CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
MONDAY, NOVEMBER 7, 2016
5:30 TO 7:00 PM

1. **5:30 p.m. -** Update on Cable Television Franchise Agreement negotiations with Charter Communications and provide direction on Public, Educational, and Government local access cable television channel

2. **6:15 p.m. -** Review and give direction on monthly parking lease rates in parking structure

3. Public Comment

4. Give direction to City Manager on above topics

5. Adjournment

MEMORANDUM

#2016-030

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Update on Cable Television Franchise Agreement negotiations with Charter Communications and provide direction on Public, Educational, and Government local access cable television channel

Date: October 25, 2016

Introduction/History

The Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 enables cities to enter into franchise agreements with cable television providers for the cable companies' use of the public right-of-way. While franchise agreements with all utilities are common in other states, Montana State Law prohibits other franchise agreements by municipalities. In the case of cable television, federal law pre-empts state law.

Our current franchise agreement was enacted on September 4, 2007 and made effective as of September 5, 2007. It was a five year franchise agreement, therefore it expired on September 5, 2012. We have been operating on extensions to that agreement since then. In accordance with federal law, Bresnan Communications sent us a letter on October 15, 2009 to initiate renewal of the franchise agreement

At a work session on February 1, 2010, I discussed the aspects of our franchise agreement, the franchise renewal process, and pros and cons of a formal renewal process versus an informal renewal process with the Mayor and City Council. At that time, there was some interest on the part of City Council Members to see if there was public interest in the community in expanded local access television capability and programming as well as interest in improvements to our tape recorded broadcasting system for City Council meetings.

On April 5, 2010, we held a public hearing on a Community Needs Assessment for the Cable Television Franchise which is a necessary act in enacting a new franchise agreement. At that hearing, the Whitefish Chamber of Commerce expressed an interest in a local access channel for public broadcasting. (See attached minutes) After that hearing, the City Council instructed us to negotiate for our own, dedicated local access channel, separate from the one that we currently share with the City of Kalispell.

In the ensuing six years, Bresnan Communications has sold their system 2-3 times and it is now Charter Communications. I have negotiated with 4 different Governmental Affairs representatives from each of the different ownership groups during that six year period. Finally during 2016, we have had a stable group of Charter representatives to negotiate with and we have made some progress on negotiations, but there are still discussions on several issues including Public, Educational, and Government Access Channel (PEG) versus just an Educational and Government Access Channel (EG) (see attached FCC Guide to PEG).

Current Report

While our negotiations continue, the most pressing issue for the City Council to consider and decide is whether we want to pursue a Public, Educational and Government Access channel (PEG) or just an Educational and Government Access Channel. We first proposed a PEG channel in the franchise agreement and we wanted our own dedicated channel. Charter has responded suggesting that we limit our access channel to Educational and Government access and not get into Public Access programming (see attached pages from Charter Communications' draft response to Franchise Agreement). Charter's reasoning is that they get caught up in the local programming controversies that can occur with Public Access programming in local communities (see attached articles in the packet) and they prefer to avoid those controversies. Although they deflect calls and controversies to the respective local government, they still feel that they are perceived as allowing such controversial public access channel programming.

A second issue is how much will Charter pay towards cameras and other equipment for PEG or EG access channels. We first proposed they contribute $30,000 for such equipment and they have responded with a proposal of $8,500. Moreover, in our most recent negotiations, they say we will incur approximately $26,000 of broadband connection and equipment costs, although I have disputed whether that is our cost or a Charter cost.

I will try to outline some of the pros and cons of a PEG local access channel versus just an EG local access channel.

Pros of PEG – Public, Educational and Government programming

1. Allows the public to borrow equipment from a local government or their assignee to videotape and broadcast local events or local shows. Think of "Wayne's World" on Saturday Night Live in the past.
2. The cable company has to provide a channel for this programming under the Cable Act of 1984 and its amendments.
3. The Chamber, Schools, and public can provide content for broadcast on the local channel.
4. Missoula has run a very successful PEG channel, but the City gave the non-profit (MCAT) all of their cable franchise fees to operate the channel.
5. PEG local access exists among many cities throughout the country (estimated at over 2,000).

Cons of PEG

1. The P portion or Public Access allows anyone access to the broadcasts. Many hate groups have found Public Access channels to be a cheap and convenient way to get their programming onto the airwaves throughout the country. Also many religious groups have found it as a way to get religious programming onto the airwaves. Many times these programs are not produced locally, but produced nationally and given to local representatives to get onto the local access channel.
2. Public access programming requires a staff to do the training, education, and check-out of video equipment if we provide video equipment for check-out. Without video equipment check-out, then you just ensure that there will not be much local content on the channel and the programming will be dominated by national programming aired by local representatives. Currently, our $98,000 of cable franchise fees from the Franchise Agreement all go into the Street Fund as the fees are similar to a rental of our right-of-way for Charter to string their wires on the power poles in the right-of-way. If the City Council diverted this money for a PEG channel operation, we would likely have to raise the Street Assessments to make up for that money (that would be a 12% increase in the street assessments). The School District is interested in local access programming, but they do not want to be the equipment checkout center for the public.

Pros of EG – Educational and Government programming

1. Limits the local programming to Educational (schools) and Government programming (City Council meetings etc.)
2. This is the format used by many municipalities throughout the Country to avoid the programming controversies that come with Public access programming. Kalispell limits their channel to EG components as does Bozeman.
3. Avoids the controversial aspects of Public programming (see attached articles) while still allowing educational and government access programming which is fairly popular.
4. Can be done with existing staff and less equipment is needed. No video equipment or editing equipment is bought or checked out.

Cons of EG

1. Doesn't allow for Public access programming.

<u>Recommendations</u>

The staff is just looking for direction right now. Deputy City Attorney Kristi Curtis has helped me with negotiations this year and she has been very helpful. We both strongly recommend that we obtain our own dedicated channel from Charter, but limit it to EG programming, not PEG programming. We don't have the staff and resources to run a PEG operation with equipment checkout, video editing equipment etc. and we don't believe that the community would be very tolerant if the public access programming were taken over by hate groups or religious groups.

Another alternative that we are exploring is to do the live broadcast of the City Council meetings (and any other meetings in our chambers) via the internet and live streaming versus having a dedicated PEG or EG channel. That might save us the $26,000 of connection costs that Charter is discussing (although I dispute whether that is our cost or their cost) while still allowing live broadcasts of meetings. Moreover, much of the direction of broadcasting now is going toward live streaming and away from cable programming with many people "cutting the cord" nationally. This transition is still fledgling, but is certain to grow as time goes on. We would continue to get our Council meetings delivered to Kalispell for delayed broadcast as we do now for those citizens who like it on the cable channel and then have live streaming for the people who want to see it live. We feel this option is very viable and very cost effective. We might even be able to deploy this option before completing and executing the Cable Television Franchise Agreement.

said the regulations say a charge in writing is what is required. Metzmaker asked if there has been a complaint that the WCVB Board hasn't been able to act or perform due to a lack of quorum. She said their procedure is that about a week before a meeting she asks them if there are any agenda items they want included, and she asks them if they are available to attend. She knows ahead of the meeting, so she knows that they have a quorum. She said they don't put absences in the minutes, but they can if they need to. All board members get their packets; receive the minutes and financial information so they are up on what is happening. She said they could consider conference calls or Skype calls. She asked them to provide any complaints or written documentation to the WCVB.

Mayor Jenson reminded the Council that the motion was to deal with the written charges, discuss absences and to hold a public hearing to that affect at the next meeting.

The motion was tied 3-3 with Councilors Mitchell, Askew and Hyatt voting in favor, Councilors Muhlfeld, Friel and Kahle were opposed. Mayor Jenson voted in opposition and the motion failed.

5. **CONSENT AGENDA** (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda.)

5a. Minutes from the March 15, 2010 Council regular meeting (p. 17)

5b. Request by Jennifer Byers for a one year extension of Preliminary Plat for McKaul subdivision (p. 25)

5c. Resolution No. 10-08; A Resolution extending the time for the WB-2 Zoning District Ad Hoc Committee to submit a written report to the Whitefish City-County Planning Board. (p. 30)

5d. Approval of Whitefish Lake Lakeshore Permit #WLP-10-W01; Bill and Dori Walton – Construct gravel/log access path down to lake and remove dead vegetative material with 23 Conditions (p. 31)

5e. Approval of Whitefish Lake Lakeshore Permit #WLP-10-W02; J. Robert Mobley – Modification of existing rip rap structure with 7 Conditions (p. 53)

5f. Approval of Whitefish Lake Lakeshore Permit #WLP-10-W03; Carol Foley – Repair and maintenance of existing deck and access stairs with 8 Conditions (p. 75)

Councilor Muhlfeld offered a motion, seconded by Councilor Kahle, to approve the consent agenda. The motion passed unanimously.

6. **PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations)

6a. Community Needs Assessment Phase I - Bresnan Communications LLC Cable Television System Franchise Agreement Renewal (p. 101)

Manager Stearns reported that the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 enables cities to enter into franchise agreements with cable television providers for the cable companies' use of the public right-of-way. While franchise agreements with all utilities are common in other states, Montana State Law prohibits other franchise agreements by municipalities. In the case of cable television, federal law pre-empts state law.

The current franchise agreement was enacted on September 4, 2007 and made effective as of September 5, 2007. It was a five year franchise agreement; therefore it expires September 5, 2012. In accordance with federal law, Bresnan Communications sent a letter on October 15, 2009 to initiate renewal of the franchise agreement.

Manager Stearns said there is a formal or an informal renewal process. The last time the contract was renewed the City used the informal process. This is a public hearing to determine how Bresnan has performed and to determine community needs. At a work session on February 1, 2010, there was some interest on the part of City Council members to see if there was public interest in the community in expanded local access television capability and programming as well as interest in improvements to the tape recorded broadcasting system for City Council meetings. They mentioned wanting to have a guaranteed time slot and better equipment.

He said the local access channel is called Public/Educational/Government or PEG access in the franchise renewal process. We currently have limited access to the PEG channel for re-broadcast of the City Council meetings, but there is no other local production of programming or local origination of broadcasts in Whitefish of which he is aware. One limitation of a formal renewal process is that it would likely require the City to hire a consultant to make sure the City followed the very formal and detailed process outlined in federal law. In talking recently with Sean O'Donnell, the Regional Vice-President of Bresnan Communications, he said he has not done a formal renewal process in more than eight years – almost all of their renewals are done via the informal franchise renewal process.

For public notification of this hearing and to raise community awareness, staff published the legal notice twice in the Whitefish Pilot and a display ad published once in the Whitefish Pilot. He also emailed the display ad to the School District Superintendent and to the city email list. Also, Linda Engh-Grady of the Whitefish Community Foundation agreed to forward the display ad notice to other non-profit organizations in the area as non-profits are often interested in local origination or local access programming. An extensive amount of outreach was completed for this public hearing.

Staff respectfully recommends the City Council consider the testimony at Monday's public hearing and determine if there is sufficient need for a formal renewal process or if an informal renewal process will suffice for the cable television franchise agreement renewal.

Mayor Jenson opened the public hearing.

Rebecca Norton, 530 Scott Avenue, recommended they go with the informal process. She said a lot of people watch the Council meetings and it would be nice if there was a set time. She said it would be nice to have that publicized for people who can't catch the meetings.

Richard Hildner, 104 E. Fifth Street, said as a classroom teacher he thinks this public access is critical. He said his students note that they see him on TV and he is able to engage them in the civic

process and to see what public access is all about. He would like to see more young people in the meetings and involved in this process.

Kevin Gartland, 726 Waverly Place, said he liked the idea of Whitefish having its own public access TV process. He came from Mammoth, CA and they had a public access channel and it did a number of things for the community including kid's programs, local sports, local events and news. If there were no recorded programs, then a community calendar was posted. He said Jill Evans with the Stumptown Historical Society could create a weekly historical program. He suggested that they talk to the cable company to see what they could create. He said the Chamber of Commerce would be willing to help put this together.

Mike Oswald, Bresnan Communication General Manager from Bozeman, said they can do this informally. He thinks they can work this out so it is beneficial for all involved. He would be glad to meet with the Councilors or a committee on this issue. He passed out his business cards to the Council.

Mayor Jenson closed the public hearing.

Councilor Mitchell asked if the City creates a public channel whether there is a fee. Mr. Oswald said there is a 29 cent/month fee that is passed on to the consumer in Missoula. Councilor Mitchell asked and Councilor Hyatt said the programming occurs at various times of day. Mr. Oswald said he would research it and tell Manager Stearns when it runs. Councilor Askew asked and Mr. Oswald said HD programming is free when you rent the box. Mayor Jenson said they seem to be interested in an informal process and there is the possibility of Whitefish having their own channel. Councilor Kahle said he thought there was a distinction in what they could ask for in funding in the two different processes. Manager Stearns said the informal renewal generally renews the existing contract, but Sean O'Donnell indicated that the things they've discussed tonight could be raised in the informal process. He said Bresnan can do anything they want to do, but it is a matter of negotiation. If you want to compel them to do something it may require the formal process. He said his experience in Missoula was that the cost was passed on to the consumer. He said most cable franchisers pass the cost on. He said what Kevin Gartland has proposed will have staffing and cost implications. He said they get $48,000 in franchise fees and that currently goes in the street budget. The utility is basically renting the street for these services. The City is at the maximum 5% allowed by Federal Regulations. Councilor Askew said they have $1 million in liability insurance and he's sure Bresnan has more than that and they could ask them to raise it. He asked who participates in the negotiation process and how long would it take. Manager Stearns said there are timelines in the formal process. He said last time the City Attorney and City Manager negotiated for the franchise contract. Mr. Oswald said they are willing to work out a decision with the informal process.

Councilor Mitchell said a consistent time for broadcasting the meeting and new speakers are important. Councilor Kahle said he would like to compel Bresnan to provide the framework for some of the things Kevin Gartland brought up. He would be concerned about funding and staffing, but he thinks if the framework is completed then it can be carried out with volunteers. Councilor Askew said he spoke with Jill Evans from the Historical Society and she said they should have a world of material they could put in as fillers.

Councilor Askew offered a motion, seconded by Councilor Kahle, to authorize Manager Stearns and City Attorney Phelps, with input from the Council, to pursue an informal process for

the Cable Television Franchise Agreement renewal with Bresnan Communications. The motion passed unanimously.

Mayor Jenson called a 10-minute recess.

6b. Resolution No. 10-09; A Resolution approving an increase in the rates for solid waste collection and disposal (p. 131)

Finance Director Knapp said the contract with the private hauler has increased 2.78% since 2004 and the City has not passed that onto the consumers. It order to keep solvent they need to raise this fee. In May 2004, the City moved from collecting solid waste in house to contracting with Montana Waste Systems, Inc., however the billing remains in house. The five year contract included an increase of 2.78% every July 1st. At the beginning of the contract MWS billed the City $5.50 per can and the City billed the resident $7.50 in order to cover the City's administrative costs. As of July 1, 2009, MWS is billing the City $6.31 per can and the City is still billing $7.50. The once $2 administration spread is currently $1.19. The percentage increase from the beginning of the contract to the current rate is 14.7%, and the CPI-U percentage increase (inflation) for the same period was 14.2%. The City has been able to delay rate increases by spending down the $200,000 cash balance the City maintained before contracting out with MWS. The cash balance subsidized inflation, and kept the rate at 2004 levels.

On July 1, 2010, MWS will raise their rate again by 2.78%. After the July 1, 2010, the Solid Waste Fund will **lose** a projected monthly amount of $7,000 if rates remain the same. In order to maintain solvency in Solid Waste, the City will need to pass on the rate increases from MWS. This equates to a $1 increase for residential. The City will need to increase commercial rates by the same amount MWS has increased rates to the city as shown in the attachment in the packet.

In addition, if a customer leaves an extra bag next to their can, MWS will charge the City $5.50 per bag—MWS calls it a "City Extra". The City then manually adds those charges to the customer's bill every month. Staff proposes adding a $1.00 administration fee for this service.

The proposed rate increase will generate a projected $7,312 monthly and keep the City solvent to July, 2011. Mayor Jenson asked if commercial units are based on a cubic foot usage. Finance Director Knapp said the administrative fee will be passed on. Councilor Askew said the commercial administrative fee will remain at $5.50, but they need to catch up with what the contractor is charging them. Manager Stearns said on page 135 in their Council packet the full rate schedule is listed. Councilor Mitchell asked and Finance Director Knapp deferred to Utilities Supervisor, Greg Acton, who said there are about 2,400-2,800 residential and about 400 commercial customers. Manager Stearns said last July they signed a two year extension so the contract will end June 30, 2011. Councilor Mitchell suggested they get another bid at that time. Councilor Muhlfeld said they discussed incremental increases. He asked and Director Knapp said it does not include fees beyond June 2011. Councilor Askew asked if the City tried to negotiate the existing contract. Director Knapp said they did not negotiate because they are committed to the contract. Councilor Askew asked if staff could talk to the contractor. Director Knapp said he was sure they could bring it up. Councilor Hyatt asked about the $5.50 if there is an extra garbage bag out there. He said the administrative fee was an additional $1.00 and he thought at 18% it was pretty high. Director Knapp said it seems fair because it takes a lot of time to add the fee to individual bills. Director Knapp said if it is something someone is doing every week they want to encourage them to get a second can. Councilor Hyatt asked if they could flag those people and ask them to get another can.

Public, Educational, and Governmental Access Channels ("PEG Channels")

Documents, Reports and Surveys

AM Tower Locator (WTB)

Broadcast Station Totals

CDBS Application ID Search

Closed Captioning

Customer Service Standards

Documents

Events and Workshops

License Renewal Applications for Radio

License Renewal Applications for TV

MB ECFS Dockets

Media Bureau Forms

Online Public Inspection File Access and Information

Over-the-Air Reception Devices Rule

Program Content Regulations

Public, Educational, and Governmental Access Channels ("PEG Channels")

Public Inspection File Information Online

Significantly Viewed List (4/19/16)

Television Broadcast Stations on Satellite

The Public and Broadcasting

Video Competition and Price

Pursuant to Section 611 of the Communications Act, local franchising authorities may require cable operators to set aside channels for public, educational, or governmental ("PEG") use.

Public access channels are available for use by the general public. They are usually administered either by the cable operator or by a third party designated by the franchising authority.

Educational access channels are used by educational institutions for educational programming. Time on these channels is typically allocated among local schools, colleges and universities by either the franchising authority or the cable operator.

Governmental access channels are used for programming by local governments. In most jurisdictions, the local governments directly controls these channels.

PEG channels are not mandated by federal law, rather they are a right given to the franchising authority, which it may choose to exercise. The decision whether to require the cable operator to carry PEG channels is up to the local franchising authority. If the franchise authority does require PEG channels, that requirement will be set out in the franchise agreement between the franchising authority and the cable operator.

Franchising authorities may also require cable operators to set aside channels for educational or governmental use on institutional networks, i.e., channels that are generally available only to institutions such as schools, libraries, or government offices.

Franchising authorities may require cable operators to provide services, facilities, or equipment for the use of PEG channels.

In accordance with applicable franchise agreements, local franchising authorities or cable operators may adopt on their own, non-content-based rules governing the use of PEG channels. For example:

- Rules may be adopted for allocating time among competing applicants on a reasonable basis other than the content of their programming.
- Minimum production standards may be required.
- Users may be required to undergo training.

Federal law permitted a cable operator to prohibit the use of a PEG channel for programming that contains obscene material, sexually explicit conduct, indecency, nudity, or material soliciting or promoting unlawful conduct. However, the U.S. Supreme Court determined that this law was unconstitutional. Therefore, cable operators may not control the content of

Survey Reports

programming on public access channels with the exception that the cable operator may refuse to transmit a public access program, or a portion of the program, which the cable operator reasonably believes contains obscenity.

PEG channel capacity that is not in use for its designated purpose may, with the franchising authority's permission, be used by the cable operator to provide other cable services. Franchising authorities are directed by federal law to prescribe rules governing when this use is permitted.

For additional information

Any questions or comments about PEG channels on a particular system should be directed to the cable operator or the local franchising authority, and not to the Federal Communications Commission. The name and telephone number of your franchising authority should appear on your cable bill, or should be available through your cable operator. With very limited exceptions, the Federal Communications Commission is not responsible for enforcing the federal statute governing PEG channels.

- FCC -

For more information pertaining to the Media Bureau, please call: (202) 418-7200.

FCC > Media Bureau

Bureau/Office:

Media

Tags:

Cable Television - Indecent Programming - Television

Updated:

Wednesday, December 9, 2015

2 8

Federal Communications Commission
445 12th Street SW, Washington, DC 20554
Phone: 1-888-225-5322
TTY: 1-888-835-5322
Videophone: 1-844-432-2275
Fax: 1-866-418-0232

Contact Us

Two pages from Charter Communications latest response to the City of Whitefish for a new CATV Franchise Agreement.

electronic funds transfer to a bank account designated by Grantor. In the event that a Franchise Fee payment or other sum due is not received by the Grantor on or before the date due, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the lower of (A) the maximum rate permitted under State law, (B) eight percent (8%) and (C) the prime rate of interest as reported by the Wall Street Journal on July 1st of the previous calendar year, plus two percent (2%), rounded to the nearest full percent). All payments of the Franchise Fee shall be accompanied by a report by an authorized representative of Grantee showing the basis for the computation. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.10.

10.4 **Accord and Satisfaction**. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.5 **Limitation on Recovery**. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

SECTION 11
Education and Government (EG) Access

Commented [A13]: Kristi: I said that I would provide you information regarding min. programming for PEG and standards. Please see Section 611 [47 U.S.C. 531] and http://www.fcc.gov/guides/public-educational-and-governmental-access-channels-peg-channels

11.1 Upon request, Grantee will provide to Grantor the use of one (1) dedicated Educational and Governmental ("EG") Access channel in accordance with Section 611 of the Cable Act. Such EG channel shall be used for non-commercial community programming related to educational and/or governmental activities. Grantor shall have complete control over the content, scheduling, administration and all other programming aspects of the EG channel, and may delegate such functions, or a portion of such functions, to an appropriate designee other than Grantee. Grantee shall not exercise any editorial control over EG channel programming.

11.2 Grantor or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel.

11.3 In the event Grantor or its designee does not program the EG channel, Grantee may request the use of this EG channel after giving the Grantor thirty (30) days notice and Grantor fails to program the EG channel during those thirty (30) days. Grantor shall not unreasonably withhold its approval of Grantee's use of an EG channel. If Grantor requests the utilization of the EG channel being programmed by Grantee and provides a demonstrated need and use for the EG channel, Grantee shall relinquish such use no later than ninety (90) days after receipt of written notification from Grantor.

Commented [A14]: My notes show the City would like notice and an opportunity to cure if the City is not meeting the standards herein (i.e., "does not program the EG channel…")

Please see the inserted language. I think it needs to be worked into this section better, but is the concept something that you are seeking? Again, I need to run this by Charter Corporate before I can offer this as a formal proposal.

SECTION 12
EG Access Capital Grant

12.1 **Capital Grant**. Grantee shall provide Grantor with a capital grant of up to ~~Thirty Thousand~~eighty-five hundred and No/100 Dollars ($~~30,000~~8500.00) ("Access Capital Grant"),

Commented [A15]: This is an open issue. Please see the PEG equipment list that I attached to the email.

payable upon acceptance of the Franchise for capital equipment for ~~broadcasting~~ cablecasting City Council and other public meetings and for equipping a local access studio for ~~Public,~~ Education, and Government (EG) programming.

12.2 Grantor shall be responsible for purchasing, installing, operating, maintaining and replacing all capital equipment purchased with the Access Capital Grant.

12.3 Grantor understands that pursuant to federal law, Grantee may, but is not required to, collect the Access Capital Grant from Subscribers as a separate line item on Subscriber bills, in addition to the price for Cable Service.

12.4 All EG Funds must be spent for capital equipment and capital costs associated with EG Access programming and not for operational costs in compliance with federal law. Grantor shall, no more than once annually, provide Grantee with a report as shown in Exhibit A, detailing how the EG Access programming capital support funds were used. Grantor shall permit any duly authorized representative of the Grantee, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis, any and all records and equipment to ensure the Grantor's compliance with this section. If EG contributions have been improperly used for operational or non-capital costs, consistent with the Cable Act and the accounting standards used by the Grantor to keep its books, the Grantee may offset future franchise fees by those amounts. If there is a dispute as to whether the Grantor improperly used EG contributions, the Grantee and the Grantor shall first informally discuss the matter Grantor is required to keep records pursuant to this Franchise for up to six (6) years. Grantor shall account for all EG Access capital fees and equipment separately from other Grantor financial accounts so that Grantee may easily determine Grantor's compliance under this section.

Commented [A16]: My notes show the City wants to have an opportunity to show that contributions have been used properly before Charter offsets franchise fees. I need to get Charter Corporate formal approval before we can agree, but am offering the inserted language for your consideration:

SECTION 13
Transfer of Franchise

13.1 **Franchise Transfer**. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 14
Records, Reports and Maps

14.1 **Reports Required**. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and

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ART & DESIGN BOOKS DANCE MOVIES MUSIC TELEVISION THEATER EVENTS INTERNATIONAL ARTS

TV VIEW

TV VIEW; Is the Klan Entitled to Public Access?

By DAVID A. KAPLAN; David A. Kaplan is senior writer for The National Law Journal.
Published: July 31, 1988

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REPRINTS

It is an exquisitely vexing debate over cable television and the First Amendment. Trouble is, the First Amendment seems to be on both sides.

For the Ku Klux Klan and the civil libertarians who support the white supremacy group's right of free speech, it is a question of whether a cable system's public-access channel really will be open to all speakers, regardless of how repugnant their views may be to some.

For the city government, it is a matter of how much bigotry the community must tolerate in the name of free expression.

Such has been the battleground this year in Kansas City, Mo., over American Cablevision's Channel 20. The City Council was deliberating if the local members of the Klan would be allowed to show a multipart series entitled "Race and Reason," produced by Tom Metzger, leader of the California-based White Aryan Resistance. Rather than give the Klan air time, the council last month voted 9 to 2 to eliminate the public-access channel. Now, the local chapter of the American Civil Liberties Union says it will help the Klan sue for the right to be heard.

Kansas City is merely the latest setting for an on-going drama over racist programming that is being played out between cities, cable operators and extremist groups. More than two dozen cable systems across the country have shown "Race and Reason," with protests occurring in Cincinnati, Pocatello, Idaho, several Northern California communities and elsewhere. In New York City, the program has been cablecast three times this month - and sporadically since last September - on the public-access channel of Manhattan Cable TV and is scheduled for tomorrow morning at 10 on Channel C. According to a spokewoman for the company, no complaints have been received thus far.

While the outcomes of the disputes that have arisen are of concern to the sensibilities of individual cable subscribers, the battles are more significant for what they portend for the First Amendment as cable technology continues to revolutionize communications.

The world that existed in 1791 when the First Amendment was ratified is a far cry from modern society. Back then, robust community debate took place in various public forums - on a street corner, in the marketplace - where there were no entry barriers, economic or otherwise, and where free speech was listened to. The print media flourished as well.

These days, most people get their news and information from television; the soap-box orator on the village green is an anacronism, and entry into the newspaper business requires a small fortune. And although rules of the Federal Communications Commission - including the moribund Fairness Doctrine - aim to guarantee a balanced, evenhanded broadcast picture, they do not give individual speakers the right to appear.

Cable television offered a different vision than conventional broadcasting. Unrestricted by the finite spectrum of the latter, cable held the promise of unlimited channels. In the

1960's, many local governments, with F.C.C. support, began legislating the equivalent of an electronic soap box. As a condition for obtaining a franchise, cable operators had to provide the public with free access to designated channels, to be used on a first-come, first-served basis.

"Here was another well-meaning attempt by government to make sure that editing power was not concentrated in the hands of a few," explains James C. Goodale, a New York media lawyer.

Congress tackled public access in 1984, passing a law that allows - but does not force - municipalities to require cable franchises to provide a free public-access channel. Under the 1984 Cable Act, anyone can get on such channels. Cable operators are not permitted to exercise any editorial control over content, except to exclude clearly obscene material.

According to the National Cable Television Association (N.C.T.A), most of the nation's large cable systems provide public-access channels. New York City's two franchises have had them since 1971. The channels offer nothing if not variety; people get on to preach, cook, sing and talk. Because it's cheap (to produce), talk - about sports, sex and politics - is the most prevalent. Few viewers tune in. Fewer still complain. "Ladies with blue hair have long since stopped objecting to the nudity, sexual content and strong language in the programming," observes Stuart F. Feldstein, a Washington lawyer who used to becounsel to the N.C.T.A.

Of course, what's happening in Kansas City is another story. Unlike other municipalities that have cablecast "Race and Reason" with disclaimers or counterprogramming scheduled immediately after, the City Council there took the unprecedented step of doing away with its public-access channel altogether - a move, if upheld in court, that other cities are likely to copy.

Mayor Richard Berkley, who co-sponsored the resoluton eliminating Channel 20, says that he "fully understood people who came out on the other side," but that the City Council's decision was justified.

Dick Kurtenbach, the director of the local A.C.L.U., responds that the government action was "clearly intended to keep an unpopular group off the air. That," he adds, "is precisely what the First Amendment prohibits. The proper response to speech you don't like is more speech."

Taking government-ordered public-access channels to be a given, Mr. Kurtenbach has a point. Free expression means little if it only belongs to those in the mainstream. And content-neutral criteria are the best way to insure that all views, even extremist ones like "Race and Reason" or other racist programming, get time.

But there is another First Amendment dimension: Why are private cable operators forced to supply public-access channels? "We have First Amendment rights, too, and that seems to have been forgotten," says Jeff Johnston, a vice president of American Cablevision, the system caught in the middle of the Kansas City debate. "I've no problem with the Ku Klux Klan being interviewed on a news show, but why should we have to give them or anyone else their own chunk of time?"

Mr. Johnston acknowledges his company's position is not just a matter of priniciple. "While one can never be certain," he says, "I believe if we had to show the Klan program, we would have lost subscribers."

Though not the noblest of sentiments, it's no different from the calculation that many publishers have to make every day. And must newspapers devote free space to simply anyone? Most print media voluntarily offer individuals who are attacked a letters page on which to respond, but the Supreme Court in 1974 unanimously said government could not require such balance.

Why is television treated differently? Could the reason be that there are a scarce number of channels and, therefore, television programmers may be forced to operate in the

government-defined "public interest"? While that argument might be convincing for over-the-air broadcasting, it isn't for cable. The proliferation of cable channels -up to 120 in some areas - suggests more diversity than print ever provided. When the cable industry fully utilizes fibre optics, the number of channels - and, indeed, competing operators - will be virtually unlimited.

Municipalities necessarily will also have a regulatory role, since the laying of cable lines has to be supervised. (Try to imagine not one cable truck on Third Avenue but 100 every day of the year.) This function, however, amounts to little more than playing traffic cop and hardly justifies program decision-making by the government.

For better or worse, the First Amendment entrusts the private sector with editorial control, free from government second-guessing. "We don't trump this right to decide what should appear by asserting some right of the public to get more or better information," says Floyd Abrams, a First Amendment lawyer in New York.

If that view prevailed with full force on cable television, programs like "Race and Reason" probably would not be shown (unless the Klan itself owned a system). Similarly, public access would not exist in many markets. Such a state of affairs would be nothing to cheer about, but is it not a worthy price to pay for keeping government from playing programmer?

Drawing

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Controversy Puts the Spotlight on Public Access TV : Media: The debate over the airing of a white supremacist show has focused attention on the operating procedures at Torrance's public channel.

January 20, 1991 | DEBORAH SCHOCH | TIMES STAFF WRITER

Every day for the past week, Father Chung Ching Lee has been cooking meatballs on Channel 59 in Torrance. He'll be cooking meatballs again, every morning and night, at 9:30 a.m. and 7 p.m., until Tuesday.

Lee is creator, producer and host of "Father Lee Egg Roll King's Cooking Ministry," one of 17 locally produced shows seen daily on the city's public access channel, known as Torrance Community Television.

This is not slick, star-studded network fare. Father Lee is a Catholic priest who wears his clerical collar beneath a bright-red apron. On the episode now airing, he sings, accompanied by a violinist, while the meatballs are cooking.

The channel also features talk shows, arts programming and an eclectic array of shows such as "Metology Dutch Guru," "Cosmic Swami Turbo Head" and "Happy Time Pipers: Seniors Love Torrance."

This programming mix is typical of many of the public access cable channels in 2,000 communities in California and nationwide. The channels serve as a kind of video soapbox, populated by amateur producers and talk show hosts. And, in many cities, their work goes virtually unnoticed by a viewing public tuned in to the major networks.

But the Torrance channel has drawn unusual attention since October when it aired a white supremacist program called "Race and Reason"--a series denounced by critics as "racist garbage." Council members raised objections to the series, but City Atty. Kenneth L. Nelson determined that First Amendment protections prevent the city from banning the show. After several scheduling delays, the next segment, submitted by a local couple, is to begin airing Wednesday.

The furor over "Race and Reason" is similar to First Amendment controversies that have cropped up in public access cases in other areas. In Kansas City, efforts to block "Race and Reason" and a show produced by the local Ku Klux Klan led to a lawsuit; the city ultimately dropped its efforts to keep the klan off cable television.

Although no legal action appears to be contemplated in Torrance, the local debate has focused attention on operating procedures at Channel 59, some of which are considerably different from those in other South Bay cities.

Unlike most public access stations in the area, which air a given show only once or twice, the Torrance channel runs its shows at the same time slot every day for two weeks. That means that a series like "Race and Reason"--which has more than 100 episodes--could theoretically run on the station for four years.

Torrance cable administrator Michael Smith said the city repeats its shows for two weeks because it has an automated tape-playing system and lacks the staff to change the tapes manually, and because it wants to give the shows maximum exposure.

In addition, most such channels in the South Bay are run by the cable companies that hold city franchises. Paragon Cable of Los Angeles, for instance, oversees the public access channel that can be seen in Hawthorne, Lawndale, Gardena and El Segundo. And Dimension Cable Services manages the channel seen in cities on the Palos Verdes Peninsula.

But in Torrance, Channel 59 is operated directly by the city. The channel is distributed on the Paragon Cable network, but the people who oversee the programming are city employees.

The City Council doubles as the Torrance Cable Television Public Access Foundation, which has ultimate authority over the station and approves its budget. LeRoy J. Jackson, the city manager, serves as executive director of the foundation. Its chairwoman is Mayor Katy Geissert; its clerk is City Clerk John A. Bramhall.

Some public access experts are critical of the system used in Torrance, saying it leaves the city vulnerable to charges of tampering with the channel for political reasons.

"Because access is a First Amendment forum, there's a real problem with cities taking an active role in the channel," said Sharon Ingraham, chairwoman of the National Federation of Local Cable Programmers.

Torrance officials say they entered the public access business somewhat reluctantly when Group W, the city's previous cable franchise operator, was replaced by Paragon Cable in 1987. The city's decision to take over the channel was made in the course of its contract negotiations with Paragon, Jackson said.

Under the federal Cable Act of 1984, cable companies must provide a public access channel if a community requests it, Ingraham said. Public access channels are usually managed in one of three ways: by cable companies, by cities or by independent nonprofit foundations. Several cable access experts said they prefer the foundation model. To have a city running the channel "is not unusual, but it's not ideal," said Reginald Carter, the cable federation's operations manager.

But Torrance officials say they prefer to see public access controlled by the city, not by the cable company.

"Actually, I think we provide a much better service, because it's conducted as a city service would be, like parks and recreation," said Darren P. Doerschel, Torrance community television coordinator.

City Councilman Dan Walker said the "Race and Reason" debate illustrates why the Torrance system is a good one. "You obviously want to maintain as much control as you possibly can."

Ron Cooper, operations and training director at Access Sacramento, the foundation that oversees that city's public access channel, said that in the long run, it is often in the public's best interests to allow such controversial material to be aired.

In 1987, he said, a resident submitted "Race and Reason" to the public access station in Sacramento, which aired the series. As a result, local black and Jewish groups began producing their own shows that appeared on the channel, Cooper said.

"Indeed, the system works, if you allow people freedom of speech," he said.

Only 13 episodes of "Race and Reason" were submitted to the Sacramento station, and the series faded away, Cooper added. "Frankly, it was a relatively boring talk show," he said. "It's just talking heads."

Sue Gibbons, who heads the city's Cable Television Advisory Board, says the quality of the Torrance public access channel has improved dramatically since the city took it over three years ago. "It's like night and day," she said. Operations run more smoothly, and "we don't have the discussions that have to go on between the cable operator and the city about who's responsible for getting something done."

One producer, Priscilla La Marca of Torrance, praised the city's facilities.

"We do happen to have one of the nicest studio facilities and equipment available," said La Marca, producer and creator of "The Arts and You," a feature program about the arts that is made in Torrance. But La Marca said she would like to see producers have more time to use the studio. And she added: "Any time you're tied in with a city budget, you're limited to rules and red tape."

A growing number of residents like La Marca are producing and editing their own shows at the Torrance studio. In November, the channel reported that local residents spent 50 hours shooting programs in channel studios and 319 hours in the station's editing rooms.

But "Race and Reason" is what Torrance officials call a "bicycled tape," a show produced elsewhere that has been submitted for airing.

The station's rules, like those of other public access channels, say it must air tapes submitted by local residents as long as the tapes do not contain obscene material, advertising, political endorsements or lottery information.

"Race and Reason" first aired in Torrance for two weeks in October, attracting little attention. But the City Council, concerned about the series' content, asked the city attorney to study whether the series could be banned.

The city then instituted new rules for "bicycled tapes." Residents submitting the tapes are now required to provide written permission from whoever holds the copyright. And at the beginning and end of the bicycled tape, the city has begun running the name and address of the resident who submitted it, together with a disclaimer that the city is not responsible for the program.

The city's cable administrator notified council members in a Dec. 28 memorandum that "Race and Reason" would begin airing at 11 p.m. Jan. 8; the date was later changed to Jan. 9. Meanwhile, Geissert obtained a tape from the Anti-Defamation League that she asked to air at 10:30 p.m.

However, Walker argued that the city should not "roll over" and show the tape without a fight. He called Jackson on Jan. 4 and asked that the City Council have a chance to discuss the matter.

In its role as the cable access foundation, the City Council met in closed session Jan. 8 to discuss "Race and Reason." Afterward, Jackson announced that the tape submitted by Katherine and Paul Beaton of Torrance was technically defective and was being struck from the Jan. 9-22 schedule.

Katherine Beaton said recently that she was growing frustrated with what she sees as delaying tactics by the city.

For instance, she said, the Beatons rushed a substitute tape of another episode to city studios the evening of Jan. 9, only to be told that because of scheduling requirements, it could not air until this Wednesday, she said.

"It's just getting real gamesy," Beaton complained.

Smith said the Beatons have submitted two more tapes, asking that they be aired in the two-week cycles after the episode that is scheduled to start Wednesday. Smith said he had not yet reviewed the tapes but that he did not expect technical problems.

Meanwhile, Gibbons said the city's cable advisory board may discuss how to limit the number of bicycled tapes appearing on Channel 59, perhaps by giving preference to local producers. That discussion would be a result of the growing number of local producers and shows, Gibbons said Friday. "We're not doing it to limit any particular program, I assure you."

The Long Beach public access channel limited bicycled tapes to one showing apiece after a dispute arose over "Race and Reason" and another controversial tape. And the Paragon public access channel serving the Hawthorne-Lawndale-Gardena area generally does not run shows produced outside the system area.

But Ingraham at the National Federation of Local Cable Programmers warns against severely limiting outside programming.

"I say, 'Don't do that.' You could cut off a whole lot of interesting programs," Ingraham said.

And Robert Purvis, legal director at the National Institute Against Prejudice and Violence in Baltimore urges communities not to overreact to series such as "Race and Reason" and not to scapegoat public access television.

"My concern is that the people who are trying to deal with racism in the community don't end up making matters worse," Purvis said.

At least one local producer says she believes "Race and Reason" should not be banned from the public access channel.

June Armstrong, who produces a feature show called "What's Happening," says efforts to curb such programming could backfire.

"You could be standing on the other side of the street and saying, 'June, I hate your show and don't think it should be on.'

"I could be facing the same thing."

Los Angeles Times Copyright 2016 Los Angeles Times

Extreme TV: Hate groups exploit cable

Boston Globe/September 3, 2000
By Tatsha Robertson

Ranford, Conn. -In a normal week, viewers whose remote controls stop at Channel21 might find a group of local boys sharing wrestling techniques, a town selectman honoring a retiree, or the Rev. Walter Oliver preaching about modern-day evils while a soloist sings gospel music in the background.

This is exactly what you'd expect on a public access cable channel in a town small enough that the appearance of an Elvis impersonator at a local restaurant causes a buzz. So, few were prepared when Matt Hale started showing up on Channel 21 with his chilling call for whites to prepare for a racial war. Hale's white supremacist speeches were first broadcast in half-hour installments last week in seven towns in south-central Connecticut, part of AT&T Cable Services.

Hale is from half a country away, taping his broadcasts in his home in East Peoria, Ill. He got on the air in Branford the same way he has managed to get on in Washington state, Indiana, and Florida: He used the Internet to attract followers who in turn took copies of his tapes to their local cable company and requested that they be aired on the public access channel.

The tactic is becoming more common as hate groups across the nation discover they can spread their messages free and with little regulation on public access television.

While controversial programming has occasionally popped up on public access channels since the 1980s, many in the industry have been taken aback by Hale's avowed campaign to spread his message of racial intolerance one public access station at a time. Specialists say Hale is exploiting a fundamental intent of many local access channels on cable systems nationwide to give ordinary citizens a public soapbox.

Although Hale's extremist views are drawing widespread criticism, cable officials and regular viewers are grappling with where the line should be drawn between free speech and manipulation.

Sitting in a tavern on Branford's main drag, Edward Dimenstein, a local lawyer who is Jewish, said he despises Hale, who argues that minorities and Jews should be deported. But Dimenstein rejects the idea of censoring him. ''I disagree with the man and his views, but he has the right to express those views,'' Dimenstein said.

Hale, 29, the leader of The World Church of The Creator, is banking on exactly that reaction from his critics. Smiling into the camera at the start of his first broadcast, Hale said, ''Public access is indeed for the public, and we intend to utilize it.''

While pressure to regulate the growing number of hate groups on the Internet continues to rise, specialists say extremists are discovering the power of public access and stirring a debate among First Amendment advocates, public access administrators, and racial activists about whether community television is truly the virtual platform the government intended it to be, or whether it has become an alarming ''Gong Show.''

''People have the right to say what they want, regardless of how outrageous it is,'' said John Roberts, executive director of the Massachusetts branch of the American Civil Liberties Union. ''If you give the government the power to decide who will speak and what they will say, then they are going to clamp down on all kinds of political speech.''

But Susan Fleischmann, executive director of Cambridge Community Television, said public access advocates are beginning to look for ways to combat negative programs like Hale's ''White Revolution'' without censorship. If a local subscriber comes to her station with controversial programming, the station will make sure the subscriber is aware of the content and, where appropriate, invite community groups to submit programming to counter it.

''We are starting to say it doesn't make sense to be totally hands off,'' she said.

Norman Gross, head of Tampa Bay's Anti-Hate Committee of B'Nai B'rith, said that might not be enough. For years, Gross has fought to keep groups like The National Alliance off the air in Florida. He says shows like Hale's are far too dangerous to ignore for the sake of free speech.

''I think public access has been a failed experiment. There is some speech that is so heinous that it should not be accepted in a decent society,'' said Gross. ''There are volatile people who look at these messages and, unfortunately, act on them.''

Hale said in a telephone interview that whites who marry minorities should be assassinated, while insisting he doesn't condone violence. Instead, he says, his soldiers are peacefully distributing videos to public access TV stations across the country.

Last month, Brian P. Davis, 21, of Wallingford, Conn., brought ''White Revolution'' tapes to AT&T Cable Services, according to the officials at the station.

Shortly afterward, Davis was arrested in upstate New York when, it was reported, police found several rounds of ammunition and a semiautomatic rifle in his car. He could not be reached for comment.

In his first of nine different programs, Hale dedicates his speech to another follower - Brian Smith, who over the July 4 weekend in 1998 killed two men and wounded eight during a shooting rampage in Indiana and Illinois during which he targeted minorities and Orthodox Jews.

Hale said Smith, 21, who eventually turned the gun on himself, was a kind man who couldn't take the unfair treatment white people face daily.

Oliver, who hosts his own weekly show on Channel 21 in Branford, said after viewing ''White Revolution'' that he's disturbed that Hale is defending a murderer. Oliver said the public access channel is watched by many, adding that he himself is recognized across Connecticut by viewers. Oliver also said he hopes people will reject Hale's message.

''You have to give a person a right to speak, but you have to get someone to rebut him,'' said Oliver, who is black.

Hale said his followers will use public access television to teach ''racism'' to white children and to attract young misunderstood people like Smith to ''the cause.''

''Our goal is to have it [the show] on in as many places as possible, and wherever white people are. We believe we can win them over,'' said Hale, who lives with his father in Illinois.

In 1984, Congress mandated local access channels for public, educational, or governmental use, according to a spokesperson for the Federal Communications Commission. Federal law prohibits cable companies from interfering with the editorial content of the program unless the program is deemed obscene.

Critics say groups have used public access television not only to espouse their views but to threaten others. In May, a Klansman who used his show to threaten a woman and her child settled a lawsuit by agreeing to pay her part of his salary.

But sometimes cable operators say they can do little more than sit back and watch.

''It's happening and it's disturbing. We hold our noses, but we have to allow it. It's tough at times,'' said Dale Clift, executive director of Nutmeg TV, a Connecticut public access organization. ''Whether you believe in the First Amendment or not - you really are tested when the material that is put on the air is something which you don't agree with.''

Locally, Jeff Hansell, executive director of Malden Access TV, said airing the messages of a Neo-Nazi or a Klansman is every public access administrator's worst nightmare. He said Malden's public access station has been able to limit offensive programming by reminding the viewers who want to sponsor it that ''they will be held accountable.''

