysis reveals the presence of unstable fill material along the bank of the Whitefish River."

- "Manufacturing, Artisan (see Special Provisions in section 11-3-38 of this title) with the exception of "formula retail" (see definition in section 11-9-2 of this title)."

11-2X-2: PERMITTED USES:

- "Building supply outlets with the exception of "formula retail" (see definition in section 11-9-2 of this title)."

11-2X-3 Conditional Uses as follows:

- Coffee shops and sandwich shops ~~(no "formula" businesses)~~ with the exception of "formula retail" for coffee shops and sandwich shops (see definition in section 11-9-2 of this title), with no more than 2,000 square feet of gross floor area.

- Manufacturing, artisan with the exception of "formula retail" (see definition in section 11-9-2 of this title) (see Special Provisions in section 11-3-38 of this title).

- Business incubator. The following uses are permitted **with the exception of retail sales** and "formula retail" (see definition in section 11-9-2 of this title) within a business incubator facility, not to exceed 3,600 square feet of floor area per use:

Note that the Whitefish zoning code definition of formula retail is found at 11-9-2 and states:

"FORMULA RETAIL: A type of retail sales activity or retail sales establishment, including restaurant, which, along with twelve (12) or more other retail sales establishments, maintains two (2) or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or service mark.
Color Scheme: Selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

Decor: The style of interior finishings, which may include, but is not limited to, style of furniture, wall coverings or permanent fixtures.

Facade: The face or front of a building, including awnings, looking onto a street or an open space.

Service Mark: A word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

Signage: Shall be defined pursuant to this section.

Standardized: Does not mean identical, but means "substantially the same".

Standardized Array Of Merchandise: Fifty percent (50%) or more of in stock merchandise from a single distributor bearing uniform markings.

Trademark: A word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.

Uniform Apparel: Standardized items of clothing including, but not limited to, standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than nametags) as well as standardized colors of clothing."

5. **We continue to have concerns that conditions for shared parking should not be allowed to be temporary** (see page 6 of staff report) as building site development may preclude the addition of necessary parking should a shared parking agreement fail at any point. Conditions should be added to provide that space be reserved for all on site parking should a shared parking agreement fail. **We recommend the following changes to this section:**

"Off-street parking: See Chapter 6 of this title.
1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both.
2. If a non-residential and a residential use share off-street parking, the parking requirement for the residential use may be reduced by up to 50% if the applicant can demonstrate that they have retained adequate buildable land on which to build the parking that must be provided as otherwise required by Chapter 6 of this title should the shared parking agreement ever be dissolved.
3. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by Chapter 6 of this title.
4. Shared or leased parking may be located within 300 feet of the site.
5. Required accessible parking spaces (for persons with disabilities) may not be shared and must be located on site."

6. Given potential electromagnetic issues with a wireless transmission facility this should likely be considered a conditional use.

Move from 11-2X-2: PERMITTED USES to 11-2X-3: CONDITIONAL USES::

"Wireless transmission facility."

7. Why are there no minimum lot areas for the WI-T? How can you have permitted lot coverage of 70% when there is no minimum lot area? Should greater buffers be considered when such uses adjoin residential uses? We would suggest the following amendments to this WI-T Property Development Standards to be similar to the WT-3 Property Development standards to encourage similar scale of development under these new zones

that may be next to residential uses when applied and are both within an area about 45 acres in size. Setting a smaller square footage for the WI-T district does not mean a larger building can not be build but allows for your additional review within a district that is proposed for a wide variety of uses that need to be developed in a compatible and sensitive way. Artisan Manufacturing and Business Incubator uses are already capped at 3,500 sq. ft. and 3,600 sq. ft. respectively per use within this zone and grocery stores at 5,000 sq. ft. and coffee and sandwich shops are set at 2,000 sq. ft.:

WI-T Industrial Transitional District
"11-2X-4: PROPERTY DEVELOPMENT STANDARDS:
The following property development standards shall apply to land and buildings within this district:

> Bulk and scale: All new structures with a building footprint of 7,500 ~~15,000~~ square feet or greater, existing structures where an addition causes the total footprint to be 7,500 ~~15,000~~ square feet or greater, and additions to structures where the footprint is already 7,500 ~~15,000~~ square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title."

Permitted lot coverage: ~~70~~ 50 percent[2]

8. The definition of Artisan Manufacturing should include the statement that alcohol production is NOT included in this definition. **Artisan Manufacturing in section 11-9-2 is defined as and should be amended to clarify the following:**

"Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires screened outdoor operations or storage, and where the production operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, or food processing with the exception of micro breweries and micro distilleries and other alcohol related businesses, which are not allowed."