In the small Branford office of AT&T, the staffers have found a more subtle way to respond to ''White Revolution.'' The show is followed by ''Mr. Crayon Man,'' a children's favorite in which a man dressed like a giant Crayola teaches children that all crayons are different, and no one is better than the other.

MASSACHUSETTS

Jim Rizoli a Holocaust denier and an anti-immigrant activist, lost his bid to become the state representative in the 6th Middlesex District in Framingham, Massachusetts. He received 1,219 votes or about 9% of the vote.

Although Jim Rizoli denies charges of anti-Semitism by claiming that he is merely "anti-Zionist," his Holocaust denial activities and references to a "Zionist controlled government" reveal his anti-Semitism.

During an October 2009 segment of his public access television show in Framingham, Rizoli delivered a lengthy diatribe promoting Holocaust denial. He defended Holocaust denier and Iranian leader Mahmoud Ahmadinejad, instructed viewers to conduct their own research on the Holocaust to discover the alleged "truth," and directed people to visit Web sites that advance Holocaust denial. Jim Rizoli's public access cable show, which he did with his twin brother Joe, was taken off the air in June 2010 after the cable station cited the Rizolis for 26 policy violations.

http://www.adl.org/combating-hate/domestic-extremism-terrorism/c/extremist-candidates-try-to.html

Officials' Hands Tied Over Racist Shows

Video Is Aired on 3 Nights in Arundel

By Daniel de Vise
Washington Post Staff Writer
Friday, December 16, 2005

It was, unapologetically, a recruiting video for a group that promotes an Aryan master race. Interspersing news footage of decaying urban scenes with still photographs of a segregated America, the show decried illegal immigration, rap music and "the multicultural degenerate mess that we have today," blaming it on Jewish media owners.

And it ran three nights in a row this week on public-access television in Anne Arundel County.

County leaders yesterday publicly denounced the video "America Is a Changing Country," produced by a West Virginia group called the National Alliance, but said free-speech laws stopped them from keeping it off the television.

"We checked everything to see if I had to legally allow them to proceed. I did," said County Executive Janet S. Owens, who described the program as "anti-everything."

The one thing Owens could do was place the show at 11:30 p.m., at the end of Anne Arundel Community Television's daily schedule. The video ran Monday, Tuesday and Wednesday, and Owen timed the public announcement for yesterday morning, hours after the final broadcast, so as not to attract more viewers.

The centerpiece of the video is a monologue by William Pierce, the group's late founder, who recounts the four-decade history of a group that once was considered by some to be among the most influential neo-Nazi organizations in the nation.

The station reaches 150,000 homes. Owens said yesterday that she had no evidence that anyone watched it: Neither her office nor the public-access station fielded any calls of complaint. Cable companies typically are required to offer some measure of public access as a condition for a local cable franchise.

Some in the Annapolis area did, however, take note of the promotional campaign that preceded it: Fliers appeared over the weekend on several streets in the state capital and in the nearby suburbs of Arnold and Severna Park, some with stickers advertising the show.

A packet landed on the lawn of Jennifer Laszlo Mizrahi, an Annapolis resident who is president of the Israel Project, a nonprofit group devoted to spreading accurate information about Israel.

"We had 22 pages of this horrific, vicious attack in a plastic bag in our driveway" Saturday morning, she said. "The Jewish Sabbath, how nice."

The spread of leaflets was at least the 12th such incident this year in Anne Arundel, said Lt. David Waltemeyer of the Anne Arundel police. The county seems to be a particular focus of the National Alliance, which has a chapter with an Annapolis address.

Last weekend, a swastika and an anti-Semitic epithet appeared at Severna Park High School, school district officials said.

This is not the first time Owens has wrestled with the civil rights of white supremacists as county executive. Six years ago, Anne Arundel County abolished its volunteer roadside cleanup program rather than face a court challenge over the Ku Klux Klan's desire to pick up litter along a stretch of highway.

White supremacists around the nation placed programs on many public-access channels in the 1990s, when local television offered as much exposure as such groups could hope to get, said Joe Roy, an expert on white supremacy at the Southern Poverty Law Center in Montgomery, Ala. The ascendance of the Internet as a mass communication tool in the past several years "replaced all that," he said, effectively silencing efforts on local television.

The National Alliance has foundered since Pierce's death in 2002 and subsequent infighting, civil rights advocates say.

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Article 8

Controversial Programming on Cable Television's Public Access Channels: The Limits of Governmental Response

Wally Mueller

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Pulling the Plug: Controversial Programming on Public Access Television and the Cable Television Consumer Protection and Competition Act of 1992, 28 J. Marshall L. Rev. 399 (1995)

Bradley J. Howard

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MEMORANDUM
#2016-027

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Leased Parking in future parking structure

Date: September 21, 2016 – Updated 10-24-16

Introduction/History

The City Council held a work session on October 19, 2015 regarding options for the number and monthly cost of leased parking spaces in the future Parking Structure.

Also present at that work session were members of Heart of Whitefish who advocated for a larger number of leased parking spaces and a lower monthly rental rate so as to still arrive at around $50,000 of annual revenue. That amount as was determined during the Parking Structure Feasibility Study to be in the range of annual revenue for Operations and Maintenance costs including accumulation of an equipment and facility replacement reserve that would add at least $10,000 per year to a reserve account.

The Parking options were also discussed during the meeting of April 4, 2016. A copy of the minutes from the April 4th meeting are attached to this staff report.

We are still planning to deploy a "free-flow" license plate recognition (LPR) system for the leased parking spaces on the 2nd and 3rd levels of the parking structure. We cannot have control gates at the entrance to the parking structure because any small queue of cars waiting to enter the structure will back up onto 1st Street. Also, parking control gates are very high maintenance, inflexible, and not very convenient and easy for customers.

FYI – the current plan is that the leased parking spaces would be for 12 hour days, say 6:00 a.m. to 6:00 p.m. or 7:00 a.m. to 7:00 p.m. Monday through Friday. At night time and on weekends, the entire parking structure would be free and unlimited parking. Cars left overnight at least in the leased parking spaces would be towed.

Current Report

We are ready to order the LPR cameras, but some final decisions need to be made prior to placing the order. We also are also nearly ready to advertise and solicit for businesses, other organizations, and citizens to sign up for parking leases. However, we need to finalize the monthly rate of the leases and whether there are two tiers of rates for covered versus uncovered spaces and how many spaces to lease so that we can position the LPR cameras in the parking structure.

A spreadsheet attached to this report provides a breakdown of retail, lease, short-term, and handicapped parking spaces in the parking structure. The spreadsheet also shows the lease revenues that might be realized from each option on an annual basis, if the spaces are fully leased, which is no certainty. The spreadsheet can easily adjust for different monthly lease rate scenarios if the Mayor and City Council want to analyze different rates.

Several questions or issues to decide are:

1. A single rate for monthly leases versus two tiers of rates for uncovered spaces on the roof and covered spaces. Also, at what level of cost? At the April 4th City Council meeting, the most support was voiced for two tiers of rates. I remain an advocate for a single rate in order to keep it simple for the City and users. The main impact of two tiers of rates is buying two more LPR cameras for about $27,000[1] more cost.

   The spreadsheet shows two tiers of rates with $30 per month for uncovered spaces and $40 per month for covered spaces. Our old lease rate for surface parking spaces at 3rd and Central and 2nd and Spokane lots (before we raised the rates and moved the spaces to Block 46) was $20 per month for 12 hour leases and $25 per month for 24 hour leases.

2. For either one or two tiers, there are two different options for the number of leased parking spots available and therefore the corresponding, free three hour retail spots. The number of leased spots depends upon where we place the LPR cameras, so we need to decide on the desired number of leased spots to start out with so we can place the cameras. The two options shown are for either 125 or 107 leased spaces and therefore a corresponding number of free, three hour retail parking spots at either 71 or 87 respectively.

   It is possible to change the camera locations in the future to about 8 different fixed locations that have power and a network cable to them, so it is somewhat flexible to change it in the future. We typically would want to start leased parking after turning a corner in the parking structure and starting up a new ramp for ease of driver understanding.

3. Hours of lease – from 6:00 a.m. to 6:00 p.m. or 7:00 a.m. to 7:00 p.m. I would recommend 6:00 a.m. to 6:00 p.m. because it will be difficult for us to enforce after 5:00

[1] Updated cost as of 10-24-16 – see attached price quote

p.m. I doubt many people would leave at 5:00 and be coming back before 6:00 p.m. or if so, I doubt they would have trouble getting a spot back between 5:00 and 6:00 p.m.

Financial Requirements and Revenues

See the attached spreadsheet for revenues generated from each option and the capital cost of 2 versus 4 LPR cameras (four cameras needed for two tiers of rates).

Recommendation

Staff respectfully recommends the City Council continue to provide direction on the number of leased parking spaces that we should plan for in the parking structure and their monthly lease rate or rates.

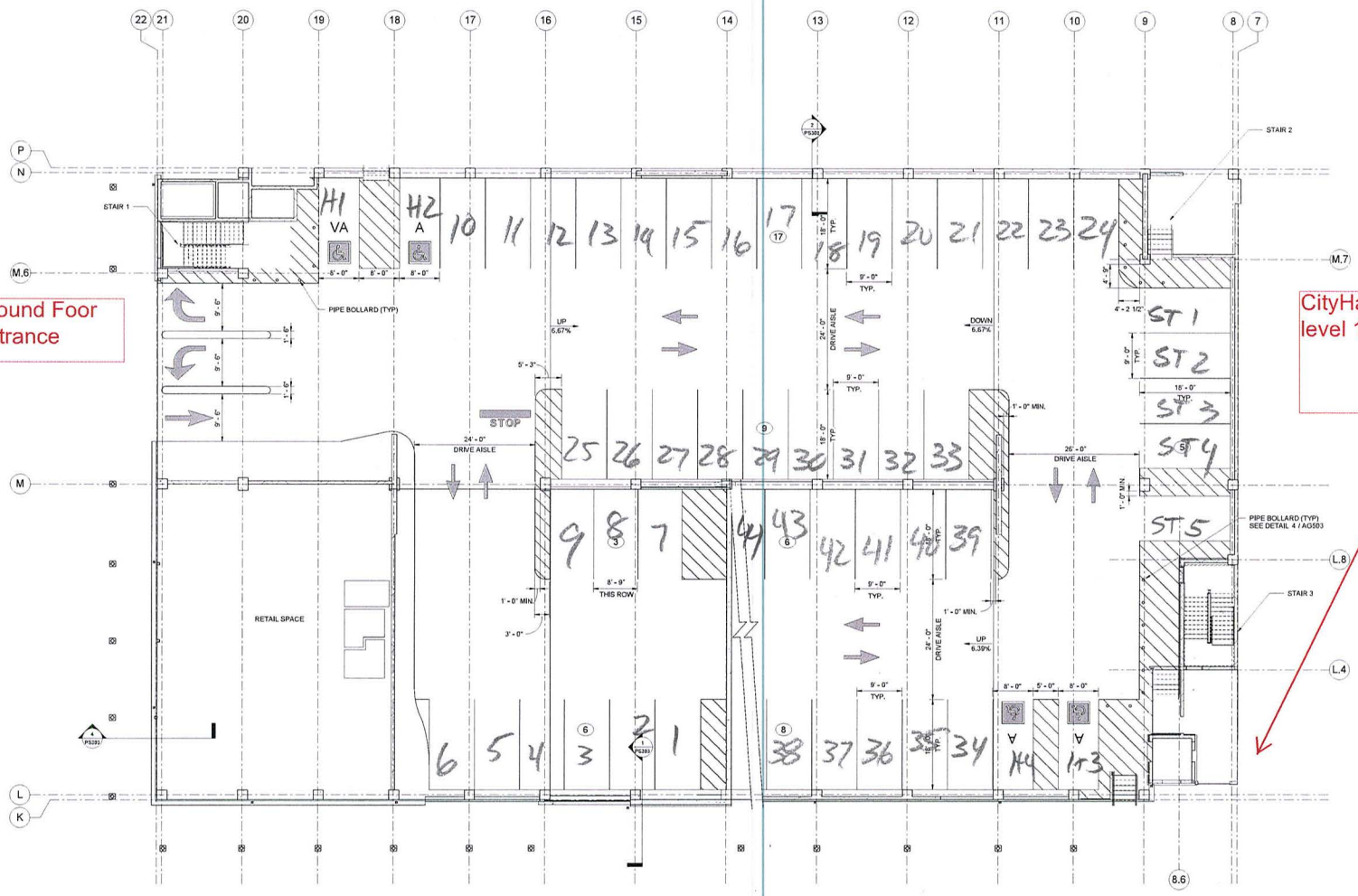
attachments

	A	B	C	D	E	F	G	H	I	J	K	L
1				Parking Structure								
2			Lease/Retail parking spot mix - Alternatives									
3			Prepared:		10/24/2016							
4												
5												
6												
7												
8												
9												
10				Option A		Option B		Option C		Option D		
11				Maximizes Leases		Maximizes Free Retail		Maximizes Leases		Maximizes Free Retail		Notes
12				Two Tiers of Rates		Two Tiers of Rates		One Rate Tier - $40/mo		One Rate Tier - $40/mo		
13	**PARKING SPACE ALLOCATIONS**											
14	Number of Free Retail Spaces			71		87		71		87		Entire Structure is free on weekends
15	Number of Free Retail Spaces - Handicapped			5		7		5		7		
16	Short Term Spots for quick City Hall in and out			10		10		10		10		5 spots on level 1 and 5 spots on level 2
17	Leased Parking - covered			20		20		20		20		
18	Leased Parking - uncovered			103		87		103		87		
19	Leased Parking - handicapped - covered			2		0		2		0		
20												
21	Total spaces			211		211		211		211		
22												
23												
24	**LEASE REVENUES**											
25	Lease parking - covered - annual revenue @	$40	per month	$10,560		$9,600						
26	Lease parking - uncovered - annual revenue @	$30	per month	$37,080		$31,320						
27												
28	Total Lease Revenue			$47,640		$40,920		$60,000		$51,360		
29												
30												
31	less One Half Cost of Facility Maintenance Tech position - annualized ($16.21/hour pay)		less	($31,050)		($31,050)		($31,050)		($31,050)		
32	(other half paid by TIF)											
33												
34	Amount available for supplies or to go into a facility reserve fund - annually			$16,590		$9,870		$28,950		$20,310		
35												
36												
37	Capital Cost of License Plate Recognition Cameras			$59,895 + waranty costs		$59,895 + waranty costs		$42,305 + warranty costs		$42,305 + warranty costs		
38												

First Floor of Parking Structure

Ground Foor Entrance

CityHall entrance - level 1



1 AG101 STRIPING PLAN - LEVEL P1
SCALE 1/8" = 1'-0"

N

NOTES:

1. ALL SPACES ARE TO BE 9'-0" WIDE UNLESS NOTED OTHERWISE, MEASURED FROM CENTER OF 4" WIDE WHITE STRIPE.
2. FOR FINISHED FLOOR ELEVATIONS, REFER TO SHEET PS100.
3. FOR DETAILS NOT SHOWN, REFER TO ARCHITECTURAL PLANS.
4. FOR ENLARGED STAIR PLANS, REFER TO PS401-404 AND ARCHITECTURAL PLANS.
5. ALL STRIPING TO BE RETRO-REFLECTIVE PAINT IN ACCORDANCE WITH SPECIFICATIONS. STRIPING PAINT AND SYMBOLS SHALL BE WHITE. CROSS-HATCH SHALL BE WHITE. FOR STRIPING DETAILS SEE AG104.
6. ALL CURBED CORNERS TO HAVE A MINIMUM 6" RADIUS UNO.
7. COORDINATE FINAL SIGN LOCATIONS WITH LIGHT FIXTURES, RISERS, DRAINS, AND CONDUIT.

LEGEND:

(23) DENOTES NUMBER OF PARKING SPACES SPACED BETWEEN CURBS, CURB ISLANDS, PAINTED ISLANDS, ETC.

DENOTES CROSS-HATCHED PAINTED AREA

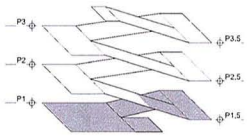
DENOTES "STOP" MARKING TO BE PAINTED ON FLOOR.

DENOTES PAVEMENT ARROW MARKING TO BE PAINTED ON FLOOR.

DENOTES ACCESSIBLE PARKING SPACE.

PARKING STALL COUNT SUMMARY (9'X18' STANDARD STALLS TYP.)

LEVEL	STANDARD SPACES	NON-STANDARD SPACES (< 9'-0")	ACCESSIBLE SPACES	VAN ACCESSIBLE SPACES	TOTAL SPACES	AREA (SF)	EFFICIENCY
P3	70	13	0	0	83	28866	348
P2	69	3	2	1	75	26598	355
P1	47	3	3	1	54	23382	433
TOTAL	186	19	5	2	212	78846	372



MONTANA SANJAY PANDYA No. 36816 PE LICENSED PROFESSIONAL ENGINEER

Kimley»Horn

mosaic architecture-planning-design
428 N. Last Chance Gulch
Helena, Montana
59601

BUILDING SHELL BID PACKAGES

Whitefish City Hall Parking Structure
Baker Street, Whitefish, Montana 59937

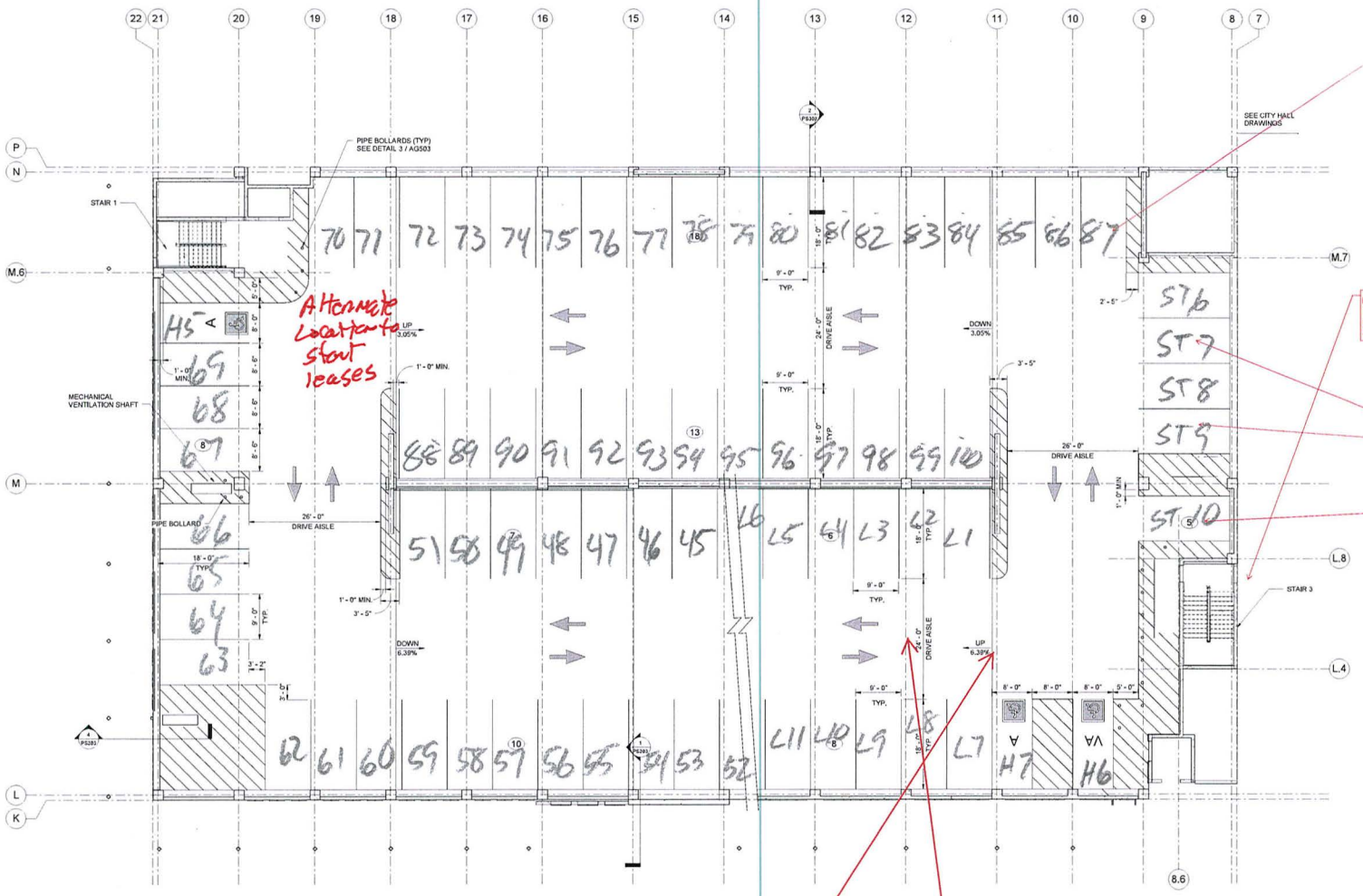
STRIPING PLAN - LEVEL P1

DATE 09-21-15

SHEET AG101

DATE STAMP 9/22/2015 10:01:10 AM

Second Floor of Parking Structure



Free, 3 hour retail parking below this point - controlled by chalking

City Hall - 2nd Floor Entrance

Free, short term City Hall drop in parking 1/2 hour to 1 hour

Leased parking begins at this point

Location of Genetec cameras - one pointing downhill and one pointing uphill

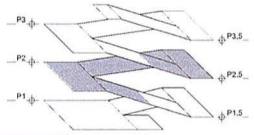
STRIPING PLAN - LEVEL P2
SCALE: 1/8" = 1'-0"

NOTES:

1. FOR NOTES SEE SHEET AG101.

LEGEND:

- DENOTES NUMBER OF PARKING SPACES SPACED BETWEEN CURBS, CURB ISLANDS, PAINTED ISLANDS, ETC.
- DENOTES CROSS-HATCHED PAINTED AREA
- DENOTES "STOP" MARKING TO BE PAINTED ON FLOOR.
- DENOTES PAVEMENT ARROW MARKING TO BE PAINTED ON FLOOR.
- DENOTES ACCESSIBLE PARKING SPACE.



MONTANA SANJAY PANDYA No. 36816 PE LICENSED PROFESSIONAL ENGINEER

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mosaic architecture-planning-design
428 N. Last Chance Gulch
Helena, Montana
59601

BUILDING SHELL BID PACKAGES

Whitefish City Hall Parking Structure
Whitefish, Montana 59937

STRIPING PLAN - LEVEL P2

DATE 09-21-15

SHEET AG102

DATE STAMP: 9/22/2015 10:01:29 AM

Top Floor - 3rd floor - open to sky

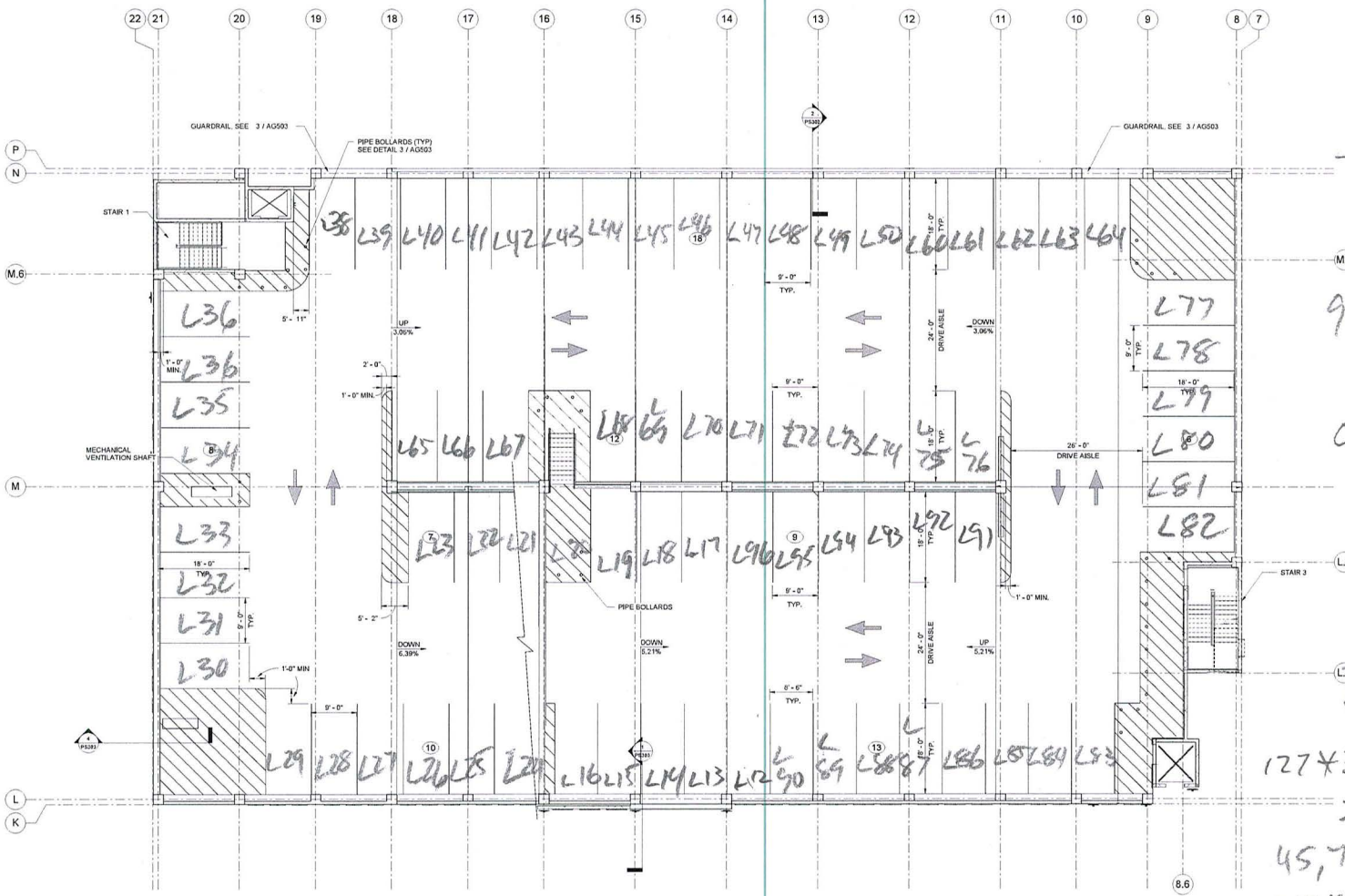
100 Retail
5 Handicapped
10 Short Term
96 Lease
211

96 * 40 * 12 =
46,080

OR
69 Retail
5 H
10 ST
127 Lease
211

127 * 30 * 12
=
45,720

127 * 40 * 12 =
60,960



AG103 STRIPING PLAN - LEVEL P3
SCALE: 1/8" = 1'-0"

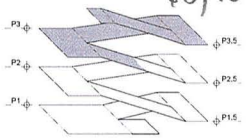
N

NOTES:

1. FOR NOTES SEE SHEET AG101.

LEGEND:

- (23) DENOTES NUMBER OF PARKING SPACES SPACED BETWEEN CURBS, CURB ISLANDS, PAINTED ISLANDS, ETC.
- DENOTES CROSS-HATCHED PAINTED AREA
- DENOTES "STOP" MARKING TO BE PAINTED ON FLOOR.
- DENOTES PAVEMENT ARROW MARKING TO BE PAINTED ON FLOOR.
- DENOTES ACCESSIBLE PARKING SPACE.



MONTANA
SANJAY PANDYA
No. 36816 PE
LICENSED PROFESSIONAL ENGINEER

Kimley»Horn

#	DATE	REVISION

mosaic
architecture-planning-design
428 N. Last Chance Gulch
Helena, Montana
59601

BUILDING SHELL BID PACKAGES

Whitefish City Hall Parking Structure
Street,
Whitefish, Montana 59937

STRIPING PLAN - LEVEL P3

DATE 09-21-15

SHEET AG103

DATE STAMP 9/22/2015 10:01:29 AM

Councilor Hildner made a motion, second by Councilor Williams to approve the FY17 marketing plan and public lodging tax budget not to exceed $90,000. The motion passed unanimously with a 5-0 vote, Councilor Frandsen abstaining.

4) COMMUNICATIONS FROM THE PUBLIC – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda) (CD: 23:00)

Allen Secher, 955 Northwoods Drive, thanked the Council for passing the Non-Discrimination Ordinance. He stated he is proud to live in Whitefish.

Rhonda Fitzgerald, 412 Luper Avenue, spoke towards the lease parking rates that are on the agenda. She urges the Council to structure the rates system in such a way that as many employees and business owners park in the garage as possible to provide off street parking to the customers. She is hoping that there be different rates for covered and un-covered parking.

Denny Gignoux, 659 West 9th Street, presented a petition to the Council from the residents that live in the county from 18th Street to 7th Street, who are wanting to live in R2 zoning rather than R3 zoning that the County is proposing. He is asking the Council to not reconstruct West 7th Street and keep it as a rural street.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS (CD 28:00)

Councilor Hildner reported on behalf of the Bicycle Pedestrian Committee. Skye Park Bridge grading and paving should be completed by the end of April. The committee recognizes the problem with transients along the river. The committee is looking for a contract amendment to the Bike/Ped Master Plan update to include information in regards to construction or creation of the trail in front of Riverbend Condos. The committee would like this done prior to Riverbend Condos HOA meeting in July. There is going to be a special Bicycle Pedestrian meeting on April 18, at 8:30 a.m. in the Council Conference Room to go over the Master Plan updates.

6) CONSENT AGENDA (CD 29:29)

a) Minutes from the March 21, 2016 Council executive session (p.119)

b) Minutes from the March 21, 2016 Council regular meeting (p.120)

c) Ordinance No. 16-07; An Ordinance adding a new chapter to Title 1, Administration, of the Whitefish City Code, to establish a civil rights policy prohibiting discrimination on the basis of actual or perceived sexual orientation or gender identity or expression, creating a cause of action in the Whitefish Municipal Court, authorizing the Municipal Court to fashion civil remedies, creating a time limit under which a claim may be filed, and establishing an effective date (Second Reading) (p.129)

Councilor Hildner had corrections to the minutes on page 124 of the packet, next to the last paragraph. Change "in partial" to "in part of", then change "bit" to "bid" in the motion on the same page.

Councilor Sweeney had a correction on page 123 of the packet, in the first paragraph, second line, change "…… rock solid and demonstrated in other communities that had strived as a result" to "…… rock solid and in other communities that have enacted it have thrived as a result."

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

(NONE)

8) COMMUNICATIONS FROM CITY MANAGER (CD 31:14)

a) Written report enclosed with the packet. Questions from Mayor or Council? (p.137)-None

b) Other items arising between March 30th and April 4th -None

c) Discussion and possible direction on options for leased parking in the future parking structure – number of spaces, lease rates, and other items (p.144)

City Manager Stearns gave his staff report that is included in the packet on the website. In order to put in cameras for License Plate Recognition (LPR), he is looking for a decision on the number of conduit and the location of the cameras in the parking structure.

City Manager Stearns reviewed the options for additional lease spaces on page 145 of the packet. City Manager Stearns agreed with Heart of Whitefish that it is desirable to get as many cars off of Central Avenue from employees and get them relocated, so we want the lease rate to be attractive. He met with Chris Schustrom and he pressed City Manager Stearns with a difference with covered and un-covered parking rates.

City Manager Stearns reported he is starting to anticipate in the budget a position to both maintain City Hall Parking Structure and do the enforcement of the lease parking. That position on an annual basis will cost $61,772, without any other supplies or cost. There could be an argument that not all of that should go towards parking lease, but if it is not paid for by parking leases then we will have to pay it out of property taxes.

The LPR system is nice to use since we can't have a gate at the entrance on 1st Street, due to too many vehicles would be backed up. A gate could be placed at the start of the lease section of the structure, but gates require maintenance, and are customer unfriendly. The LPR is customer friendly, and can be effective with a 90% recognition. Obviously with the dirty license plates and those covered in snow it won't recognize the plate. That is when the Parking Structure Maintenance would go and verify the license plate and enforce if need be.

City Manager Stearns walked the Council through the map on page 159 of the packet, of his thoughts on location for the conduit for the camera system. Two cameras are needed in each location, one for each direction of traffic. City Manager Stearns is looking for direction from the Council on how many locations are wanted or needed for the conduit for the camera system.

Discussion followed between Councilor Williams and City Manager Stearns regarding the number of vehicles per leased space. City Manager Stearns thought two vehicles per space, the LPR system could have options of three to four plates per space, which could be more difficult. The LPR system will send an alarm if anything is out of the ordinary. Councilor Williams felt businesses might be more incentivized if purchasing two or three lease spots and rotate through employees on shift. City Manager Stearns stated the lease will be 12-hours, and evenings and weekends the whole structure will be free and available.

Councilor Sweeney asked and City Manager Stearns stated it is going to be more of a first come first serve rather than assigned parking. With this there could be some concern with covered and un-covered parking control. The system should be able to pick up if a vehicle who is not authorized to park in covered and should be parking in un-covered parking. Councilor Sweeney also asked if 127 spaces will be leased, City Manager Stearns stated there is not a good feeling for the demand, but we could incentivize the merchants with lower rates, or discounted rates for long lease period, or quantity leasing.

Councilor Frandsen agreed to differentiate between covered and un-covered parking rates and incentivize that a little more and provide as many conduit locations as possible.

Councilor Hildner favors the three camera conduit locations that City Manager Stearns suggested. He would support the differentiation of the rate prices.

Discussion followed between Mayor Muhlfeld and City Manager Stearns regarding evening leased parking. City Manager Stearns stated the peak parking is during the day and at night parking is usually available in the 200 block of Central. The peak event parking is Farmers Market; he believes the whole parking structure should be available at night. City Manager Stearns said the system would be flexible enough to lease in the evenings. He can go back and research if other Utility Parking Structures lease in the evening. Finance Director Smith stated that with the evening leasing we need to think about the cost of enforcement for overnight parking. We have staff on hand Monday through Friday, enforcement overnight would require somebody to be on call, which would be an increased cost.

Mayor Muhlfeld stated when the revenue goal was set, it was anticipated that revenue would be used for operation and maintenance of the garage. There was never talk of creating an additional position of a lease manager. City Manager Stearns stated there was always some anticipation that some salary would need to go to operations and maintenance. We need City Hall maintenance, Parking Structure maintenance and somebody to handle the lease violations. Mayor Muhlfeld asked and City Manager Stearns stated he anticipates putting the position in the Parks and Recreation budget, which would include maintenance at the ESC to help with the HVAC system, and boiler system. Mayor Muhlfeld felt this is a more detailed discussion for the budget session.

Councilor Sweeney agrees with Mayor Muhlfeld, that the cost of operations and maintenance didn't include time a person was going to take to do that work. Since this position will have other duties outside the Parking Structure, it should not be charged to the operations and maintenance. Mayor Muhlfeld is opposed to using property tax revenue to pay for the operation and maintenance of the Parking Structure. Finance Director Smith clarified that each position is allocated across funds.

City Manager Stearns will create as much flexibility for camera positions and continue to think about lease.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 1:10:50)

a) Consideration of approving the Request for Qualifications (RFQ) for a Housing Needs Assessment in conjunction with the Whitefish Chamber of Commerce (p.153)

City Manager Stearns gave the staff report that is included in the packet on the website. Kevin Gartland with the Whitefish Chamber of Commerce, stating they were trying to link two parts of the process together and bring the assessment and the planned development under one RFQ, to be eligible for WCVB grants for phase II, unfortunately, was not able to get there. This is moving forward with the RFQ for the housing assessment.

Councilor Sweeney asked and Kevin stated the decision that is taken to the Board will come out of the selection committee. The council and the City will be represented in the selection committee.

Councilor Sweeney made a motion, second by Councilor Barberis to approve the Request for Qualifications (RFQ) for a Housing Needs Assessment. The motion passed unanimously.

b) Letter from Toby Scott regarding the South Whitefish Transportation Plan issues (p.159)-None

c) Consideration of appointing City representative to the Haskill Basin Conservation Easement Liaison Team (p.160)

Councilor Hildner made a motion, second by Councilor Sweeney to appoint Mayor Muhlfeld as a representative to the Haskill Basin Conservation Easement Liaison Team. The motion passed unanimously.

Councilor Frandsen stated that the property on Edgewood next to the O'Shaughnessy property has been slowly clearing the trailers from the property, but there is trash that needs to be cleaned up and would like Code Enforcement to look into it.

Councilor Sweeney stated that the Consent Agenda was the most pleasurable to approve in some time.

Mayor Muhlfeld suggested holding another work session in July regarding the Lion Mountain septic and sewer alternatives. Councilor Frandsen asked if this is delayed until July

FEDERAL SIGNAL
Safety and Security Systems
Protecting people and our planet

QUOTE

Project Name: Parking Garage opt cameras

Quote Number **SSGQ17932**
Date 10/24/2016
Expiration Date 12/06/2016

Presented To:
City of Whitefish
Chuck Stearns, City Manager
PO Box 158
1005 Baker Ave
Whitefish, MT 59937-0158
USA

Phone 406-863-2406
Email cstearns@cityofwhitefish.org

Your Sales Rep
Mike O'Brien
Enterprise Sales Manager
Phone (708) 465-0812

Fax
mobrien@fedsig.com

Terms	Ship Via	FOB
NET 30 With Account Approval	Ex-Works, University Park, IL	Origin

Line	Qty	Part Number	Description	Unit Price	Extended Price
1			SERVER SOFTWARE		
2	1	V-GSC-BASE-5.4	Genetec Security Center (GSC) Base Package - Version 5.4 which includes: 1 Directory, 5 Security Desk client connections (incl. Web Client), Plan Manager Basic, Alarm Management, Advanced Reporting, System Partitioning, Zone Monitoring, IO Modules Support, Email Support, Macros Support (actual macros sold separately), Support for server virtualization, all supported languages. Must purchase a Synergis, Omnicast, or AutoVu base package to enable access control, video, or LPR content respectively.	$0.00	$0.00
3	1	S-GSC-Av-S	GSC AutoVu Standard Base Package. Works with Genetec Security Center (sold separately) SQL 2008 Express Edition included. Full Microsoft SQL Server 2008 package not included. Camera connection NOT included	$1,495.00	$1,495.00
4	1	S-GSC-FREEFLOW-Base	AutoVu™ Free-Flow Base Package. Includes 1 Free-Flow Lot, List Updater and Pay-by-Plate.	$7,500.00	$7,500.00
5			SubTotal		$8,995.00
6			GARAGE EQUIPMENT		
7	2	S-AU-K-XGA-W25850-U	WHITE AUTOVU SHARP XGA CAMERA KIT WHICH INCLUDES: SHARP XGA 25MM LENS AND 850NM ILLUMINATOR, UNIVERSAL MOUNTING AND 10M FIXED EXTERIOR CABLE (POWER SUPPLY NOT INCLUDED)	$7,350.00	$14,700.00
8	2	V-GSC-Av-S-1SHP	ONE (1) FIXED SHARP CAMERA CONNECTION (ONE (1) CONNECTION IS REQUIRED FOR EACH ANALYZED STREAM)	$450.00	$900.00
9	2	S-ADV-LPR-F-1Y	Genetec Advantage for 1 AutoVu fixed camera - 1 Year	$80.00	$160.00
10	2	S-MM22	LPR CAMERA MOUNT FOR CEILING	$65.00	$130.00
11	2	V-IPCAM	IPCAM - NEMA4 EQUIPMENT CABINET WITH POWER SUPPLY, NETWORK SWITCH AND SURGE PROTECTION	$850.00	$1,700.00

NETWORK CABLE RAN TO BOX AND PLUGGED INTO EXISTING NETWORK THAT CONNECTS TO SERVER. IT IS ASSUMED THERE IS AN AVAILABLE SWITCH AND PORT TO PLUG IN CABLE

Line	Qty	Part Number	Description	Unit Price	Extended Price
12			SubTotal		$17,590.00
13			FSC SERVICES		
14	1	TK-IO-CUSTINS	CUSTOM INSTALLATION SERVICES	$4,500.00	$4,500.00
		ALL CONDUIT FOR NETWORK AND 24/7 ELECTRIC B/O. FSC TO INSTALL HARDWARE COMMISSION & TRAIN			
15	1	TK-S-PROJMGT	PROJECT MANAGEMENT SERVICES (TRAVELING & LIVING EXPENSES NOT INCLUDED)	$600.00	$600.00
16	1	TK-S-SYSENG	SYSTEMS ENGINEERING: BUILD BOXES, CONFIGURE CAMERAS, 3-DAYS FSC ENG ON GROUND TO SUPPORT HARDWARE INSTALL, INSTALL SOFTWARE ON SERVER, COMMISION CAMERAS/SYSTEM & TRAINING.	$6,100.00	$6,100.00
17			Running SubTotal		$37,785.00
18			OPTIONAL ADDITIONAL (2) CAMERAS		
19	2	S-AU-K-XGA-W25850-U	WHITE AUTOVU SHARP XGA CAMERA KIT WHICH INCLUDES: SHARP XGA 25MM LENS AND 850NM ILLUMINATOR, UNIVERSAL MOUNTING AND 10M FIXED EXTERIOR CABLE (POWER SUPPLY NOT INCLUDED)	$7,350.00	$14,700.00
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		NETWORK CABLE RAN TO BOX AND PLUGGED INTO EXISTING NETWORK THAT CONNECTS TO SERVER. IT IS ASSUMED THERE IS AN AVAILABLE SWITCH AND PORT TO PLUG IN CABLE			
24	1	TK-IO-CUSTINS	CUSTOM INSTALLATION SERVICES	$3,000.00	$3,000.00
25	1	TK-S-PROJMGT	PROJECT MANAGEMENT SERVICES (TRAVELING & LIVING EXPENSES NOT INCLUDED)	$400.00	$400.00
26	1	TK-S-SYSENG	SYSTEMS ENGINEERING PER HOUR	$1,120.00	$1,120.00
27			SubTotal		$22,110.00
28			OPTIONAL EXTENDED HARDWARE WARRANTY		
29	4	S-AU-K-S-EWAS-P2	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH ADVANCE REPLACEMENT COVERAGE - TOTAL WARRANTY COVERAGE OF 2 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE FOR RETURN AND REPAIR, PLUS UPDATE TO ADVANCED REPLACEMENT PLAN AND ONE (1) ADDITIONAL YEARS) (Optional)	$1,180.00	$4,720.00
30	4	S-AU-K-S-EWAS-P3	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH ADVANCE REPLACEMENT COVERAGE - TOTAL WARRANTY COVERAGE OF 3 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE FOR RETURN AND REPAIR, PLUS UPDATE TO ADVANCED REPLACEMENT PLAN AND TWO (2) ADDITIONAL YEARS) (Optional)	$1,840.00	$7,360.00
31	4	S-AU-K-S-EWAS-P4	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH ADVANCE REPLACEMENT COVERAGE - TOTAL WARRANTY COVERAGE OF 4 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE FOR RETURN AND REPAIR, PLUS UPDATE TO ADVANCED	$2,460.00	$9,840.00

Line	Qty	Part Number	Description	Unit Price	Extended Price
			REPLACEMENT PLAN AND THREE (3) ADDITIONAL YEARS) (Optional)		
32	4	S-AU-K-S-EWAS-P5	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH ADVANCE REPLACEMENT COVERAGE - TOTAL WARRANTY COVERAGE OF 5 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE FOR RETURN AND REPAIR, PLUS UPDATE TO ADVANCED REPLACEMENT PLAN AND FOUR (4) ADDITIONAL YEARS) (Optional)	$2,980.00	$11,920.00
		ABOVE IS ADVANCED REPLACEMENT ON HARDWARE SHOULD ANYTHING FAIL			
33	4	S-AU-K-S-EWRR-P2	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH RETURN AND REPAIR COVERAGE - TOTAL WARRANTY COVERAGE OF 2 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE AND ONE (1) ADDITIONAL YEARS) (Optional)	$670.00	$2,680.00
34	4	S-AU-K-S-EWRR-P3	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH RETURN AND REPAIR COVERAGE - TOTAL WARRANTY COVERAGE OF 3 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE AND TWO (2) ADDITIONAL YEARS) (Optional)	$1,190.00	$4,760.00
35	4	S-AU-K-S-EWRR-P4	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH RETURN AND REPAIR COVERAGE - TOTAL WARRANTY COVERAGE OF 4 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE AND THREE (3) ADDITIONAL YEARS) (Optional)	$1,670.00	$6,680.00
36	4	S-AU-K-S-EWRR-P5	EXTENDED WARRANTY FOR SHARP VGA OR SHARP XGA WITH RETURN AND REPAIR COVERAGE - TOTAL WARRANTY COVERAGE OF 5 YEARS WHEN PRE-PAID AT TIME OF SYSTEM PURCHASE (ONE YEAR INCLUDED IN THE SELLING PRICE AND FOUR (4) ADDITIONAL YEARS) (Optional)	$2,080.00	$8,320.00
		ABOVE IS RETURN & REPAIR SHOULD ANYTHING FAIL			

SubTotal	$59,895.00
Tax	
Total	$59,895.00
Recurring Totals	$0.00

Quote Approved by: _____

Line	Qty	Part Number	Description	Unit Price	Extended Price

Prices are firm until expiration date above unless shown otherwise. Upon acceptance, prices are firm for 6 months. This quotation is expressly subject to acceptance by Buyer of all Terms stated in the attached Terms document, and any exception to or modification of such Terms shall not be binding on Seller unless expressly accepted in writing by an authorized agent or Officer of Seller. Any order submitted to Seller on the basis set forth above, in whole or in part, shall constitute an acceptance by Buyer of the Terms. Any such order shall be subject to acceptance by Seller in its discretion. If the total price for the items set forth above exceeds $50,000 then this quotation IS ONLY VALID if countersigned below by a Regional Manager of the Safety & Security Systems Group, Federal Signal Corporation. Installation is not included unless specifically quoted as a line item above. Adverse Site Conditions, including rock, caving soil conditions, contaminated soil, and poor site access availability, and other circumstances which result in more than 2 hours to install a pole, will result in a $385.00 per hour fee, plus equipment. Trenching is additional. Power Clause, bringing power to the equipment is the responsibility of the purchaser. Permit Clause, any special permits, licenses or fees will be additional. See attached Terms sheet.

Please make all payments payable to:

FEDERAL SIGNAL CORPORATION - ALERTING & NOTIFICATION SYSTEMS

Quote Number SSGQ17932

Approved by: _____ Date: _____

FEDERAL SIGNAL
Protecting people and our planet

TERMS AND CONDITIONS OF SALE (Goods and Services)
Effective 9-20-2016

1. DEFINITIONS. In these Terms and Conditions of Sale, "Seller" means Federal Signal Corporation, including any division or subsidiary of Federal Signal Corporation; "Buyer" means the person or entity that placed the order or on whose behalf the order is placed; "Goods" means the goods identified in Seller's acknowledgement of Buyer's order; "Services" means the services identified in Seller's acknowledgment of Buyer's order; "Contract" means the written agreement (which shall include these Terms and Conditions) between Buyer and Seller for the supply of the Goods and/or provision of Services; and "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services.

2. ORDERS; CONTRACT. All orders must be in writing. Buyer understands and agrees that any order, upon Acceptance by Seller, shall be subject to these Terms and Conditions of Sale. Seller objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's order or in any other communication from Buyer to Seller, or any trade usage or course of dealing between Buyer and Seller, unless expressly agreed to in writing by Seller in Seller's acknowledgement of Buyer's order. If the details of the Goods or Services described in Seller's quotation differ from those set out in Seller's acknowledgment, the latter shall apply. Seller reserves the right to make minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

3. EFFECTIVE DATE; CANCELLATION. The Contract shall become effective only upon the date of acceptance of Buyer's order by Seller's written acknowledgement or upon Seller's commencement of performance, whichever is first ("Acceptance"). Buyer may not cancel or change an order after Acceptance by Seller without the written consent of Seller. Notwithstanding the forgoing, Seller may, in its sole discretion, agree to a written request from Buyer for cancellation of an open order under the following conditions: Seller shall be subject to cancellation charges equal to the greater of (i) 110% of the cost of work completed and/or custom materials purchased at the time the request is delivered, or (ii) a percentage of the canceled portion of the Contract calculated as follows:

10%	-	if cancelled more than 2 weeks from the Effective Date;
20%	-	if cancelled more than 4 weeks from the Effective Date;
40%	-	if cancelled more than 6 weeks from the Effective Date;
80%	-	if cancelled more than 8 weeks from the Effective Date.

4. PRICE AND PAYMENT TERMS. Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date of issuance to Buyer. Prices are subject to increase by Seller based on Seller's prices in effect at the time of shipment in all instances where the specified shipment date is more than 30 days from the date of the order from Buyer. Unless otherwise specified in the Contract or Seller's applicable price list, prices are FOB Seller's point of shipment, and the terms of payment are NET 30 days from the date of invoice. Amounts not paid when due shall bear interest for each day after the due date calculated at the annual rate of 18% or the highest rate permitted by law, whichever is less. Freight, packing and handling will be charged at Seller's standard rates, which are available upon request by Buyer. If the Contract is for more than one unit of Goods, the Goods may be shipped in a single lot or in several lots at the discretion of Seller. In such event, each such shipment shall be paid separately and Buyer shall be responsible for all transportation charges. Seller may require full or partial payment or payment guarantee in advance of shipment whenever, in its opinion, the financial condition of Buyer so warrants. Payment by credit card may be subject to a service charge.

5. TITLE; RISK OF LOSS. Title to, ownership of, and risk of loss or damage to the Goods shall pass to the Buyer, and Buyer shall be responsible for insurance of the Goods, upon delivery of the Goods to the carrier. Alternatively, if it is expressly stated in the Contract that Seller is to procure insurance for the Goods after delivery to the carrier, such insurance will be charged at the carrier's standard rates. "FOB" and any other delivery term used in the Contract shall be defined in accordance with the latest version of Incoterms. Buyer shall have sole responsibility for processing and collection of any claim of loss against the carrier.

6. TAXES. Prices do not include taxes. Buyer shall pay Seller, in addition to the price of the goods, any applicable excise, sales, use or other tax (however designated) imposed upon the sale, production, delivery or use of the Goods or Services ordered to the extent required or not forbidden by law to be collected by Seller from Buyer, whether or not so collected at the time of the sale, unless valid exemption certificates acceptable to the taxing authorities are furnished to Seller before the date of invoice.

7. DELIVERY; FORCE MAJEURE. Unless otherwise stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only and are not guaranteed. If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents, the delivery/completion period and the Contract Price shall both be adjusted as necessary. If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for shipment, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into storage at Buyer's expense. Upon placing the Goods into storage, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly. The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labor trouble, strike, lockout or injunction. Seller shall have no obligation to deliver any hardware, software, services or technology unless and until it has received any necessary licenses or authorizations or has qualified for general licenses or license exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time (including without limitation those of the United States, the European Union and the jurisdiction in which Seller is established or from which the items are supplied). If for any reason any such licenses, authorizations or approvals are denied or revoked, or if there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller from fulfilling the Contract, or would in the reasonable judgment of Seller otherwise expose Seller to a risk of liability under applicable laws, regulations, orders or requirements, Seller shall be relieved without liability of all obligations under the Contract. If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by installments, and each

delivery shall constitute a separate Contract. Failure by Seller to deliver any one or more of the installments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

8. INSPECTION. Buyer shall inspect the goods immediately upon the receipt thereof. All claims for shortfalls in quantity or for incorrect delivery or for any alleged defect in Seller's performance under this Contract, capable of discovery upon reasonable inspection, must be fully set forth in writing and received by Seller within five days of Buyer's receipt of the Goods. Failure to make any such claim within said period shall constitute a waiver of such claim and an irrevocable acceptance of the Goods by Buyer.

9. DEDUCTIONS AND RETURNS. Buyer must contact the factory before returning any merchandise. Goods in new, unused and undamaged condition that are resalable as new products without modification or repackaging may be returned to Seller for credit only upon the Seller's prior written consent (such consent to be in the sole discretion of Seller) and upon terms specified by Seller, including prevailing restocking, freight, and handling charges. A Return Material Authorization (RMA) must be obtained before returning merchandise for credit. All returns are subject to inspection of merchandise and any defects in the units will be charged back to the Buyer at the cost of parts and labor. Credit deductions will not be honored unless covered by an RMA. Buyer assumes all risk of loss for such returned goods until actual receipt thereof by Seller. Agents of Seller are not authorized to accept returned goods or to grant allowances or adjustments with respect to Buyer's account.

10. LIMITED WARRANTY.

NOTICE: IF ANY GOODS, INCLUDING ANY COMPONENT PART OF ANY GOODS, OR SERVICES SOLD BY SELLER ARE ACCOMPANIED BY A SEPARATE MANUFACTURER'S WARRANTY COVERING SUCH GOODS OR SERVICES, THE TERMS OF SUCH WARRANTY, INCLUDING ALL LIMITATIONS OF SUCH WARRANTY, SHALL GOVERN THOSE GOODS OR SERVICES, AND ANY WARRANTY OF SELLER OTHERWISE APPLICABLE TO SUCH GOODS OR SERVICES SHALL NOT APPLY.

A. **Goods.** Subject to the forgoing, Seller's limited warranty for any new Goods which are the subject of any Seller's acknowledgement of Buyer's order may be found at www.fedsig.com/ssg-warranty or may be obtained by writing to Federal Signal Corporation, 2645 Federal Signal Drive, University Park, IL 60484; by email to info@federalsignal.com; or by calling 708/534-3400**.**

B. **Services** Seller warrants that Services provided by Seller will be performed with all reasonable skill, care and diligence and in accordance with standard industry practice. Seller will correct defects in Services provided by Seller and reported to Seller within ninety days after completion of such Services. Services corrected in accordance with this Section shall be subject to the foregoing warranty for an additional ninety days from the date of completion of correction of such Services.

11. REMEDIES AND LIMITATIONS OF LIABILITY. The remedies contained the preceding paragraph constitute the sole recourse against Seller for breach of any of Seller's obligations under the Contract, whether of warranty or otherwise. **IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES NOR SHALL SELLER'S LIABILITY ON ANY CLAIM FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR CONNECTED WITH THE CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS OR SERVICES EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk

12. LIMITED INDEMNITY AGAINST INFRINGEMENT. Seller shall, at its own expense, defend any litigation resulting from sale of the Goods to the extent that such litigation alleges that the Goods or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Goods in combination with equipment or devices not made by Seller or from modification of the Goods, and further provided that Buyer notifies Seller immediately upon its obtaining notice of such impending claim and cooperates fully with Seller in preparing a defense. If Buyer provides to Seller the authority, assistance, and information Seller needs to defend or settle such claim, Seller shall pay any final award of damages in such suit and any expense Buyer incurs at Seller's written request, but Seller shall not be liable for a settlement made without its prior written consent. If the Goods are held to be infringing and the use thereof is enjoined, Seller shall, at its option, either (i) procure for the Buyer the right to use the Goods, (ii) replace the Goods with others which do not constitute infringement, or (iii) remove the infringing Goods and refund the payment(s) made therefor by Buyer. The foregoing states the Buyer's sole remedy for, and Seller's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Goods provided hereunder. **THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.**

13. INTELLECTUAL PROPERTY RIGHTS. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights , mask works, source code, object code, patents, patent applications, know-how, computer and/or product software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for Seller in the production of any Goods or Services sold hereunder will be and remain the sole property of Seller (or its licensors, if any). Buyer agrees not to reverse engineer any Goods purchased hereunder.

14. EXPORT REGULATIONS. Buyer agrees to comply fully with all laws and regulations concerning the export of Goods from the United States.

15. INSTALLATION. In those circumstances where Seller has agreed to install Goods for Buyer, the following provisions shall control:

A. Responsibility. Installation shall be by Buyer unless otherwise specifically agreed to in writing by Seller.

B. Receiving Product and Staging Location. Buyer is responsible to receive, store and protect all Goods intended for installation purposes, including, but not exclusively, siren equipment, poles, batteries, and installation materials. Materials received in cardboard containers must be protected from all forms of precipitation. Additionally, Buyer is to provide a staging area of an appropriate size for installation contractors to work from and to store equipment overnight.

C. Installation Methods & Materials. Installation is based on methods and specifications intended to meet applicable safety and installation codes and regulations. Design changes required by Buyer may result in additional charges.

D. Radio Frequency Interference. Seller is not responsible for RF transmission and reception affected by system interference beyond its control.

E. Installation Site Approval. Buyer must provide signed documentation to Seller, such as the "WARNING SITE SURVEY FORM" or a document with the equivalent information, that Seller is authorized to commence installation at the site designated by Buyer before Seller will commence installation. Once installation has started at an approved site, Buyer is responsible for all additional costs incurred by Seller for redeployment of resources if the work is stopped by Buyer or its agents, property owners, or as the result of any governmental authority or court order, or if it is determined that installation is not possible at the intended location, or the site is changed for any reason by the Buyer.

F. AC Power Hookup. Buyer is responsible to coordinate and pay for all costs to bring proper AC power to the electrical service disconnect installed adjacent to the controller cabinet, unless these services are quoted by Seller.

G. Permits & Easements. Seller will obtain and pay for electrical and right-of-way work permits as necessary for installations. Buyer is responsible for obtaining and payment of all other required easements, permits, or other fees required for installation, unless specifically quoted.

H. Soil Conditions Clause. In the event of poor site conditions including, but not limited to rock, cave-ins, high water levels, or inability of soil to provide stable installation to meet specifications, Seller will direct installation contractors to attempt pole installation for a maximum of 2 hours. Buyer approval will be sought when pole installation exceeds 2 hours and abandoned if Seller cannot obtain approval in a timely manner.

I. Contaminated Sites. Seller is not responsible for cleanup and restoration of any installation sites or installer equipment where contaminated soil is encountered. Seller will not knowingly approve installation at any site containing contaminates. Buyer must inform Seller when known or suspected soil contaminates exist at any intended installation site.

J. Site Cleanup. Basic installation site cleanup includes installation debris removal, general site cleanup, and general leveling of affected soil within 30' of the pole. Additional site restoration quotes are available.

K. Waste Disposal. Buyer is responsible for providing disposal of all packing materials including shipping skids and containers.

L. Work Hours. All installation quotes are based on the ability to work outdoors during daylight hours and indoors from 7 AM to 7 PM Monday through Saturday. Work restrictions or limitations imposed by Buyer or its agents may result in additional charges being assessed to Buyer for services.

M. Project Reporting. Installation & Service Progress Reports will be provided on a regular basis, normally every week during active installation, unless pre-arranged otherwise by mutual agreement.

N. Safety Requirements & Compliance. Seller requires that all subcontractors and their employees follow applicable laws and regulations pertaining to all work performed, equipment utilized and personal protective gear common to electrical and construction site work performed in the installation of Seller equipment. Additional safety compliance requirements by Buyer may result in additional charges assessed to Buyer for the time and expenses required to comply with the additional requirements.

16. ASSIGNMENT AND SUBCONTRACTING. Seller may assign its rights and obligations by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. In the event of an assignment, Seller shall be discharged of any liability pursuant to those purchase orders which have been assigned or delegated. Customer may not assign its rights nor delegate its obligations under any or all of its purchase orders unless Seller's written consent is obtained prior thereto and any such assignment or delegation without such consent shall be void.

17. DEFAULT, INSOLVENCY AND CANCELLATION. Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract immediately, in whole or in part, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the Contract and fails, within 20 (twenty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take and diligently continue action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (ii) a receiver, administrator or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts; (iv) Buyer or its equity holders or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within 30 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such default or cancellation, including all costs of collection and a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

18. SEVERABILITY. If any term, clause or provision contained in the sales contract is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

19. NO WAIVER. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing or performance, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

20. NOTICES. All notices and claims in connection with the Contract must be in writing.

21. INTEGRATION. These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions.

22. GOVERNING LAW AND LIMITATIONS. The formation and performance of the sales contract shall be governed by the laws of the State of Illinois. Venue for any proceeding initiated as the result of any dispute between the parties that arises under this Agreement shall be either the state or federal courts in Cook or DuPage County, Illinois. Whenever a term defined by the Uniform Commercial Code as adopted in Illinois is used in these standard terms, the definition contained in said Uniform Commercial Code is to control. Any action by the Buyer for breach of the sales contract or any covenant or warranty contained herein must be commenced within one year after the cause of action accrued.

23. U.N. CONVENTION. Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods (the "UN Convention"), the Parties agree that the UN Convention shall not apply to this Agreement.

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CITY COUNCIL REGULAR MEETING AGENDA

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

Ordinance numbers start with 16-19. Resolution numbers start with 16-56.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATION -
   a) Update on City Hall/Parking Structure Construction progress – Mike Cronquist, Owner's Representative (p. 68)
   b) Extra Mile Proclamation (p. 80)

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 October 3, 2016 Regular Meeting (p. 83)
   b) Consideration of approving application from Daniel Scheffer & Triple S Landgroup for a 6-lot subdivision located at 235 Haugen Heights Road. (p. 92)
   c) Resolution No. 16-___; A Resolution of the City Council of the City of Whitefish, Montana, declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property (Depot Park Building and one Police car) (p. 127)
   d) Resolution No. 16-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 1.02 acres of land known as 2088 Houston Drive, for which the owner has petitioned for and consented to annexation (p. 129)

7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
   a) Resolution No. 16-___; A Resolution to establish an increase in the public usage fee for the Whitefish City Beach boat launch (p. 141)
   b) Consideration of a request from the Whitefish Hotel Group to amend Conditional Use Permit #14-11 for the Firebrand Hotel at 650 East Third Street in order to locate a hot tub on the roof (p. 144)

8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
   a) Approval of the rating panel and selection panel with one elected official to recommend the selection of a firm or firms for engineering services during 2016 – 2018 (p. 274)

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 297)
   b) Other items arising between November 2nd and November 7th
   c) Resolution No. 16-56; A Resolution relating to $779,000 Special Improvement District Bonds (Special Improvement District No. 167), Series 2017; authorizing the issuance and private negotiated sale thereof and authorizing the pledge of the revolving fund to the security thereof (p. 303)
   d) Review and consideration of the annual Impact Fee Report (p. 312)
   e) Quarterly Financial Report (p. 321)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Letter from Governor Steve Bullock awarding the City of Whitefish a $40,000 CDBG planning grant for the Affordable Workforce Housing Plan (p. 331)
   b) Email from Alex Pearl of America in Bloom organization inviting the City of Whitefish to join the America in Bloom organization (p. 332)

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

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

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

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

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

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

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

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

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

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

Adopted by Resolution 07-09
February 20, 2007

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November 2, 2016

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

Mayor Muhlfeld and City Councilors:

Monday, November 7, 2016 City Council Agenda Report

There will be a work session at 5:30 p.m., to discuss and provide direction on the Cable Television franchise agreement with Charter Communications and on parking lease rates and number of lease parking spaces in the parking structure. Food will be provided.

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

CONSENT AGENDA

a) Minutes from October 3, 2016 Regular Meeting (p. 83)
b) Consideration of approving application from Daniel Scheffer & Triple S Landgroup for a 6-lot subdivision located at 235 Haugen Heights Road. (p. 92)
c) Resolution No. 16-___; A Resolution of the City Council of the City of Whitefish, Montana, declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property (Depot Park Building and one Police car) (p. 127)
d) Resolution No. 16-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 1.02 acres of land known as 2088 Houston Drive, for which the owner has petitioned for and consented to annexation (p. 129)

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

Item a is an administrative matter, item b is a quasi-judicial matter, and items c and d are legislative matters.

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

a) Resolution No. 16-___; A Resolution to establish an increase in the public usage fee for the Whitefish City Beach boat launch (p. 141)

From Parks and Recreation Director Maria Butts' staff report:

The daily boat launch fee for the City Beach boat launch has been $5 per launch since the 2011 launch season. As well, prior to the adoption of the FY17 budget, boat launch season pass fees were increased from $40 to $50 per season pass, per vessel. These fees support the maintenance of the launch, staffing of the launch and AIS Inspection Station, and the City's protection efforts for Whitefish Lake. Through contractual services, the City annually makes financial contributions to Whitefish Lake Institute to manage the water quality of Whitefish Lake.

On September 13, 2016 the Park Board discussed the proposed daily boat launch fee increase from $5 to $10. Discussion was focused on establishing a fair fee in comparison to other launches, including State Parks. After some discussion, the Park Board unanimously moved to recommend the Whitefish City Council approve a daily boat launch fee increase from $5 to $10.

The Whitefish Parks and Recreation Department advertised for a public hearing in the Whitefish Pilot on October 12, 2016 and October 19, 2016.

The implementation of the proposed fee increase should not require any addition financial resources.

RECOMMENDATION: Staff respectfully recommends the City Council adopt a Resolution to establish an increase in the public usage fee for the Whitefish City Beach boat launch.

This item is a legislative matter.

b) Consideration of a request from the Whitefish Hotel Group to amend Conditional Use Permit #14-11 for the Firebrand Hotel at 650 East Third Street in order to locate a hot tub on the roof (p. 144)

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

Summary of Requested Action: Jeff Badelt on behalf of Whitefish Hotel Group llc is requesting a Conditional Use Permit to amend Condition #22 of WCUP 14-11 to locate a hot tub on the roof of the hotel. The property is developed with the Firebrand Hotel and is zoned WB-3 (General Commercial District). The Whitefish Growth Policy designates this property as "Core Commercial". The hot tub would be in the northwest

portion of the roof – on the north side of the hotel and would only be available to guests of the hotel with a key card by either the elevators or stairs.

Planning & Building Department Recommendation: Staff recommended the original conditions of approval be maintained and did not recommend approval of the change to Condition #22.

Public Hearing: The applicant and the hotel manager spoke at the public hearing on October 20, 2016 in support of the application and described the noise study included in the packet. Two members of the public spoke in opposition to the request citing noise and incompatibility with the neighborhood.

The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 20, 2016. Following the hearing, the Planning Board recommended denial of the above referenced conditional use permit and adopted the staff report as findings of fact (4-2, Linville, Qunell voting in opposition; Ellis was absent).

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, deny WCUP 14-11A along with the findings of fact in the staff report and not amend Conditional Use Permit #14-11 for the Firebrand Hotel at 650 East Third Street in order to locate a hot tub on the roof

This item is a quasi-judicial matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

a) Approval of the rating panel and selection panel with one elected official to recommend the selection of a firm or firms for engineering services during 2016 – 2018 (p. 274)

From Public Works Director Craig Workman's staff report:

In 1990, the City Council adopted a policy for Selection of Consultants for services including, but not limited to architectural, engineering, surveying, auditing, accounting, and management consulting, where the services would exceed $10,000. This policy was amended and updated earlier this year. The revised policy increased the threshold for such contracts to $20,000, as provided for in §18-8-212(1) MCA.

In accordance with the above-mentioned policy for consultant selection, the Public Works Department advertised for proposals from qualified consulting engineering firms to provide engineering services for a variety of projects to be designed and constructed in 2016-2018. Proposals for these projects were due by Friday October 21, 2016. These

projects, which involve roadway, water, sanitary sewer, and storm sewer elements, are briefly described as follows:

Central Avenue Reconstruction Project: This project will include another phase of the "Shopping Loop" on Central Ave. from E. 3rd Street to E. 4th Street. This portion of the Downtown Business District Master Plan is intended to expand Central Avenue retail opportunities by providing additional retail sites in the Downtown District. Roadway, curbside parking, sidewalk and crosswalk enhancements will extend the Central Avenue streetscape south to E. 4th Street. The Central Avenue Reconstruction Project also aims to tackle the longstanding issue of the "Central Avenue Slump" that exists near the intersection of Central Avenue and E. 6th Street. In addition to these major project objectives, water main replacement and asphalt overlays are proposed for the remainder of the Central Avenue between E. 4th and E. 6th.

Somers Avenue Reconstruction Project: Somers Avenue is the next roadway project in line for Resort Tax Funding. This project will include the Reconstruction of Somers Avenue from E. 2nd Street to E. 8th Street.

Flathead Avenue Roadway Extension: The west end of Flathead Avenue currently terminates about 375 feet west of O'Brien Avenue. The Public Works Department had envisioned Flathead Avenue continuing through to W. 18th Street. This 500' extension of roadway would greatly improve ingress/egress to the City shop by providing a much safer access than W. 18th Street. Extension of sanitary sewer beneath this new roadway would also provide sewer service to the City Shop, eliminating the use of the current septic system. The completion of these improvements will also serve to increase the value of the property adjacent to the City Shop.

Armory Road Drainage Improvements: This phase of the Armory Drainage Improvements includes regrading and reconfiguring the existing drainage ditches on the north side of Armory Road and along the east side of Armory Park.

Cast Iron Water Main Replacement Projects: The City has more than 50 miles of water pipelines, some of which are nearly 100 years old, and in need of replacement. This budget cycle includes the replacement of small diameter cast iron mains at 3rd Street west of Jennings, 4th Street west of Jennings and Montana Avenue north of Edgewood.

Greenwood to Columbia Sewer Replacement: This project is located in an easement between Greenwood Drive and Columbia Avenue along the east side of the HWY 93 corridor. The City has experienced historical maintenance issues and Sanitary Sewer Overflows (SSO's) as a result of significant growth and undersized pipe within this corridor. A sewer design must be developed to eliminate capacity deficiencies in this area of the sanitary sewer system.

South Whitefish Water Tank Evaluation: The most recent analysis of the City's water system indicated there was adequate capacity to meet our max day demand, however, additional storage on the south side of town would significantly increase the system's ability to meet

desired fire flow demands. This additional storage capacity has become increasingly important with the recent surge in development along the HWY 93 South corridor.

It will be determined by the City during the consultant selection process whether engineering services will be contracted for each project individually, or if services for a certain group of project will be awarded to a single consultant. Either way, the terms of the contract(s), including cost, will be negotiated after a consultant is selected.

RECOMMENDATION: Staff respectfully recommends that the City Council appoint Craig Workman and Karin Hilding to serve on the *Rating Panel* for this RFP and appoint Craig Workman, Karin Hilding, and one council member to serve on the *Selection Panel* for this RFP.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 297)
b) Other items arising between November 2nd and November 7th
c) Resolution No. 16-56; A Resolution relating to $779,000 Special Improvement District Bonds (Special Improvement District No. 167), Series 2017; authorizing the issuance and private negotiated sale thereof and authorizing the pledge of the revolving fund to the security thereof (p. 303)

The City Council created Special Improvement District #167 in 2015 to provide partial funding of $750,000.00 for the construction of the Parking Structure. A prior City Council initially wanted downtown businesses to "have some skin in the game" or have some financial obligation for the Parking Structure beyond the Tax Increment property taxes that they might pay.

During our 2015 negotiations with First Interstate Bank and Glacier Bank for their purchase of the two Tax Increment bond issues to finance the City Hall/Parking Structure project, both banks expressed an interest in possibly buying the parking structure SID bonds. One of the banks had bought a 20 year RSID bond in 2015 from Flathead County for a road construction project on Big Mountain. In the past, banks were not very interested in 20 year, fixed interest rate bonds, but I think their investment portfolios are so diversified now, tax-exempt interest is also a good investment, and they get Community Reinvestment Act points for investing in local bonds, so banks are more interested now in municipal bonds.

We allowed property owners in SID #167 an opportunity to pay off their assessments entirely before we issued bonds in order to allow them to avoid paying any interest. Fifteen (15) property owners did pay off their assessments early which totaled $69,638.06. That allows us to reduce the total amount of bonds that we have to issue for SID #167.

On October 3, 2016, the City Council approved working with First Interstate Bank and Glacier Bank on the sale of SID #167 bonds.

With the early pay off of assessments, the Sources and Uses of funds for SID #167 are as follows:

Uses of Funds

SID $ to Parking Structure	$ 680,361.94[1]
Issuance Costs	36,000.00
Revolving Fund contribution (5% of principal)	38,950.00
Underwriter's Discount	0.00
Administration Fees (3% of principal)	23,370.00
Contingency	318.06
Total of SID #167 Bond Size	$ 779,000.00
Sources of Revenue – SID #167 bond sale	$ 779,000.00

The next step in the bond issuance is to adopt a "parameters" Resolution which sets out the parameters and limits of the bond issue. Dorsey and Whitney, our bond counsel, has prepared such a resolution for the negotiated sale of the bonds to the two banks. This resolution delegates authority to the Mayor, myself, and the Finance Director to set the pricing and interest rate for the bond sale and sign those details in a Bond Purchase Agreement with the banks. We are scheduled to price the interest rate on the bonds on Tuesday, November 29th and execute two Bond Purchase Agreements with the banks on that day, provided that the interest rates and other details of the bond issue are within the parameters in this Resolution. After that occurs, we will come back to the City Council on December 5th for adoption of the final Resolution authorizing the sale of the bonds. We are then scheduled to close on the bond sale on January 5, 2017.

The term sheet from the banks is also attached to this report in the packet.

The financial requirements are shown above in the Sources and Uses of Funds statement.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution No. 16-56, A Resolution relating to $779,000 Special Improvement District Bonds (Special Improvement District No. 167), Series 2017; authorizing the issuance and private negotiated sale thereof and authorizing the pledge of the revolving fund to the security thereof.

[1] ($69,638.06 of early payments in full is deposited to Parking Structure construction fund)

d) Review and consideration of the annual Impact Fee Report (p. 312)

From Finance Director Dana Smith's staff report:

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

Impact Fee Cash Balance

The following table details the cash balance for each type of impact fee as of June 30, 2015, June 30, 2016, and the corresponding dollar amount change from the prior year:

Impact Fee Description	Cash Balance 6/30/15	Cash Balance 6/30/16	Dollar Change
Paved Trails	$ 163,437	$ 39,534	($123,903)
Park Maintenance Bldg.	3,250	2,013	($1,237)
Emergency Services Ctr.	117,834	119,373	$1,539
City Hall	55	108,098	$108,043
Stormwater	115,727	80,996	($34,731)
Water	954,156	1,091,177	$137,021
Wastewater	219,078	289,556	$70,478
Total	$1,573,537	$1,730,747	$157,210

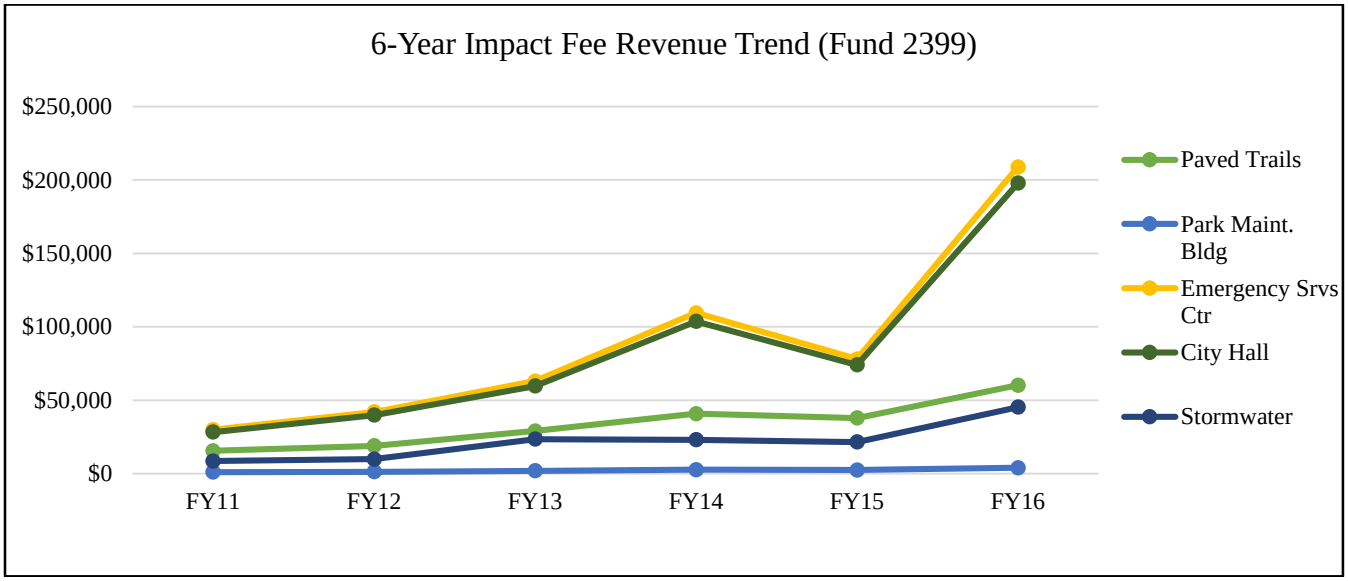
Overall cash balance for impact fees increased from FY15 to FY16. Cash balance for a few types of the impact fees decreased due to increased spending on new projects in FY16 and increased transfers to other funds to pay previously incurred debt. While cash balance (reserves) is appropriate when projects are planned in the near future, it is generally accepted that the revenue generated from impact fees be spent within five years. Since developers pay impact fees to help fund capital improvements related directly to their increased demand on public facilities it is important to identify projects that expand capacity in a reasonable time after receipt of the impact fee payments. Currently, the water impact fee cash reserves are being closely monitored since they have continued to grow by significant amounts with minimal use. Staff is looking at accelerating projects that are eligible for water impact fees including those identified in the Capital Improvement Plan (attached) and the possible extinguishment of debt that was previously incurred for impact fee eligible projects. All other impact fees are currently being used or have projects planned in the near future.

Impact Fee Revenue

The sources of revenue for impact fees are primarily from new construction and remodels that expand the number of dwelling units or usable square footage space. In addition, water and wastewater impact fees are also collected on new connections to the system.

The following table details the revenue and interest earned for those impact fees accounted for in the Impact Fee Fund (2399):

Impact Fee Description	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Revenue
Paved Trails	$22,313	$15,577	$18,945	$29,049	$40,837	$37,890	$60,203	$224,814
Park Maintenance Bldg.	644	1,036	1,260	1,932	2,716	2,520	4,004	14,112
Emergency Services Ctr.	75,827	29,892	42,074	63,038	109,464	78,050	208,862	607,207
City Hall	71,274	28,311	39,850	59,705	103,682	74,082	197,839	574,743
Stormwater	26,620	8,606	9,919	23,525	23,070	21,576	45,355	158,670
Total	**$196,678**	**$83,422**	**$112,047**	**$177,249**	**$279,769**	**$214,118**	**$516,263**	**$1,579,546**
Interest - Fund Total	*7,407*	*2,482*	*2,085*	*921*	*1,938*	*1,891*	*1,584*	*18,307*
Total Fund Revenue	**$204,085**	**$85,904**	**$114,132**	**$178,170**	**$281,707**	**$216,010**	**$517,847**	**$1,597,853**

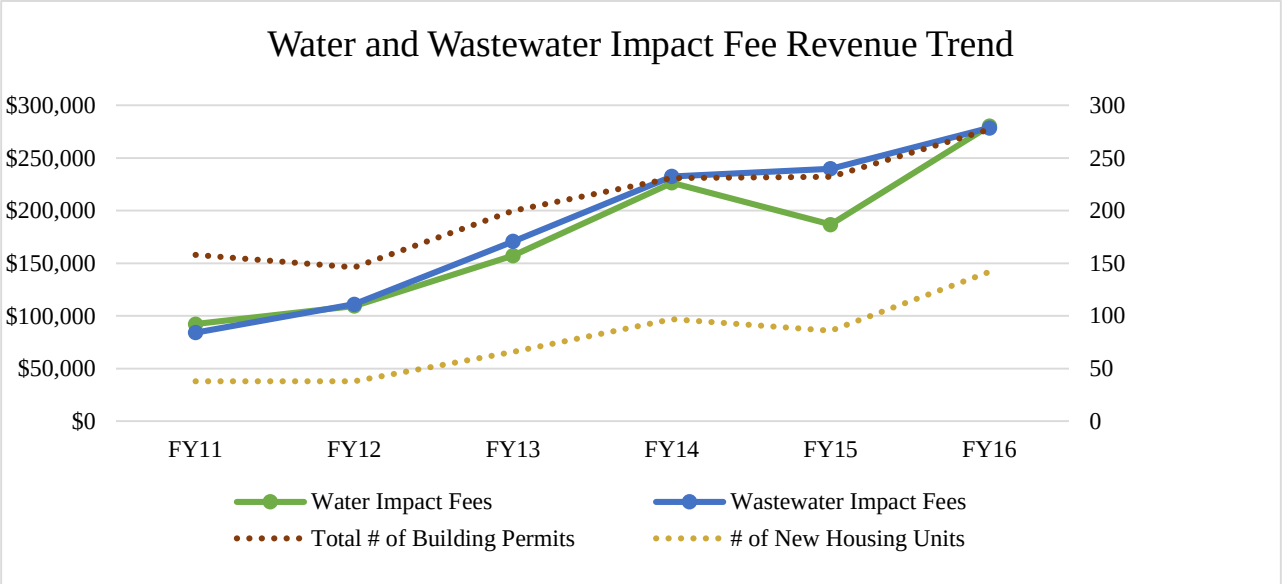


As many of you know, Whitefish has continued to see strong building and growth over the past few years, which is evident in the year-end impact fee revenue figures that all exceeded budget expectations. Impact fees, other than water and wastewater, finished the year with more than 200% of the budgeted revenue for FY16. The emergency services center and city hall impact fees have seen an overall bigger jump due to commercial building and growth since those are the other

impact fees in the above graph that are assessed on both dwelling units and commercial properties. One significant factor regarding impact fee revenue was the early receipt of impact fees from a large development in the community that was not anticipated for FY16.

In addition to the impact fees discussed above, the City also charges water and wastewater impact fees that are accounted for separately in the water and wastewater funds. The following table details the water and wastewater impact fees collected and interest earned:

Impact Fee Description	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Revenue
Water Impact Fees	$ 148,596	$ 92,267	$ 109,445	$ 157,333	$ 226,365	$ 186,708	$ 280,349	$ 1,201,065
Interest	*6,481*	*3,376*	*2,952*	*1,249*	*2,273*	*2,140*	*3,618*	22,090
Total Fund Revenue	**$ 155,077**	**$ 95,643**	**$ 112,398**	**$ 158,583**	**$ 228,638**	**$ 188,849**	**$ 283,967**	**$ 1,223,155**
Wastewater Impact Fees	$ 164,975	$ 84,246	$ 111,137	$ 170,870	$ 232,422	$ 239,754	$ 278,569	$ 1,281,972
Interest–Water Impact Fee	*7,178*	*3,251*	*2,908*	*1,199*	*1,920*	*1,099*	*864*	18,420
Total Fund Revenue	**$ 172,153**	**$ 87,496**	**$ 114,046**	**$ 172,070**	**$ 234,342**	**$ 240,853**	**$ 279,433**	**$ 1,300,392**



The water and wastewater impact fees completed the year with revenues totaling 187% and 139% of the FY16 budget, respectively. In the graph above, the number of building permits issued and the number of new housing units is included to show the strong relationship between impact fees and building permits. Furthermore, the sharper decrease in water impact fees compared to wastewater impact fees in FY15 is

not an error, but instead is due to the varying credits given for existing fixtures for the water impact fee verses the wastewater impact fee.
In addition to the different type of impact fees charged, administrative expenses incurred when collecting the impact fees are charged to developers at a rate of 5% in addition to the impact fee rates. The administrative charges are deposited into the general fund or the respective enterprise funds. Below are the admin fee collections since the impact fees were established:

Fund	FY08-FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Admin Fees Collected
General	$10,566	$4,171	$5,602	$8,894	$14,212	$10,714	$25,489	$79,648
Water	8,278	4,667	5,556	7,030	11,356	9,395	14,016	60,298
Wastewater	8,934	4,290	5,664	8,587	11,655	12,163	13,821	65,114
Total 5% Admin Fees	$27,778	$13,128	$16,822	$24,511	$37,223	$32,272	$53,327	$205,061

Currently all impact fee revenues are trending higher in the first couple months of FY17, which is a great forecaster of strong building permits and continued growth in the City.

Impact Fee Uses
Impact fees may be spent for public improvements including, but not limited to, planning, land acquisition, right of way acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural services, permitting, financing, administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized with a useful life of 10 years of more. Impact fees may also be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs (MCA 7-6-1603).

Impact fees may not be used for the operation or maintenance of public facilities. Remodeling, rehabilitation or other improvements to an existing structure or for rebuilding damaged structures is not allowed unless there is an increase in units that service demand and the impact fees are used only for the net increase between the old and new demand.

FY16 Impact Fee Expenditures
The following table details the FY08-FY16 impact fee expenditures:

Expenditures/Transfers	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Expenditures
Paved Trails	$ -	$ -	$ -	$ -	$ -	$3,913	$184,460	$188,373
Park Maintenance Bldg.	-	1,701	1,264	1,935	-	2,000	5,250	12,149
Emergency Services Ctr.	-	108,788	42,169	-	43,578	90,000	207,834	492,369
City Hall	-	-	-	-	-	384,356	90,055	474,411
Stormwater	-	-	-	-	-	-	80,538	80,538
Total Impact Fee Fund	$ -	**$110,489**	**$43,433**	**$1,935**	**$43,578**	**$480,269**	**$568,136**	**$1,247,840**
Water Impact Fee	-	-	-	-	-	3,333	146,946	146,946
Wastewater Impact Fee	-	-	-	-	198,388	495,715	208,954	903,057
Total Enterprise Funds	**$ -**	**$ -**	**$ -**	**$ -**	**$198,388**	**$499,048**	**$355,900**	**$1,050,002**

The park maintenance building and emergency services center impact fees are transferred to the tax increment financing district fund (TIF) on an annual basis since the TIF either paid the original expenditures or incurred debt related to those building projects. When the TIF sunsets in 2020 these impact fees could be used to help expand both the emergency services center and parks maintenance building. Departments at both locations have expressed a need for additional storage.
In FY15 the city hall impact fee cash balance at year-end, for the first time, was transferred to the city hall/parking structure construction fund due to the start of construction. An annual transfer will continue to be made to that fund until completion of the project, contingent on the annual budget approval by Council.

After the project is completed, the city hall impact fees could be redirected to the TIF to help repay the outstanding debt obligations from the project. When the TIF sunsets in 2020 and all debt obligations for the new city hall have been repaid, the city hall impact fees could either be accumulated to expand City Hall by adding the third level, repealed and no longer collected, or the Council could temporarily stop assessing the city hall impact fee until the time comes that a project to expand city hall is identified and upcoming.

Paved trails impact fees will continue to be used for expansion of the City's trail system. In FY16, $165,000 was allocated to the Skye Park Bridge Project and the FY17 Budget includes $65,034 available for the completion of two stairways and other trail related projects.

Stormwater impact fees were used for the Monegan Stormwater Project in FY16. and, although, no projects were budgeted in FY17, State Park Road will be a significant improvement that expands the Stormwater system and will be eligible for Stormwater impact fees as a partial funding source.

Before FY14, plant investment fees were expended on capital improvement projects. Starting in FY14 wastewater impact fees were used for various projects that expanded the capacity of the wastewater system. From FY14 through FY15 various

capital projects were partially funded by impact fees that included: the HWY 93 Utility Improvements Project, the Birch Point Lift Station design, and the 2014 Wastewater System Project. In FY16 the City continued to utilize wastewater impact fees for the Birch Point Lift Station Project, the Cow Creek Sewer Extension, and the shop building expansion. The FY17 Budget provides for wastewater impact fees to be expended on any additional HWY 93 Utility Improvements Project costs related to a final change order up to $50,000, a small amount of the shop expansion carryover from FY16, and half of the cost of the sewer main upgrades north of the hospital (Greenwood to Columbia). The new wastewater treatment plant that is in the planning stages will likely be eligible for partial funding from wastewater impact fees, but the amount is still to be determined. Only the amount of capacity expansion will be eligible.

In FY15, the final amounts remaining from the water plant investment fees were spent on a portion of the Highway 93 Utility Improvements Project. In addition, a small amount of water impact fee cash balance was expended for the first time on that project. In FY16 projects that were funded partially by water impact fees included the shop expansion and the Lion Mountain Loop Interconnect. The FY17 Budget only includes the carryover from FY16 for the shop expansion. The Capital Improvement Plan (attached) identifies projects that are eligible for impact fees and planned within the next five years. The primary project is the expansion of the water system at the south end of the City. Staff is working to ensure the water impact fees are used not only in a timely manner, but that all eligible projects are identified too.

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

This item is a legislative matter.

e) Quarterly Financial Report (p. 321)

Finance Director Dana Smith has a quarterly financial report in the packet. While the General Fund and some cash balances are lower than in previous years, some of this decrease was expected in the budget. Revenues will increase with the first half property tax collections and a more accurate picture of revenues and expenditures will be reflected in the mid-year financial report in January.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) Letter from Governor Steve Bullock awarding the City of Whitefish a $40,000 CDBG planning grant for the Affordable Workforce Housing Plan (p. 331)
b) Email from Alex Pearl of America in Bloom organization inviting the City of Whitefish to join the America in Bloom organization (p. 332)

ADJOURNMENT

Chuck

Sincerely,
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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PROJECT REVIEW

DATE: 31 October 2016

CITY OF WHITEFISH

NEW CITY HALL and PARKING STRUCTURE

REPORT TO CITY COUNCIL and STAFF for 07 November, 2016 COUNCIL MEETING

ACTIVITIES – THIS PERIOD

- Parking Structure ramps are now complete to level 3 (North half of the top ramp).
- Completed tightening post tensioning cables in the first two elements of the Parking Structure elevated ramps.
- Completed placing concrete for the third PS ramp section (October 27/28th.)
- Interior framing is approx. 85% complete.
- Began stocking drywall inside the building.
- Completed roofing system and dry-in of the City Hall.
- Continued ductwork insulation.
- Received and installed first pre-cast elements for CH exterior and began brickwork on the south face.
- Continued Mechanical & Electrical installation throughout the CH.
- Completed alley regrading – paving is scheduled for the week of October 31st.
- Note: 3377 CY of concrete have been placed to date – approx. 775 CY in the City Hall and 2602 CY in the Parking Structure. Concrete is now 75% complete overall with the PS right at 70%.
- Overall progress at the end of October was 65%.

ACTIVITIES IN PROGRESS

- Tensioning PT cables on third ramp section was completed on Nov. 1.
- Removing and rotating deck forms into place for the fourth ramp will follow after cable tensioning.
- Crews are working on forming and preparing to place concrete for last ramp.
- Brickwork is continuing the South face of the City Hall.
- Masons are beginning work on the CMU stairwells in the Parking Structure.
- Installation of electrical panels in the CH is happening during the week of Nov. 1st.
- Mechanical and Plumbing work is ongoing.
- Drywall is being installed on the second floor of the City Hall. Dry-wall crews will proceed “from the top down”

- Martel is installing temporary heaters and completing closing-in the building in preparation for drywall work in the City Hall.
- Continue HVAC installation work in the CH.
- Continue misc. concrete columns on the Parking Structure, along with the last ramp.

ACTIVITIES PLANNED (3 WEEK LOOK AHEAD)

- Place PT concrete – fourth ramp section, PS (Realistically, this will happen the week of Nov.28th.)
- Perform final cable tensioning efforts.
- Continue mechanical and electrical work – CH.
- Boiler and AHU tie-in work.
- Continue receiving brick for the CH.
- Continue brick installation – City Hall, south face (2nd Street).
- Install drywall – City Hall
- Begin taping and texturing drywall – City Hall.
- Continue setup of electrical switchgear.

FUTURE SCHEDULED ACTIVITIES

- Complete brickwork – Second Street, City Hall.
- Begin exterior brick installation -west face, City Hall.
- Begin exterior brick work – PS, west face.
- Continue mechanical and electrical connections for Heating and Cooling systems.
- Continue ductwork connections to AHU's.
- Begin CMU for elevator shafts – Parking Structure
- Begin receiving components for the CH elevator and possibly start installation.

CONTRACT ACTIVITES

- None, this period.

COMMUNICATIONS TO THE PUBLIC

- A press tour was conducted with the editor of the Pilot on Wednesday, Oct. 26th.
- A second press tour was held with the Flathead Beacon on Nov. 2nd.
- Relations with the Public, in general, remain positive.

AREAS OF CONCERN

- There are no immediate concerns at this time.