9. Under Research Facilities the scope of permitted uses be amended to eliminate biological and chemical research given the residential character of this corridor and the proximity of this district to the Whitefish River.

Amend this definition as follows:

11-9-2: DEFINITIONS

"RESEARCH FACILITIES: A laboratory facility that is primarily used for scientific research. This use can include the design, development, and testing of ~~biological, chemical,~~ electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing.

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[2] Lot coverage by right should be reduced in a district that is attempting to mix many different types of uses to allow for adequate buffers between uses, retention of mature trees and vegetation, and soften mixing of multi story and single story buildings. A variance or a PUD are tools that can be used to provide flexibility on lot coverage with additional review by the council when warranted.

This use does not involve the fabrication, mass manufacture, or processing of the products."

10. Additionally given the proximity to the Whitefish River and the intent of the ARTICLE X. WI-T INDUSTRIAL TRANSITIONAL DISTRICT 11-2X-1: INTENT AND PURPOSE: The WI-T District is intended to allow for the gradual transition on vacant or underutilized sites that were traditionally used for heavy manufacturing to adaptive, clean industries and business incubators, and the residential character of this corridor, the proximity of this district to the Whitefish River you may want to consider removing the following conditional uses under WI-T as they could remain uses if the property owner chose to retain the existing WI zoning—there does not appear to be the need to keep these uses in both districts.

    WI-T INDUSTRIAL TRANSITIONAL DISTRICT 11-2X-3: Conditional Uses

    ~~. Heavy equipment sales, rental and service.~~
    ~~. Petroleum products, wholesale.~~
    ~~. Contractor Yards~~

11. **The two new zoning districts and Ordinance NO. 16-___before you in this hearing do not address if PUD's will be allowed in these two new districts.** To allow for PUD's in these two new zones the WPUD Planned Unit Development District section 11-2S-3: Standards of Development would need to be amended to add these districts to the list of districts where PUD's can be applied. **The decision to decide if a PUD can be applied in either WT-3 Neighborhood Mixed Use Transitional District and WI-T Industrial Transitional District should be delayed until:**
    - Any proposed amendment to WPUD Planned Unit Development District section 11-2S-3: Standards of Development impacting the West Side Corridor can be properly noticed for public hearing and comment.
    - The proposed rewrite of the PUD regulations, directed to be done by the city council, is completed and the pros and cons of how a PUD might or might not be beneficially applied in these two districts is reviewed.
    - Careful consideration can be given to the effectiveness of the current PUD standards in securing the type of affordable housing most needed in the city and in this corridor.

    It is important to note that PUD's are currently allowed under the existing WR-3 and WI zoning in place. A zone change process is required for either of these two new zones to be applied.

Rec'd at Council Meeting 2-16-16

Susan Prilliman
334 W 3rd Street
Whitefish, MT 59937

February 16, 2016

Good evening Council,

I have been speaking at these meetings regarding the Hyw 93 W Corridor for 4 ½ years now and I want to express my appreciation for the process and for the hard work of the Council. The neighbors have worked really hard, too.

This all started with Ryan Zinke's PUD application for a combined B&B involving his 2 homes on the south side of Hwy 93, proposed to be connected by a crosswalk across the Highway to a proposed microbrewery on the north side. We were understandably concerned about what this could mean for neighborhoods along the Highway and W 3rd Street. Before the PUD came up for Council vote I circulated a petition that would require a 2/3 majority vote for the necessary zone change to accommodate the proposed project. In only 2 days we exceeded the required number of signatures to make this petition enforceable.

The PUD application was pulled at that time, and from there ensued the Hwy 93W Corridor Study to take a closer look at what should be allowed along the corridor. It is important to note that the corridor study area encompassed a much larger area than just the properties along Hwy 93. In the process of the study, a few neighbors again surveyed other residents in the planning area and obtained over 60 signatures of homeowners who expressed their concerns for maintaining the character of their neighborhoods and their wishes to have the area protected from more intense commercial uses.

I want to thank the council for agreeing unanimously that the neighborhood of W 3rd Street, being 100% residential, should be protected from commercial interests. Special consideration was given to the fact that it backs up to the homes and businesses on the south side of W 2nd Street without any alleys as a buffer. Whatever happens on the highway can have an enormous impact on W 3rd Street. This is particularly true just behind the Zinkes' W 2nd Street properties because they own an adjoining property on W 3rd Street. Any of their events on W 2nd Street have involved heavy traffic and parking along the length of W 3rd Street because foot access is granted through their W 3rd Street property.