Mike Cronquist
Owners Representative
SITE PHOTOS

Fig. 1 PARKING STRUCTURE – NE CORNER

Fig. 2 PARKING STRUCTURE – NW CORNER

Fig. 3 CENTRAL ALLEY – REGRADING WORK IN PROGRESS – LOOKING SOUTH

Fig. 4 CENTRAL ALLEY – DETAIL AT SOUTH END – EXIT ONTO SECOND ST.

Fig. 5 MASONS WORKING ON CMU WALL AT NE ENTRY TO PARKING STRUCTURE

Fig. 6 FRONT ENTRY TO CITY HALL

Fig. 7 STAIRWELL AND ELEVATOR DETAIL – FROM FRONT ENTRY

Fig. 8 PUBLIC WORKS COUNTER (Left) and BLDG & PLANNING (Right)

Fig. 9 FRONT ENTRY FROM BLDG & PLANNING COUNTER

Fig. 10 LOBBY AREA

Fig. 11 BLDG & PLANNING OFFICES and WORK AREAS

Fig. 12 PUBLIC WORKS AREA

Fig. 13 COUNCIL CHAMBERS

Fig. 14 COUNCIL CHAMBER CONFERENCE ROOM

Fig. 15 DETAIL of CITY HR DIRECTOR'S AND FINANCE DIRECTOR'S OFFICES

Fig. 16 CITY MANAGER'S OFFICE

Fig. 17 SKYLIGHT DETAIL

Fig. 18 NEWLY COMPLETED THIRD RAMP SECTION

Fig. 19 THE FINAL RAMP SECTION WILL START AT THE FORMWORK ON THE RIGHT AND

CONTINUE AROUND TO APPROX. THE POINT WHERE THE FORKLIFT IS POSITIONED.

EXTRA MILE DAY PROCLAMATION

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

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

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

WHEREAS, Whitefish, Montana, acknowledges the mission of Extra Mile America to create 575 Extra Mile cities in America and is proud to support "Extra Mile Day" on November 1, 2016.

WHEREAS, the Whitefish Community Foundation, since its inception in 2000, has supported local nonprofit organizations serving Whitefish with over $20 million in grant funding, including supporting the hungry, assisting and lifting the underserved, building affordable housing, caring for the sick and impoverished, supporting programs to protect and enhance our natural environments, and enriching our lives and community through the arts.

WHEREAS, since 2008, under the direction of Linda Engh-Grady, President of Whitefish Community Foundation, the community grant programs have grown to award over $500,000 annually with assets now exceeding $12 million; and

WHEREAS, on October 10th, Whitefish Community Foundation distributed nearly $1.5 million dollars to 40 participating nonprofits in the second annual Great Fish Community Challenge. The Challenge received 2,420 contributions totaling close to $1.2 million dollars. Nearly all participating

nonprofits received $15,000 or more and received the maximum grant of $8,250; and

WHEREAS, the City of Whitefish recognizes all individuals, business, and organizations who donated to make the 2016 Great Fish Community Challenge a success. Donations literally flooded into the Foundation office both online and in the mail during the final two weeks of the campaign; and

WHEREAS, the City of Whitefish honors the incredibly hard work and commitment of the Whitefish Community Foundation staff, Advisory Council and Board of Directors, including President Linda Engh-Grady, Vice President Daria Perez, Special Projects leader Linda Hobbs, and past and present Foundation board members, including Board Chair David Dittman, Linda Maetzold, Ken Wessels, Ardyce Whisler, Jamie Shennan, John Collins, Jeff Allen, Carol Atkinson, Betsy Bayne, Judah Gersh, Joe Gregory, Mike Jenson, John Kramer, Jay Latimer, Sherry Lesar, Lori Miller, Monica Pastor, Tom Quinn, Doug Reed, Kristin Tabor, and John Witt. Your visions and efforts are testaments to the values we embrace as a community, and tonight, we honor and thank you, and all of the individuals, organizations, and businesses who donated to the 2016 Great Fish Community Challenge. You lift our community and make it a place we are all proud to call home.

NOW THEREFORE, I, Mayor of Whitefish, Montana, retroactively do hereby proclaim November 1, 2016, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place; and

DECLARED this 7th day of November, 2016 by the Mayor of Whitefish.

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John M. Muhlfeld, Mayor

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WHITEFISH CITY COUNCIL CLOSED EXECUTIVE SESSION
October 3, 2016
5:30 P.M.

Closed Session pursuant to §2-3-203 (4) MCA, Quarterly litigation update and strategy with City Attorney. Present were Councilors Hildner, Barberis, Frandsen, Sweeney and Williams. Mayor Muhlfeld was tardy, and Councilor Feury was absent. Staff present were City Attorney Jacobs, City Clerk Howke and City Manager Stearns. The meeting was called to order at 5:30 p.m. and adjourned at 6:10 p.m.

WHITEFISH CITY COUNCIL
October 3, 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 Howke, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Lieutenant Kelch and Fire Chief Page. Approximately 10 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Mike Cronquist to lead the audience in the Pledge of Allegiance.

3) PRESENTATION - Update on City Hall/Parking Structure Construction progress – Mike Cronquist, Owner's Representative (p. 35)

Mike Cronquist gave his report that is included in the packet on the website. The elevated ramp is in the process of being placed in the Parking Structure. The City Hall concrete is 95% complete, the HVAC equipment have been set, they are now in the process of piping into the system. The duct work is 90% complete, the interior framing is 90% complete, some of the drywall has been started along with interior insulation. The oversized brick is complete on the alley side of City Hall; the brick work should be complete in February. The roofing in about 95% complete, the building is close to being dried in, the mechanical, electrical and plumbing will continue. The electrical and plumbing are at 7% completion, mechanical is 50-60% complete. The alley will be closed the week of October 17th to remove the asphalt, and repaving to 1st Street; during that time a valley gutter will be placed on the north end of the alley. Councilor Frandsen stated there is concern the mortar on the east wall seems dark but is drying lighter. Mike said the mortar has coloring when placed and will lighten as it continues to cure. Councilor Hildner asked and Mike said the plumbing and electrical have been roughed in for the maternity room. Manager Stearns said there will be a time capsule, but he is not sure of a cornerstone. The windows are out about a month but visqueen will be placed to keep the interior dry.

4) COMMUNICATIONS FROM THE PUBLIC – **(This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda) (CD 14:38)**

Rebecca Norton- 530 Scott Avenue- is opposed to keeping the building in Depot Park. She said that the underutilized kiosk that is located in the parking lot behind Casey's Bar could be moved to the Library or where the gazebo in the park will be placed. She feels the building should not be rented to a partisan group, or a lobbying group. Per Wikipedia the Chamber of Commerce is a partisan group and a lobbying group.

Marcus Duffy, 326 Somers Avenue, stated he is a homeowner, a business owner, a chamber member, a Board member of the Chamber and a CVB business member. He is in support of the Chamber of Commerce utilizing the building at Depot Park.

Kevin Gartland, Executive Director for the Chamber of Commerce stated the Depot Park is the best location for the Chamber of Commerce to better promote the community to tourists and families looking to relocate to Whitefish. The local Chamber of Commerce is not a lobbying organization, it is in the bylaws they do not take position on politics, they advocate pro-business and pro-community issues.

Rebecca Norton, 530 Scott Avenue, said there are over 2,000 business in town, only 8% are members of Whitefish Chamber of Commerce, they have had a political event that they have not invited one of the political parties to.

Don Kaltschmidt, 230 JP Road, supports the Chamber of Commerce leasing the building at Depot Park and feels it is a great location for the Chamber. He also asks that his property, 3B and 3BD, be removed from the wholly surround annexation along with the Morris property. He has given a letter to City Attorney Jacobs that was drafted from a local attorney regarding findings of wholly surround annexation. He says the properties will come into the City, this is not the right time. Mayor Muhlfeld stated the Council did receive a copy of the letter.

Chris Schustrom, 504 Spokane Avenue, a Board Member of the Heart of Whitefish and the Heart of Whitefish representative to the Depot Park Master Plan, asks the Council to continue to honor the Depot Park Master Plan and its implementation and remove the building in Depot Park.

John Wallace, 246 4th Street West, owns properties on Ramsey Avenue and opposes the annexation of the properties that he owns. His family has owned the property since 1930, they have paid plenty of taxes in regards to the City equities. He doesn't think the wholly surrounded law is fair. If he is annexed into the City he loses restrictions to his property, such as open burning and building restrictions.

Jason Spring, 147 West Swift Creek Way, Kalispell, represents a business in Whitefish that is a member of the Chamber of Commerce and serves on the Board of the Chamber of Commerce. He supports the Chamber of Commerce to utilize the building in Depot Park.

Brenda Banning, 250 West 18th Street, asked the Council to postpone voting on the 44 properties to be annexed into the City until it has been decided what is happening at Houston Point.

Rita Hanson, 528 Ramsey Ave, agrees with Brenda Banning, and it would be interesting in what transpires with the Houston Point area. Cost increases, such as refuse, water, sewer and property taxes will impact her. She thinks there might be a historical aspect to Ramsey Avenue. She asks for possibly not an expedient decision but a total consideration of all the properties.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS (CD 37:04)

Ron Brunk, 130 4th Street, Parks Board representative stated the Board encourages the Council to award the contract bid to Watson Excavating for the Riverside Tennis Courts and fund it through the Resort Tax Funds to meet the shortfall. The Park Board is in favor of the Depot Park building to stay but with a lease of five years. He personally feels a ten-year lease is a long time.

Councilor Hildner invited members of the community to meet at the Riverside Park October 4th at 5:30, and bring your bike to ride to Skye Park for the dedication of the Skye Park Bridge. He also encouraged the community to check out the new path behind the Pine Lodge and Stumptown Inn that connects to the Riverside Park. The Bike Pedestrian Master Plan is close to completion.

6) CONSENT AGENDA

a) Minutes from September 19, 2016 Regular Meeting (p. 45)

b) Ordinance No. 16-18; An Ordinance rezoning certain tracts of recently annexed land on West Lakeshore Drive from County R-3 (One Family Residential) to City WR-1 (One-Family Residential District), and adopting findings with respect to such rezone (Second Reading) (p. 50)

c) Resolution No. 16-53; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 1.31 acres of land known as 2045 Lion Mountain Loop Road, for which the owners have petitioned for and consented to annexation (p. 56)

RESOLUTION NO. 16-53

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 1.31 acres of land known as 2045 Lion Mountain Loop Road, for which the owners have petitioned for and consented to annexation.

WHEREAS, Alan Myers-Davis and Frances Montanye, have filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owners 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:

TRACT 1 OF CERTIFICATE OF SURVEY NO. 17698, LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF MONTANA BY DEED RECORDED JUNE 23, 2014 AS INSTRUMENT NO. 2014-000-11007.

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

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the October 3, 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 3RD DAY OF OCTOBER, 2016.

/S/ John M. Muhlfeld
John M. Muhlfeld, Mayor

ATTEST:
/S/ Michelle Howke
Michelle Howke, City Clerk

Councilor Sweeney made a motion, second by Councilor Barberis to approve the Consent Agenda. Councilor Hildner had a correction to the minutes on packet page 45, first paragraph, fourth sentence should add "same as previous years", and on packet page 49, third sentence "…Councilor Sweeney to table…" should read "…Councilor Sweeney to postpone…" **The consent agenda passed as amended 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))

None

8) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR (CD 43:34)

a) Consideration of awarding a construction contract award for the Riverside Tennis Courts reconstruction project (p. 68)

Parks and Recreation Director Butts gave her staff report that is provided in the packet on the website. The Department is not recommending moving forward with the bike path and landscaping.

Councilor Frandsen made a motion, second by Councilor Hildner to award the Riverside Tennis Court project to Watson Excavating and allocate additional $63,258 of Resort Tax Funds to complete the project this fall. The motion passed unanimously.

9) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR (CD 52:34)

a) **Consideration of accepting Preliminary Engineering Report for the Wastewater Treatment Plant improvements design and authorizing its submittal to the Montana Department of Environmental Quality (p. 76)**

Public Works Director Workman gave his staff report that is provided in the packet on the website. Councilor Frandsen asked and Director Workman said as we move from a lagoon system to a mechanical plant, there is a number of different areas that we can control odors much more readily. With a mechanical plant, we have a variety of different aeration techniques, pumping techniques, returning techniques and ways to control odors. Some of the area in this new plant where the more odiferous processes will take place will uncovered cells. There is the same probability of odors but much more operator control. Mayor Muhlfeld asked and Director Workman assumes there will be a pretty quick turn around on this report, he anticipates we will hear by the end of the year. Councilor Hildner asked and Director Workman said part of the PER does incorporate a nutrient trading plan that is associated with it for possible nutrient credits. Nutrient trading down the road will give us flexibility as we go to deal with future permits, and Burlington Northern (BN) will be the first place we look. Councilor Hildner also did not want to lose sight about the composting plant, as well as the possibility to convert a lagoon into a nursery that can be fertilized and watered from the waste water treatment plant.

Councilor Frandsen made a motion, second by Councilor Sweeney to accept the Preliminary Engineering Report for the Wastewater Treatment Plant improvements design and authorizing its submittal to the Montana Department of Environmental Quality. The motion passed unanimously.

10) COMMUNICATIONS FROM CITY MANAGER (CD 1:04:49)

a) **Written report enclosed with the packet. Questions from Mayor or Council? (p. 92)**

b) **Other items arising between September 28th and October 3rd**

City Manager Stearns wanted to make sure the Council saw the City Hall Parking Structure budget update that in his manager report. This afternoon he received the August Resort Tax Report. August was up 27.7% or $120,000 increase from last year, most of that being in Lodging which was up 78%.

c) **Resolution No. 16-54; A Resolution indicating its intent to consider annexing approximately 82.7 acres of wholly surrounded land into the City of Whitefish, Montana, describing the land to be so considered, providing for notice and publication as provided by law, providing for a date of hearing such proposed annexation, and approving the Report on Extension of Services (p. 97)**

City Manager Stearns gave his staff report that is provided in the packet on the website. Councilor Sweeney asked and Manager Stearns said at the time of the Public Hearing the Council can decide to remove properties, or delay properties for annexation. The decisions would need to be supported by findings or rational. Mayor Muhlfeld asked and Director Taylor said there will be a work session regarding the extension of services before the end of the year.

He also clarified with Rita Hanson, it is $12,000 in new property tax revenue and additional $16,310 related to our streets, greenway, street lights and storm water assessment for a total revenue of $28,000.

Councilor Hildner made a motion, second by Councilor Barberis to approve Resolution No. 16-54; A Resolution indicating its intent to consider annexing approximately 82.7 acres of wholly surrounded land into the City of Whitefish, Montana, describing the land to be so considered, providing for notice and publication as provided by law, providing for a date of hearing such proposed annexation, and approving the Report on Extension of Services. The motion passed unanimously.

d) Resolution No. 16-55; A Resolution of the City Council of the City of Whitefish, Montana, establishing "No Parking" Zones along portions of East 1st Street (p. 126)

City Manager Stearns gave his staff report that is provided in the packet on the website.

Councilor Sweeney made a motion, second by Councilor Frandsen to approve Resolution No. 16-55; A Resolution of the City Council of the City of Whitefish, Montana, establishing "No Parking" Zones along portions of East 1st Street.

Councilor Frandsen amended the resolution, second by Councilor Sweeney to state "No Parking to be allowed on both sides of East 1st Street from Baker Avenue eastward to the alley". The amendment to Resolution 16-55 passed unanimously.

The original motion to approve Resolution 16-55 was passed unanimously.

e) Consideration of authorizing staff to proceed with a negotiated sale of SID #167 Bonds (Parking Structure SID) up to $880,000.00 with First Interstate Bank and Glacier Bank (p. 135)

City Manager Stearns gave his staff report that was provided in the packet on the website.

Councilor Sweeney made a motion, second by Councilor Williams to authorize staff to proceed with a negotiated sale of SID #167 Bonds (Parking Structure SID) up to $880,000.00 with First Interstate Bank and Glacier Bank. The motion passed unanimously.

11) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 1:32:32)

a) Letter from Montana Municipal Interlocal Authority (MMIA) regarding receiving the Liability Loss Control Award for lowest incurred liability claims among 2nd Class cities in Montana during the past five years (p. 141)

City Clerk Howke will be accepting the award at the Montana League of Cities and Towns.

b) Discussion and possible consideration of a proposal from the Whitefish Chamber of Commerce to lease the Depot Park building after it is vacated (p. 142)

Councilor Frandsen stated she is a member of the Chamber of Commerce and the agency of record for the Whitefish Convention and Visitors Bureau. She asked of the current build out schedule of the Master Plan and do we have the funds to build it out? Manager Stearns said based on the last CIP we would be able to finish the Depot Park Master Plan by the end of the TIF, a lot of that will depend on next year's property valuation. He thinks in this year's budget we would have enough to demolish the building next spring without starting on Phase II. Councilor Frandsen asked and Manager Stearns said to build out the Master Plan, the funds are within the TIF and they would have to be spent before 2020. Finance Director Smith said the remaining amount is $1.7 million for the remainder of the entire plan, of that there is also additional $100,000 that was moved to FY17. Late FY18 we could start using those funds. Councilor Frandsen asked and Director Butts said that if we are not moving forward with the Depot Park Master Plan now, we would not be putting in the angle parking on the south side of Depot Park.

Councilor Hildner asked and Manager Stearns said there would be sufficient funds to lay sod if the building were to be removed. He also thinks that before demolishing the building we would see if there was any interest in purchasing and moving the building. We don't have interest in reusing the building, but we would like somebody to reuse it before demolition.

Councilor Sweeney asked and Director Butts said T. Bauer is committed to donating funds at a reasonable rate to demolish the building. Manager Stearns said the Building Official looked at the building and stated his most concern was the roof. Mayor Muhlfeld clarified with Kevin Gartland that the Chamber would be responsible for the interior changes but not the exterior repairs of the building.

Councilor Hildner made a motion, second by Councilor Sweeney to deny the lease of the Depot Park building and continue with its removal from the Depot Park.

Councilor Hildner thinks the intent of the Master Plan and the intent of what goes on downtown was to make it an open space. The structure itself occupies roughly 20-25% of perhaps the most active corner of Depot Park. The removal of that building will open that amount of space in Depot Park. In comparing prices, $14/square foot is the same as office space that is vacant and has been vacant for some time on the south edge of the core district. Once we approve and once we get into that habit of having that building there we will never take it down. He thinks now is the opportunity. The argument might be used later for city offices when City Hall is full, that is certainly not going to happen, based on our plans for City Hall as constructed for at least 50 years. He thinks 50 years is too long, ten years is too long, 5 years is too long to keep that building on the corner of Depot Park.

Councilor Frandsen thanked the Chamber for presenting a proposal to review. With that said this gives us numbers and an opportunity to weigh what stands before us. The bottom line is a ten-year revenue of about $340,000, for a ten-year lease and weighing that against capital improvement cost, exterior maintenance costs, and the over whelming need to accomplish the remainder of the Depot Park Master Plan build out, within three years of our exit, that stands around $1.5 million coming out of TIF which expires in 2020. She can't imagine how to come up with those funds in five years, or ten years. So with that she has to honor the original plan.

Councilor Sweeney thanked Councilor Frandsen for putting it in that light. For him this has been as much about economics as anything else. He hears the argument in some respects that this would be a good building to have just in case we run out of space at the new City Hall. He would make the argument that in five or ten years this building would have lived its life. The City Hall is designed to add a third floor to accommodate any growth, or unforeseen growth over the next fifty

years. This community has put an awful lot of effort into the Depot Park Master Plan; its approval from day one always called for that building being removed. He thinks we should honor the original vision for this park and the Master Plan. If we don't implement this Master Plan within the next three years, the funds will be very hard to come by. He supports Councilor Hildner's motion.

Councilor Williams said Councilor Frandsen has made a very sound argument, and has put her more on the fence with this issue. She still supports keeping the building, she said we need to save money where we can. We can make it a workable green space and we can cut costs in implementing the Depot Park Plan. We can generate revenue and look at a ten year or a five-year lease for this building, and then see where we end up. It would be a sound decision in terms of looking at our state of finance. She respects all the hard work the citizen's committees and staff have put into this entire process. This building still has youth, and use in a long term, and can provide and be a viable space for the Chamber and events to invite other organizations and provide an interface with the community. Instead of utilizing technology to introduce tourists to our town, we can have a human presence. That carries a lot of weight in a town that really prides itself in being authentic. She knows that the economic doesn't add up to as much as we thought, but it adds up to potential and leaves us with more viable options in the long run in saving money.

Councilor Hildner reiterated a lease that starts mid-2017 and two and a half years later the TIF has expired, and seven ½ years later the building comes down, and given a reasonable rate inflation, he doesn't know where the City would come up with $2 million to implement the plan. Now is the time to implement the plan and now is a prudent financial time to implement the plan and he thinks we are fiscally responsible in doing so and we would be fiscally irresponsible if we didn't. Manager Stearns said of the $1.7 million we would still spend most of that before 2020. Most of the rest of Depot Park Master Plan development is the street on Spokane Avenue between the Library and Depot Park, new sidewalks on all four sides, and the bikeway promenade. Most of it would be spent before the TIF expires. If the building stays, the fourth corner would be finished after the TIF expires.

Councilor Hildner said whether the $1.7 million goes to 90% or 80% of the completion, the park is a beautiful face in Whitefish, but if we leave that building on the corner, there will be a pimple in the middle of the nose.

Councilor Sweeney asked and Manager Stearns said that except for the hardscape in that corner and any green space outside of the bulb out, the big expense is Spokane Avenue between the Library and the Depot Park. You can do three of the four corners easily, all four streets, and then the green scapes. The biggest value is the green space and the visual intrusion of the building, but he doesn't see it as preventing the rest of the work. Councilor Sweeney stated the Park Board would be happy to tolerate up to a five-year lease in that park.

The motion passed with a 4-1 vote, Councilor Williams voting in opposition.

c) Any actions related to hiring of new City Manager

Mayor Muhlfeld stated an action will not be taken tonight. The Council met in an executive session after the top candidate turned down the offer due to a life decision, at which time the second top choice also voluntarily removed himself from the process. The mayor has been in touch with Kim Park and Edwin Meece and relayed to them the Council's direction is to re-advertise for the City Manager position and will continue to do that in house with Sherri Becarro in addition with the citizen advisory committee and City staff committee. Chuck has graciously offered to stay on board for at least a part time basis through March to help fill the gap. Manager Stearns said as

quickly as it can be filled will be appreciated. He did ask Sherri if the interviews could be in December, rather than January.

Council Comment

Councilor Sweeney stated that a couple of the issues that was dealt with tonight which included inclusionary activities of various properties of the City as well as the Depot Park Master Plan; there aren't a lot of right answers sometimes. He wants everybody to know we work these problems as hard as we can and try to come up with the right answer. He is very sensitive to what incorporating properties into the city does in respect to the taxes and what it does to the owners of the properties, he is sensitive to those issues particularly with individuals and families that have been here a long time. We need to help them plan as best we can, for the increase in their taxes, he doesn't know how to do that logically at this point but he wants us to be very sensitive to those issues as we move forward.

Councilor Frandsen apologized for missing the last meeting due to being ill.

Councilor Hildner added that Wednesday October 5th is bike and walk to school day, and please be aware of those young people and be careful. He will be absent November 21st meeting.

Mayor Muhlfeld reminded the Council the retreat will be November 15th, time and place to be determined. He will be traveling to Ferny to sit on a roundtable discussion as part of the Crown of the Continent Meeting. The top is going to be building sustainable communities and how local communities can help support the timber industry while achieving long term development goals. An annual meeting will be held within the next few months for the Haskill Basin Conservation.

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

Mayor Muhlfeld adjourned the meeting at 9:26 p.m.

_____
Mayor Muhlfeld

Attest:

_____
Michelle Howke, Whitefish City Clerk

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

November 1, 2016

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

Re: Final Plat for SW Subdivision; WFP 16-04

Honorable Mayor and Councilors:

This office is in receipt of a final plat application from Daniel Scheffer & Triple S Landgroup for a 6-lot subdivision located at 235 Haugen Heights Road. The property is zoned WR-2 (Two-Family Residential District). The preliminary plat was approved by the Whitefish City Council on May 2, 2016, subject to twenty (20) conditions of approval.

Following is a list of the conditions of approval and a discussion of how they have been met.

COMPLIANCE WITH PRELIMINARY PLAT CONDITIONS OF APPROVAL:

Condition 1. The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.

- Condition met. The final plat conforms to applicable City Codes and the approval granted.

Condition 2. Except as amended by these conditions, the development of the subdivision shall be in substantial conformance with the approved preliminary plat that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as “approved plans” by the City Council.

- Condition met. The final plat conforms to applicable City Codes and the approval granted.

Condition 3. Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, driveways, etc.) within the development shall be

designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)

- Condition met. The Public Works Department and Fire Marshal approved the engineering plans.

Condition 4. Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)

- Condition met. The Public Works Department and Fire Marshal approved the engineering plans.

Condition 5. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:

- Dust abatement and control of fugitive dust.
- Hours of construction activity.
- Noise abatement.
- Control of erosion and siltation.
- Routing for heavy equipment, hauling, and employees.
- Construction office siting, staging areas for material and vehicles, and employee parking.
- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
- Notation of any street closures or need to work in public right-of-way.

(City Engineering Standards, 2009)

- Condition met. These matters were addressed by the Public Works Department during the pre-construction meeting.

Condition 6. All roads within the subdivision shall be built to City of Whitefish Public Works Standards and the Whitefish Subdivision Regulations unless otherwise approved by the Public Works Director. (City Engineering Standards, 2009)

- Condition met. The City approved the engineering plans and the applicant's engineer has certified this work.

Condition 7. The entire length of Salmon Run, from Haugen Heights to Lake Park Lane will be maintained and plowed for emergency access until such time as the remainder of Salmon Run is constructed to current City standards. (Finding 4)

- Condition met. See attached letter from Public Works and Road Maintenance Agreement.

Condition 8. A 10-foot wide easement along the west side of Salmon Run and the north side of Haugen Heights shall be shown on the face of the final plat for utilities, sidewalks, and landscaped boulevards. (Subdivision Regulations §12-4-29)

- Condition met. This dedication is on the face of the plat.

Condition 9. Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance. (Zoning Regulations §11-3-25; City Engineering Standards, 2009)

- Condition met. The applicant installed the city's standard street lights, which are dark sky compliant.

Condition 10. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (IFC; Subdivision Regulations §12-4-18; Engineering Standards, 2009)

- Condition met. The Fire Marshal has reviewed the engineering plans and fire protection features.

Condition 11. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision. (Subdivision Regulations, Appendix C)

- Condition met. See attached letters from DEQ and the PW Department.

Condition 12. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by Whitefish City Code, shall be removed throughout the life of the

development by the recorded property owner or homeowners' association. (Subdivision Regulations §12-4-30)

- Condition met. See attached Weed Maintenance Agreement.

Condition 13. Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. (Engineering Standards, 2009)

- Condition met. See letter from North Valley Refuse.

Condition 14. Cash in lieu of parkland dedication shall be paid at the time of final plat to the equivalent of 0.10351 acres (4,508.89 square feet). (Subdivision Regulations §12-4-11E)

- Condition met. Amount required was incorrect – gross acreage was used instead of net acreage during preliminary plat review. Net acreage of subdivision is 0.886 acres. See copies of the receipt and check in the amount of $8,337.30.

Condition 15. A tree retention plan shall be submitted to the Planning Department for review and approval. Appropriate trees outside building envelopes, driveways and roads shall be preserved. Any additional tree removal shall be approved by the Planning Department (§12-4-5)

- Condition met. See attached letter from SSD Development and Tree Preservation Plan on Preliminary Plat.

Condition 16. Architectural Review is required for the townhouse structures prior to the issuance of a building permit. (Zoning Regulations §11-3-3)

- Condition met. This will be required at the time of building permit.

Condition 17. The following notes shall be placed on the face of the plat:

- House numbers shall be located in a clearly visible location.

(Subdivision Regulations §12-4-29, §12-4-6; City Engineering Standards, 2009)

- Condition met. This note is on the face of the final plat.

Condition 18. A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)

- Condition met. See letter from the USPS.

Condition 19. Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for Timber Ridge Subdivision Homeowners' Association (HOA) providing for:

- Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
- Long-term maintenance plan for drainage and storm water management facilities.
- Long-term maintenance and plowing of Salmon Run from Haugen Heights to Lake Park Lane, until such time as the remainder of Salmon Run meets current City roadway standards.

(Subdivision Regulations §12-4-30; City Engineering Standards, 2009)

- Condition met. See attached Weed Management Plan, Stormwater Management Plan and Road Users Maintenance Agreement.

Condition 20. The SW Subdivision preliminary plat is approved for three years from Council action. (Subdivision Regulations, §12-3-8)

- Condition met. The final plat applicant was received prior to its expiration.

Please be advised that the Council should act on this application within 30-days following receipt of this recommendation.

Sincerely,

Bailey Minnich, AICP, CFM
Planner II

Attachments: 2 reproducible mylars of final plat
Final plat application, received 9-27-16
Letter, applicant, 9-21-16
Title Report, Alliance Title, No. 74156-96829014, 8-25-16
Treasurer's Certification, 9-26-16
Letter, USPS, 2-19-16
Letter, Public Works Department, 10-17-16
Email, Fire Department, 10-27-16
Letter, DEQ, EQ#16-1913, 6-23-16
Letter and Plans, DEQ, EQ#16-1912, 7-7-16
Letter, APEC Engineering, 8-24-16
Letter, North Valley Refuse, 10-20-16
Letter, SSD Development, 10-1-16
Receipt/Copy of Check, Cash in Lieu of Parkland, 9-27-16
Stormwater Maintenance Agreement, 2016
Weed Maintenance Agreement, 10-27-16
Road Maintenance Agreement, 10-27-16

Consent to Plat, Whitefish Credit Union, 11-1-16

c/w/att: Michelle Howke, Whitefish City Clerk

c/wo/att: Dan Scheffer, 4899 Highway 93 S, Whitefish, MT 59937
Jay Snowden, SSD Development, 164 Old Ranch Rd, Whitefish, MT 59937
Christine Bleyhl, 633 Colorado Avenue, Whitefish, MT 59937

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

File #: WFP 16-04
Date: 9/27/16
Intake Staff: BM
Date Complete: _____

FINAL PLAT APPLICATION

FEE ATTACHED $ 3,774.00
(See current fee schedule)

INSTRUCTIONS:

- ☐ Submit the application fee, a complete application, with appropriate attachments, to the Whitefish Planning & Building Department no less than **90 days** prior to expiration date of the preliminary plat.
- ☐ When all application materials are submitted to the Planning & Building Department, and the staff finds the application is complete, the staff will submit a report to the City Council. Incomplete submittals will not be accepted and will not be forwarded to the Council for approval. Changes to the approved preliminary plat may necessitate reconsideration by the Planning Board.
- ☐ The regularly scheduled meetings of the City Council are the first and third Mondays of each month at 7:10PM in the Council Chambers at 402 E 2nd Street.

All applicable items required by *Appendix C: Final Plat Contents* of the Whitefish Subdivision Regulations must be submitted with the application for final plat including the following. Check items attached or not applicable.

Not Applicable	Attached	(MUST CHECK ONE)
	____	Cover letter listing each condition of approval and individually state how each condition is specifically met. In cases where documentation is required, such as an engineer's certification, State Department of Health certification, etc., original letters shall be submitted. Blanket statements stating, for example, "all improvements are in place" are not acceptable.
	____	Montana DEQ Health Department Certification (*Original)*
	____	Title Report, not more than 90 days old
	____	Tax Certification (*Property taxes must be paid*)
____	____	Consent(s) to Plat (*Originals and notarized*)
____	____	Engineer's Certification (*Original)*
		Subdivision Improvements Agreement (*Attach collateral*)
____	____	Engineering Improvements (*sidewalks, walkways, street lights, street signs, solid waste facilities, utilities)*
____	____	Landscaping Improvements (*landscaping, street trees, parkland improvements – trails, park facilities,)*
____	____	Parkland Cash-in-Lieu (*Check attached payable to City of Whitefish*)
____	____	Maintenance Agreement (*as applicable: stormwater facility, private roads, parks, etc)*

Revised 12-31-13

SEP 27 2016

____ ____ Articles of Incorporation and Conditions, Covenants & Restrictions

____ ____ Approach Permit (*when applicable)*

____ **Plat:** signed mylars: 2, 24" x 36" paper copy: 2, 11" x 17" paper copy: 1 and .pdf The plat must be signed by all owners of record, the surveyor and the examining land surveyor.

Project /Subdivision Name: SW Subdivison

Date of Preliminary Plat Approval: 5/5/2016

OWNER(S) OF RECORD:
Name: Van Schaffer Phone: 862-6365
Mailing Address: 4899 Hwy 93 S
City, State, Zip: Whitefish, MT 59937
Email:

APPLICANT (if different than above):
Name: SSD Development Inc Phone: 206 730 5648
Mailing Address: 164 old Ranch Rd
City, State, Zip: Whitefish MT 59937
Email: jsnowden@TripleSLG.com

TECHNICAL/PROFESSIONAL:
Name: Christine Bleyhl Phone: 612-961-1371
Mailing Address: 633 Colorado Avenue
City, State, Zip: Whitefish MT 59937
Email: cbleyhl@me.com
Name: Phone:
Mailing Address:
City, State, Zip:
Email:

PROJECT DESCRIPTION:
Type of Subdivision: Residential [X] Industrial [ ] Commercial [ ] PUD [ ] Other [ ]
Total Number of Lots in Subdivision 6 Land in Project (acres) ____
Parkland (acres) ____ Cash-in-Lieu $____ Exempt [ ]

NUMBER OF LOTS BY TYPE:
Single Family: 4 Townhouse: 2 Mobile Home Park: ____ Duplex: ____ Apartment: ____
Recreational Vehicle Park: ____ Commercial: ____ Industrial: ____ Planned Unit Development: ____
Condominium: ____ Multi-Family: ____ Other: ____
Legal Description of the Property:

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Dan Scheffer
Owner's Signature[1]

9/22/16
Date

Dan Scheffer
Print Name

Applicant's Signature

9/22/16
Date

Jay Snowden
Print Name

Representative's Signature

9-22-16
Date

Christine Bleigh
Print Name

Date

****NOTE: Please be advised that the County Clerk & Recorder and the City of Whitefish request that all subdivision final plat applications be accompanied with digital copies.**

**A digital copy of the final plat in a Drawing Interchange File (DXF) format or an AutoCAD file format, consisting of the following layers:

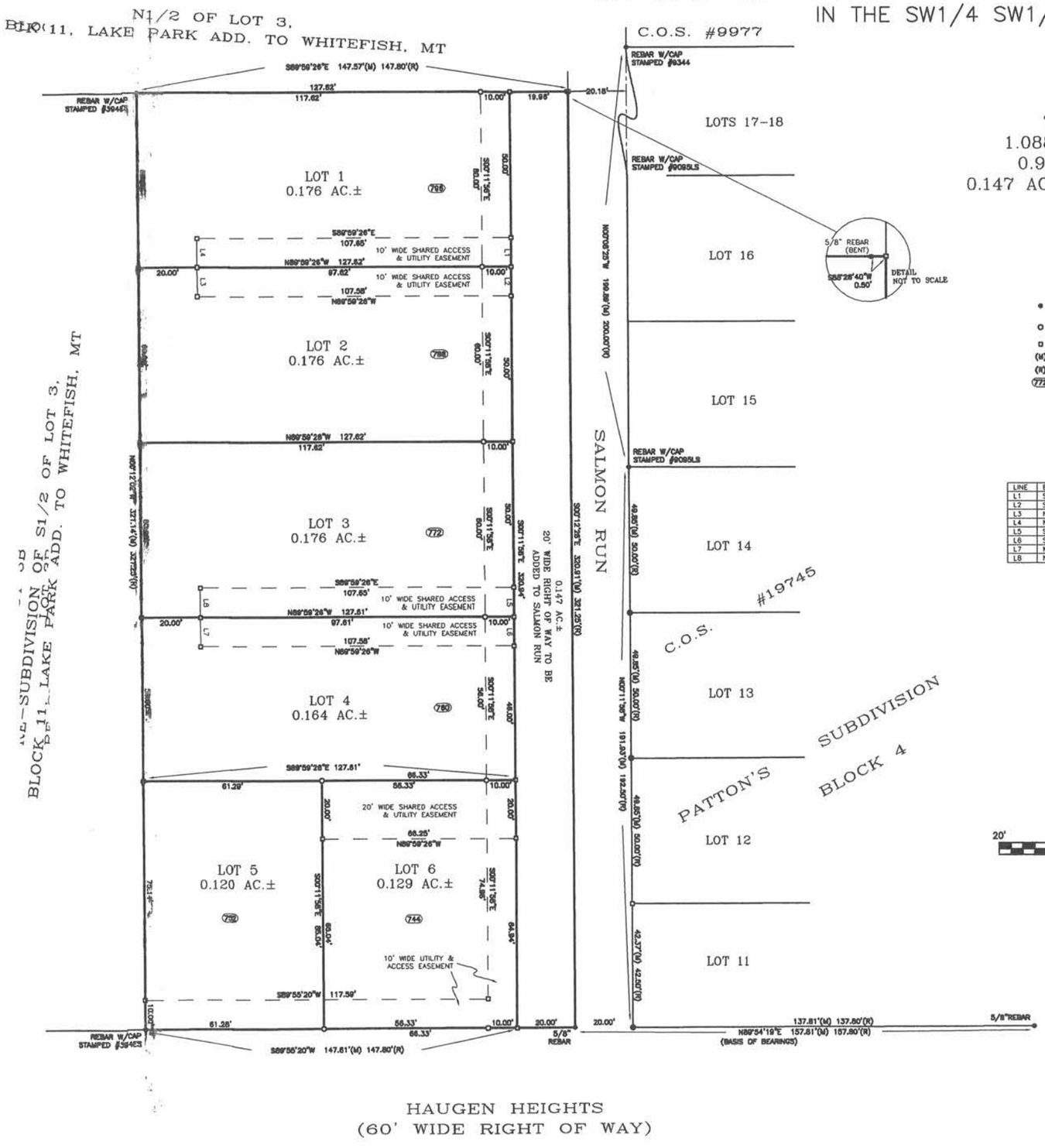
1. Exterior boundary of subdivision
2. Lot or park boundaries
3. Easements
4. Roads or rights-of-way
5. A tie to either an existing subdivision corner or a corner of the public land survey system

[1] May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included

OWNERS: DAN M. SCHEFFER & MELODY WATTS
DATE: 3/8/2016

FINAL PLAT OF SW SUBDIVISION

LOT 3A OF THE RE-SUBDIVISION OF THE S1/2 OF LOT 3, BLOCK 11, LAKE PARK ADDITION TO WHITEFISH, MT IN THE SW1/4 SW1/4, SEC. 26, T31N, R22W, P.M.,M., FLATHEAD COUNTY



TOTAL AREA
1.088 AC.± (GROSS)
0.941 AC.± (NET)
0.147 AC.± (RIGHT OF WAY)

LEGEND

- ● FOUND REBAR W/CAP STAMPED #15627LS (UNLESS OTHERWISE NOTED)
- ○ SET 5/8" X 24" REBAR W/PLASTIC CAP STAMPED #15627LS
- ◻ COMPUTED POINT, MONUMENT NOT SET
- (M) MEASURED DISTANCE
- (R) RECORDED DISTANCE
- (772) HOUSE ADDRESS

LINE	BEARING	DISTANCE
L1	S00°11'58"E	10.00'
L2	S00°11'58"E	10.00'
L3	N00°12'02"W	10.00'
L4	N00°12'02"W	10.00'
L5	S00°11'58"E	10.00'
L6	S00°11'58"E	10.00'
L7	N00°12'02"W	10.00'
L8	N00°12'02"W	10.00'

CERTIFICATE OF DEDICATION

We, Daniel M. Scheffer and Melody Watts, the undersigned property owners, do hereby certify that we have caused to be surveyed and platted into lots and streets all the following described property as described in the Certificate of Dedication, and shown by the annexed plat or map and situated in Flathead County, Montana:

That portion of the Southwest one-quarter of the Southwest one-quarter (SW1/4 SW1/4) of Section Twenty-six (26), Township Thirty-one North (T31N), Range Twenty-two West (R22W), Principal Meridian, Montana, more particularly described as follows:

Lot 3A of the Re-subdivision of South one-half (S1/2) of Lot Three (3), Block Eleven (11), Lake Park Addition to Whitefish, Montana and containing 1.088 acres of land, gross measure, more or less. All as shown hereon.

Subject to and together with all appurtenant easements of record.

The above described tract of land shall hereafter be known as "SW SUBDIVISION."

In witness whereof, I have caused my hand to be set on this _____day of _____, _____.

DANIEL M. SCHEFFER MELODY WATTS

STATE OF _____)
County of _____) SS

On this ____ day of _____, _____, before me, the undersigned, a Notary Public for the State of _____, personally appeared Daniel M. Scheffer and Melody Watts, known to me to be the persons 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 first above written.

Signature

Print Name
Notary Public for the State of _____
Residing at _____, _____
My Commission expires_____

CERTIFICATE OF FINAL PLAT APPROVAL

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

Dated this _____Day of _____, _____ 2016.

Michelle Howes, City Clerk
City of Whitefish, Montana

John Muffield, Mayor
City of Whitefish, Montana

CERTIFICATE OF CITY ATTORNEY

This plat has been examined by the Office of the City Attorney according to Section 76-3-612(2), MCA, relying upon Title Report No. _____, and approved based upon information submitted by the developer and/or his agent.

Dated this _____Day of _____, _____ 2016.

Office of the Whitefish City Attorney

CERTIFICATE OF PUBLIC WORKS DIRECTOR

I, Director of Public Works/City Engineer for the City of Whitefish, Montana, do hereby certify that the accompanying subdivision plat has been duly examined and has found that the required improvements have been reviewed and approved for compliance with the Whitefish Standards for Design and Construction, and hereby accept the dedication of those improvements to the City of Whitefish for the public use of any and all lands shown on the plat subject to any and all maintenance warranties and guarantees.

Dated this _____Day of _____, _____ 2016.

Director of Public Works/City Engineer
City of Whitefish, Montana

CERTIFICATE OF PLANNING DIRECTOR

I, Planning Director for the City of Whitefish, Montana, do hereby certify that the accompanying subdivision plat has been duly reviewed, and has been found to conform to the requirements of the Whitefish Zoning Regulations and the Whitefish Subdivision Regulations.

Dated this _____Day of _____, _____ 2016.

Planning Director
City of Whitefish, Montana

NOTES

1) HOUSE NUMBERS ARE REQUIRED TO BE POSTED IN A CLEARLY VISIBLE LOCATION.

2) MONUMENTS WERE NOT SET AT THE EASTERLY PROPERTY CORNERS AS THE LOCATIONS FALL IN A SIDEWALK.

CERTIFICATE OF SURVEYOR

THOMAS SIMON REGISTRATION NO. 15627LS
APPROVED: _____, _____

EXAMINING LAND SURVEYOR REG. NO. 7536S

STATE OF MONTANA
County of Flathead SS

Filed on the _____ day of _____
A.D. _____ at _____ o' clock ___ M.

CLERK AND RECORDER

BY: _____
DEPUTY

INSTRUMENT REC. NO. _____

SAM CORDI
REGISTERED SURVEYOR
974 COLORADO AVE
P.O. BOX 323
WHITEFISH, MT 59937
PHONE: (406) 862-

SNOWDEN_16-01_SUB(FINAL).dwg

September 21, 2016

City of Whitefish Planning and Building Department
PO Box 158
Whitefish, MT 59937

RE: Final Plat Submittal for SW Subdivision

Dear Planning Department,

This cover letter is an overview of the conditions of approval and the supporting documentation required for meeting the conditions of the SW Subdivision. The Whitefish City Council granted preliminary plat approval for the subdivision on May 2, 2016 based on the application dated February 22, 2016 subject to the following conditions:

Condition 1. The subdivision shall comply with Title 12 and Title 11 and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.

This condition is met. The Subdivision complies with Title 12 and Title 11.

Condition 2. Except as amended by these conditions, the development of the subdivision shall be in substantial conformance with the approved preliminary plat that govern the general location of lots, roadways, parking, landscaping, and improvements and labeled as "approved plans" by the City Council.

This condition is met. The plat reflects the design of the approved preliminary plat.

Condition 3. Prior to any pre-construction meeting, construction, excavation, grading, or other terrain disturbance, plans for all on and off-site infrastructure shall be submitted to, and approved by, the Whitefish Public Works Department. The improvements within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks, and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works.

These conditions have been met. The applicant has secured approval from the Whitefish Public Works Department, dated ( ).

Condition 4. Approval of the preliminary plat is subject to detailed design of all on and off-site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density, and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements, or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion.

This condition has been met. The applicant has secured approval from the Whitefish Public Works Department (see approval letter dated).

Condition 5. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Departments. The plan shall include, but not limited to, the following: [See conditions listed on Preliminary Plat Conditions]

These conditions have been met. (See approval letter from Whitefish Public Works Department dated).

Condition 6. All roads within the subdivision shall be built to City of Whitefish Public Works Standards and the Whitefish Subdivision Regulations unless otherwise approved by the Public Works Director.

This condition has been met. (See approval letter from Whitefish Public Works Department dated and the letter from Apec Engineering stating that the construction meets the City's standards).

Condition 7. The entire length of Salmon Run, from Haugen Heights to Lake Park Lane will be maintained and plowed for emergency access until such time as the remainder of Salmon Run is constructed to current City Standards.

Condition 8. A 10-foot wide easement along the west side of Salmon Run and the north side of Haugen Heights shall be shown on the face of the final plat for utilities, sidewalks, and landscaped boulevards.

Condition 9. Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance.

Condition will be met by October 8, 2016. Street lights shall be City-approved standard lights.

Condition 10. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access.

Condition has been met. Fire hydrant and water lines have been tested on

Condition 11. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision.

Condition will be met after the September 26, 2016 site walk-thru.

Condition 12. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by the Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association.

Condition has been met. Reseeding has occurred by September 26, 2016. Noxious weed management shall occur per the stormwater management maintenance plan. No other HOA or CC&Rs are in place for this subdivision.

Condition 13. Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse.

Condition has been met. North Valley Refuse has agreed to collect refuse along Salmon Run per individual house.

Condition 14. Cash-in-lieu of Parkland dedication shall be paid at the time of final plat to the equivalent of 0.10351 acres.

Cash-in-lieu payment amount has been determined by City Staff and the applicant will submit payment for the full amount with the final plat application.

Condition 15. A tree retention plan shall be submitted to the Planning Department for review and approval. Appropriate trees outside building envelopes, driveways, and roads shall be preserved. Any additional tree removal shall be approved by the Planning Department.

Condition will be met by applicant at time of final plat application.

Condition 16. Architectural Review is required for the townhouse structures prior to the issuance of a building permit.

Condition will be met at time of design and submittal of townhouse structure. Townhouse structures will be submitted for architectural review at a later date.

Condition 17. The following notes shall be placed on the face of the plat: House numbers shall be located in a clearly visible location.

Condition has been met. See letter from the Whitefish Post Master dated . Street numbers are as follows: 744, 752, 760, 772, 788, 796 Salmon Run.

Condition 18. A common off-street mail facility shall be provided by the developer and approved by the local post office.

Condition will be met the first week of October when the post box is installed by the Post Master. Mail facility will be located on Haugen Heights.

Condition 19. Prior to approval of the final plat, the applicant shall produce a copy of the proposed CC&Rs for SW Subdivision Homeowners' Association providing for: Long-term weed management plan. Weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; long-term maintenance plan for drainage and stormwater management facilities; long-term maintenance and plowing of Salmon Run from Haugen Heights to Lake Park Lane, until such time as the remainder of Salmon Run meets current City roadway standards.

A stormwater management plan will be in place by the applicant for long-term weed management of the stormewater conveyance area. Public Works will manage plowing from Haugen Heights to the paved end of Salmon Run. Private plowing will occur on the rural road deck to Lake Park Lane.

Condition 20. The SW Subdivision preliminary plat is approved for three (3) years from Council action.

Condition has been met. Improvements have been installed prior to three years from Council action (until May 2, 2019).

Alliance Title & Escrow Corp.

1.800.826.1801

ALLIANCE
TITLE & ESCROW CORP.

Invoice

Date: 09/19/2016
Number: 106170

Daniel M. Scheffer and Melody Watts
4899 US Highway 93 S
Whitefish, MT 59937

Property Address:
235 Haugen Heights
Whitefish, MT 59937

Please Remit Payment To:
Alliance Title & Escrow Corp.
Attn: Accounts Receivable
380 E. Parkcenter Blvd Suite 105
Boise, ID 83706

File Number	Transactee	Client's File #	Class/Description	Memo		Amount
329211	Scheffer, Daniel		Owner's Premium			$150.00
					Total	$150.00
				Total Due		$150.00

Buyer (Borrower) - Daniel M. Scheffer and Melody Watts
Seller (if any) -
Loan Amount (if any) -
Sales Price (if any) - $10,000.00

SUBDIVISION GUARANTEE

Issued by Chicago Title Insurance Company

Policy No. 7195-36-329211-2016.74156-96829014

GUARANTEE

CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation, herein called the Company, guarantees the Assured against actual loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.

2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth in Schedule A.

PLEASE NOTE CAREFULLY THE LIABILITY EXCLUSIONS AND LIMITATIONS AND THE SPECIFIC ASSURANCES AFFORDED BY THIS GUARANTEE. IF YOU WISH ADDITIONAL LIABILITY, OR ASSURANCES OTHER THAN AS CONTAINED HEREIN, PLEASE CONTACT THE COMPANY FOR FURTHER INFORMATION AS TO THE AVAILABILITY AND COST.

Dated: August 25, 2016

7195MT 328463
Alliance Title & Escrow Corporation
380 E. Parkcenter Blvd, Suite 105
Boise, ID 83706
Tel: (208) 388-8881
Fax: (208) 388-8984

CHICAGO TITLE INSURANCE COMPANY

By:

CHICAGO TITLE INSURANCE COMPANY CORPORATE SEAL

ATTEST President

Secretary

: _____
Authorized Signatory

Form No. 72156 (Reprinted 01/08

SCHEDULE A
Subdivision Guarantee

Order No.: **329211**
Guarantee No.: **74156-96829014**
Liability: **$10,000.00**
Fee: **$175.00**

1. Name of Assured: **Daniel M. Scheffer and Melody Watts**

2. Title to said estate or interest at the date hereof is vested in

   Daniel M. Scheffer and Melody Watts, as Joint Tenants

3. The estate or interest in the land hereinafter described or referred to covered by this Guarantee is

   FEE SIMPLE

4. The land referred to in this Guarantee is situated in the State of MT, County of Flathead and is described as follows:

   Lot 3A of the Resubdivision of the South Half of Lot 3 of Block 11 of Lake Park Addition to Whitefish, Montana, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

5. The assurances referred to on the face page hereof are:
   According to the public records the title to the herein described estate or interest was vested in the vestee named in paragraph 2 subject to the matters shown in Exceptions in Schedule B, which Exceptions are not necessarily shown in the order of their priority.

SCHEDULE B
Subdivision Guarantee

Guarantee No.: **74156-96829014**

EXCEPTIONS:

1. Encroachments or questions of location, boundary and area, which an accurate survey may disclose; public or private easements, streets, roads, alleys or highways, unless disclosed of record by recorded Plat or conveyance, or decree of a Court of record; rights or claims of persons in possession, or claiming to be in possession, not disclosed by the public records; material or labor liens or liens under the Workmen's Compensation Act not disclosed by the public records; any service, installation or construction charges for sewer, water, electricity, or garbage collection and disposal.

2. Reservations and exceptions in United States Patents or in Acts authorizing the issuance thereof; right of use, control or regulation by the United States of America in the exercise of powers over navigation; any prohibition or limitation on the use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water, water rights or matters relating thereto.

3. General taxes not now payable; matters relating to special assessments and special levies, if any, preceding the same becoming a lien.

4. General Taxes for the year 2015 are paid
   Parcel No.: 74-0183600

5. Taxes, including any assessments collected therewith, for the year 2016 which are a lien not yet due and payable.

6. Easements, reservations, notes and/or dedications as shown on the official plat of Lake Park Addition.

7. Easements, reservations, notes and/or dedications as shown on the official plat of Re-Subdivision of South Half of Lot 3, Block 11 of Lake Park Addition.

8. Reservations and exceptions in the United States Patent, and in the act authorizing the issuance thereof.
   Recorded: December 26, 1896.
   Book: 8 at Page: 360
   Official Records: Flathead County.

9. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
   Purpose: Ordinance No. 04-21
   Recorded: December 28, 2004
   Instrument No.: 200436309460

10. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Resolution No. 2015T Revision to Flathead County Grown Policy
    Recorded: August 6, 2015
    Instrument No.: 2015-000-18100

11. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Resolution No. 15-41 to change the name of Third Street West of State Park Road in Patton's Subdivision to Salmon Run
    Recorded: September 23, 2015
    Instrument No.: 201500022367

12. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Resolution No. 2417 City of Whitefish and the Lake Park Addition Zoning District
    Recorded: February 19, 2016
    Instrument No.: 201600003369

13. Terms, provisions, covenants, conditions, definitions, options, obligations and restrictions, contained in a document
    Purpose: Resolution No. 2416A Flathead County Zoning Regulations
    Recorded: April 7, 2016
    Instrument No.: 201600006564

14. A Deed of Trust to secure an indebtedness in the amount shown below.
    Amount: $35,105.00
    Trustor/Grantor: Daniel M. Scheffer and Melody Watts
    Trustee: Whitefish Title Service, Inc.
    Beneficiary: Whitefish Credit Union Association
    Dated: October 9, 2000
    Recorded: October 10, 2000
    Instrument No.:200028416230

The end

Plat Room
Flathead County, Montana
800 S. Main St.
Kalispell, MT 59901
(406) 758-5510

This Form is for Subdivisions Only

BY : CORDI

FOR : SCHEFFER & WATTS

DATE : 9/21/16

DESCP : SW SUB
(L3A Lake Pk Add Resub
S2 L3 B11 in 26-31-22)

PURPOSE : SUB

YEARS	ASSESSOR #
2012 THRU 2015	0183600

I hereby certify that there are no outstanding taxes on the property assigned the assessor numbers listed above, for the years indicated for each assessor number.

SEP 26 2016 Jody Workman
Deputy Treasurer
(seal)

FLATHEAD COUNTY TREASURER
KALISPELL, MONTANA

POSTMASTER
UNITED STATES POSTAL SERVICE

UNITED STATES
POSTAL SERVICE

February 19,2016

Triple S Land Group
PO Box 1659
Whitefish, MT 59937

RE: Salmon Run subdivision

Mail delivery for subdivision located off Salmon Run has been approved for mail delivery.

Mail service will consist of CBU(lock box) for the resident.

If you have any questions or concerns , you may reach me at 406-892-7621

Thank you

Steve Kvapil

Postmaster
Whitefish, MT 59937
406-862-2151

424 BAKER AVE.
WHITEFISH, MT. 59937-9998
406-862-2151
FAX:

P.O. Box 158 • Whitefish, MT 59937 • (406) 863-2400 • Fax: (406) 863-2419

City of Whitefish

October 17, 2016

Justin Ahmann, PE
APEC Engineering
75 Somers Road
Somers, Montana
59932

Re: S&W Subdivision Project Acceptance

Dear Justin:

We received your August 24, 2016 letter certifying that the S&W Subdivision improvements are substantially complete and have been constructed in accordance with the approved plans and specifications. We also received Record Drawings for the S&W Subdivision dated August 29, 2016.

The City is formally accepting the subdivision improvements. The City's Public Works Department will plow the paved portion of Salmon Run Road. The owner is responsible for plowing the gravel section of Salmon Run Road to Lake Park Lane. As a condition of acceptance of the infrastructure improvements, the property owner or contractor shall provide the City with a maintenance bond of ten percent of the total value of the infrastructure improvements. The maintenance bond shall remain in effect for a two-year period. The project engineer shall conduct a two-year inspection at the end of this warranty period. Please call 863-2450 if you have any questions.

Sincerely,

Karin Hilding, P.E.
Senior Project Engineer

Bailey Minnich

From: Tom Kennelly
Sent: Thursday, October 27, 2016 1:21 PM
To: Bailey Minnich
Subject: RE: SW Subdivision - 235 Haugen Heights

Bailey,

I did have a chance to review and approve the hydrant placement during the engineering plan review. Today , I drove out to Salmon Run and verified that the fire hydrant was placed in the agreed upon location. The Fire Department also has no issues at this time with the agreed upon emergency service access to the subdivision. We, therefore, have no issues with final plat preceding from the Fire Department's standpoint.

Tom

From: Bailey Minnich
Sent: Wednesday, October 26, 2016 4:26 PM
To: Tom Kennelly <tkennelly@cityofwhitefish.org>
Subject: SW Subdivision - 235 Haugen Heights

Hi Tom,
I wanted to make sure that you had approved the placement and design of the fire hydrant for the SW Subdivision located on the newly built Salmon Run. They are coming in for Final Plat, but I didn't see any email from you and I wasn't sure if you had approved the placement during the Engineering Plan Review.

Thanks!
Bailey

Bailey Minnich, AICP, CFM
Planner II
City of Whitefish
510 Railway Street
P.O. Box 158
Whitefish, MT 59937
(406) 863-2410

DEQ
Montana Department
of Environmental Quality

June 23, 2016

Justin Ahmann
APEC Inc
75 Somers Road
Somers MT 59932

RE: SW Subdivision
Municipal Facilities Exclusion
EQ# 16-1913
City of Whitefish
Flathead County

Dear Mr. Ahmann;

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA. Under 76-4-125(2)(d), MCA, this subdivision is not subject to review, and the plat can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed 76-4-131. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

Sincerely,

Leata English

Leata English
Subdivision Section
(406) 444-4224
email lenglish@mt.gov

cc: City Engineer
County Sanitarian
Owner
file

DEQ
Montana Department of Environmental Quality

July 7, 2016

Justin Ahmann, PE
APEC
75 Somers Road
Somers, MT 59932

Re: City of Whitefish (PWSID MT00000357) – Scheffer & Watts (SW) Subdivision Water and Sewer Main Extensions Approval EQ#16-1912

Dear Mr. Ahmann:

I have reviewed the revised plans and specifications for the water and sewer extensions proposed to serve the Scheffer and Watts Subdivision (also referred to as "Salman Run") within the City of Whitefish, received June 23, 2016, under the seal of Justin D. Ahmann, license#20369PE. This submittal was reviewed along with the original April 18, 2016 submittal. The entire project was reviewed under Circular Design Standards DEQ-1, 2014 Edition and Circular Design Standards DEQ-2, 2012 Edition. The City of Whitefish approval letter was received June 21, 2016.

Scheffer & Watts Subdivision utilized the Municipal Facility Exclusion (MFE) method to satisfy the Sanitation in Subdivision Act requirements (approved under EQ#16-1913), which was approved on June 23, 2016. In using the MFE process, the City of Whitefish provided the storm water review.

The Scheffer & Watts (SW) Subdivision water main and sewer main extension plans and specifications, received June 23, 2016, are hereby approved. One copy of the plans and specifications bearing the approval stamp of the Department of Environmental Quality is enclosed. A second set will be retained as Department Record.

In general, the water main extension consists of: approximately 330 feet of 8-inch diameter C-900 CL150 PVC water main, one fire hydrant assembly, 3 gate valves, one connection to existing water main in Haugen Heights Road, and one end cap. The fire hydrants are capable of providing over 1000 gpm fire flow at 20 psi residual pressure.

The sanitary sewer extension consists of: installing approximately 330 feet of 8-inch diameter SDR 35 gravity sewer main, 2 manholes and one connection to existing gravity sewer line located within Haugen Heights Road.

Approval is given with the understanding that any deviation from the approved plans and specifications will be submitted to the Department for reappraisal and approval. The project may not be placed into service until the project engineer or designer certifies by letter to the Department that the activated portion of the project was constructed in substantial accordance with the plans and specifications approved by the Department and there are no deviations from the design standards other than those previously approved by the department. Within 90 days after the completion of construction, a complete set of certified "as-built" drawings must be signed and submitted to the department.

OCT 07 2016

It is further understood that construction will be completed within three years of this date. If more than three years elapse before completing construction, plans and specifications must be resubmitted and approved before construction begins. This three-year expiration period does not extend any compliance schedule requirements pursuant to a Department enforcement action against a public water or sewage system.

Department approval of this project covers only those portions of the plans and specifications that are subject to the Department's review authority under the Public Water Supply Laws (MCA 75-6) and the Administrative Rules promulgated thereunder (ARM 17.38). This approval does not cover items found within the plans and specifications that are outside of the Department's review authority, including but not limited to: electrical work, architecture, site grading or water and sewer service connections.

Thank you for your efforts regarding this submittal. If you have any further questions, please contact me at (406) 755-8979 or egillespie@mt.gov

Sincerely,

Emily J. Gillespie, P.E.
Public Water Supply and Subdivisions Bureau

cc: Craig Workman, Whitefish Public Works
Wendee Jacobs, Flathead County Environmental Health
MDEQ Plan Review File
MDEQ PWS File#MT000357

August 24, 2016 151216

Craig Workman
Public Works Director
Whitefish Public Works
P.O. Box 158
Whitefish, MT 59937-0158

RE: WATER, SEWER & STORM CERTIFICATION – SW SUBDIVISION

Dear Mr. Workman:

Pursuant to the DEQ approval statement issued for the SW Subdivision, APEC Engineering (APEC) has inspected the public water, sewer & storm. To the best of our knowledge and belief, the water, sewer, & storm system improvements have been constructed in accordance to and in general conformance with the approved plans and specifications. To our knowledge, there are no deviations from the design standards other than those previously approved by the Department. The current list of approved conditions are:

1. The 10-foot dry utility easement and 18-foot drainage easement much be record with the final plat. The recorded easement mush note that the storm drainage system outside of the road right-of-way will be privately maintained.
2. The stormwater maintain section of the stormwater report will need to be include in the homeowner's Conditions, Covenants, and Restrictions (CC&Rs). The drainage O&M plan needs to note that no fencing will be allowed within the drainage easement.
3. Five deviations request were approved by the City of Whitefish; these include:
    a. The required 100-foot setback for a detention pond and a neighbor's septic system will be reduced to approximately 40 feet.
    b. The "1 foot of freeboard" within the detention pond, will be reduced to 0.07 feet.
    c. The 0.5 feet of sediment storage depth will not be provided in the detention facility.
    d. Rather than a required 50-foot setback from a detention pond to a building foundation, a 5-foot setback will be provided.
    e. The 20 foot required setback between a detention pond and the property line will be reduced to two feet.

As these deviations have been granted, the Final Plat requires a statement "All buildings must be construed as slab on grade" as a result of 3.d. (the allowed 5-foot separation from building foundations).

4. The landscaping plan must be provided to the Planning Department for their review.
5. All other plan set conditions have been updated on the attached record drawings.

Sincerely,

APEC Engineering, Inc

Justin D. Ahmann, P.E.

Enclosed: Record Drawings

Cc: MDEQ, Emily Gillespie
Wendee Jacobs, Flathead County Environmental Health
Jay Snowden, Triple S Land Group, LLC

OCT 07 2016

NORTH VALLEY REFUSE
PO BOX 1157
WHITEFISH, MT. 59937
PHONE: 862-4381
FAX: 862-4387
E-MAIL nvr@montanawastesystems.com

Date: 10/20/16

To: Triple S Landgroup
Jay Snowden

From: Jake Persinger

Re: SW Subdivision located in Sec: 26 Tn: 31n R: 22w off Salmon Run road in Whitefish MT. For Daniel Scheffer and Melody Watts

We do offer garbage service for this area, we currently service 775 Salmon run rd for the city of Whitefish.

For any further questions please call Jake at North Valley Refuse.

Sincerely
Jake Persinger

OCT 20 2016

SSD
DEVELOPMENT
www.ssddevelop.com
PO Box 1659, Whitefish, MT 59937

October 1, 2015

Bailey Minnich
Planner II
City of Whitefish
510 Railway Street
PO Box 158
Whitefish, MT 59937

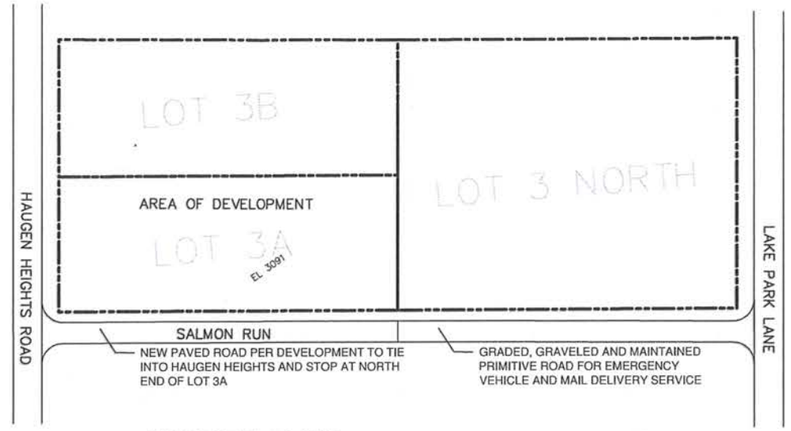
SW Subdivision Tree Preservation Plan

It is the goal of SSD Development maximise retention of all healthy trees not in the building envelope, right of way, utility lines, driveways or storm water ditches and pond.

Unfortunately all trees greater than 6 inch in diameter, except for the larch located in the Southwest corner of the subdivision boundary, were either located in one of the above mentioned right zones and had to be removed. In addition many of the smaller trees were unhealthy, diseased or dying, these were removed as well from the subdivision.

Jay Snowden
Principal
SSD Development INC

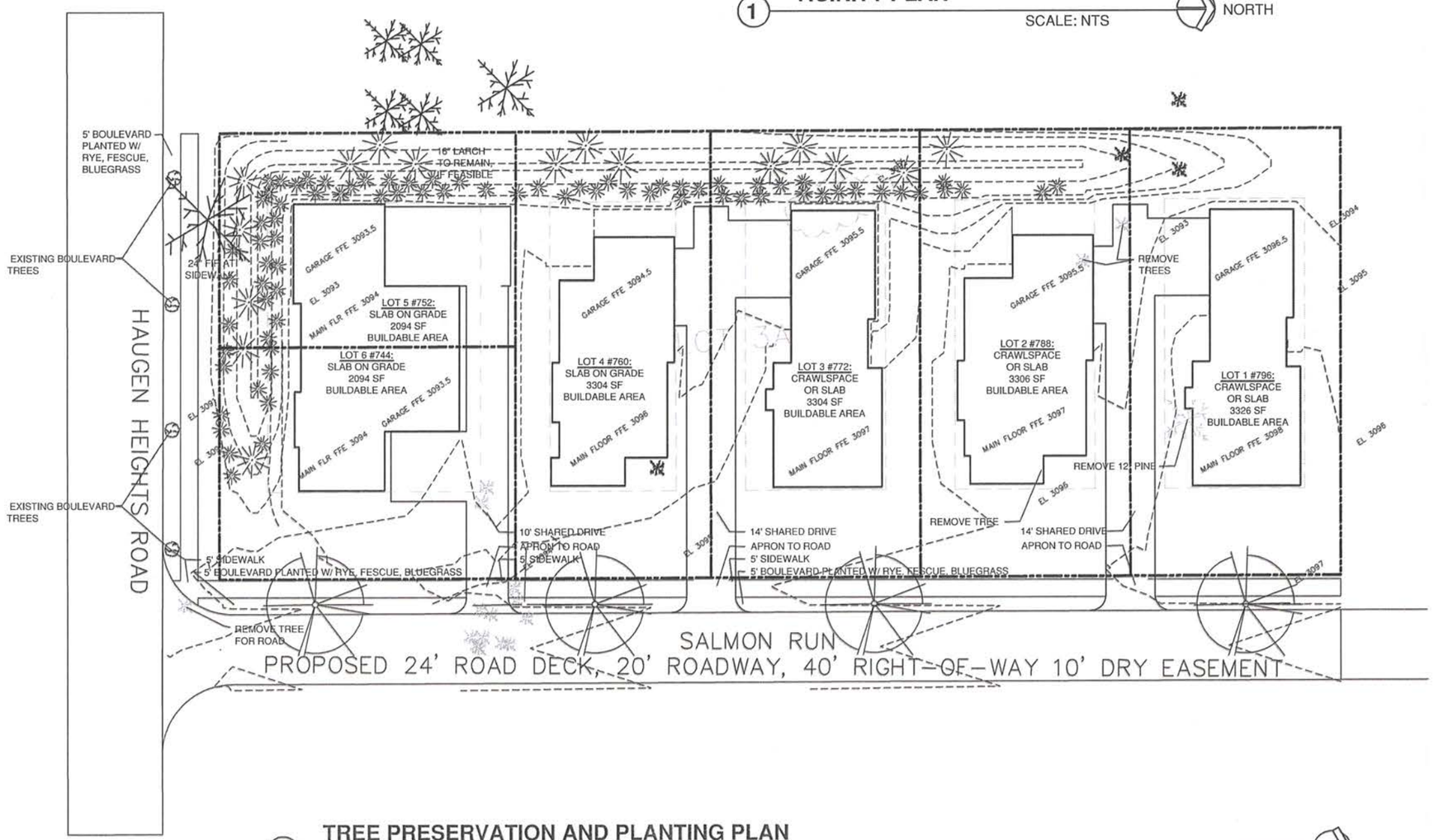
OCT 17 2016



1 **VICINITY PLAN**

SCALE: NTS

NORTH



2 **TREE PRESERVATION AND PLANTING PLAN**

SCALE: 1/16"-1'-0"

NORTH

SHEET SCHEDULE:

A0/L1 PRELIMINARY SITE, LANDSCAPING PLAN
SURVEY AND PRELIMINARY PLAT
CIVIL ENGINEERING PLANS

GENERAL SITE CONDITIONS:

1. CALL UDIG BEFORE YOU DIG - 1-800-551-UDIG
2. PROTECT ALL EXISTING TREES AND SITE FEATURES TO REMAIN
3. ALL SOILS TRACKED ONTO PAVED SURFACES ON SITE AND ROADWAYS SHALL BE REMOVED DAILY.
4. INSTALL AND MAINTAIN EROSION CONTROL DEVICES AS NECESSARY TO PREVENT SEDIMENT TRANSPORT OFF-SITE.
5. MATERIAL EXCAVATED FROM TRENCHES OR GENERAL SITE GRADING MAY BE USED FOR BACKFILL TO PROPOSED SUBGRADE ELEVATIONS.
6. VERIFY ALL SETBACKS, EASEMENTS, PROPERTY LINES, CONSTRUCTION LIMITS AND REQUIREMENTS THEREOF WITH GOVERNING AUTHORITY PRIOR TO WORK
7. WEED MANAGEMENT PLAN SHALL BE IN PLACE ONCE IT IS DETERMINED ANY NOXIOUS WEEDS ARE PRESENT ON THE SITE (SEASONAL CONDITIONS PREVENT VERIFICATION).
8. UNITED STATES POSTAL SERVICE DELIVERY TO CENTRAL MAIL COLLECTION BOX LOCATED AT INTERSECTION OF SALMON RUN AND HAUGEN HEIGHTS AND IS SUBJECT TO USPS REVIEW
9. CONTACT NORTH VALLEY REFUSE FOR WASTE HAULING - DETERMINATION OF 300 SERIES UNITS OR INDIVIDUAL SERVICE IS SUBJECT TO REVIEW

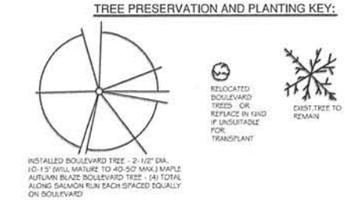
PROPOSED USE:
6 LOT SUBDIVISION

ZONING:
WR-2 TWO-FAMILY SUBDIVISION

PARCEL SIZE:
TOTAL ORIGINAL 1.09 ACRES (47,480 SQ/FT) INCLUDING RIGHTS-OF WAY AND DRY EASEMENTS

LOT #	GROSS	NET
LOT 1:	.176 AC	.162 AC
LOT 2:	.176 AC	.162 AC
LOT 3:	.176 AC	.162 AC
LOT 4:	.164 AC	.151 AC
LOT 5:	.120 AC	.120 AC
LOT 6:	.129 AC	.109 AC
TOTALS:	.941 AC (LESS R.O.W)	.866 AC(LESS EASEMENT)

TREE PRESERVATION AND PLANTING KEY:



SW SUBDIVISION
TRIPLE S LAND GROUP, LLC WHITEFISH, MT

HAPPY MEDIUM, LLC
CHRISTINE BLEYHL, AIA
MONTANA LIC. # 5534
612.961.1371

SUBDIVISION FINAL PLAT SET
02.16.2016
REVISED 04.07.2016
REVISED 10.18.2016

A0/L1

SSD DEVELOPMENT INC
P.O. BOX 1659
WHITEFISH, MT 59937

2062

93-7082/2929

DATE 9/27/16

CHECK ARMOR

PAY TO THE ORDER OF City of Whitefish $ 8,337.30

eight thousand three hundred + thirty seven 30/100 DOLLARS

GLACIER BANK
319 E. Second Street (406) 863-6300
Whitefish, MT 59937

FOR Park Fees

⑈002062⑈ ⑆292970825⑆0101 2000 28733⑈

CITY OF WHITEFISH
CASH RECEIPT

Printed 13:34:13 - 10/31/16

Batch:15692
Transaction:48

Reference Number: SW SUBDIVISION PARK

Name: SSD DEVELOPMENT INC.

Address:

Item(s) Description:

PLANNING FEES	8337.30
Check # 2062	8337.30
Cash Paid	
Credit Paid	
Less Change Given	( )
TOTAL:	**8337.30**

Maintenance Agreement

Responsible Party

List the party that shall be permanently responsible for the maintenance of structural or non-structural measures required by the Operation Manual. (e.g. owner, governmental agency, or other legal established entity)

_____

Designate personnel for inspection and maintenance:
Name: _____
Address: _____
Contact Phone: _____ Cell: _____

Property Description

List legal description of property: Lake Park Add Resub S2 L3, Blk 11
Section 26, Township 31 N, Range 22 W, Flathead County, MT

Operation and Maintenance

Has the Operation and Maintenance Manual been created? ☑ Yes ☐ No

Responsible Party shall ensure the continued performance of the maintenance obligation in accordance with the Operation and Maintenance Manual.

Failure to Maintain Stormwater Systems

If the required maintenance and repairs are not being performed and inhibit the intended function of the stormwater system the City may hire a contractor to perform the required maintenance and bill the HOA, POA, or responsible property owner.

In the event the HOA, POA, or responsible property owner fail to perform the required maintenance and repairs to the stormwater facility and inhibit the intended function of the stormwater system, a stormwater maintenance district program may be formed in accordance with §7-12-4102 MCA incorporating all the lots within a development. The taxes levied within the maintenance district shall be determined by the Public Works Department with approval by the Whitefish City Council.

By signing the Maintenance Agreement the Responsible Party shall assume full responsibility for the maintenance of the stormwater system.

X_____ _____
Signature of Responsible Party Date

Lot Maintenance and Weed Plan Agreement

This agreement is by and between_____and_____ both of_____ Montana. The parties agree as follows:

1. Property.

The parties are the owners of the following described property located in Flathead County, Montana.

LEGAL DESCRIPTION.....

.....

2. Improved/Occupied Lots

Owners shall neatly maintain any flower gardens, shrubs and trees. Lawns shall be mowed and not permitted to grow to a height in excess of five (5) inches.

3. Unimproved/Unoccupied Lots

For general appearance and to prevent fire hazards, Owners shall mow the grassy/weedy portions of the Lot and not permit grass/weeds to grow to a height in excess of eight (8) inches.

4. Noxious Weeds

Whether a Lot is improved, unimproved, occupied or unoccupied Owners shall not permit noxious weeds to grow thereon. The noxious weed list of Flathead County Weed District includes but is not limited to the following:

Spotted, Russian and Diffuse Knapweeds

Dalmatian Toadflax

St. John's Wort

Sulfur Cinquefoil

Field Bindweed

Leafy Spurge

Whitetop and Canadian Thistle

Common Tansy

Biennial Wormwood

5. Obnoxious Weeds:

Obnoxious weeds such as dandelions shall be controlled to prevent the dissemination of seeds.

6. Successors. The burdens and benefits of the is agreement shall attach to and run with the respective properties described herein and shall be binding upon and for the benefit of the parties hereto and their respective heirs, successors and assigns.

DATED this _____ day of _____, 20___.

_____ _____

Owners Name Owners Name

STATE OF MONTANA)

)ss.

County of Flathead)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, Known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed same.

_____

NOTARY PUBLIC FOR THE STATE OF MT

Road Maintenance Agreement

This agreement is by and between _____and_____ both of _____ Montana. The parties agree as follows:

1. Property. The parties are the owners of the following described property located in Flathead County, Montana.

LEGAL DESCRIPTION.....

.....

2. Maintenance. The parties hereto agree to share equally in the cost of maintenance and snow removal for the existing primitive gravel road deck of Salmon Run extending to Lake Park Lane. The expenditure of funds requires the consent of all parties.

3. Successors. The burdens and benefits of the is agreement shall attach to and run with the respective properties described herein and shall be binding upon and for the benefit of the parties hereto and their respective heirs, successors and assigns.

DATED this _____ day of _____, 20___.

_____ _____

Owners Name Owners Name

STATE OF MONTANA)

)ss.

County of Flathead)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, Known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed same.

_____

NOTARY PUBLIC FOR THE STATE OF MT

(Letterhead of Lending Institution or Leinholder)

CONSENT TO PLATTING

Pursuant to Section 76-3-612, MCA, (I), (We) the undersigned, as beneficiary of a mortgage or other indenture to secure payment in the principle sum of $----------, recorded ------- as Document #----------, hereby consents to the platting of a tract of land to be known and named as (Subdivision Name).

IN WITNESS WHERE OF, said party has caused their name to be subscribed hereto on the 1st day of November, 2016

Signature:

Paul L. Iversen, SVP

Printed Name and Title:

STATE OF Montana)

SS

COUNTY OF Flathead)

On this 1st day of November, 2016, before me a Notary Public for the State of Montana, personally appeared whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Signature:

Printed Name of Notary M. Johnson
Notary Public for State of Montana
Residing at: Columbia Falls
My Commission Express: 12-01-2018

M JOHNSON NOTARIAL SEAL STATE OF MONTANA

M JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Columbia Falls, Montana
My Commission Expires
December 01, 2018

RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property.

WHEREAS, the City has accumulated a quantity of used property and equipment which is obsolete and of no further value or use to the City. Such property is described generally on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Section 7-8-4201 M.C.A. provides, with some restrictions, that the City Council may sell, dispose of, donate, or lease any property belonging to the City.

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

Section 1: That the recitals set forth above are adopted as findings of fact.

Section 2: That the City Council hereby determines that all of the items described on Exhibit "A" are of no further use to the City of Whitefish and can be declared surplus.

Section 3: That City staff is hereby authorized to dispose of the property described on Exhibit "A" at public auction. If not sold at the auction, City departments may dispose of remaining property as follows:

A. Items having no market value shall be donated to any non-profit organization that is willing to accept such items. Such non-profit organizations shall be ones which are qualified under Section 501(c)(3) of the Internal Revenue Code.

B. Any items having no market value and which a non-profit organization declines to accept may be disposed of by hauling to the local landfill, or by other means of disposal.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Michelle Howke, City Clerk

EXHIBIT A

1. The Depot Park building currently housing the Planning/Building and Parks and Recreation Departments.

2. Police vehicle - 2004 Dodge Durango, VIN #D4HB38N24F224536, Mileage 144,101

When Recorded Return to:
Michelle Howke, 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 approximately 1.02 acres of land known as 2088 Houston Drive, for which the owner has petitioned for and consented to annexation.

WHEREAS, Wanda Bennetts, 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:

> LOT 15 OF HOUSTON LAKESHORE TRACTS, ACCORDING TO THE MAP OR PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

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 November 7, 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 7TH DAY OF NOVEMBER, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Michelle Howke, City Clerk

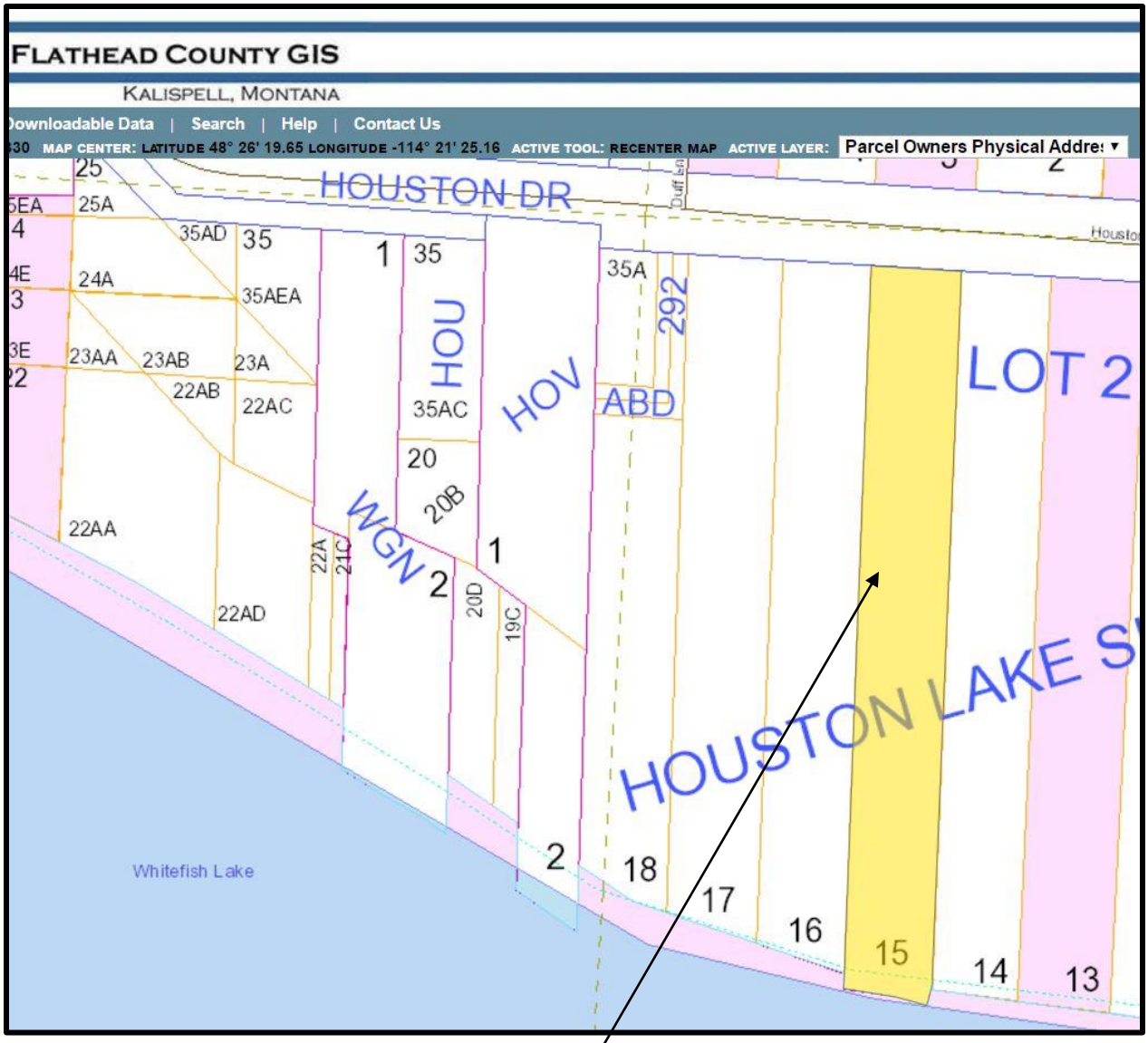
CERTIFICATE AS TO RESOLUTION
AND ADOPTING VOTE

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 approximately 1.02 acres of land known as 2088 Houston Drive, 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 November 7, 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 7th day of November 2016.

_____
Michelle Howke, City Clerk



2088 Houston Drive
Assessor No. 0972933

After Recording Return to:
Michelle Howke, 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 28 day of OCT, 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 Whitefish Fire Service Area.

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 28 day of OCT, 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: ✓

LOT 015 Houston. ~~HUSTON~~ LAKE SHORE TR.
SECTION 23 TOWNSHIP 31N RANGE 22W
1.02 acres

PROPERTY ADDRESS: 4/B 2088 Houston Drive ~~2088 HUSTON DR~~

ZONED AS: RESIDENTIAL

Wanda Bennetts
Wanda Bennetts

[Printed Name] [Printed Name]

STATE OF Montana)
) :ss
County of Flathead)

On this 28th day of October, 2016 before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Wanda Bennetts 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.

CHANEL LAUGEN NOTARIAL SEAL STATE OF MONTANA

CHANEL LAUGEN
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
February 14, 2018

Chanel Laugen

After Recording Return to:
Michelle Howke, 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 28 day of OCT., 2016, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and WANDA BENNETTS ("OWNER"), as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is 106-Cranleigh Terrace, SE Calgary, Alta. T3M0G2 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 ✓

WB

LOT 015 ~~HUSTON~~ HOUSTON LAKE SHORE TR.
SECTION 23 TOWNSHIP 31N RANGE 22W

1.02 acres

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 1 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 1 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.

OWNER(S)

Wanda Bennetts

Wanda Bennett's

[Printed Name]

OWNER(S)

[Printed Name]

CITY OF WHITEFISH

By: Charles C. Stearns

Charles C. Stearns, City Manager

ATTEST:

Michelle Howke

Michelle Howke, City Clerk

STATE OF Montana)
) ss.
County of Flathead)

On this 28th day of ~~December~~ October, 20 16, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Wanda Bennetts 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.

CHANEL LAUGEN NOTARIAL SEAL STATE OF MONTANA

CHANEL LAUGEN
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
February 14, 2018

Chanel Laugen

STATE OF MONTANA)
) ss.
County of Flathead)

On this 31st day of October, 20 16, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared CHARLES C. STEARNS, and MICHELLE HOWKE, to me known to be the City Manager and City Clerk respectively of the City of Whitefish, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Whitefish for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the City of Whitefish.

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

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, to establish an increase in the public usage fee for the Whitefish City Beach boat launch.

WHEREAS, §§ 7-1-4123(7) and 7-6-4013, MCA, empower municipalities to impose a fee for the provision of a service and grant municipalities the authority to regulate, establish and change fees and classifications that are imposed for services, which must be reasonable and related to the cost of providing such a service; and

WHEREAS, § 7-16-4201, MCA, and §§ 2-2-4, and 7-3-1, Whitefish City Code, authorize the Board of Park Commissioners to protect, manage and control City parks and grounds and to make all rules for the use of the parks by the public; and

WHEREAS, following notice, public comment, and review of staff reports, at a lawfully noticed public meeting on September 13, 2016, the Board of Park Commissioners reviewed past fees for the use of the Whitefish City Beach boat launch and recommended a fee schedule increase to $10.00 per vessel for the daily boat launch permit fee, having determined such fee to be reasonable and related to the cost of providing City services; and

WHEREAS, as required by § 7-6-4013, MCA, notice of a public hearing before the City Council at its November 7, 2016 meeting with respect to the proposed increase in the public usage daily boat launch permit fee was published on October 12, 2016, and October 19, 2016; and

WHEREAS, at a lawfully noticed public hearing on November 7, 2016, after receiving public comment, reviewing staff reports, and having considered the cost of operation and equipment and the use of public parks, facilities and grounds, the Whitefish City Council reviewed the recommendations made by the Board of Park Commissioners with respect to an increase in the public usage daily boat launch permit fee and found the fee to be reasonable and related to the cost of providing City services.

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

Section 1: The public usage daily boat launch permit fee for the Whitefish City Beach boat launch is increased to $10.00 per vessel.

Section 2: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Michelle Howke, City Clerk

November 1, 2016

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

MB

Recommendation to Adopt Resolution 16- , Implementing a New City Beach Daily Boat Launch Fee

Introduction/History

The daily boat launch fee for the City Beach boat launch has been $5 per launch since the 2011 launch season. As well, prior to the adoption of the FY17 budget, boat launch season pass fees were increased from $40 to $50 per season pass, per vessel. These fees support the maintenance of the launch, staffing of the launch and AIS Inspection Station, and the City's protection efforts for Whitefish Lake. Through contractual services, the City annually makes financial contributions to Whitefish Lake Institute to manage the water quality of Whitefish Lake.

Current Report

On September 13, 2016 the Park Board discussed the proposed daily boat launch fee increase from $5 to $10. Discussion was focused on establishing a fair fee in comparison to other launches, including State Parks. After some discussion, the Park Board unanimously moved to recommend the Whitefish City Council approve a daily boat launch fee increase from $5 to $10.

The Whitefish Parks and Recreation Department advertised for a public hearing in the Whitefish Pilot on October 12, 2016 and October 19, 2016.

Financial Requirement

The implementation of the proposed fee increase should not require any addition financial resources.

Recommendation

I, along with the City of Whitefish Park Board of Commissioners, respectfully recommend that the City Council adopt Resolution 16- implementing a fee increase of the Whitefish City Beach daily boat launch rate from $5 to $10, per vessel.

Sincerely,
Maria Butts
Parks, Recreation, and Community Services Director

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

November 1, 2016

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

RE: Firebrand Hotel – request to amend Condition #22; (WCUP 14-11A)

Honorable Mayor and Council:

Summary of Requested Action: Jeff Badelt on behalf of Whitefish Hotel Group llc is requesting a Conditional Use Permit to amend Condition #22 of WCUP 14-11 to locate a hot tub on the roof of the hotel. The property is developed with the Firebrand Hotel and is zoned WB-3 (General Commercial District). The Whitefish Growth Policy designates this property as "Core Commercial". The hot tub would be in the northwest portion of the roof – on the north side of the hotel and would only be available to guests of the hotel with a key card by either the elevators or stairs.

Planning & Building Department Recommendation: Staff recommended the original conditions of approval be maintained and did not recommend approval of the change to Condition #22.

Public Hearing: The applicant and the hotel manager spoke at the public hearing on October 20, 2016 in support of the application and described the noise study included in the packet. Two members of the public spoke in opposition to the request citing noise and incompatibility with the neighborhood.

The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 20, 2016. Following the hearing, the Planning Board recommended <u>denial</u> of the above referenced conditional use permit and adopted the staff report as findings of fact (4-2, Linville, Qunell voting in opposition; Ellis was absent).

Proposed Motion:

- I move to deny WCUP 14-11A along with the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board.