This corridor is largely residential, with no indication at all of an exodus of residents abandoning their homes, even those fronting the Highway. Because of this, and because the corridor provides an important stock of attainable/affordable housing, I believe the Council took some important steps to protect the residential nature of the area by unanimously disallowing short-term rentals along the corridor.

Area B was of primary concern during the study given the many homes there. Although Artisan Manufacturing was allowed there, a very important exception was made. Whereas alcohol-related businesses were originally included as part of this classification, they were removed and specifically **disallowed** in Area B for the same reasons that short-term rentals were disallowed.

Many comments have been made about homes being renter rather than owner occupied along the corridor. The renters I know take as much pride in their homes as most owners do. Many have lived there long-term, and they deserve the same quality of residential experience as home owners do. And many homes along the corridor are owner occupied as well. One particular home on W 2nd Street has been owned **and** occupied by one family for over 50 years. It is this home that could have found itself only 38 feet from the property line shared by a microbrewery. And because of the narrow lot, that microbrewery would have been pushed to the very edge of the required setback close to this home.

Microbreweries are proven to bring certain neighborhood-unfriendly conditions such as noise, traffic congestion and parking nightmares. If any of you have observed the Bonsai Brewery even in the shoulder seasons, you will have seen this. A business such as a microbrewery would have been a disaster for this corridor, especially with entry and exit for businesses directly off of the Highway itself.

This brings me to further comment on Artisan Manufacturing. When I researched this concept I learned that it began in the cities of Bozeman and Missoula, but in neither of those cases was there any component of retail allowed – not even 1% let alone 40%-49% as proposed in the draft zoning districts of WT-3 and WI-T before you in this hearing. Additionally, in Bozeman and Missoula Artisan Manufacturing is allowed only in business and industrial zones, not in residential or transitional zones. Adding the generous percent of retail uses as proposed in the zoning text before you, as a standard for Artisan Manufacturing, is not warranted. Businesses such as professional offices and ceramic studios are one thing. Both are compatible with residential because of their hours of operation and their low traffic and parking needs. Other unnamed retail uses, which by their very nature would bring large gatherings of patrons on a regular basis, should be seen as detrimental, just as short-term rentals and breweries have been. Retail uses should be located more appropriately in our downtown business core. There are those who want more retail uses and open-end uses to be the future of this corridor, but those are the people who do not live there, and that is not the trend we are seeing.

And in the case of the microbrewery, this issue has been decided by the council. It has been looked at over and over again and even voted on twice. I know of no precedent where 2 votes that produced the same result – namely to disallow alcohol-related businesses in Area B – could then be overturned by yet another vote with perhaps a different council makeup, or could be sabotaged by blended PUDs or some other ambiguous zoning language. We already had a different council makeup for the 2 votes that occurred, and the result was confirmed. Relooking at this could raise enormous public trust issues. Should citizens who have worked so hard to get their concerns heard through this process have this result later overturned by some confusing new zoning decisions? It is unfortunate that area residents were not proportionately represented in the makeup of the Corridor Study's Steering Committee, but neighbors like myself have taken time to participate in this process in every opportunity provided. We have attended meetings religiously and spoken out respectfully and without fail to protect where we live. We ask that you retain the steps you have already taken to remove alcohol-related businesses from Artisan Manufacturing in Area B and to ensure that such businesses be allowed only by conditional use in the WI-T , Industrial Transitional District.

I believe there are yet other concerns that could be too impactful on the character of the corridor. Uses that involve chemical and biological research should be disallowed along with formula businesses such as hotels, sandwich shops and other retail. These are matters not only of maintaining the unique character of this entrance into Whitefish, but of public health and safety.

I support the moratorium on blending of PUD's because of the probability that this blending could be a way to circumvent the Council's decisions in the Westside Corridor and other neighborhoods, and because of the general confusion and uncertainty I feel it would bring to our citizens. The zoning needs to be predictable for residents and for those interested in investing in this area. Blending undermines this predictability and it could undermine the council's decisions, including those mentioned in this letter.

In closing, I want to express support for the retention of affordable/attainable housing in this corridor. The current zoning accommodates these kinds of uses and we have stepped up on the record to support them. This cannot be said of many other neighborhoods in Whitefish.

Thank you for your time.