This item has been placed on the agenda for your regularly scheduled meeting on November 7, 2016. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Draft Minutes, Planning Board, 10-20-16

Exhibits from 10-20-16 Staff Packet

1. Staff Report – WCUP 14-11A, 10-13-16
2. Adjacent Landowner Notice, 9-30-16
3. Advisory Agency Notice, 9-30-16
4. Email, McCamley, 10-3-16
5. Email, VonLindern, 10-6-16
6. Email, Bortree, 10-6-16
7. Email, D. Lard, 10-6-16
8. Email, Kohl, 10-7-16
9. Email, L. Lard, 10-7-16
10. Email, Ledyard, 10-7-16
11. Email, Sarratt, 10-7-16
12. Email, Scott, 10-7-16
13. Email, Kahane, 10-7-16
14. Email, Fisher, 10-10-16
15. Letter, Rosenthal, 10-11-16
16. Email, Cutforth, 10-11-16
17. Email, Sausen, 10-11-16
18. Email, Fairbank, 10-12-16
19. Letter, Kraus, 10-13-16
20. Approval Letter, WCUP 14-11, 2-3-15
21. Minutes, City Council, 2-2-15
22. Minutes, Planning Board, 1-15-15
23. Minutes, Planning Board, 12-18-14
24. Minutes, Board of Adjustment, 5-3-16
25. Pictures, Downtowner Hot Tub, 10-11-16

The following were submitted by the applicant:

26. Application for Amended Conditional Use Permit, 8-23-16

The following were received after the Planning Board packet was mailed:

27. Email, Watkins, 10-17-16
28. Email, N. Howard, 10-17-16
29. Email, Carloss, 10-19-16

30. Email, Gulick, 10-19-16
31. Email, Blackwell, 10-19-16
32. Email, Taylor, 10-19-16
33. Email, E. Howard, 10-19-16
34. Email, Daniels, 10-19-16
35. Email, King, 10-19-16
36. Email, Thomas, 10-19-16
37. Email, Hyatt, 10-20-16
38. Letter, Gartland, 10-20-16
39. Letter, N. Howard, 10-30-16
40. Email, J Hannon, 10-31-16
41. Letter, M Hannon, 11-1-16
42. Email, Schultz, 11-1-16

c: w/att Michelle Howke, City Clerk

c: w/o att Jeff Badelt, Whitefish Hotel Group llc, PO Box 275 Bigfork, MT 59911

	there are currently too many unknowns. The density might have to change because of the water in that area and without knowing that it is too hard to go forward. Assuming the vote will be to continue until next month, Hildner asked the developer to include a further discussion on including a place to recycle as he will probably ask to have that added as a Condition. Secondly, he would like the developer to incorporate boulevard trees and boulevard irrigation, along with some of the things they have concerns about. Qunell asked and Mr. Lapp said a month will probably be enough time to address these items. He asked and Compton-Ring said Planning staff would need to get stuff early, review it and get it to the Planning Board. Mr. Lapp asked if it could be delayed to the next month if necessary and she agreed. Chairman Meckel reminded the Board of its responsibility and discretion. Members are not designers, which is why we have the Public Works Department. He typically would not want to get too much into the design, but in this case, he agrees with Hildner that the high groundwater situation is a big concern. He cautioned the Board about crossing the threshold and trying to do Public Work's job and just to be wary of the line. Norton said she appreciates Chairman Meckel's caution.
VOTE	**The motion to continue passed unanimously.** The matter was previously scheduled to go before the Council on November 7, 2016.
BREAK: 7:15 pm	Five-minute break with microphone off.
PUBLIC HEARING 2: WHITEFISH HOTEL GROUP WCUP CONDITION AMENDMENT REQUEST 7:20 pm	A request by Whitefish Hotel Group to amend Condition #22 of Conditional Use Permit WCUP 14-11 to install a hot tub on the roof of the hotel. The property is zoned WB-3 (General Business District). It is addressed as 650 East 3rd Street and can be legally described as Whitefish Original Townsite, Block 46, Amended Lots 1-18 in S36, T31N, R22W.
STAFF REPORT WCUP 14-11A (Compton-Ring)	Compton-Ring reviewed her staff report and findings. As of the writing of the staff report, fifteen public comments have been received. Eleven comments were in support of the request on the basis that it will bring more business to the hotel and add value to the hotel. Three comments were not in support of the request, citing continued concerns with noise

DRAFT

	and neighborhood impacts. One comment questioned the use of the roof as usable space; essentially a fourth floor, when the maximum number of floors in Whitefish is three. Since the packets went out, there have been twelve additional comments, two against and ten in support, with a couple of them suggesting closing the hot tub at 10:00 pm, so there are now 24 comment letters. Staff recommended the Whitefish Planning Board adopt the findings of fact within staff report WCUP 14-11A, and recommend to the Whitefish City Council that the original conditions of approval be maintained and amendment to Condition No. 22 be **denied**.
BOARD QUESTIONS OF STAFF	Qunell asked for clarification on how Planning staff found out how the Whitefish Hotel Group was going to be building a hot tub on the roof of The Firebrand, and what set of building plans they finally saw that incorporated the hot tub. Qunell asked and Compton-Ring said the July 24, 2015 building plans did not show any type of hot tub nor plumbing for a hot tub. Minnich reviews the building plans and said it started as a rumor in the Fall of 2015. In January 2016, theApplicant said they were planning to do a hot tub. To her knowledge, no building plans have ever been submitted showing the hot tub or plumbing. Taylor said the Applicant was told they would not be able to include a rooftop hot tub, so they were looking at other means to pursue it and would have had to submit additional drawings to be able to do so. Qunell asked if Planning staff had to contact the Applicant and tell them a hot tub was not okay. Taylor said the Applicant thought a hot tub was part of a patio, but because of the specific language the City Council placed on the Condition, he made the determination that since it was never talked about nor anticipated, but since it would have some of the same impacts of what was anticipated, a hot tub was also covered in that Condition and they would have to pursue other mean to get approval for a hot tub. Norton asked and Taylor said there are no statutes about indecent exposure in the City Code, but she would have to ask the Police.
APPLICANT / AGENCIES	Sean Averill, Whitefish Hotel Group, said the Growth Policy anticipated a downtown hotel in Whitefish for 20 years and there are plenty of reasons why it did not happen for a long time because it is very challenging and difficult to get one, along with being very expensive, and he described failed previous attempts. The Whitefish Hotel Group deemed this as a partnership with the City to get a hotel downtown. The Whitefish Hotel Group went through the CUP process, and when they submitted the CUP, they anticipated a flag business hotel with a

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brand on it. The reason was because the appraisal came back and the bank was going to require having a branded hotel to make it work. The City Council said they did not want that, they wanted a boutique hotel, and the Applicant agreed, but it was easier said than done as they had to redo everything. The original plan had a basement pool, but to make this a true boutique hotel, they felt they needed to get a hot tub included and the roof seemed like the best idea for its placement. They did not mean to be secretive, it was just a big change at the last minute and they were just busy moving through the process of redesign to change it from a brand hotel to a boutique hotel, including getting it reappraised and secure financing. They feel they are a good partner with the City on this hotel. They moved it over 18' and gave up a big strip to the City, kept a small footprint, and tried to make it look like it has been there for a while by using a lot of brick and rock. They think they have done a good job of making this look like something the community will be proud of. Mr. Averill believes, if they had known what they needed for a boutique hotel the first day they would have shown a rooftop hot tub and it would have been approved from the outset but because they did not know, he feels they are kind of being punished on this.

Brian Averill, 1494 Barkley Lane, feels noise is the main issue and he agrees it is an issue, but creating noise impacts their guests which hurts the Hotel's reputation and revenue. They wanted to study the noise to see if there is an impact and come here with some hard proof. They hired a sound engineer company out of Missoula who measured the noise as it exists today and added a noise source and re-measured it. He went over the results that are included in the packet. They took it to the level of what a rock concert would be and the main takeaway is there was no discernable noise increase in the neighborhood between pink noise and rock concert noise. They have an eight-foot high cedar fence on the south and east sides of the proposed hot tub area and are planning to frost the glass on the north and west sides which would block direct sight access to the School. Since sounds travels in a straight line, it is not able to carry over the fence into the neighborhood. They plan to operate the hot tub from 8:00 am until 11:00 pm, with quiet hours after 11:00 pm. They have security, security cameras, and staff trained to deal with noise situations. They will use a key card system to access the elevators and stairways and will restrict the access after 11:00 pm.

Mr. Averill pointed out a letter in the packet from a gentleman at PKF Consulting, a foremost hotel consulting company in Montana, concerning why hotels need hot tubs, and the impact on the revenues

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of a hotel if they do not have a hot tub, which he identified as 10-20% annually for a mountain resort destination with proximity to skiing. That could jeopardize the whole financial viability of the hotel.

Mr. Averill reminded the Board of what he previously mentioned during the approval process that the ratio between the amount a hotel guest spends in a hotel and how that equates to an economic benefit to the community. They anticipate guests of The Firebrand Hotel would generate $26.5 million spent locally, and based on the 10-20% impact to the community, that would be approximately $5 million annually.

Qunell asked and Mr. Averill explained why some of the sound readings were taken for 15 minutes and others were not because they were averaged. Qunell asked and Mr. Averill said requiring the clear glass to be frosted as a Condition would not be a problem.

Laidlaw said he can understand the issue of the sound, but he thinks there is a greater underlying concern, with all their expertise, initial planning, work done with international chains, etc., that went into this hotel, why wasn't the hot tub ever raised at all? And yet it is now all completed except for the actual machinery of the hot tub itself being put in. Why has it taken so long to figure this out? Mr. Averill said that is a fair question. Sean alluded to all the different challenges and the week before they went to City Council, they changed from a branded hotel to making a commitment to make it an independent hotel. They went from a commercial hotel box, where the chain is going to produce 40-60% of the clientele through reward points, memberships, etc., with them not having to do anything, to an independent hotel where they must do everything themselves, based on the services and amenities they provide. After they got through City Council, they redesigned the services and amenities. The hotel, if the architect was here, would tell us it was in a "design-build" process almost to when the building was totally open. In hindsight, it was a terrible decision, but they wanted to open in summer of 2016.

Laidlaw toured the property the other day and this morning, and thought we were talking about a 10:00 pm closing, but now they are saying 11:00 pm. He asked and Mr. Averill said they have tested going until 10:00 pm at The Lodge and prefer 11:00 pm, but having the hot tub is more important than the hours.

Qunell asked and Mr. Averill said the speakers are for music. Qunell pointed out the Condition says no music and Mr. Averill said it is a residential, household speaker used to create ambiance as it is awkward

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not to have any background noise, but the volume is controlled downstairs. This is a touchy issue.

Hildner said he recently observed noise when he left a function at Central School at 9:30 pm and the amount of noise from the roof of The Firebrand was sufficient to draw his attention and that of his companion, and not just in a casual way. That concerns him. Hildner asked and Mr. Averill said people using the hot tub would have access to both the open area and the currently locked enclosure. Hildner asked and Mr. Averill said access is controlled by your room key card, which can be programmed to prevent access after stated hours of operation. The elevator is programmed to shut off at prescribed times.

Laidlaw said when he toured the facility, the manager said the patio equipment is borrowed from The Lodge but the layout is the same as what it is designated for, a place for people to relax in the sun and enjoy themselves. He is concerned with Winter Carnival, or other public events up there. Mr. Averill does not want to make commitments about what is not going to happen there, but he does not anticipate that being a big issue as you must maintain space for hotel guests. Winter Carnival has already approached them about whether they can announce from the patio.

Norton said when this came through Planning Board, there was a pool and she assumed a hot tub in the basement and they deviated from the plan. She said it looks like there is a meeting room and workout room in the basement and asked if it was possible to convert a hotel room to a hot tub room and get a hot tub in another area of hotel. Mr. Averill said it is probably possible, but their bank loan is predicated on a certain number of guest rooms, and there would probably be some structural issues, so it would be difficult.

Hildner said he can understand the desire for a hot tub, but nothing he has read says it must be on the roof. Their original plan called for a swimming pool and hot tub at the ground level and they choose not to do that but to put in some conference facilities instead. He takes their word for it that a hot tub is necessary for the solvency of the project, but he does not see anything that says it must be on the roof, especially when considering the size of the hot tub, which is 22.5' long, 4.5' deep and 8' wide, almost to lap-pool size. It is a big hot tub. Mr. Averill referred to the PKF consultant's letter, which says aside from a lounge/beverage service, an outdoor hot tub is rated as the most amenity for a mountain resort property with proximity to skiing. A basement hot tub would be run of the mill, and as a high-end boutique

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	independent place, they are looking for a unique. The size is based on maintaining enough space on the patio for everyone else and is rated for 16 people. They have 86 guest rooms with an average of 1.5 people per guest room, but the size of the hot tub is more based on the size of the hot tub at The Lodge. Jeff Badelt, the Whitefish Hotel Group, said the measurements described by Hildner are the overall measurements including decking, so the tub itself is 7' by 20'. The space with the tub would hold 16 people and without would hold 24 people. It is already approved for potentially 24 people standing out in the rain chatting and now they are looking for approval for 16 people sitting in the water and he does not see how that is a big difference.
PUBLIC COMMENT	Leo Rosenthal, 236 Columbia Avenue, lives one block east of the hotel. He has been opposed to this project since the inception of it. He and lots of other residents of Whitefish have concerns with the size and scale of the hotel. They talk about this being a boutique hotel but they had to get a Conditional Use Permit because the size they wanted to build was twice the size footprint of what zoning allowed. There were other residents of Whitefish who were concerned about parking, noise having to do with the rooftop patio. This went on for months and much to his chagrin, the City Council decided to pass this Conditional Use permit. They took a lot of the input from the public and residents of the historic downtown neighborhood, and carefully put a lot of different Conditions into approving this project, including landscaping and parking, but one of the most important Conditions they included was that the rooftop patio could only be used for patio - not for music, not for a bar, and not for any other entertainment purposes. Contrary to what Brian and Sean will tell you, they tried to slip this one by the City. It wasn't until City Planning staff heard rumors about it and prodded the developers who finally admitted to putting a hot tub on the roof. Had they not heard about this, there would be people sitting up there right now. This is just another example of the owners trying to get one over on this. There have been other Conditions that were worked through during the CUP portion of this, one of which was providing adequate parking for guests and they agreed to put in 76 parking spots for guests, and now they charge $12 per day for their guests to use the parking. If guests do not want to pay, they suggest they use the residential neighborhood. They also said they were going to have a minimum beverage service when there were concerns about have a bar and lounge across the street from the Middle School. Brian said they needed to have a minimum beverage and food service for their guests, but now if you look at Flathead Events online they have live music

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almost every day scheduled and have signs on the street where they are trying to bring guests in off the street to come in and visit their lounge. It is just another example of them being disingenuous with their motives. In his opinion they have not fulfilled all the Conditions the City Council placed on them and now are coming back and trying to get amendments to Conditions they have not even fulfilled. He urged the Board to uphold the City Council's Conditions they placed on this hotel to mitigate the impacts of such a large hotel on the adjacent neighborhoods, the historic downtown neighborhoods of Whitefish. These impacts have already been felt in their neighborhood and he urged the Board to uphold the City Council's Conditions and stop them for doing any more damage to their neighborhood.

Nola Howard, 224 Columbia Avenue, has owned that property for 38 years and seen a lot of transition. She was one of the people interested when they first wanted to put this hotel in this location and she wrote a 2-3-page document expressing her concerns with noise, parking and the location in general. She thinks what they have done is very nice and the Planning Board and staff as community representatives have done well to work with them to protect the community. Regarding the noise issue, OSHA law requires an employer to give employees headgear at 85 decibels, as it causes damage to the ears. When Mr. Averill was talking about 75 decibels, that is annoying if it is people yelling on an overhead bar, but if it is music, it is very annoying. As an example, during Octoberfest last year at 11:00 pm she was living by the Duck Inn, a mile away, and it was so loud that she couldn't sleep. We should be going by the top decibel, not the average decibel. Music should not be allowed period, ambiance or otherwise. From a safety issue, when you get in a hot tub, you will get drunk faster. We live in a higher elevation and people from lower elevations do not realize they can get drunk faster, due to oxygen deprivation. People also easily suffer from dehydration when they drink a lot of alcohol and/or caffeine and do not realize those are diuretics. She doesn't know the clientele they are looking for, but ski groups and Carnival will be a real issue up there. If they are looking for a family friendly place where people can come for business, a place where you do not want to be in the lounge/bar or restaurant, you have a third place to go as a family, which would be on the rooftop. She does not think the ambiance of a hot tub with people getting inebriated, would be a benefit to the hotel or community. She thinks the business will do well and they just must find their thing, but she doesn't think this hot tub will speak to all the people who want to stay there and may invite clientele that might make some people not want to go there. She felt kids getting access to key cards and going to the rooftop by themselves may be another safety

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issue. She just recent found out about the $12 charge for parking. While the hotel was being built, people on her street had to accept all the construction traffic and they accepted it. However, they made a very special point to City Council that they do not want their street to be a parking lot for hotel guests, friends or employees. She understood the employees would not be parking on their streets and there would be a way for them to get to work that would not involve using the streets as a private parking lot. People have been told by the hotel employees to go park in front of the houses on the streets if they do not want to pay the $12. The Planning Board has done everything to represent the community and answered the hot tub question numerous times and she thinks it should keep with what it has already decided. She thinks the parking should be addressed to get it off their streets and the developers should be held to their agreement to provide parking for their guests. She is happy about having the hotel, but does not want there to be a noise impact.

Angela Flickinger, 676 Trumbull Canyon Road, General Manager of Firebrand, is responsible for booking music at The Firebrand on Saturday nights and it is dinner music in the lounge from 7:00 to 10:00. As General Manager representing The Firebrand, it is very important they establish a relationship with the community. They have a sales focus where they are going to the downtown business owners, introducing themselves and saying how excited they are to be downtown. They are asking them what they can do to work with other downtown businesses to make Whitefish even better, to increase tourism and business. Their 51 employees are looking forward to having successful careers at the Hotel and she wants that to start with a good relationship with the community. The Performing Arts folks come in and have dinner with them before performances and stay with them. BNSF is excited to be part of their hotel community. The support they have gotten from downtown stores has been awesome.

There being no further comment, Chairman Meckel closed the public hearing and turned the matter over to the Planning Board for consideration.

Norton disclosed she received a public comment via telephone tonight at 5:19 pm, from Chris Holt who got her number from Jan Metzmaker. Norton read the notes she took during the conversation into the record as Ms. Holt was not able to attend tonight. Ms. Holt has been a teacher at the Middle School for 39 years, teaching 7th and 8th grades, as well as working with the student council and supervising students on special projects before and after school. Twice in the last week her students

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	have observed people without clothes on getting dressed in their rooms with their lights on and the shades open. The children can see the patio from about the calf level upwards and Ms. Holt is concerned about indecent exposure from the rooms and activities the children might be exposed to in a hot tub from 8:00 am to 11:00 pm, which includes school hours. Norton wanted to bring it to the attention of the Board and the Hotel owners.
MOTION / BOARD DISCUSSION	Hildner moved and Norton seconded to deny amendment to Condition #22 to permit a rooftop hot tub at The Firebrand Hotel. Hildner said the Planning Board initially addressed the issue, Council in addressing the issue came up with Condition No. 22, and it was clear how Council was responding to the wishes, desires and concerns of the neighborhood. Then the Board of Adjustment upheld the Planning Director's statements on the purposes of a patio versus and/or a hot tub, followed by the Planning staffs' recommendation to deny. In taking another look at this with regards to the necessity of a hot tub, he thinks that could have been addressed as it was initially in the designs of the Hotel, but to come back later at this point is not in keeping with the actions of Council, Board of Adjustment, and Planning staff. Norton said she feels bad about how this has come out because she can see their vision and thinks it would be a great idea in another setting, and beautiful on the roof if on another setting. Unfortunately, the plans presented were in the basement and that is what was approved at the time it passed through the public process. To have this come out later, when we have a lot of concerns already about the noise levels and now what the children are seeing, she does not think it is appropriate to allow it. She hopes they can make it work in the basement and she is sure they will do a great job. She is sorry it was not discussed earlier, as maybe there would have been another location where it would have worked out, but she is against it at this point. Qunell said there are some things that probably need to be said. His original concern was there was some aspect of being sneaky,but in this case, he does not think this is what happened. He thinks what happened is what the Applicants said, this was a design-build project where they were running as fast as they could to get things done and to include the amenities they felt they needed to have in this Hotel to make it successful. Though, he also has two questions, what did City Council mean in Condition No. 22 that no other uses will be permitted and he thinks they meant what they said - they did not envision a hot tub being up there. That is the current Condition and what they meant,

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but now the other question we are looking at is trying to decide if the noise, and now the issue with indecent exposure, is going to be a nuisance. Qunell believes the noise will not be an issue as he believes in science. It was suggested at the Board of Adjustment meeting it would be nice if there was a study about the noise and the Applicant went out and did it. They have been acting above board, but there is a perception unfortunately in the community that they are trying to slip one through. He honestly does not think that is the case. Ultimately, he does not think the Planning Board should be the ones dealing with this, he thinks they should go back to the Council and say we know this is what you said, but this is what we need to make this a successful project. He does not think there is anyone in this room that does not want this project to be a success. He wishes there was some way to negotiate or compromise somewhat on where the hot tub is located, and that is the real issue. Unfortunately, through the design-build process the hot tub was put on the roof, but it got us to this point whereas if they knew they could not put it there, the design-build would have put it somewhere inside. He would hope we have some sort of leverage to rethink that the location, or just no hot tub, but he does not think that is a good idea. He believes as an amenity downtown, they need to have a water feature, and he hopes they can find a way to do that. He thinks it needs to go back to the City Council.

Qunell said he would like to add a Condition of Approval as a separate motion that if this does go through that there is frosting on the glass, but Taylor said since the motion to deny, adding a Condition towards the Approval would not make sense. If the motion should fail, then Qunell could offer the motion.

Laidlaw agreed completely with what Qunell said. He thinks they have done an excellent job. He has looked at all the research and studies the letters, and the hot tub is a feature they must have. He has a problem with the location and what this will lead to, but he is sure they will figure out a way to have one and they do need one, but not there.

Linville said at this point she thinks the planning part seems sort of reactionary, and it is difficult to be looking at this plan and considering this amenity only in this one available place where it is prepared to be put. She understands the community concerns, and it is an amenity an upscale hotel would need, but there is no discussion where it could go. Facing the school is a concern for some community members and the noise is a concern. The view would be nice for the Hotel, but she is struggling that there is no conversation around relocating it on the roof because it sounds like something that is appropriate for the hotel, but

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	they may need to adjust the exact placement of it. Chairman Meckel called for the question.
VOTE	**The motion to deny passed, with Chairman Meckel, Hildner, Laidlaw and Norton voting in favor; and Linville and Qunell voting against denial.** The matter is scheduled to go before the Council on November 7, 2016.
PUBLIC HEARING 3: CITY OF WHITEFISH REZONE REQUEST 8:45 pm	A request by the City of Whitefish to rezone one parcel recently annexed into City limits from County R-1 (Suburban Residential) to WSR (Suburban Residential District). The property is unaddressed off Highway 93 West, and can be legally described as Parcel C of Certificate of Survey No. 20213, in the Southwest Quarter of the Northwest Quarter of S35, T31N, R22W.
STAFF REPORT WZC 16-07 (Minnich)	Planner Minnich reviewed her staff report and findings. To date, no comments have been received. Staff recommended adoption of the findings of fact and conditions of approval within staff report WZC 16-07, and for **approval** to the Whitefish City Council.
BOARD QUESTIONS OF STAFF	Hildner asked and Minnich said the annexation was at the request of the landowners.
APPLICANT / AGENCIES	None.
PUBLIC COMMENT	There being no comment, Chairman Meckel closed the public hearing and turned the matter over to the Planning Board for consideration.
MOTION / BOARD DISCUSSION	Hildner moved and Norton seconded to adopt the findings of fact within staff report WZC 16-07.
VOTE	**The motion passed unanimously.** The matter is scheduled to go before the Council on November 21, 2016.
PUBLIC HEARING 4: CITY OF WHITEFISH REZONE REQUEST 8:50 pm	A request by the City of Whitefish to rezone one parcel recently annexed into City limits from County R-1 (Suburban Residential) to WSR (Suburban Residential District). The property is unaddressed off Highway 93 West, and can be legally described as Parcel C of Certificate of Survey No. 20213, in the Southwest Quarter of the Northwest Quarter of S35, T31N, R22W.

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WHITEFISH HOTEL GROUP
CONDITIONAL USE PERMIT – AMENDMENT OF CONDITION #22
STAFF REPORT
WCUP 14-11A
October 13, 2016

A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by the Whitefish Hotel Group to amend condition #22 of Conditional Use Permit WCUP 14-11 in order to locate a hot tub on the roof of the Firebrand Hotel. A public hearing is scheduled before the Whitefish Planning Board on October 20, 2016 and a subsequent hearing is set before the City Council on November 7, 2016.

A. OWNER:

Whitefish Hotel Group
Jeffrey Badelt
PO Box 275
Bigfork, MT 59911

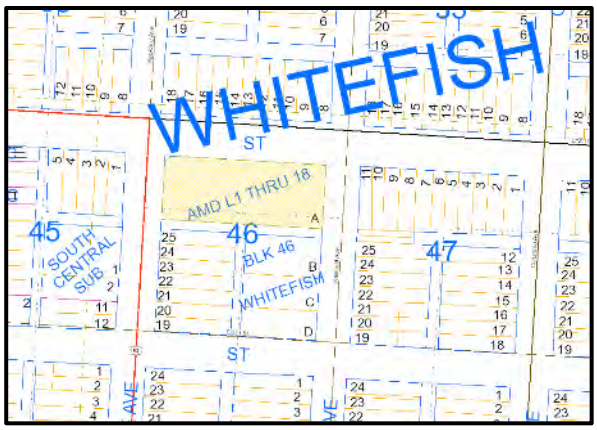
B. LOCATION OF PROPERTY:

The Firebrand Hotel is located at the southeast corner of E 2nd Street and Spokane Avenue. It can be described as Block 46, Amended Lots 1-18, Whitefish Original Townsite.

C. ZONING:

The property is zoned WB-3 (General Business District).

D. NATURE OF REQUEST:



The applicant is requesting a Conditional Use Permit in order to amend Condition #22 of WCUP 14-11 to locate a hot tub on the roof of the hotel.[1] The hot tub would be located in the northwest portion of the roof – on the north side of the hotel and would only be available to guests of the hotel with a key card. The hot tub would be accessed by either the elevators or the stairs. Attached to this report, please find the written request from the applicant and supplemental

[1] The zoning regulations do not have a separate process to amend a condition of an approved Conditional Use Permit. In order to amend a condition of approval, one must reapply for a new Conditional Use Permit (CUP).

reports.

While this request is only related to the hot tub request and Condition #22, it should be noted that all conditions of approval have been met for the Conditional Use Permit or they are working on finalizing some items (street furniture and street lights are due in late October). The approval letter with all conditions is attached as an exhibit to this report.

Background

The Whitefish City Council approved the Conditional Use Permit for the Firebrand Hotel to exceed 7,500 square foot footprint on February 2, 2015 subject to 24 conditions of approval. During the public hearing process before both the Planning Board and City Council, public comments identified concerns related to activities on the roof of the hotel. Residents noted how noise from nearby restaurants and bars infiltrate adjacent neighborhoods and the location of the hotel, even closer to the residential neighborhood, could be more intrusive. As such the Council added condition #22 to state:

> "Under no circumstances shall the roof top facilities be used as a bar, for music or other entertainment or for anything other than a patio. (Whitefish City Council Meeting, 2-2-15)"

It was discovered by staff on January 7, 2016 during the construction process that there were plans to install a hot tub on the roof of the hotel. The hot tub was not shown on the building plans (issued on 7-24-15) staff originally reviewed nor discussed during the land use planning process, but was added at a later date by

the owner. Once this intention was revealed, staff reviewed the conditions of approval and informed the owner that only a patio was permitted – no other uses.

The applicant then requested an official zoning interpretation from the Zoning Administrator that "patio," as used in the conditions of approval, could also include a hot tub. The Zoning Administrator determined on February 22, 2016 the condition of approval precluded the installation of a hot tub. The applicant was informed they could either appeal the Zoning Administrator's decision to the Board of Adjustments or request an amendment to Condition #22 of their Conditional Use Permit and go back through the public hearing process.

On March 18, 2016, the applicant chose to appeal this decision to the Whitefish Board of Adjustments (BOA). The BOA met on May 3, 2016. After taking public testimony and much deliberation, the Board concurred with the Zoning Administrator's determination and directed the applicant to apply to amend their Conditional Use Permit.

On August 4, 2016, the Building Department issued a certificate of occupancy for the hotel.

E. PUBLIC NOTICE:

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on September 30, 2016. Advisory agencies were noticed on September 30, 2016. A notice was published in the Whitefish Pilot on October 5, 2016. As of the writing of this report, fifteen public comments have been received. Eleven comments were in support of the request on the basis that it will bring more business to the hotel and add value to the hotel. Three comments were not in support of the request, citing continued concerns with noise and neighborhood impacts. One comment questioned the use of the roof as usable space; essentially a 4th floor when the maximum number of floors in Whitefish is three.

F. EVALUATION OF THE REQUEST:

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

1. Growth Policy Compliance:

The Growth Policy designates this area as Core Commercial which is consistent with the WB-3 zoning District. Aspects of the adopted Downtown Plan have been implemented as part of this project.

Finding 1: Although this criterion does not apply to the proposed hot tub, the hotel and restaurant complies with Growth Policy Designation of Core Commercial because it is zoned WB-3 (General Commercial District) and is consistent with the

WB-3 zone and aspects of the development implemented the Downtown Master Plan because they provided additional easement along Spokane Avenue to develop the Pedestrian/Bike Trail along the western edge of Block 46 and they developed a hotel in the downtown.

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

The property is zoned WB-3 which permits hotels and restaurants. In addition, all development standards and Architectural Review standards have been met with the project.

Finding 2: Although this criterion does not apply to the proposed hot tub, the hotel and restaurant complies with the zoning regulations because all the zoning standards have been met with conditions of approval and review of the building permit.

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

Finding 3: Although this criterion does not apply to the proposed hot tub, the site is suitable for the hotel and restaurant because it was approved by the City Council for a Conditional Use Permit, it was approved by the Architectural Review Committee and a building permit was approved.

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

Finding 4: Although this criterion does not apply to the proposed hot tub, the quality and functionality of the proposed development effectively dealt with the site design issues because they have a Conditional Use Permit, Architectural Review approval and an approved Building Permit.

5. Availability and Adequacy of Public Services and Facilities.

Finding 5: Although this criterion does not apply to the proposed hot tub, public facilities and services are available and adequate because these matters were reviewed at the time of Conditional Use Permit approval and Building Permit review and approval and they are serving the site.

6. Neighborhood/Community Impact:

Traffic Generation: Traffic will be unchanged due to the addition of a hot tub.

Noise or Vibration: The applicant has submitted two reports on sound indicating the noise from the hot tub will not be noticeable due to the noise surrounding the project from other sources. In addition, the consultants indicate any noise originating on the roof will not transmit to the adjacent residential areas. The applicant has installed an 8-foot tall wood fence along the east and south sides of the hot tub to reduce any noise toward the residential areas. They have installed a 5-foot glass wall along the north and west side to further reduce noise but permit views of the mountains.

Staff noted speakers on the roof of the patio facing Spokane Avenue. The speakers alone may not pose a noise problem; however, if additional speakers are added, they could contribute to additional noise coming from the rooftop.

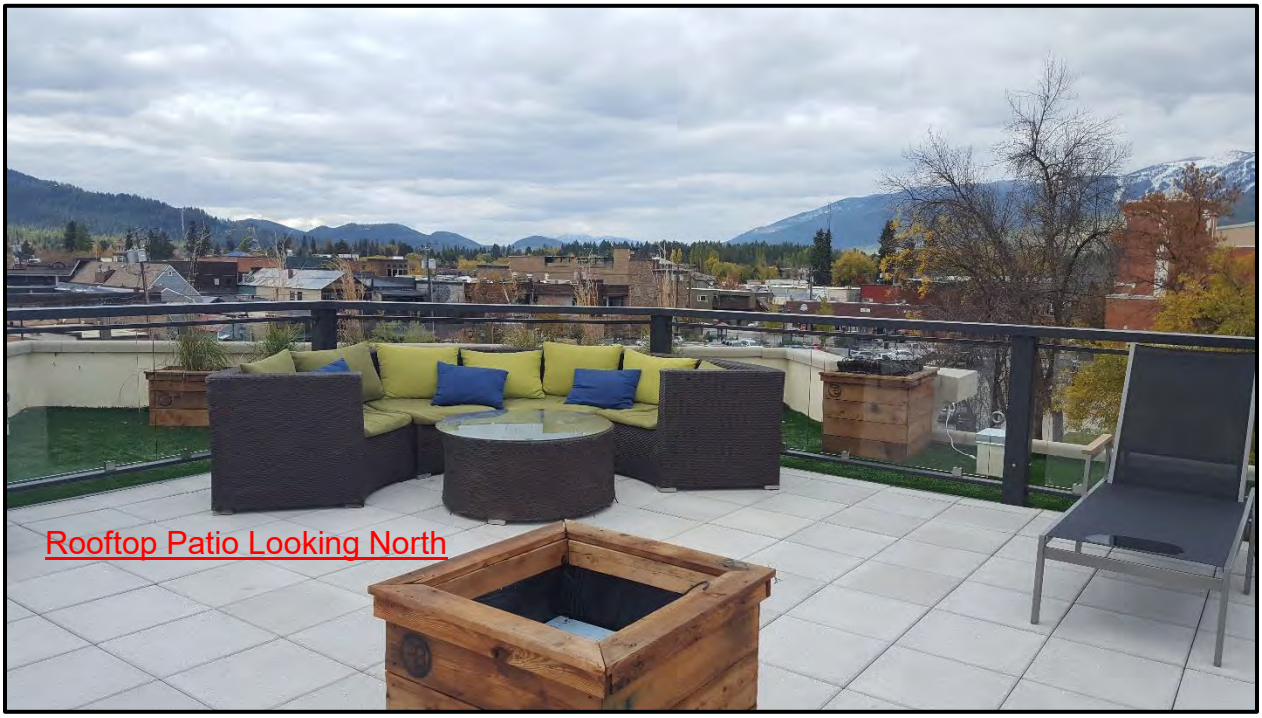
Noise was one of the main reasons Council added Condition #22. The neighbors' public testimony was compelling as they described the noise from the downtown establishments with live music. There was concern that a rooftop bar would be installed and live music would occur.

Dust, Smoke, Glare, or Heat: No impact is anticipated with regards to dust, smoke, glare or heat.

Smoke, Fumes, Gas, and Odor: No impact is anticipated with regards to smoke, fumes or gas.

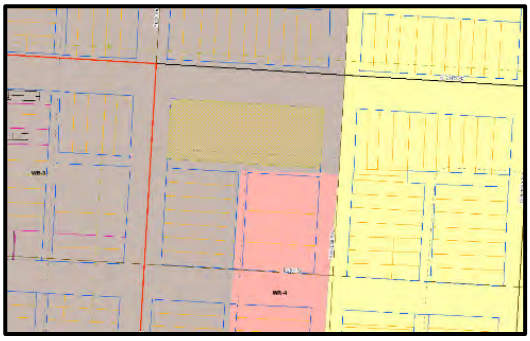
Hours of Operation: The applicant indicates the hours of operation for the hot tub are 8:00 AM – 11:00 PM.

Finding 6: The proposed hot tub is not anticipated to have a neighborhood impact because negative impacts due to dust, smoke, odor or other environmental nuisances. No changes are expected regarding outdoor lighting or traffic. The applicant has presented reports from sound engineers that noise from the hot tub will not infiltrate into the neighborhood and will be mitigated through in the installation of noise damping techniques.



7. Neighborhood/Community Compatibility:

The building is constructed so neighborhood compatibility issues associated with structural bulk, mass, scale, density and neighborhood context have been addressed through the review of the Conditional Use Permit, Architectural Review and the building permit.



The commercial district in this area is at the edge of the residential area and, as such, needs to be carefully designed to be a good neighbor. Through the Conditional Use Permit process, numerous comments were received during public hearings about the compatibility of a hotel adjacent to the existing residential neighborhood and possible negative impacts. Issues such as landscaping, buffering, traffic, parking and noise were all discussed. These issues were mitigated through conditions of approval. The effects of usable space on the roof top was also a concern, as it essentially creates a 4th floor. As described earlier in this report, the neighbors pointed to other downtown establishments with outdoor roof top spaces and live music that infiltrates the residential neighborhood. When the Council added condition #22, all of these issues and the public testimony were part of the careful consideration.

Staff does not find conditions have changed to warrant changing the condition of approval. Issues surrounding neighborhood compatibility remain an important part of preserving the character of the neighborhood and the community – especially now that the project is constructed.

Finding 7: The project is compatible with the neighborhood and community because the original conditions of approval carefully considered the impact of the project and were designed to mitigate any negative effects of the project.

G. RECOMMENDATION

It is recommended that the Whitefish Planning Board adopt the findings of fact within staff report WCUP 14-11A and that the original conditions of approval be maintained and no amendment to Condition #22 be approved.

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

Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that the Whitefish Hotel Group is requesting an amendment to Condition #22 of Condition Use Permit WCUP 14-11 in order to install a hot tub on the roof of the hotel. The property is currently developed with the Firebrand Hotel and is zoned WB-3 (General Business District). The property is located at 650 E 3rd Street and can be legally described as Block 46, Amended Lots 1-18, Whitefish Original Townsite in S36, T31N, R22W P.M.M., Flathead County.

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

Thursday, October 20, 2016
6:00 p.m.
Whitefish City Council Chambers, City Hall
1005 Baker Avenue, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on **Monday, November 7, 2016** at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at *wcompton-ring@cityofwhitefish.org*. Comments received by the close of business on Tuesday, October 11, 2016, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

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

Date: September 30, 2016

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, October 20, 2016 at 6:00 pm in the Whitefish City Council Chambers at **1005 Baker Avenue**. During the meeting, the Board will hold a public hearing on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold a subsequent public hearing for items 1-2 on Monday, November 7, 2016 and items 3-5 on Monday, November 21, 2016. City Council meetings start at 7:10 pm at **1005 Baker Avenue** in the Whitefish City Council Chambers.

1. A request by Cottonwood llc to develop a 23-lot subdivision. The property is zoned WR-2 (Two-Family Residential District). It is addressed as 709 & 711 Colorado Avenue and can be legally described as Whitefish Townsite Company 5 Acre Tracts, Block 2, Lot 6 in S25, T31N, R22W. (WPP 16-03) Compton-Ring

2. A request by Whitefish Hotel Group to amend Condition #22 of Condition Use Permit WCUP 14-11 in order to install a hot tub on the roof of the hotel. The property is zoned WB-3 (General Business District). It is addressed as 650 E 3rd Street and can be legally described as Whitefish Original Townsite, Block 46, Amended Lots 1-18 in S36, T31N, R22W. (WCUP 14-11A) Compton-Ring

3. A request by the City of Whitefish to rezone one parcel recently annexed into City limits from County R-1 (Suburban Residential) to WSR (Suburban Residential District). The property is unaddressed off Highway 93 West, and can be legally described as Parcel C of Certificate of Survey No. 20213, in the Southwest Quarter of the Northwest Quarter of Section 35, Township 31N, Range 22W. (WZC 16-07) Minnich

4. A request by the City of Whitefish to rezone one parcel recently annexed into City limits from County R-3 (One Family Residential) to WR-1 (One-Family Residential District). The subject property is located at 835 West 7th Street and can be legally described as Lot 1 in Torgerson Subdivision located in NW1/4SW1/4 of in Section 36, Township 21N, Range 22W. (WZC 16-08) Minnich

5. A request by the City of Whitefish to rezone one parcel recently annexed into City limits from County R-1 (Suburban Residential) to WSR (Suburban Residential District). The subject property is located at 2045 Lion Mountain

Loop Road and can be legally described as Tract 1DF in Section 35, Township 21N, Range 22W. (WZC 16-09) Minnich

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

Wendy Compton-Ring

From: Rick McCamley <mccamley@aboutmontana.net>
Sent: Monday, October 03, 2016 2:52 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel hot tub request

Hello Wendy,
I do not believe the Firebrand should be allowed to add a hot tub to the roof of their new motel. This wasn't in the original building plans. The plan for this that I received with the Public Notice shows a hot tub that measures 8 1/2' x 22'. That is one big hot tub! Picture that hot tub filled with a whole bunch of partiers on a Friday or Saturday night..It will be loud and probably pretty obnoxious. As I recall, one of the biggest reasons a bar or live music wasn't allowed was in consideration of the neighborhood. I would contend a hot tub, with the partiers, would be louder than the bar they wanted. So, with this said, I would hope their request is not permitted.

Please pass my comments onto the Planning Board Members.

Sincerely,

Rick McCamley
Chief Operating Officer

Rick McCamley
Richatti Investment Corp.
807 Spokane Avenue, Ste. 200
Whitefish, MT 59937
406-862-8304-Office
406-862-2024-Fax
406-253-9679-Cell
mccamley@aboutmontana.net

Wendy Compton-Ring

From: Cheryl VonLindern <cvonlindern@icloud.com>
Sent: Thursday, October 06, 2016 8:32 AM
To: Wendy Compton-Ring
Subject: Firebrand Hotel

I support the Firebrand putting in a hot tub. Skiers in the winter would stay at the Firebrand, thus spending time in downtown Whitefish which brings revenue to business owners and resort tax for the city

Sent from my iPhone

Wendy Compton-Ring

From: Scott Bortree <scottboats@yahoo.com>
Sent: Thursday, October 06, 2016 9:01 AM
To: Wendy Compton-Ring
Subject: Firebrand Hotel hot tub.

I am the owner of a home very near this hotel. I am opposed to the addition of the roof top hot tub. This is a residential area and I feel that the roof top hot will create noise in what is a very peaceful quite neighborhood.

Scott Bortree
706 2nd St East.

Sent from my iPad

Wendy Compton-Ring

From: Darcy Lard <darcy@flatheadtravel.com>
Sent: Thursday, October 06, 2016 11:06 AM
To: Wendy Compton-Ring
Subject: Hot tub on Firebrand roof

Dear Ms. Compton-Smith,

I am writing to support the installation of a hot tub on the roof of the new Firebrand. As a longtime local business, we realize the value this hot tub will add to the Firebrand and its' customers. Having seen the roof personally, I believe it will not harm the quality of the downtown area or its neighbors. The hot tub will add needed value to this property and make it more comparable to other Whitefish lodging.

Thank you for your time and consideration.

Darcy Lard
President
Flathead Travel Service, Inc.
406-752-8700

Wendy Compton-Ring

From: Rhonda Kohl <rkohlmt@gmail.com>
Sent: Friday, October 07, 2016 9:00 AM
To: Wendy Compton-Ring
Subject: Firebrand rooftop hot tub

Wendy,
I fully support the Firebrand Hotel installing a rooftop hot tub for guests.
Thank you,
Rhonda

Rhonda Kohl
PureWest Real Estate
The Lodge at Whitefish Lake Office
1380 Wisconsin Avenue
Whitefish, MT. 59937
Cell 406-250-5849
Office 406-862-4900

Wendy Compton-Ring

From: Laci Lard <laci@flatheadtravel.com>
Sent: Friday, October 07, 2016 9:20 AM
To: Wendy Compton-Ring
Subject: Firebrand Hot Tub Approval

Dear Wendy,

I am a travel agent with Flathead Travel Service. I have had the pleasure of touring the brand new Firebrand hotel with our team on Wednesday. We are so excited about this new property for our customers as I already have a group blocked for Summer of next year there. I am writing to show my support for the approval of the hot tub on the roof. I think that my customers will benefit from this addition greatly.

Thank you for your consideration.

Best Regards,

Check out Flathead Travel's Blog for inside travel tips!

Laci Lard
Travel Consultant
Flathead Travel
406-751-5402
www.flatheadtravel.com

Wendy Compton-Ring

From: Elizabeth Ledyard <elizabethledyard@icloud.com>
Sent: Friday, October 07, 2016 10:53 AM
To: Wendy Compton-Ring
Cc: wendy@aboutmontana.com
Subject: Hot tub at Firebrand

Sent from my iPhone Hi , I am a resident of Whitefish and recently had friends stay at the Firebrand. They were surprised that there was no hot tub! I was hoping that the City Council would support a hot tub at such a nice addition (Firebrand) to our town. I think it would attract more guests to the hotel and consequently more business to the downtown shops and restaurants. Thank you for any consideration, Wendy Ledyard.

Wendy Compton-Ring

From: Connie Sarratt <connie@flatheadtravel.com>
Sent: Friday, October 07, 2016 11:28 AM
To: Wendy Compton-Ring
Subject: hello

Dear Ms. Compton-Smith,

I visited the Firebrand hotel Thursday evening.
It is a beautiful property that has enhanced the town, and I believe Whitefish community will benefit from Firebrand having a hot tub on the rooftop.

Have a great weekend,
Thank you for your consideration,
Connie Sarratt

Connie Sarratt
Travel Consultant

Flathead Travel Service
500 South Main Street
Kalispell MT 59901
406-751-5405- Direct Line
800-223-9380-Toll Free
www.flatheadtravel.com

Wendy Compton-Ring

From: Kathleen Scott <badkittybikes@yahoo.com>
Sent: Friday, October 07, 2016 12:21 PM
To: Wendy Compton-Ring
Subject: Support of hot tub/FB

Hello!

I simply wanted to say that I support a hot tub on the roof of Firebrand. We have needed a nice hotel downtown for so long...now we have it! Let's make it perfect by allowing a hot tub. I can't imagine there being any issues especially with the clientele Firebrand will attract.

Thank you for listening!

Kathleen Scott
1636 Whitefish Ave

Sent from my iPhone

Wendy Compton-Ring

From: Skip Kahane <skipk@bresnan.net>
Sent: Friday, October 07, 2016 3:25 PM
To: Wendy Compton-Ring
Subject: The Firebrand Hotel-Hot Tub

Wendy
My name is Charles Kahane. I'm an Audio Engineer & Head of Research & Development for KELLETT ENT Inc., located in Greenville, South Carolina. I LIVE in Lolo, Montana and have for 25+ years. Over the last 25 years I've provided services to SNOW GHOST Studios (Brett Allen & Jeff Allen), multiple entertainment venues, John Cole (a consummate Pianist & resident of Whitefish), numerous Architectural firms, DON K. SUBARU of Whitefish, The Lodge @ Whitefish Lake, Contractors and many more (to numerous to mention). I travel to Whitefish regularly and stay over night in Whitefish on a very regular basis. I'm 66 years old and one of the amenities I consider to be a 'standard bearer' of the quality of my selected lodging is the HOT TUB. I feel this allows me to relax and erase the miles I travel to & from Whitefish, to do business there. I've stayed at almost all of the Hotels in and near Whitefish. I would also like to stay DOWNTOWN, where i'm close to the companies work with, and close to shops, nightlife & entertainment. The new Firebrand Hotel provides those needs, but does not have HOT TUB yet. It is my hope that I can stay @ this fine new Hotel in the near future. It is obvious to me that the facility readily provides a 'hub' for travelers, with close access to the downtown corridors. We all LIKE that. That said, amenities are an important part of my considerations when selecting Lodging.

I work with a Cadre of Engineers & Architects who also feel similarly. We'd all prefer to stay downtown @ the new Firebrand!

Charles G.(Skip) Kahane C.A.E.
P.G.S./BMS
KELLETT Ent. Inc.
P.O. Box 8332
Missoula, Mt 59807
Office 406-493-1128
Mobil 406-36-0134

Wendy Compton-Ring

From: Jennifer Fisher <jennifer@kandaharlodge.com>
Sent: Monday, October 10, 2016 11:10 AM
To: Wendy Compton-Ring
Subject: Firebrand hotel hot tub on the rooftop

Hello Ms. Compton,

I understand that the Firebrand Hotel is asking for a permit to operate a hot tub on their roof top deck. Apparently there are community members who have expressed concern about the noise generated from that activity. I think it is meaningful that the Firebrand staff has measured the decibels at street level with music playing on the rooftop deck and without music playing and there has been no change in the decibels recorded at street level. It is also meaningful that the Downtowner has two outdoor hot tubs operating on their rooftop. They do not appear to be causing a noise disturbance.

I am in favor of the Firebrand obtaining a permit to operate a hot tub on their roof top deck.

Thank you for your time.

Best regards,

Jennifer Fisher
Director of Sales & Marketing
Kandahar Lodge at Whitefish Mountain Resort – www.kandaharlodge.com
800-862-6094/406-862-6098
Jennifer@kandaharlodge.com

Be Enchanted Be Our Guest

Leo Rosenthal
236 Columbia Avenue
Whitefish, MT 59937
406-544-3058

To whom it may concern:

I am writing this letter in response to the Firebrand Hotel owners' desire to put a large hot tub on the rooftop patio of their new hotel. I live at 236 Columbia Avenue, which is located one block east of the new hotel. During the developers' planning process, I and many other members of the community opposed the issuance of a conditional use permit (CUP) that allowed the hotel to be built much larger than the zoning allowed. Concerns included impacts to the adjacent neighborhood associated with increased traffic, parking shortfalls, and noise from the rooftop patio. The public process was relatively contentious and in the end the City issued the CUP with several conditions. One of those conditions was that the rooftop patio could only be used as a sitting area for their guests to take in the views, and not to be used as a bar, for music, or for other entertainment purposes. This condition was added by City Council to address concerns from the community about noise and the inappropriateness of providing a party-like atmosphere across the street from our middle school. At the time of issuance of the CUP, the developers' plans only called for a rooftop patio. Now we find out that they have tried to slip one by the City and put a large hot tub on the roof, as noted by the inclusion of plumbing and engineering to accommodate a large pool. Noise associated with a rooftop hot tub will certainly be pervasive throughout the adjacent neighborhood and will infringe on long-time homeowners' ability to enjoy a nice quiet evening. I know this from experience, as I can many times hear the patrons of Casey's rooftop bar located four blocks away. This rooftop hot tub will be one block from my house and will result in noticeable nighttime noise heard throughout the historic downtown neighborhood.

These developers have a history of being disingenuous with regard to their plans and trying to push zoning and building limits to their fullest. The conditions placed by City Council were put in place to mitigate the impacts of a large hotel on the historic downtown neighborhood. Therefore, I urge the Planning Board to deny the hotel owners' request for the rooftop hot tub. Many hours and much thought was given to the conditions that City Council placed on the development of this hotel. By allowing for this hot tub, you would be overturning a decision that came after considerable public comment and the will of our elected city representatives.

Sincerely,

Leo Rosenthal

Wendy Compton-Ring

From: Yvonne Cutforth <y.d.cutforth@gmail.com>
Sent: Tuesday, October 11, 2016 11:59 AM
To: Wendy Compton-Ring
Subject: Firebrand hotel hot tub

Dan Cutforth, Owner
Downtowner Inn

Regarding the hot tub of Firebrand Hotel-- The Downtowner Inn has been brought up as an example of a hot tub on a roof in the area. Just to clarify our hot tub is on the third floor of our building surrounded by 3 walls and a roof, all in accordance with existing zoning.
My understanding is that Firebrand wants a hot tub on the 4th floor with walls. I also was under the impression that three floors is the max in Whitefish. How is it that the Firebrand has 4 floors?? That's the bigger question not the hot tub.

Sent from my iPad

Wendy Compton-Ring

From: Cheryl Sausen <Cheryl.Sausen@nprmail.com>
Sent: Tuesday, October 11, 2016 1:09 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Firebrand Hotel

To Whom it May Concern:

This letter is being sent in support of the new Firebrand Hotel in downtown Whitefish. As a local reservation company that specializes in national park lodging around the country, we are excited to support the Firebrand as one of the featured hotels in the area near Glacier National Park.

With 2016 seeing record numbers at the park, adding another hotel in Whitefish was a necessity as we continue to become the popular place to stay for area visitors. As you know, Whitefish continues to grow and is becoming one of the hot spot tourist destinations for small-town vacations, drawing a variety of people from around the world. The Firebrand Hotel is a perfect, much-needed addition to the downtown area, and specifically to the lodging community. We applaud Averill Hospitality for their continued support and development efforts around the Flathead Valley.

We at National Park Reservations are looking forward to another record season in 2017 and are anxious to promote the City of Whitefish and all it has to offer!

Respectfully,

Cheryl Sausen
Director of Reservations
National Park Reservations
1-406-730-5925

Wendy Compton-Ring

From: Pam Fairbank <pfairbank@flatheadtravel.com>
Sent: Wednesday, October 12, 2016 2:33 PM
To: Wendy Compton-Ring
Subject: I support the Firebrand Hotel - Hot tub

Good afternoon,

After experiencing the Firebrand Hotel's rooftop, I believe that a hot tub would be a wonderful attraction for Whitefish travelers. What a great view and so peaceful after a long day of sightseeing or skiing. It adds a touch of luxury and knowing the great staff at the Firebrand, it would be operated efficiently and respectfully.

Thank you!

Pamela Fairbank, CTC
Operations Manager
Flathead Travel Service
(406)752-8703
pfairbank@flatheadtravel.com
www.flatheadtravel.com

COMMERCIAL REAL ESTATE SERVICES

CBRE

Chris Kraus
Managing Director
CBRE Hotels, Consulting

CBRE, Inc.
101 California Street, 44th Floor
San Francisco, CA 94111

+1 406 582 8189 Office
+1 415 652 4483 Mobile

chris.kraus@cbre.com
www.cbrehotels.com

October 11, 2016

Ms. Wendy Compton-Ring
City of Whitefish Planning & Building
510 Railway Street
Whitefish, MT 59937

RE: Firebrand Hotel – Hot Tub Application

Dear Ms. Compton-Ring:

At the request of Mr. Brian Averill, I have been asked to comment on the need for a (roof-top) hot tub water feature in the newly opened Firebrand Hotel located in the downtown area of Whitefish, Montana. Provided in the paragraphs below are my opinions regarding the necessity of a hot tub amenity in a property such as the Firebrand Hotel.

As a 20 year veteran of the hospitality industry and of CBRE Hotels (formerly operating as PKF Consulting USA), I have evaluated literally thousands of existing hotels and resorts across the country and of all quality levels, including branded and boutique in markets ranging from urban to mountain resort. I have evaluated numerous high quality, full service hotels in ski towns such as Big Sky, MT, Vail, Beaver Creek, Aspen, and Telluride, CO, Jackson, WY, Park City and Deer Valley, UT, Sun Valley, ID, and Lake Tahoe, CA.

While I have not personally inspected the Firebrand Hotel, based on a review of the development budget, architectural renderings, and photos of the completed property, the Firebrand Hotel was developed and operates as a high-quality, upper upscale, independent, full-service hotel. This type of hotel property, located proximate to a major ski resort such as the Whitefish Mountain Resort, and in a scenic mountain location, would be expected to capture between 40 and 60 percent of its demand from the leisure (vacation travel) market segment. Given this high percentage of leisure travel, it is imperative that the hotel amenities include a hot tub, and ideally one that offers an outdoor experience with surrounding mountain or city views. Based upon my professional experience, aside from the lounge/beverage service, an outdoor hot tub is rated as the most important amenity for a mountain resort property with proximity to skiing.

In fact, if the Firebrand Hotel does not provide a hot tub as part of the overall guest amenity package, the resulting impact through word of mouth and social media alone (TripAdvisor ratings and reviews as an example) could be a reduction in both the occupancy and average daily room rate that could result in a 10 to 20 percent reduction in the overall revenue to the property. This loss would not only be re-occurring, but could also jeopardize the financial viability of the project.

As a matter of comparison, in all of my professional work in mountain resort destinations, I have never encountered a high-quality, upper upscale, independent, full-service hotel that did *not* offer a hot tub amenity. This has become such a standard in the mountain resort market that nearly all independent hotels and major hotel brands mandate a hot tub amenity in properties that not only cater to the leisure traveler but also predominately to the individual business traveler in locations that extend beyond resort, to suburban and urban. This is best demonstrated by the requirement of the major hotel companies such as Marriott International, Inc., Hilton Hotels Corporation, Starwood Hotels and Resorts, Hyatt Hotels, and the InterContinental Hotel Group to include a hot tub and pool as part of their guest amenity brand standards for nearly all property types. As a local point of reference, in the Flathead Valley all of the newly developed upscale and upper upscale branded and independent hotels provide a hot tub and pool.

In conclusion, given the quality level and location of the Firebrand Hotel, it is a necessity that the property contain a hot tub amenity and ideally one that provides an outdoor experience with views of the surrounding mountains and city. Given the high percentage of leisure travel the property must capture, a hot tub is one of the most crucial amenities to insure the financial success of the hotel.

If I can be of any further assistance on this matter, please do not hesitate to contact me directly.

CBRE Hotels

By: Chris Kraus
Managing Director

chris.kraus@cbre.com | 406.582.8189

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

February 3, 2015

Sean Averill
Whitefish Hotel Group llc
PO Box 275
Bigfork, MT 59911

Re: Hotel at 205 Spokane Avenue; (WCUP 14-11)

Mr. Averill:

On February 2, 2015, the Whitefish City Council approved your request for a CUP subject to twenty-four (24) conditions of approval, enclosed herein. The CUP approved was according to the application submitted November 20, 2014 and updated site plan dated February 2, 2015.

The conditional use permit is valid for a period of 18 months from the date of approval or until August 2, 2016.

Please let me know if you have any questions.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

C: Building Department
Fire Department
Public Works Department

Exhibit A
Block 46 Hotel
Conditional Use Permit
WCUP 14-11
Whitefish City Council
Conditions of Approval
February 2, 2015

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

1. The project shall be in compliance with the application submitted on November 26, 2014 and the revised site plan dated February 2, 2015, except as amended by these conditions. Any significant deviation from the plans shall require approval (§11-7-8, WCC).

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

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

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

5. Proper sight distance measures shall be designed and put in place for the intersection of the east-west alley and Kalispell Avenue. Such measure shall be reviewed and approved by the Public Works Department. (Finding 6)

6. The interior lot lines located between Lots 1 and 11 shall be abandoned prior to the issuance of the building permit. (§11-2-3B(3), WCC)

7. Approval from the Architectural Review Committee shall be obtained prior to submitting an application for a building permit. (§11-3-3B, WCC)

8. A copy of the state of Montana Restaurant Beer Wine license shall be provided to the Planning Department. Any other alcohol permit shall require approval of a Conditional Use Permit by the city of Whitefish. (§11-2L-3, WCC)

9. An encroachment permit shall be obtained from Montana Department of Transportation (MDT) for any construction within the right-of-way. Any revisions to the site plan based on MDT requirements shall be reviewed and approved by both the Planning & Public Works Departments. (Finding 5)

10. Coordinate with Public Works Department regarding required Structural and Construction Encroachment Permits, which are issued independently from this Conditional Use Permit. (§7-2-1, WCC)

11. Prior to the issuance of a building permit, the applicant shall either dedicate right-of-way or grant an access easement for the shared pedestrian-bike path along Spokane Avenue. The bike path shall be 11-feet and the sidewalk shall be 8-feet. The applicant and the city shall work together with respect to the parking lot landscaping to ensure adequate landscaping, space room for the pedestrian-bike path and no loss of on-site parking. (Findings 1, 5)

12. The refuse location shall be reviewed and approved by the Public Works Department and North Valley Refuse. (§4-2, WCC)

13. An engineered stormwater plan, including the additional alley width, shall be submitted for review and approval to the Public Works Department. (Whitefish Engineering Standards, Section 5)

14. No groundwater from Block 46 shall be discharged to the City stormwater collection system without specific written approval from the Public Works Department. The developer shall reimburse the City for reasonable expenses necessary to evaluate such a proposal. Those expenses may include, but will

not necessarily be limited to, the services of an independent professional consultant. (Finding 3)

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

16. The applicant shall comply with all city fire codes for this classification of occupancy and the building shall be equipped with a fire sprinkling system. The alleys are the emergency access and shall be improved to a width of 20-feet. The additional width shall either be in the form of an easement or right-of-way dedication and shall be recorded or otherwise granted prior to the issuance of a building permit. (IFC)

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

18. All exterior mechanical equipment shall be screened visually and acoustically. (4.6.1., Arch Review Standards)

19. A landscaping plan pursuant to §11-4 shall be reviewed and approved by the Planning Department prior to the issuance of a building permit. This plan shall also include screening along the eastern edge of the parking lot. (§11-4, WCC)

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

21. The hotel shall be required to maintain employee parking at an off-site location in order to ensure the off-street parking lot is used for hotel guests. (Whitefish City Council Meeting, 2-2-15)

22. Under no circumstances shall the roof top facilities be used as a bar, for music or other entertainment or for anything other than a patio. (Whitefish City Council Meeting, 2-2-15)

23. The hotel shall not be a chain or formula hotel. (Whitefish City Council Meeting, 2-2-15)

24. Mass, scale and character of the building shall be consistent with the Architectural Review Standards and the building shall be sensitive to the residential neighborhood to the east. No building wash lighting shall be permitted. (Whitefish City Council Meeting, 2-2-15)

State of Montana; amending Section 9-1-1 of the Whitefish City Code to recognize said adoption; and allow continual adoption by reference of subsequent versions of the International Fire Code (First Reading). The motion passed unanimously.

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b) Consideration of an application from Sean Averill on behalf of Whitefish Hotel Group, LLC for a Conditional Use Permit for a proposed hotel at 205 Spokane Avenue (Block 46) that exceeds 7,500 square feet and is proposed to contain 89 rooms with 72 parking spaces (WCUP 14-11) (p. 100) (CD 31:55)

Senior Planner Compton-Ring drew the Council's attention to the revised site plans and building elevations of a 3-story building that started on packet page 233 that were submitted to the City Manager's office after her packet had been submitted to the City Manager for tonight's meeting. The revisions include a reduction in rooms from 89 to 86, and increases the parking spaces from 72 to 74 on land adjacent to and just south of the hotel, and about 5 on-street parking spaces. In the revisions the applicants says the project is now for an independent hotel instead of a franchise hotel, along with some other details that the applicant will be going into with their presentation. Customers will access the parking off the existing alleys at E. 3rd Street and Kalispell Avenue. A Conditional Use Permit is required for buildings with a footprint that exceed 7,500 square feet; hotels are a permitted use in this zone (WB-3), but the process requires a conditional use permit and conditions can be attached to the permit that the developer must meet. The Growth Policy identifies this area as Commercial, and the Master Plan that was adopted in 2005 identifies a boutique hotel as one of the catalyst projects. The Planning Board held two public hearings on this project, one in December 2014 and one in January 2015 because in December they had received an amended site plan and the traffic study. There was considerable public comment at both public hearings. The Planning Office has received over 100 comments, and she was sure the Council had received more. Of the 100, over half of them are a petition in support of the project and at least 33 are from citizens who have concerns about the project; those concerns are listed on page 129 of the packet. Planner Compton-Ring detailed the evaluation of the project based on the criteria required for consideration of a conditional use permit; and said this was an application for a hotel only, and does not include a bar and/or restaurant. That would have to be an application with a separate review. Condition #8 addresses requirements regarding a Beer & Wine and alcohol permits. Compton-Ring suggested the Council consider adding a condition of approval regarding the revised application that this project is not a chain hotel. Compton-Ring reviewed the building height according to WB-3 zoning regulations; architectural review is required that not only includes review of the building but also parking lots, pedestrian features, and landscaping. Compton-Ring's staff report also addresses Site Suitability; the site was a former gas station with a leaking underground storage tank and the applicant and staff are working with the Department of Environmental Quality to insure all standards are met and a condition of approval addresses these issues. Additional issues of accessibility and traffic flow, a parking analysis, employee parking, and discussion regarding issues of hotel parking in the adjacent residential area, landscaping, overhead utilities going underground, an engineered stormwater plan, provision of extra right/way to allow an 11-foot pedestrian/bicycle path along Spokane Avenue, the compatibility of this building in this neighborhood, were included in Compton-Ring's report as shown on packet pages 129 through 141. The recommended Conditions of Approval are on packet pages 141 through 143; and Compton-Ring suggested the Council could consider adding another condition if they wanted to give the Architectural Review Committee (ARC) additional direction along with their standards to consider during the ARC review. On a vote of 5 to 2, the Planning Board is recommending approval, adopting the staff report as findings subject to 20 Conditions of Approval, including an amendment to Condition #11, all as shown on packet pages 104 through 106, and Planner Compton-Ring reviewed those. The Planning Board also agreed to

recommend the Council carefully consider the impact of the roof top patio and associated activities, and to consider creating a residential parking district as discussed in her staff report. The Planning Board was ready to add a condition regarding on-street parking, but Compton-Ring said that was within the Council's authority.

Karin Hilding, Senior Project Engineer, explained some of the issues regarding the drainage of surface water and groundwater that they have been dealing with on this property. City Manager gave a further explanation of our current residential only parking area by the high school that is regulated by signage and enforced by the Police Department when complaints are called in. The other residential parking district he was familiar with and explained was around the University of Montana in Missoula, that involves having a parking permit for each vehicle.

Mayor Muhlfeld opened the public hearing.

Sean Averill from the Whitefish Hotel Group LLC addressed the Council. He said their plan has evolved to address concerns they heard from the public and the Planning Board. He said with him tonight were Roger Noble from Water Consulting and Brian Averill, both who could answer Council's questions; also other members of their team were Bruce Boody – Landscape Architect, Montana Creative – Architect, and TD & H – Civil Engineer. He said they have support from 64 of downtown's 71 businesses. One of the biggest changes was going independent, so they could take out the pool that was franchise driven, they are working on off-site employee parking, they are excited about this site one block off Central Avenue, it is a gateway into Whitefish and their guests can walk to downtown retail, bars, and restaurants. Their proposal fits what has been called for in the Downtown Master Plan as a catalyst project. He showed the breakdown of the lots, 19 of them, all zoned WB-3; and said if each one would have been developed individually, lot line to lot line, and no additional parking added, think of the impact of that block on the downtown in comparison to their proposed development which he feels will complement the downtown rather than competing with it. Their hotel will be built on the north portion of the block and parking will be provided in the back. He compared, on an aerial photograph, their proposed footprint in comparison to other buildings in close proximity with a footprint larger than 7,500 square feet; the school, the office building to the south at 307 Spokane Avenue, the church to the east and the First Interstate Bank. So he said their building does fit into the character of the neighborhood. He put up a slide from packet page 193 from their traffic study counting trips from Spokane Avenue: 35% goes west on 2nd Street and 35% goes south on Spokane Avenue, 15% goes north on Spokane Avenue, 5% goes east on 2nd Street and 10% goes west on 3rd Street. The traffic study showed the property going east on 2nd Street has had an overall decrease in traffic volumes over the last 10 years. The study says the total traffic volume increase caused by this project on the surrounding road system is between 2% and 4%. By going to an independent hotel; the current proposal is 86 rooms, onsite parking is 74 spaces, offsite leased parking is 16 (across the street to the south and to the west) and offsite public parking created is 5 that is public parking on 3rd Street newly created by this construction removing current curb cuts; for a total of 95 spaces. Sean described their plans for the promenade, he said Bruce Boody will go over it in more detail; but it will be an improvement of the current narrow sidewalks fit between the buildings to the south that are built up to the lots lines, then the sidewalk, then the curbs onto Spokane Avenue. Sean said they wanted to build a building that would stand for 50 years and looked like it had been standing for the last 50 years. He said their current rendering has evolved from an earlier, more modern look, and he introduced their architect, Aaron Wallace (Montana Creative) to describe it.

Aaron Wallace went back to the current site plan on packet page 233, and described the setbacks, including that the setback on the west side of the building is setback 13 feet to allow room for the promenade. He said with this site plan they don't get into the city utility infrastructure in the alley which was always a concern, and their current plan maximizes parking spaces for the area. He described a 3-story building with a basement for subsidiary public space and building support/mechanical space. He said they are using stone and brick and architectural elements to help create their timeless look, and a series of breakups to address the building mass. A patio is on the roof top at both the north and south side of the western portion of the building. The main building is 33', a couple popup areas are 35' and the elevator elements go up a little higher than that. The same building design at the front of the building is carried through to both sides and the back of the building.

Bruce Boody, Landscape Architect, again referred to the site plan on packet page 233 and said the primary entrance will be off of 3rd Street, with traffic entering into an alley widened to 20'. The east-west alley that enters back onto Kalispell Avenue has also been widened to 20' to allow room for emergency vehicles, as requested by the Fire Marshal. He said greater setbacks to development provide 3 public plaza areas along the west side; one at each corner and one at a center-point between the building and the parking area. He said in order to allow room for the promenade, the developer has to give to the city, either through an easement or a deed, an amount of land just about equal to one city lot, (25' x 130' lot) as shown on packet page 237. The existing easement and the promenade easement and building setbacks are detailed on Exhibits A, B and C on pages 234 through 236 in the packet; which Bruce Boody showed as he described those dimensions. The architect and landscaping team has been working with city staff and Crandall & Arambula to fit their building, the landscaping buffer, and the addition promenade easement all in.

Brian Averill called attention to the current rendering of the building on packet page 225, and said they are finally getting close to the look and feel of the building they want. He confirmed that this is not a franchise hotel, but will be independent. He said the Whitefish Lake Lodge is currently the only other large locally owned and operated hotel in Whitefish. They reduced their room count to 86 to be able to offer some larger suites; also basing their final room count on a formula calculating annualized occupancy in town and associated development costs. They hope to provide higher end accommodations with limited food and beverage services designed and intended to serve their guests. They do not intend to create a bar and restaurant but more a wine and beer and limited food service, not for the community. He said they envision their guests going downtown for major dining and entertainment purposes. He said this was one of the sites called out in the Downtown Master Plan for a hotel, and this is the only site downtown that has room for a hotel with parking. There is a Montana State study projecting an economic benefit ration of $1 to $9. If $26.5 million is spent in local businesses by travelers of the hotel; retailers will profit around $5.83 million in annual sales from hotel visitors, and restaurants and bars will profit around $5 million in annual sales from hotel visitors. Community Tax Benefit projections: Whitefish Resort Tax $59,000, Tourism Promotion Assessments $29,500, and TIF/Property Tax $100,000. Brian brought up the parking and said they currently shuttle their Whitefish Lake Lodge staff back and forth to work in the peak seasons of summer and holiday times, it is not regulatory but have found that it works well for them and they anticipate doing the same at peak seasons for this project. In addition, because they know parking is at a premium in Whitefish, the will need their onsite parking during the summer months and holidays, and less at other times. They foresee opening up their parking to the community on a controlled basis during those times it is not needed for their business, doing their part in providing community parking as they can. A residential parking plan to benefit those residential neighbors is not yet in place, but they anticipate being in support of that if it is of benefit to the residential community. They feel their summertime and holiday traffic

will not be an impact to the school traffic; and not all their guests leave at 8 or check in at 5 but arrivals and departures are spread throughout the day so should be of minimum impact to surrounding businesses.

Sean Averill introduced Mark Loncar, 422 Central Avenue, who has been working with them on theme development just since they decided to go with the independent hotel. Mr. Loncar explained their theory of establishing an identity for the hotel, and it is early in the game because he has only been working on it for a couple days but they are thinking of working around the name of "Empire Hotel".

Mayor Muhlfeld asked if there were public who would like to comment. (CD 1:30:11)

Jeffrey Anderson, PO Box 1242, Whitefish, spoke against the project. He said he did not think it was an exciting project but an overwhelming project; massive and not within the character of the town and he thought it should have been reduced from 89 rooms to 64 instead of 86. He said he was not against growth but had concerns about the impact to the Police Department, the school across the street, and the 'liability' of underground toxic waste becoming a burden to the taxpayers. He said the list of concerns of others that Planner Compton-Ring read during her staff report was powerful. He said this might be a great idea but the wrong place – the developers are banking on continued economic growth, but lately that trend has been going down. He said in the developers' words; the purpose of the project is to provide services for their guests, it is not for the community. He said it is way too big, big impacts, and environmental concerns are a big potential problem. He thanked the Council for their time.

Leo Rosenthal, 236 Columbia Avenue, spoke against the project. He said he lives one block east of this project in an historic neighborhood, all older homes. He said this is the block where everyone brings their kids to on Halloween for trick or treating. He asked the Council to deny the conditional use permit (CUP) on the basis the project is too big, parking is an issue, the development displaces current parking for 30 to 40 cars, there will be snow removal impacts, parking problems for the adjacent residential neighborhoods and a possible burden on those neighbors if it becomes up to them to police those who are a parking violation, and the rooftop patio is not appropriate for the area that close to the neighborhoods and across from the school. He said on a nice summer night he hears the rooftop bar at Casey's which is five blocks away, so he asked them to imagine the noise from something so close as one block away. He said the Downtown Master Plan calls for a small hotel and he requested the Council uphold that vision; he said a hotel about half this size would be a better fit with the zoning and to the Whitefish character, and would not negatively impact an historic Whitefish neighborhood. He asked the Council to scale this down, he disagreed with Planner Compton Ring that they aren't asking for exceptions; he said this project is too big and will forever change the face of Whitefish. He asked the Council to think of the residents – Whitefish is where they live and work and enjoy, it is not just for tourists. He asked the Council to uphold this philosophy and deny the CUP, keep Whitefish like it is.

Erica Mortensen, 2650 E. Edgewood Drive, spoke against the project. She said she has two children and is concerned about the safety and security at the school across from this project. She said the hotel will have windows that look directly into the school; and customers who come and go on irregular schedules that would be hard to monitor and difficult to pick up on if anything is suspicious. She said it is disappointing that it seems like many land decisions are made from the tourist's perspective and not of those who live and work here in this community. She asked the Council to consider the impact on the safety and security of the kids in this community, she said she is vigorously opposed to this hotel.

Durae Belcer, 230 Meadows Road, spoke against the project. She said she used to live on Kalispell Avenue and now lives outside of town but still has concerns about this project. She spoke against the size adjacent to a residential neighborhood and felt 86 rooms did not fit a boutique hotel as called out in the Master Plan, and it would be a dramatic change to the neighborhood. Because they had to reduce their building to allow room for the promenade maybe they should reduce their building even more, there may be parking issues and problems for the residents, contaminated ground water, a rooftop patio that isn't appropriate next to the neighborhoods; maybe this isn't the right place for their hotel. She said there isn't a benefit to the existing neighborhood, just to the visitors that come to town. The size is not appropriate, it will change the character of the neighborhood and it won't blend in.

Chris Schustrom read a letter to the Council from Rhonda Fitzgerald in support of the project. She supported an independent hotel and thought the redesign fit the character of downtown Whitefish. She said visitors to Whitefish seek an "authentic sense of place".

Karen Reeves, 230 Missy Lane, spoke against the size of the project. She was hoping it would have been reduced to a smaller hotel, this one is too big and there isn't enough parking.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West in Kalispell, said her email had been distributed earlier to the Council wherein she listed her concerns regarding the size of this project, traffic and parking issues both for hotel use and spilling into the neighborhoods, prohibition of "formula retail", and regulation of noise from a rooftop patio. She said this application has been amended several times and with yet a new plan just submitted tonight – staff and public have not had the time for complete review nor the time to formulate their comments; and she said the City should change their regulations and process to prevent this kind of thing from happening. She said this does not meet what was called for in the Master Plan which was a 36-room boutique hotel. She had concerns over the findings and said the conditions of approval should align with the facts. (Submittals are appended to the February 2, 2015 Council packet as after-packet materials).

Jeff Raper, speaking in support of the project on behalf of the Chamber as a member of the Board of Directors, and said the developers had given a presentation on the project to the Chamber. On a business perspective, he said there is a formula to determine number of rooms based on several things including economics, zoning, development costs, and sustainability. His family faced that years ago when they bought a 7-cabin facility that, in order to make ends meet, became the 66-room Pine Lodge. He said this is 19 lots with WB-3 zoning that if developed individually could have a much greater impact that this one building with nice setbacks.

Lauren Walker, has a business address of 713 E. 13th Street, spoke against the project. This project is asking for special permission. She thought this was a bad location for a hotel this size; the developer says they can't go smaller or their numbers won't crunch so she thought they should look for a different site. She said the same developers have a large project to build out on East 2nd Street and she thought it would be best to see how that project impacts the community before another project is approved. She said once this hotel is built on this site, it won't go away. She thought the site would be better for affordable housing.

There being no further public comment, Mayor Muhlfeld closed the public hearing and called a recess at 9:30 p.m. The Council reconvened at 9:42 p.m.

Some of the Council had questions answered by both applicants and staff. Councilor Anderson said he was recusing himself both from the discussion and the decision on this project.

Councilor Sweeney made a motion, second by Councilor Feury, to approve a Conditional Use Permit for a proposed hotel at 205 Spokane Avenue (Block 46) that exceeds 7,500 square feet and is proposed to contain 86 rooms with 74 parking spaces along with the Findings of Fact in the staff report (WCUP 14-11) and the amended twenty conditions of approval as recommended by the Whitefish Planning Board, and with the addition of Condition 21 to read: "The hotel shall be required to maintain employee parking at an off-site location in order to ensure the hotel parking lot is used for hotel guests."

Councilor Sweeney made an amendment to the original motion, second by Councilor Frandsen, to add a Condition 22 to read: "Under no circumstances shall the roof top facilities be used as a bar, for music or other entertainment or for anything other than a patio." The amendment passed with five aye votes, Councilor Anderson abstaining.

Councilor Frandsen made an amendment to the original motion, second by Councilor Sweeney, to amend Condition #1 to reference the most recent site plan dated 2-2-15. The amendment passed with five aye votes, Councilor Anderson abstaining.

At this point part of the Council asked the Public Works to have a viable parking plan in place at the time construction begins to address issues of this project impacting the parking in the adjacent residential area. Manager Stearns advised that is an extra task assigned to an already busy and short-staffed department; it may come to the point staff has to pick and choose what projects they have time to work on.

Councilor Sweeney made an amendment to the original motion, second by Councilor Hildner, to add a Condition 23 to read: "The hotel shall not be a chain or formula hotel." The amendment passed with five aye votes, Councilor Anderson abstaining.

Councilor Hildner made an amendment to the original motion, second by Councilor Frandsen, to add a Condition 24 to read: "Mass, scale and character of the building shall be consistent with the Architectural Review Standards and the building shall be sensitive to the residential neighborhood to the east. No building wash lighting shall be permitted." The amendment passed with five aye votes, Councilor Anderson abstaining.

The original motion, as amended, was approved with five aye votes, Councilor Anderson abstaining.

c) **Resolution No. 15-___; A Resolution of Intention indicating its intent to adopt the Whitefish Highway 93 West Corridor Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (WPGA 15-02) (p. 240)** (CD 2:45:08)

Planning and Building Director Taylor introduced the staff report presentation saying that with the consultant, the WGM Group, staff and a Steering Committee have worked together on a land-use plan for this area over a period of time in nine meetings, four public outreach sessions, 2 work sessions with the Planning Board followed by a public hearing at the Planning Board to bring forward the recommendation for the intent to adopt the Whitefish Highway 93 West Corridor Plan. Bruce Lutz,

WHITEFISH PLANNING BOARD
MINUTES OF MEETING
JANUARY 15, 2015

CALL TO ORDER AND ROLL CALL

The regular meeting of the Whitefish Planning Board was called to order at 6:00 pm. Board members present were John Ellis, Councilor Richard Hildner, Jim Laidlaw, Ken Meckel, Rebecca Norton, Melissa Picoli, Ken Stein. Councilor Frank Sweeney was absent. Planning Director David Taylor and Senior Planner Wendy Compton-Ring represented the Whitefish Planning and Building Department.

APPROVAL OF MINUTES

Rebecca moved and Jim seconded to approve the December 18, 2014 minutes with no amendments. The motion passed unanimously with Richard abstaining since he was not in attendance at the meeting.

COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)

Mayre Flowers spoke representing Citizens for a Better Flathead, a business that encourages public participation, 35 Fourth Street West in Kalispell, regarding giving the public a reasonable opportunity to participate. She felt there were too many items on the agenda tonight with too broad of a nature to the community, and felt there was a lack of adequate time to try to address all the issues on the agenda and the meeting would run too late. She thought maybe some of the items could have, and suggested they still could be, rescheduled. She also thought it was misleading to list the CUP for the Block 46 hotel under Old Business on the agenda and that it was not listed as a public hearing. In the legal notice it is, and she felt that in order to ensure informing the public at large, the agenda should be consistent with the legal notice. She also thought it was too difficult to find the Planning Board's packet on the City's Website and that it should be much more straightforward to locate and include all attachments, not just staff reports.

OLD BUSINESS:
1. CONTINUATION OF PUBLIC HEARING ON WHITEFISH HOTEL GROUP, LLC'S, CONDITIONAL USE PERMIT REQUEST

Whitefish Hotel Group, LLC, is requesting a Conditional Use Permit to construct a hotel that exceeds 7,500 square feet per § 11-2L-4, WCC, of the WB-3 zoning district at 204 Spokane Avenue, legally described as Lots 1-11 and 19-25 in Block 46 of Whitefish Original Townsite in S36 T31N R22W, P.M.M., Flathead County, Montana.

STAFF REPORT WCUP 14-11 (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings which now reflect the changes made in the site plan that was submitted at the December 18, 2014 Planning Board meeting, along with addressing the items members asked for more information on at that meeting and the traffic study which was submitted on December 22, 2014, and sent out with Planning

Board packets for this meeting. Since that time, the applicant submitted another site plan with one additional parking space as the only change, for a current total of 72.

More comments have been received and distributed to the members since the second notice to the public and neighboring properties, which include concerns with parking, stress on downtown, stress on neighborhood parking, change in downtown character, bar too near school, concerns about it being a franchise hotel but also not caring whether it was a franchise hotel, wanting it to be more historical in design and pedestrian safety while crossing surrounding roadways. A neighborhood parking permit system was discussed with the police department and apparently this is one method used in Whitefish. The Police Department said it is complaint-driven and working well.

The revised site plan was submitted to the MDT and they were pleased to see entrance on Spokane eliminated. The Traffic Study showed 720 daily trips with all intersections still at an acceptable level. The Study showed most traffic anticipated south on Spokane Avenue and west on Highway 93 W.

Wendy visited with the Public Works and Fire Departments regarding closing the alley access off Kalispell and the Fire Department was still against that idea.

Staff recommended adoption of the findings of fact within staff report WCUP 14-11 and for **approval** to the Whitefish City Council, subject to 20 Conditions of Approval. Wendy addressed the ones that have changed (Nos. 5, 9 and 14) since the staff report for the December 16 meeting.

BOARD QUESTIONS OF STAFF

Richard asked if Condition No. 11 is consistent with Downtown Master Plan, and whether the vegetation planned along Spokane will work for pedestrians, kids walking to school, etc., and Wendy said yes. Rebecca asked whether the Applicants have submitted anything indicating whether they intend for this to be a Marriott franchise hotel. Wendy said there was a letter in the packet submitted by the Applicants. She said franchise hotels are not disallowed in the Whitefish City Code, but what is located within the hotel is addressed, i.e., a McDonald's could not be located inside the hotel.

Ken M. reiterated that the board wants to hear all comments, but there is a large agenda and he asked that folks try to talk about any new issues, etc., and refrain from rehashing previously presented information and/or questions.

APPLICANT / AGENCIES

Sean Averill spoke for Whitefish Hotel Group and went over some of the high points from their slide presentation shown at the December 16 meeting.

Aaron Wallace, Montana Creative, principal architect, showed a new design with no change to the footprint of the building, but many changes to the external look, including materials, lighting, the building slopes down a couple of feet with steps to the front revolving door, front windows with a two-story entrance, arches, cut natural stone, a cleaner look awning, tumbled brick in darker tone in upper two stories and different features to break of façade. He feels the look is a little more contemporary but thinks it will still look good 50 years from now. There is also a rooftop patio with glass railing proposed, with only tables and chairs for getting outside only – no restaurant or bar on the roof.

Rebecca asked how many pop-up areas beyond the height restriction of 35' were included and Aaron said three core towers (stairway and elevator), which were all allowed. He said the highest point is the elevator core, but demonstrated how the tower is not seen from front the front of the building, and that it will be the same height as the elevator tower at Casey's, approximately 42'. John asked about the main entrance tower height and the square footage of the building footprint and Aaron said approximately 40' for the front entrance, and 14,970 square foot average per floor. Rebecca requested the design changes be shown to the audience since they hadn't seen them. John asked for a rendering from Kalispell Avenue, but none was available. However, Aaron said the brick wrapped around the entire building and the character was the same. He said the smallest setback is 15', and Sean said there is a 4' difference in a king versus a queen room, and this design makes a natural use of that difference to bring walls in and out.

Bruce Boody said the setbacks are now pretty significant, with 15-20' setbacks most of the way around. The corner at the main entrance is now setback 32', which is a significant public space (roughly 30' x 30'). On Spokane Avenue, there is an 11' promenade, and 8' pedestrian way, and an additional 3' of paving next to the building, so roughly 22'. For the parking lot planting buffer, the applicants need a little give and take, as they can fit a 5' buffer, not a 7' one, without losing seven parking spaces. They are requesting a modification to Condition No. 11 so that City staff and developers work together to find an equitable solution. Richard asked whether there would be enough room for viable landscaping if the planting buffer was reduced to 5' from 7' and Bruce said there would be as the angle of the parking stalls will be

80° rather than 90°, which will allow some extra room and he thinks there can still be a good strong buffer there that will work, and it will be similar to what the City has on Central Avenue. John asked about on-street parking on Third Street East and Bruce said there is existing parking along the east side of the alley, but not on west. New curbing will give between four and six parking spaces additional spaces.

Brian Averill reminded us the project has 89 guest rooms, and that number was arrived at based on making enough profit to be viable. They plan limited food and beverage services as an amenity for guests, but nowhere near the type available at Whitefish Lake Lodge. They envision beer and wine enjoyed in a cozy lobby or something similar. He reminded us that research shows $1 spent on a hotel room equals $9 spent in the community. Bruce and his staff have squeezed out five additional parking spaces, for a total of 72. They are also entering into an agreement for leasing 12 more, for a total of 84 spaces. They are also willing to shuttle staff, if necessary, which they currently do at the Lodge and it works well. They continued to consider the benefits and logic of whether to have a franchise hotel or not. They wrote a letter and it was included in the Planning Board's packet. They have found it would be economically better for them to build a franchise hotel, but this is a big step for them. He has spoken to a lot of folks in the community and some like the idea of a franchise hotel and some don't. Whether a franchise hotel or not, the look will be the same, and it's going to be operated by a locally owned and operated company, not by a national chain. They want to hear the Planning Boards concerns, and if the City feels the franchise issue is a deal breaker, they want to know, so they are looking for members to speak up. John asked how many employees they envision hiring and what percentage would need a parking space? Brian thought maybe 37 or so, with maybe 10-15 working at any one time, so it won't be a heavily staffed operation, but the majority would probably drive to work. The peak parking is in the summer and on holidays. If they have a problem, they would shuttle staff with designated shifts. John asked if franchise agreements run for period of time, in other words, could they try it and then change their mind if not happy with the franchise. Brian said no, they would be locked down pretty good. Rebecca asked where the leased parking will be and where shuttled employees would park, and Brian replied probably the same place where Lodge staff parks, which is at the Methodist Church south of The Lodge. They have also talked to First Interstate Bank, who is fine with them using some of their lot at night. The hotel will also plan to open up some of their lot during low occupancy times. Jim

asked about policing and Brian said he didn't know right now. Brian said looking at the overall picture, a franchise would probably increase occupancy by 12 to 14%, and help them compete better with Kalispell, and help increase occupancy during the shoulder season. He said the modern traveler seems to go to franchise hotels for points, etc. He said they really, sincerely want to know how the members and community feel about the franchise issue.

Rebecca said she feels they will be successful with whatever they decide to do. She asked if the public would be allowed to use the food service area and Brian said they would be welcome to, but it would be designed more for hotel guests.

Richard asked what type of signage the hotel would have to get guests to the parking lot without using up all their signage allotment. Brian replied directional signs should get them to Third, that signs will be down near the ground, not up on building, and that the City's Wayfinding signs would probably also come into play. Bruce said the primary sign is planned to be a ground-mounted sign on the southeast corner of the parking lot. He said the entry for check-in will have maple trees on both sides so will "read" as main entrance to hotel. Sean said they are entering into a lease for 12 spaces (24 hours) very near the hotel, but wouldn't disclose where until the lease was signed.

Roger Nobel, hydrologist with Applied Water Consultants, spoke regarding the stormwater plan. Rebecca said she found it scary to consider doing anything underground at that intersection as it could be disastrous in a high water year if anything happened. Roger said there is high water here and a basement is planned in this building, so there will need a dewatering plan. As far as contamination, there was an old gas station there and several others in Whitefish and probably all of those have contaminates, but the ones here are relatively low. They received a letter from the DEQ, and the DEQ doesn't even want the materials removed as they don't think there's an issue. John Wilson has copies of all the materials that Roger received. He said they will treat the water in order to discharge it into the stormwater sewer system. He said it is not uncommon here, and DEQ has a mechanism where they recommend that as an alternative. The developers will need a permit to discharge with monitoring, laboratory testing, etc. John asked if other cities are doing it and Roger said there are currently three in Helena, and one in Billings. The DEQ gave Roger a copy of one they just issued to Sydney. Sydney is allowed to discharge 800 gallons to the wastewater system and 400 gallons to the stormwater system and he said we are talking 5-15 gallons a

minute here, so it is much less. Richard asked about odor and Roger said there probably wouldn't be any at this level. Rebecca said on P. 10 of Staff Report WCUP 14-11 it says, "It is unlikely the City will permit discharge of this water to the City's storm system." Roger referred her to Condition No. 14. Rebecca asked if using the City's stormwater sewer system is the only possibility and Roger said yes. Rebecca asked whether there will be an opportunity to make changes once excavation starts and putting in the dewatering system starts and Roger said yes, there will get further data and make changes as appropriate. John asked how far below ground level the bottom of the swimming pool is and Aaron said they are only displacing about 4' of water as the slab goes down 11' and the first 7' are dry. Maximum depth of pool is 6'.

PUBLIC COMMENT

Patty Scruggs, 611 Delrey Road, said she feels the Board is not getting full disclosure unless they ask very specific questions. She is very concerned about the water and where it's going to go, she feels parking is a huge issue and doesn't like the idea of using the First Interstate Bank parking lot because others need to use it. The City should monitor the water, etc., not the developers. She thinks the hotel is too large for the character of downtown, and doesn't like alcohol being served so close to the school, but knows that Montana allows that. The site is zoned for 7,500 square feet and wonders why we have a zoning law if we're going to allow 15,000 square feet. She doesn't trust some of what the developers say because every time a Board members asks a question, they get more information, and feels the developers are not forthcoming enough. She agrees with Mayre Flowers that not enough information has been available to the public. She urged the Board to be careful when deciding, and feels the meeting should be postponed.

Marcus Duffy, 326 Somers Avenue, and local business owner. He supports this project and thinks it is a great economic driver for Whitefish, and that the developers are two families who have brought a lot of economic good to this community. He supports the project wholeheartedly.

Mayre Flowers, Citizens for a Better Flathead, appreciates the fact that the Board allowed the applicant to provide additional information and that they brought experts to answer questions. What is missing is looking at 2007 Growth Policy and Downtown Master Plan, which says "One of the primary objectives of the Downtown Master Plan is to preserve and enhance the special character and qualities of downtown Whitefish," and "discourage or prohibit formula business from locating in the downtown area." She thinks the Marriott requires businesses called "Bistro" and

"Market" within their hotels, which are franchise businesses. Lodging should be designed to be on scale with the surrounding architecture and not affect parking. She thinks the Board should prohibit franchise and make it a condition that no formula business be allowed at this site. She also questions the traffic study and wonders how the 720 trips were arrived at, she thinks the number should be based on the peak season when downtown businesses are relying on making their money and parking is most needed. She questioned the accuracy of some of the numbers being related to peak seasons. She also didn't understand what Bruce meant that they would lose 11 parking spaces if they were required to have 7' for the landscaping buffer instead of being able to reduce that to 5'.

Lauren Walker, 155 Fonner Road, feels she has a unique perspective on all the growth here as she lived here and then was gone for several years. She objects to the developers saying this is the only place where a downtown hotel could be located, and possibly the worst place for a hotel. She also doesn't feel this is a "boutique" hotel. She also reminded us of the new subdivision going in on East Second Street and thinks traffic will be hugely affected. She feels there are many locations that would be much better, like where the Noodle Shop is located or the Church across from the post office. She asked the developers to consider a different location.

Ian Collins, 898 Blue Heron Drive, said he saw a lot of the same people at the Downtown Master Plan meeting last night. He feels the community has been extremely successful and we live here because of the uniqueness of our community. He doesn't think a franchise hotel would be a good fit for Whitefish and doesn't think we have enough of an answer from the developer on what they have planned. He still thinks we need the question answered. Ian provided the plans provided to the Architectural Review Committee in the packet and it is clearly a cookie-cutter Courtyard Marriott. The intent of the Growth Policy is very clear and people in the community want it to stay unique, and there is no need for a franchise. He feels we will have more success if we are patient and stick to the Plan.

Leo Rosenthal, 236 Columbia Avenue, was here at the last meeting, and wanted to say again how concerned he is about parking in the neighborhood where he lives. He also sees traffic as an issue, and is concerned about the proposed rooftop patio and alcohol on the patio directly across from the Middle School. He said at his house four blocks away he can hear people from Casey's, and this location is only one block away. He urged the Board to deny the CUP.

The public hearing was closed.

Melissa wanted to clear up that this hotel does meet the definition of a "boutique hotel".

MOTION

Rebecca moved to deny CUP, John seconded. Rebecca is excited to see what is being proposed and likes the new design much better than first one, with a more historical look, but she still has concerns about the groundwater issue, the size of the hotel being too large for that site, traffic/safety issues and public comments against the project proceeding. The southeast corner of the block has previously been included in proposed projects, but not in this one which she thinks is odd and would have helped with parking. The intention is to have non-franchised businesses in our community to help locals survive and get income here, and we need to support local businesses.

Ken S. pointed out if the CUP is passed, there still is a lot of work to be done, with the 7' planting buffers being reduced to 5' so the 15 parking spaces in the parking lot are not lost, and feels there is a certain amount of responsibility upon non-private entities to provide parking for the City. He said the parking lot at First Interstate Bank is posted, so the people that are parking after hours do not have permission to do so. Parking is an issue and inherent to our town that cannot be a burden to one project.

Jim sides with Ken S. on this and said regarding the groundwater issue, we have the engineers, Public Works and DEQ involved, and technology has risen to a state that we can deal with these issues and it shouldn't be the developers' responsibility to solve that. We have had groundwater issues and have been able to survive.

Richard said in reference to Ian's remarks with regarding the overall architecture, ARC will get another shot at it, as he is on the City Council, and that there are issues still pending with regards to the CUP, but he thinks personally he would like to see the Averills to have an opportunity to make a presentation to the ARC with embellishments and refinements that will need to be addressed, and the Council will also have a chance, so he won't support the motion.

Ken M. reminded the Board to also consider what might happen to this property if this project doesn't go forward. As Frank Sweeney pointed out at the last meeting, this land is zoned WB-3 and if it gets sold in different ways there might not be any setbacks, and parking doesn't have to be provided in the WB-3.

Jim called for the question. In favor of the motion to deny the project (2-5) (Richard, Ken S., Melissa, Jim and Ken M voting in opposition).

BOARD DISCUSSION

Ken S. made a motion to approve WCUP 14-11 along with Findings of Fact and the 20 Conditions as presented. Melissa seconded. Ken S. made an amendment to Condition No. 11 that City staff and the applicant work together to review the landscaping to retain the proposed 15 spaces on the west side of the parking lot and include 5' landscaping areas within the parking lot. John E. seconded. Ken S. reminded the Board that they are an advisory board and thinks it's appropriate to pass baton to other groups who have more expertise. Unanimous vote in favor of amendment.

Richard said when this goes to the ARC, some of the historic elements will receive a great deal of scrutiny and the franchising issue, and exactly what will be located inside and who it will be controlled or operated by, will be major concerns that will be well addressed by the Council. Melissa suggested adding a Condition about residential permits, but Wendy said only group who can restrict parking is Council, but that could be added to her staff report, and Ken M. would also like the Council to look at the rooftop patio issue as he has heard people complain about the noise from Casey's.

VOTE

Ken M. called for question on motion. The motion passed with five voting in favor (Richard, Ken S. Melissa, Jim and Ken M.), and two opposed (Rebecca and John). The matter is scheduled to go before the Council on February 2, 2015.

PUBLIC HEARING 1: IRON HORSE HOMEOWNERS' ASSOCIATION REQUEST TO RECONFIGURE THE ENTRYWAY

A request by the Iron Horse Homeowners' Association to reconfigure the entryway by installing a center landscape median that will include a single story welcome center. The project will be located on Iron Horse Drive in the vicinity of the existing guard house which will be removed.

STAFF REPORT WPP-97-01A (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings. They are asking to reconfigure the entryway, not gate it, so it does meet the requirements of the Engineering Standards and Subdivision regulations that prohibit gating. The Neighborhood Plan, approved in 1996, and the PUD of Phase II, say the roads will be privately owned and maintained but will be open to the public with the same rights of usage as owners and residents.

BOARD DISCUSSION	Rebecca is concerned with the parking but admits that other studios in the area have worked the parking issue out. Also, safety in the alley is a concern but Rebecca felt it wasn't worth holding up the application. Melissa suggested signs reinforcing use of cross walks to minimize jaywalking. Rebecca asked what the maximum occupancy at any one time might be and Bailey said that would be addressed through the Building Permit process. Jim said there is an allocation of four parking spaces, but other than that, the Planning Board doesn't have any ability for input on that. Ken S. called for the question.
VOTE	The motion passed unanimously. The matter is scheduled to go before the Council on January 5, 2015.
2. ZONE CHANGE ON PROPERTY RECENTLY ANNEXED INTO CITY LIMITS	Request by the City of Whitefish for a Zone Change on a parcel recently annexed into City limits. The property is developed with a residential use. The subject property is located at 1016 Park Avenue, legally described as Tract 1AA in S31 T31N 22W.
STAFF REPORT WZC 14-09 (Minnich)	Planner Minnich reviewed her staff report and findings. The purpose of the rezone is due to recent annexation of the property into City limits. No comments were received from notified property owners. Staff recommended adoption of the findings of fact within staff report WZC 14-09 and that the map amendment from County R-4 (Two-Family Residential) to City WR-2 (Two-Family Residential District) be recommended for **approval** to the Whitefish City Council.
APPLICANT / AGENCIES	None.
PUBLIC COMMENT	None.
MOTION	Rebecca moved and Frank seconded, to accept staff report WZC 14-09.
BOARD DISCUSSION	None. Ken M. called for question.
VOTE	The motion passed unanimously and the matter is scheduled for City Council on January 5, 2015.
3. WHITEFISH HOTEL GROUP LLC	Whitefish Hotel Group, LLC, is requesting a Conditional Use Permit to construct a hotel that exceeds 7,500 square

CONDITIONAL USE PERMIT REQUEST

feet per § 11-2L-4, WCC, of the WB-3 zoning district at 204 Spokane Avenue, legally described as Lots 1-11 and 19-25 in Block 46 of Whitefish Original Townsite in S36 T31N R22W, P.M.M., Flathead County, Montana.

STAFF REPORT WCUP 14-11 (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings, including that four letters were sent out with the Planning Board packet and that four letters were received since the packet went out, which were also given to Planning Board Members for review. Two of the letters were in support and the other letters mentioned concerns with parking, impacts on snow removal, change in character of downtown, impact on infrastructure, inappropriate location for bar (near school), and rumors that it might be a chain hotel. The project has been reviewed by the Architectural Review Committee (ARC) on two occasions and the Committee has made suggestions to the design, but their formal review will occur following Council approval. The WB-3 zone does not require parking, but they are providing 67 spaces. The conversion of this lot to hotel parking rather than public parking will impact downtown parking. The Montana Department of Transportation requires an encroachment permit and is concerned with the right-in/right-out and its proximity to the East 2nd Street/Spokane Avenue intersection.

Staff recommended adoption of the findings of fact within staff report WCUP 14-11 and that the Conditional Use Permit be recommended for **approval** to the Whitefish City Council subject to 19 Conditions of Approval.

John asked whether there is any other reason why this project needs a CUP other than exceeding 7,500 square feet and Wendy said no. He asked how and when historically this property was zoned commercial. Dave said it was the location on the corner of Stacey Oil, a gas station, for many years, but Planning staff wasn't sure when or why it became commercial. John also asked for the current proposed square footage of the building and Wendy said there have been so many different proposal that John needed to ask the Applicant. John also asked if a DEQ analysis was done and Wendy replied that the Public Works Department does that part. John wondered if the Planning Department or Public Works ever does an independent study or they simply accept what the Applicant says. Wendy replied that the Applicant hires a consultant and staff reviews their findings. John wanted to know if aligning the building lengthwise along

Spokane Avenue had been considered rather than on East 2nd Street and Wendy said it had been suggested and rejected by the applicant because there are sewerlines that are in the alley that would need to be abandoned. John asked whether a parking structure with more than one level had been considered and Wendy said John would need to ask the Applicant. John asked what the highest building is in the area and Wendy replied the towers at the Middle School are 55'. John asked what the height of the building at 3rd and Spokane was and Wendy didn't know. John asked about the possibility of blocking off the alley that enters onto Kalispell Avenue. John asked if the Applicant would pay for the easements and Wendy replied the Applicant owns the entire block. Ken S. asked about the newsletter article that TIF money might be available to move the sewer line and Jim asked if they can't discharge into stormwater, where do they go? Wendy said they would need to work with the City to determine an appropriate method. Frank clarified that the newspaper article referred to a proposal for a prior hotel project utilizing TIF funds to move sewer and that the Council would entertain that request if the same proposal was made for this project. Rebecca said other communities have done bonds for off-site damage and wondered if Whitefish has done that. Wendy didn't know of any.

APPLICANT / AGENCIES

Sean Averill addressed the Planning Board on behalf of Whitefish Hotel Group, LLC. They brought their traffic study with them tonight, and showed an updated site plan via PowerPoint. They have an investor out of Florida, Bruce Boody is working on the site plan, Montana Creative is the architect, and TD&H is the engineer. There are 19 lots included in the building footprint, seven facing Spokane Avenue and 12 facing East 2nd Street. Sean said they are not taking this lightly and are trying to build a year-round hotel to be proud of.

Scott Elden spoke for architects Montana Creative. He said the limit of 7,500 sq. ft. comes from ARC guidelines regarding the Old Town District to prohibit large "box style" buildings. Several buildings (Middle School, Rocky Mountain Real Estate office, etc.) in area have larger footprints. They have already incorporated several recommendations made by the ARC.

Frank asked how many square feet were in the footprint and Scott replied 14,997 square feet. Frank asked for the square footage of the building and Scott said he hadn't done the

math, but it would equal three levels with 14,997 square feet with jigs and jogs. Mellisa said she thought it was a beautiful building, but doesn't think it looks like it fits with the character of Whitefish. Scott said breaking up of long façade into different colors and sections will help. The Middle School is the largest building in Whitefish and right across the street, and Scott felt the proposed hotel would complement it.

Bruce Boody, Landscape Architect, addressed the Planning Board and new site plans were distributed. Rebecca asked what changes have been made. Bruce pointed out there will now be no access off Spokane Avenue and the main access is now the north-south alley off E. 3rd Street, with a drop-off area on the south end of building. Currently the alley is 16', but will become 24' wide with an easement. There will also be a 7' landscape buffer to the east of that. Access off Kalispell Avenue is proposed with a 20' roadway and they are showing 69 parking spaces. Local hotel owners say their occupancy rate is 60-70% if they are really doing well. If there are 89 rooms, 60% would be 54 needed parking spaces and 70% would be 63. They are still looking for ways to make employee parking work. Tom Kennelly, Whitefish Fire Marshal, was satisfied with the original access and Bruce believes they have made it much better since Tom reviewed it. Bruce said the hotel has been moved 13' to the East to accommodate the promenade. On Spokane Avenue there is now an 11' bike way, a 4' street tree separation, and 11' sidewalk next to building. There is still a 15' setback on Kalispell, and the setback on East 2nd Street varies between 20-25'.

Rebecca asked why Whitefish Hotel Group was not using the other portions of Block 46 and Sean replied that those lots are zoned WR-4, a totally different zone with different requirements, and is not zoned for a hotel or parking.

John asked Bruce about traffic onto Kalispell Avenue and Bruce said the traffic study showed most trips will be via the other two access areas. John wanted to know why the access on Kalispell Avenue couldn't just be eliminated and Bruce replied that Fire Marshal Tom Kennelly said the access was needed for emergency vehicles. John asked about setback requirements and Bruce said WB-3 has no requirements. John also asked about a wall or fencing to block the other portion of the block. Bruce said a 7' landscaping buffer off the alley is proposed as he pointed out before. Ken S. asked

who would maintain the buffer and Bruce said the hotel, and Sean agreed. Frank asked about north end of block that is not being developed, and why no landscape screening is proposed along the South side of Kalispell Avenue access. Sean agreed that would be a good idea to consider. Rebecca asked that extra copies of the site plan be distributed to the public.

Brian Averill addressed the Board regarding their goals, services provided, etc. They want the outside of the building to be timeless and he feels that utilizing wood and glass as depicted on the drawings will be timeless. He explained that Whitefish traditionally has a high occupancy rate in the summer and low occupancy rate in "off season". Brian feels 70% occupancy that Bruce mentioned is way too high. Because of the varying occupancy rate and high development and construction costs, 89 rooms is the minimum they felt would be cost effective. Food and beverage services as depicted will be limited so people will go out into the community, but they have to have some services. They have no plans for a full restaurant and lounge for the public, more just for guests, and they will only apply for the beer and wine license, rather than a full liquor license. The Downtown Master Plan calls for a downtown hotel because it is the economic driver for the community. The State of Montana produced figures show the ratio of hotel visitor revenue to dollars spent in a community as if a customer spends $1 on a hotel room, they will spend $9 in the community. Frank asked what percentage of guests that Brian anticipates will need to park a car. Brian said 75% of hotel guests at Whitefish Lake Lodge have a car, but that they also have a large restaurant and marina. The only time they run out of parking is when they have an event, and that is rare. They will provide airport, train, etc., pickup. Staff will be there during the day and guests will be parking at night. Leased parking has also been offered to them. Brian thinks the number of parking spaces is adequate. John asked how many rooms and parking spaces the Lodge. Brian replied 140 rooms but didn't know how many parking spaces. John asked if they also rent parking spaces from the Methodist Church and Brian said they do for events and staff in the summer and that they shuttle staff and guests. John said that the Lodge is unique in that there is no opportunity to park in residential areas and asked how that would be controlled in this area. Brian agreed that parking is a problem in the downtown area. Brian was asked what the occupancy would be for the proposed meeting room and he

replied approximately 50, and that no large conference rooms like The Lodge has are proposed.

Melissa said Wikipedia defines "boutique hotel" as having less than 100 rooms and often containing luxury facilities in unique or intimate settings with full service accommodations and she doesn't think this is technically a "boutique hotel" but she thinks the design is nice. She said the design shows providing "some services" so she assumed food and beverages and Brain agreed. She said the plans indicate a workout facility and retail and asked if that meant a sundry type of store, and Brian said that meant newspapers, sodas, snack food, and typically things forgotten by guests. Melissa asked about the two proposed treatment rooms for guests and whether the hotel would hire an independent contractor or would they be staffed by an actual employee. Brian said the rooms would be just used to provide treatments such as massages to guests and independent contractor(s) would be utilized, not employees. Melissa said realistically this project causes a parking deficit of approximately 50 spaces because the location is currently being utilized by the City as a parking lot. She feels check-in and check-out times coincide with the Middle School arrival and departure times and thinks this causes safety issues in the area. Brian said statistically guests' arrivals and departures are very staggered and there is not a set rush time. Rebecca said Sean talked about this project being more responsible than the last hotel project envisioned, but she feels this is a larger scale project than envisioned by the community. Sean said they have a vested interest in making this a pleasing project. Melissa asked about there being a GoBoard® as indicated in the plans, which is an interactive, touch screen information display panel, located in lobbies of Marriott Hotels, and asked if they anticipated this being a franchise hotel. Brian said they have looked at franchise hotels, including the Marriott. There are definitely tremendous benefits, but they have not made any decisions. Rebecca asked when they might decide and Brian said he didn't know for sure and that they are still evaluating whether to franchise or stay independent. Sean said the Averills have never had a franchise hotel and are looking at the benefits of doing it, but that they are not franchise people. John asked about where the hotel sign might be located and Sean replied that a monument sign on the south end of the building is currently envisioned. Ken S. asked where the air conditioning units might be located and Scott said they will all be on rooftop, and that the equipment will be hidden like it is at Casey's.

Rebecca asked Doug Peppmeier, TD&H Engineering, about environmental concerns, including stormwater issues. He said this is not a new technology that is being proposed, just new to Whitefish. Roger Noble, Applied Water Consulting, is working with them, along with Public Works. The plan needs to be approved by the DEQ.

PUBLIC COMMENT

Ian Collins, 898 Blue Heron Drive, is on the ARC and explained the preliminary nature of this project when they looked at it. Ian made a motion to table the project based on the outcome of the CUP process so it would be reviewed on a much larger basis than ARC review. He felt Scott Elden trivialized the CUP process in his presentation. The 7,500 square foot threshold is very clearly in the zoning code and triggers all the same considerations of any project. He feels strongly that this project is subject to all the same criteria that any project being brought forward that requires a CUP would have.

Leo Rosenthal, 236 Columbia Avenue, urged the Board not to approve this CUP because of the changes to the historic residential character of the area, problems with cars parking during snow removal times (residents are currently required to move their cars but hotel guests may not be) and reduced available parking. He feels the project needs to be scaled back, that a downtown hotel is needed but that this proposed hotel is too large for the neighborhood.

Dan Cutforth, 224 Spokane Avenue, owns the Downtowner and the Stumptown Inn, and is in favor of this project but is concerned about parking. He feels occupancy is higher in the summer than the Averills estimated, but the rest of the year, 70% would be a goal he would appreciate. Ken M. asked how many of Dan's customers stay in his hotels without parking a vehicle and Dan said maybe previously 10%, but now that the train has become so unreliable, that it is probably lower. John asked how many rooms and parking spots Dan has and he said 24 rooms, and 40 parking spots. He said if non-guests park in his parking spots and don't move after being warned, he does have to tow. Melissa asked how this would be a positive thing for Dan's hotels and why he would be in favor of the project. He replied that in addition to raising property values, the proposed hotel would have different customers who would pay more for a hotel room, which would make his prices look better.

Andy Huntsberger, 574 Somers Avenue, said he felt a downtown hotel would be a great thing for the community, but feels this one is too large, and that parking for 89 rooms would directly impact downtown parking negatively.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, Kalispell, asked whether approval of a CUP for this particular project could be transferred to another owner. She said she was disappointed about the lack of information in the staff report, the fact that there is no traffic study available to the public, and that the current proposed site plan was only passed out tonight. She thought the formula business issue was a concern, and that as a CUP, the Board and City were being asked to provide a major exception to the zoning with a building twice the size of what would normally be approved to be built in this location. Because of the uncertainty of the design and lack of information about a drainage plan and other issues, residents in this area and downtown businesses all need more assurance that what is being proposed will be what is actually built at this site. She feels the standard used for needed parking should be full occupancy rather than average occupancy as a week or a month of congestion in downtown area impacts a lot of people. She said there is not a lot of detail on lighting, i.e., how headlights will be buffered and how building lighting will impact the neighborhood. In this area of downtown the school yard is just down the road, and there are a lot of farmers' markets and festival activities that take place in this area and traffic really needs to be considered. Leased parking may solve this facility's needs but leased parking is limited and she feels the Board and public needs to understand the capacity of leased parking. She said the previous plans not including a bar or restaurant was mentioned in the staff report but now tonight we've been told there will be those services, and she feels the public needs time to review the information. She recommended the public hearing be continued.

MOTION

Rebecca moved and John seconded, to continue the public hearing to the next Planning Board meeting so more detail can be provided. Rebecca said she is not ready to turn the CUP down but still has a lot of concerns. Whether to *table* or *continue* the hearing was discussed and clarification provided was that *tabling* the motion would indefinitely postpone the consideration, but *continuing* it until next month proposes a definite time to reconsider.

BOARD DISCUSSION

Frank asked Sean if continuing the project will cause a problem and Sean replied that when they originally started the project, they didn't know they needed a CUP. There has already been a lot of delay and there is definitely an expense of carrying this for another month, and he asked exactly what the Planning Board would need to see.

John wants to see the traffic study at least two weeks in advance of the meeting. He also wants to hear from the Public Works Department regarding stormwater issues, the possibility of closing or restricting access to Kalispell Avenue, and whether residents could have stickers or some other type of indication that they are residents. He urged the Board to continue the hearing.

Rebecca said part of this Board's responsibility is to represent the public and that this is a major project. She wants the ability to review the traffic study and read a report from the DEQ since this is a critical intersection for our town and it would be very serious if something happened. The Whitefish Growth Policy calls for a boutique hotel, which has a special, unique character, and she has concerns about whether this is going to be a Marriott. She said Page 21 of the Growth Policy addresses the detrimental effects of bringing in a franchise hotel because of the harm it can do to current businesses. If the Whitefish Hotel Group could outline whether they are presenting a franchise opportunity for the City, it would be better for the public to know rather than being surprised later.

Frank asked that the parking issue be adequately addressed.

Ken M. admitted that while this is a very nice looking project, he has really struggled with the parking issue. He feels it seems that cumulative decisions keep being made that add to the parking issue. He said the impact on the neighborhood and the parking situation are his major concerns, but that it is still a very nice looking project.

Frank said the density that could go in there without any requirement for parking could cause even more horrific problems for the parking.

Rebecca asked if a PUD would be more appropriate. Wendy said a PUD would not be appropriate since the applicant is not asking for any deviations to zoning. A CUP is appropriate because of the mass, etc., of the building. She

pointed out that a CUP is for 18 months and does run with the land, so if approved, even if the owners changed, it would be for 18 months.

Ken M. said the traffic study is done, just not yet distributed, and the landscape plan has come a long way. He thought the formula business issue was addressed in the staff report, and that the restaurant and bar not being designed for the public, but rather hotel guests, has also been addressed.

Jim said the Applicants have worked really hard to address the questions and problems, but feels this Board needs more time to look at issues.

Jeff from the Whitefish Hotel Group said he has seen the traffic report and feels the Board will be shocked by the minimal effect, which has been summarized as less than 4% impact, probably more like 2-4%, even during peak times.

VOTE

The motion passed unanimously. The matter is scheduled to go before the Council on January 5, 2015.

NEW BUSINESS (Taylor)

1. Work Session on the Final Draft of the *Highway 93 West Corridor Land Use Plan*. The Planning Board went into a Work Session. Several members of the Highway 93 West Committee were present, and Doug Reed, Chairman, gave a brief introduction. Doug said the vote in favor of this *Plan* was 7 or 8 to 1.

Frank asked why it was not unanimous and Anne Moran said she voted against the *Plan* as she represented the Area A and C (the residential owners of the neighborhood) and when the Committee was composed it was partly in reaction to a microbrewery on the north side of the highway. The residents had an issue with that and the developers didn't have enough information and she felt the residents continued to have very strong reservations regarding the microbrewery in Area B.

Bruce Lutz, Sitescape Associates, who served as the local guy on the planning consultant team, gave a PowerPoint presentation on the *Plan*.

Director Taylor discussed the initial draft of the *Plan* and the staff's review and revisions.

Melissa complimented *Plan* and work done by Committee.

WHITEFISH BOARD OF ADJUSTMENT
MAY 3, 2016

CALL TO ORDER AND ROLL CALL
The meeting was called to order at 6:00 p.m. Members present were Josh Akey, Brandon Jacobson, Herb Peschel, Scott Sorenson and Steve Qunell.

COMMUNICATIONS FROM THE PUBLIC-None.

APPROVAL OF THE BOARD OF ADJUSTMENT MINUTES OF THE JANUARY 5, 2016 MEETING
Josh Akey made a motion, seconded by Steve Qunell, to approve the January 5, 2016 minutes. The motion passed unanimously.

OLD BUSINESS- NONE

PUBLIC HEARING
Consideration of an administrative appeal by the Whitefish Hotel Group, LLC, of an interpretation of the zoning administrator that a condition placed by the City Council on the Conditional Use Permit approval for the Firebrand Hotel which states: "Under no circumstances shall the roof top facilities be used as a bar, for music, or for other entertainment or for anything other than a patio" precludes putting a hot tub on the roof of the facility. The subject property is located at 205 Spokane Avenue.

Planning & Building Director Dave Taylor gave the staff report. Director Taylor said on February 2, 1015 the Whitefish City Council approved a CUP (Conditional Use Permit) request by the Whitefish Hotel Group, LLC (WHG) to build the Firebrand Hotel in excess of 7,500 square feet in the Old Town Central District part of the WB-3 zone. During the public hearing, due to concerns from neighboring residential property owners about potential noise from roof top activities, the City Council added the following condition to the approval:

> **22. Under no circumstances shall the roof top facilities be used as a bar, for music or other entertainment or for anything other than a patio.**

Director Taylor said none of the plans submitted and approved for the CUP, the approved plans by the Architectural Review Committee, nor the building permit and subsequent addendums showed a hot tub facility on the roof. There was no discussion of locating a hot tub on the roof by the applicants during the CUP approval process. This was brought to the Planning department when the Building department saw that the hotel was looking at changing their plumbing and structural plans to facilitate putting a hot tub on the roof top. Director Taylor said staff met with members of the WHG team to discuss the hot tub, and explained why it was prohibited. The applicant had several options to resolve the issue, such as asking the City Council to clarify or revising their CUP application with a new or revised condition. They chose to appeal the zoning administrator's interpretation of the condition to the Board of Adjustments.

Director Taylor said the City of Whitefish zoning code does not define patio. When a term is a generally understood term it is not always codified, and in those cases standard dictionary definitions suffice. Patio is defined by Merriam-Webster as:

"A flat area of ground that is covered with a hard material (such as bricks or concrete), is usually behind a house, and is used for sitting and relaxing.
1: courtyard; especially: an inner court open to the sky
2: a recreation area that adjoins a dwelling, is often paved, and is adapted especially to outdoor dining"

While someone may choose to put a hot tub on a patio, it is not implied to be standard feature of a patio in any definition available.

Director Taylor said per Zoning Code section 11-7-6-A: Any Person may file an appeal when aggrieved by a decision or interpretation made by the zoning administrator; provided, that the appeal is based on an allegation that:

1. The zoning administrator made an error in interpretation of these regulations; and that
2. The erroneous interpretation specifically aggrieves the applicant.

The appellant appealed a February 22nd email he sent with an interpretation of the city council imposed condition to their CUP within the required 30-day window, but there is a question of whether the interpretation made by the zoning administrator was related to interpreting Title 11 of the zoning regulations. The appellant is arguing in the attached letter from Judah Gersh written on March 18, 2016 that the zoning code does not prohibit hot tubs in any way, nor does it preclude a hot tub from being placed on a patio. They are also arguing that prohibiting a hot tub aggrieves the appellant because a hot tub is a typical high end hotel accessory.

Director Taylor said the points of appeal cited in their appeal letter fail to show that the Zoning Administrator erred in the interpretation of City Code, as the interpretation is related to interpreting a broad condition placed on the CUP by the City Council. No other activities except a patio are allowed. While the code doesn't define patio, standard definitions do not assume hot tubs are standard on patios, and a hot tub would violate the terms and intent of the City Council condition, which was placed to prevent disturbance to neighboring properties.

The staff's recommendation is for the Board of Adjustment should review the facts and decide whether the Zoning Administrator erred in his interpretation of the code. Staff believes that the appellants have failed to demonstrate that the zoning code was interpreted improperly. Staff recommends that the Board of Adjustments uphold the decision of the Zoning Administrator to prohibit the hot tub based on the following findings:

Finding 1: The appellant failed to demonstrate that the Zoning Administrator made an error in interpreting the city's zoning regulations.

Finding 2: The City Council placed a condition on the CUP limiting activity on the roof to anything but a patio, and a hot tub exceeds that limitation.

Steve asked if this is not approved can they go back to City Council and either do another CUP or amended the current one and Director Taylor said they could.

Judah Gersh spoke for Whitefish Hotel Group, LLC who are the owners of the property at 205 Spokane Avenue. Judah said the plans had shown a hot tub in the basement and in going through everything they felt that the basement would work better for laundry and meeting rooms. Judah said that Dave Taylor

said a patio does not include a hot tub and they do not agree with this and this is where they are at. He said there are not any codes concerning hot tubs, patios are for sitting and relaxing and that is also what hot tubs are for. The hours for the hot tub will be 10 a.m. to 10 p.m. Judah showed a new drawing on where the hot tub would be located on the roof and they will be having a glass wall on the north and west side and on the east side will be a solid 8' cedar wall which will help with noise, the south side is where the elevator is at. He said it will be a hardship for the owners as it should be on the roof top and not in the basement.

Some of the concerns the board had was if it was just a hot tub and no swimming pool, how sound proof it was going to be, if the structure will be strong enough to support the hot tub and do they have room elsewhere in the building where they could put the hot tub.

Aaron Wallace with Montana Creative said it would only be the hot tub, he did not know the specific on the sound proof as the top is open so some sounds would be there, the structure was built strong enough to hold the weight of the hot tub and they really do not have any other place to put the hot tub as there is no room in the motel and if they put it outside they would lose parking spaces. He said the hot tub would be fully ADA so with the lift it would not fit in the basement.

Steve asked when they decided on putting the hot tub on the roof top as nothing was said during the CUP process or even when they were before the Board of Adjustment in January. Aaron said it was about 3 months after getting the CUP that they decided the roof top would be a good place for the hot tub and not the basement.

Jeff Badelt, 157 Ariel Way, said the hot tub is 10' by 22' stainless steel with decking and cost around $200,000. He does not know how many can sit in the tub.

Herb asked if there was anything else they could do to soften the noise and they really do not believe it will be that loud as it will be monitored by the staff and will have limited hours.

Brian Averill said the hot tub is over their two big suites with balconies and they will want to keep the noise down because of the suites. There will not have alcohol served and there is time limits on the use. Brian said that the Downtowner has two hot tubs on their roof.

PUBLIC COMMENT

Jim Goble, 716 2nd Street, said he would hate to see what happened at Casey's with their roof and all the noise that it creates. He said the shielding all around might help some with the noise. He said it is a fair question on what a patio is. He also asked if this was the only water feature and that 10 p.m. is the closing time.

Ray Boksich, 223 Columbia Avenue, asked if the roof access was limited at 10 p.m. and if the elevator will be locked at that time. He is also very concerned about when the bars close and people up on the roof as noise does travel.

Brian Averill said that the guests with key cards will be able to access the roof at all hours and this is where security will come into play. The hot tub area would be closed at 10.

Leo Rosenthal, 236 Columbia Avenue, said during the CUP he was opposed to the noise with the extra traffic being caused by the motel. He said there was a reason why the City Council put the condition on

the CUP for just a patio. They did not have plans about the hot tub until later in the process and they are just trying to sneak one by the City. He asked the board to uphold Dave's interpretation and stay with what the City Council wanted.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, Kalispell, said Citizens for a Better Flathead have reviewed this appeal, supports the determination of the zoning administrator that, since the intent of the condition imposed by the council was to prevent noise related disturbances which a hot tub might incur, and the condition very broadly prohibits "anything other than a patio," that a hot tub is clearly precluded. She said they do agree with the two findings that Dave had but provided additional findings of fact and information that she wished to be part of the public record:

Finding 3: None of the plans submitted and approved for the CUP, the approved plans by the Architectural Review Committee, nor the building permit and subsequent addendums showed a hot tub facility on the roof. (See MEMORANDUM To: Whitefish Board of Adjustment From: David Taylor, AICP, Director of Planning & Building Date: May 3, 2016)

Finding 4: Testimony by Sean Averill, recorded at the Feb. 2, 2015 Whitefish City Council meeting at which the CUP for the Firebrand Hotel was approved, made no reference to a hot tub as a feature of the rooftop patio. Mr. Averill responded to direct questioning by City Councilor Richard Hildner regarding rooftop uses and potential noise sources as part of that hearing record. Averill's response was recorded for that hearing record and is found at 2:10:30 of that tape [1]. Sean Averill stated as follows in describing the patio and uses that would occur there:

It is designed as a sun deck. ***It*** *is not designed for events. It doesn't have any services or amenities. It is not going to be a Casey's.* ***There is nothing up there but an open patio.***

Mayre Flowers asked that this tape found at http://www.cityofwhitefish.org/large-files/audio/council-2015/15%2002%2002.mp2 be made a part of this official hearing record.

Finding 5: The Whitefish Growth Policy states: "Conditional Use Permits (CUPs) are only granted after public hearings before the Planning Board and City Council, and permitting decisions are made based upon criteria that are set forth in the zoning ordinance. Also, **reasonable conditions to avoid and/or mitigate adverse impacts may be imposed as conditions of the CUP."**

Finding 6: The Whitefish City Council has the authority to limit and condition uses like hot tubs allowed at the Firebrand Hotel under City Code 11-7-8 (E) 6. "Upon receipt of the recommendation of the planning board, the city council shall hold a public hearing and render a determination whether to approve, **conditionally approve** or deny the application for a conditional use permit **based on public input, the staff report and findings of the planning board."**

Finding 7: Public testimony at both the Whitefish Planning Board and the Whitefish City Council establish the concerns of adjoining property owners and other residents that

noise from a proposed rooftop patio area would be detrimental to their health, safety and welfare.

Finding 8: Montana State statutes define a public nuisance as **"45-8-111. Public nuisance.** (1) "Public nuisance" means: (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;"

Finding 9: The Whitefish City Council had a reasonable basis for its decision to limit patio uses to prevent noise related disturbances The adverse impacts of noise pollution have been well documented by the World Health Organization and others.[2] Studies recognize that inadequately controlled noise adversely affects people's health, safety, and welfare, property values, and the environment.

According to American Journal of Preventive Medicine May 25, 2015, noise pollution may increase your risk of hearing loss, stress, sleep disturbances, and heart disease. *A* new analysis conducted an environmental assessment of US noise pollution as a cardiovascular health hazard, and
revealed small decreases in noise could add up to major economic savings. The analyses suggested that a 5-decibel noise reduction would reduce the prevalence of high blood pressure by 1.4 percent and coronary heart disease by 1.8 percent. The annual economic benefit was estimated at $3.9 billion. There is also the issue of sleep disturbances, which is why nighttime noise pollution is thought to be worse than daytime exposures. If you can't sleep because of noise, it can cause a cascade of negative health repercussions.3

Finding 10: *A* hot tub is a form of entertainment consistent with the definition of entertainment. [Emphasis added below]

en·ter·tain·ment4,
en(t)ar'tanmant/ un noun:
entertainment

the action of providing or being provided with amusement or enjoyment.

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2 http://www.medscape/com/viewarticle/554566_3
3 http://articles.mercola.com/sites/articles/archive/2015/06/20/noise-pollution.aspx#_edn3
4 https://www.google.come/search?q=entertainment&ie=utf-8&oe-utf-8#q=entertainment+definition

5

"everyone just sits in front of the TV for entertainment"

synonyms: amusement, pleasure, leisure, **recreation, relaxation**, fun, enjoyment, interest, diversion, "he reads for entertainment", an event, performance, or **activity designed to entertain others**.

Finding 11: Excess noise associated with hot tub use is a common complaint.[5]

Trip Advisor comment section has frequent complaints about excessive and disruptive noise from hot tub use including a recent posting for The Lodge at Whitefish owned by the Averill's.

From a Trip Advisor review of the Lodge at Whitefish Lake:

The huge problem we had is that we got room 233, a room that I don't think is really rentable!! It is located right directly above the outdoor patio restaurant and across from the pool - both created incredible noise that made the room totally unrestful. Even with all windows closed it was noisy - not enjoyable! We are seasoned travellers and my husband & I discussed these issues when we got to the room and saw this poor location, but after a 9 nine hour car ride to get there we were tired and stupidly said "it probably will be OK - this class of hotel would not let the outside restaurant get crazy late - wrong!! The outdoor patio is very busy and noisy all day, and then late at night the weddings moved to the patio, hot tub etc. with a lot of very loud drunks. That night was terrible! this deadbeat crowd was yelling and drinking on the patio - at 1:20 I called the front desk asking them to move the people inside.
https://www.tripadvisor.com/Hotel_Review-g45402-d251765-Reviews-Lodge_at_Whitefish_Lake-Whitefish_Montana.html

Finding 12: "The City of Whitefish zoning code does not define patio. When a term is a generally understood term it is not always codified, and in those cases standard dictionary definitions suffice. Patio is defined by Merriam-Webster as:

> "A flat area of ground that is covered with a hard material (such as bricks or concrete), is usually behind a house, and is used for sitting and relaxing.
> 1: courtyard; especially: an inner court open to the sky
> 2: a recreation area that adjoins a dwelling, is often paved, and is adapted especially to outdoor dining"

While someone may choose to put a hot tub on a patio, it is not implied to be a standard feature of a patio in any definition available.
(See MEMORANDUM To: Whitefish Board of Adjustment From: David Taylor, AICP, Director of Planning & Building Date: May 3, 2016)

In conclusion, these findings support denial of the appeal before you asking you to overturn the zoning administrator's ruling that hot tubs are allowed under the conditional use permit. Hot tubs are a form of entertainment, which is not permitted.

5 http://www.olmpichottub.com/hot-tubs-sauna-blog/2011/05/hot-tub-noise/
https://www.gottrouble.com/noise-law-legal-limits-and-nuisance-law/

Judah Gersh said he is objecting to having Mayre's comments be part of the records as they were not able to see her handout prior so they could not respond. Herb and Dave both said she has a right to comment and she pretty much read the whole thing word for word so it will be in the record and legally they are required to accept written comments.

Rhonda Fitzgerald said she attended the Planning Board and City Council meetings on the CUP. The Downtown Master Plan shows a boutique motel and this is not a boutique motel they have 86 rooms and a boutique motel is about 36 rooms. She said everyone is very concerned about the size and they do not want to ruin the great neighborhood. The CUP clearly stated nothing but a patio was allowed. Rhonda said Brian said nothing else would go up on the roof. She feels that if this is changing it needs to go back to the City Council.

Scott Sorenson made a motion, seconded by Steve Qunell, to uphold the Zoning Administrator's interpretation of the code and that no hot tub will be allowed on the rooftop. The motion passed on a 4 to 1 vote with Herb Peschel voting in opposition.

NEW BUSINESS- NONE

GOOD AND WELFARE

Matters from Board: None

Matters from staff: None

ADJOURNMENT

Meeting adjourned at 7:20 p.m.

Downtowner Hot Tub

WCMP 14-11A

City of Whitefish

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

CONDITIONAL USE PERMIT

FEE ATTACHED
$ _____ INSTRUCTIONS:
A Site Review Meeting with city staff is required.
Date of Site Review Meeting:

Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of
forty-five (45) days prior to the Planning Board meeting at which this application will be heard.

The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00PM in the Council Chambers at 1005 Baker Avenue.
After the Planning Board hearing, the application is forwarded with the Board's recommendation to the next available City Council meeting for hearing and final action.
A.
PROJECT INFORMATION:
Project Name: FIREBRAND HOTEL
Project Address: 650 E. 3RD ST
Assessor's Tract No.(s) 3122x36 - WHT-24 - BLK 46
Lot No(s) 1-11
Block # 46
Subdivision Name
Section 32 Township 31N Range 22W
I here by certify that the information contained or accompanied in this application is true and correct to the
best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

FOR DEPOSIT ONLY
GLACIER BANK OF WHITEFISH
Y OF WHITEFISH, CIT
FIREBRAND HOTEL 2055.00
09/02/2016 09:53:27 AM

AUG 23 2016

Whitefish Hotel Group

J Badelt PROJ. MGR.

Owner's Signature

Date

6.27.16

Print Name

JEFFREY BADELT

J Badelt

Applicant's Signature

Date

6.27.16

Print Name

JEFFREY BADELT

J Badelt

Representative's Signature

Date

6.27.16

Print Name

May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included File #:
Date:
Intake Staff:
Date Complete:
(See current fee schedule)
Revised

APPLICATION CONTENTS:
Attached
ALL ITEMS MUST BE INCLUDED

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED
Conditional Use Permit Application

8 copies Written description how the project meets the criteria in Section D

8 copies Site Plan

8 copies

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

Reduced copy of the site plan not to exceed 11" x 17"

1 copy

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

Electronic version of entire application such as .pdf

Any other additional information requested during the pre-application process

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

B.
OWNER(S) OF RECORD:
Name: Whitefish Hotel Group
Phone: 406. 837. 1715
Mailing
Address: P.O. Box 275, Bigfork 59911

Email: susanm@twre.com

APPLICANT (if different than above):
Name: JEFFREY BADELT
Phone: 406. 890. 8195
Mailing
Address: 1380 Wisconsin Ave., WF
City, State,
Zip: 59937

Email: jeff@mtdevgroup.com

TECHNICAL/PROFESSIONAL:
Name: Aaron Wallace – Architect
Phone: 406. 249. 2145
Mailing Address:
158 Railway St. WF 59937

City, State,
Zip: 59937
Email: awallace@mt-creative.com

C. DESCRIBE PROPOSED USE:

In the Winter of 2014 The Whitefish Hotel group applied for and got passed a CUP for the Block 46 Hotel in Downtown Whitefish. This CUP application is for a CUP/CUP Amendment for the Block 46 Hotel for (1) specific amendment to the original CUP.

Item 1: Install a Hot tub on the roof top patio on the North/West side of the building.

ZONING DISTRICT: _WB-3

D. FINDINGS:

The following criteria form the basis for approval or denial of the Conditional Use Permit. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Describe how the proposal conforms to the applicable goals and policies of the Whitefish City-County Growth Policy.

    a. The Block 46 Hotel is outlined as a desired project of the Growth Policy and City Masterplan. During the original CUP several items were raised up as a concern including the hotel we proposed not be a franchise. COI #23 states "the hotel shall not be a chain or formula hotel". This CUP amendment is a direct result of this condition.

    b. During the course of the original CUP the City mandated removal of Franchising as part of this project for approval. One week prior to the City Council meeting we agreed to go away from a franchise and to build a boutique independent hotel. As a result, at the time of passage, a full economic and amenity package analysis had not been completed on a boutique hotel. This change from a franchise to a boutique hotel required us to redesign the services and amenities of the hotel. In this process there

were a number of changes to the concept, one of them being the need for a hot tub. To command the rates and occupancies needed to support an independent hotel, in such a seasonal environment, a "unique" water feature such as a hot tub is vital. Additionally you will see from the original design that the interior basement level pool was removed based on space constraints for providing other amenities and the associated cost with a basement level pool. In either hotel concept the need for a water feature is critical to its success. As reference, the franchise hotel we considered required a water feature.

c. Due to the limited Square footage of the building we do not have the space within the facility to put a hot tub. The site is constrained and maximized for parking. Installing a hot tub on the rooftop patio is an appropriate solution. This solution also allows us to provide the unique amenity which will drive occupancy for the hotel. There is already elevator and stairway access and available space on the patio. We propose to enclose the hot tub area with the required 5' glass railing on the North and west and an 8' high wood fence on the south and east. This fence will shield the view from the surrounding area. Hot tub equipment will be in an enclosed mechanical space. The state requires a showerhead within 50' of the tub. This will be located on the backside of the elevator wall and enclosed on three sides.

2. Describe how the proposal is consistent with the purpose, intent and applicable provisions of the regulations.

a. In the original CUP the Conditions of Improvement specified that the roof top patio be limited to use as a patio only. This is a sweeping and vague stipulation that could be interpreted several different ways. After passage of the CUP and during the course of the development it was determined that a Hot tub amenity would be required to sustain a Hotel that is not franchised. Due to the limited availability of ground and internal space, plus to take advantage of the already

developed patio and views from the Roof, we are proposing to put a Hot tub on the Roof top patio with visual and sound screening

b. A Hot tub is a traditional element commonly seen in hotels of this size and quality. The original CUP application did not address this issue since it was an unknown at that time. There is no required permitting or Zoning items related to Hot tubs and where they are allowed or their requirements. As such we see no issue with allowing a Hot tub on the roof, other than we did not show a unit at the time of the original CUP. We are not increasing the size or use of the patio than what was originally proposed other than having people in water. Concerns related to noise will be addressed by hours of operation, enclosing mechanical equipment and providing a screened in area around the hot tub location.

3. How is the property location suitable for the proposed use? Is there adequate usable land area? Does the access, including emergency vehicle access, meet the current standards? Are environmentally sensitive areas present on the property that would render the site inappropriate for the proposed use?
   a. The Hotel was already determined appropriate for its overall location and use and meets all other current standards.
   b. The proposed hot tub location is the most appropriate location for its use. Due to its internal layout and required structural loading, this is the farthest location to the north and west away from the residential neighborhood to the south and east The structural support is already incorporated into the building.
   c. This rooftop location provides the largest buffer and offers the best views on the site. The Hot tub is set 25' off the north property line. It has glass and wood railings enclosing the Hot tub area. The enclosure will limit noise transfer to the South & SE. Typical experience is that the Hot tub area is a quieter environment than a swimming pool and is generally used for relaxation.

4. How are the following design issues addressed on the site plan?
    a. Parking locations and layout
        i. NA
    b. Traffic circulation
        i. NA
    c. Open space
        i. The hot tub on the roof will maintain the limited open space and parking we currently have on site.
    d. Fencing/screening
        i. The hot tub will have 5' glass railing on the North and West side of the hot tub enclosure allowing views but limiting noise impact and an 8' high wood fence on the south dampening sound. The mechanical equipment will be in a mechanical enclosure on the roof.
    e. Landscaping
        i. NA
    f. Signage
        i. NA
    g. Undergrounding of new utilities
        i. NA
    h. Undergrounding of existing utilities
        i. NA
5. Are all necessary public services and facilities available and adequate?
    a. Yes The State requirement for a shower within 50' has been met with addition of shower just south of hot tub area.

    If not, how will public services and facilities be upgraded?
    a. Sewer, Already Plumbed
    b. Water, Already Plumbed
    c. Storm water, Able to be tied into with elements onsite.
    d. Fire Protection, NA
    e. Police Protection, NA
    f. Street (public or private), NA
    g. Parks (residential only), NA
    h. Sidewalks, NA

i. Bike/pedestrian ways – including connectivity to existing and proposed developments, NA

6. How will your project impact on adjacent properties, the nearby neighborhoods and the community in general?
    a. The hotel has already developed and the proposed changes will have limited impact on the surrounding community however it is a necessary amenity for the overall solvency of the project.
        i. The hot tub is on an already approved patio space on the roof. The only issue related to the hot tub that has been expressed is related to noise and concerns of the neighbors. A couple of items to outline; The space identified for the hot tub is already able to be used for the patio at an occupancy of 24 people. The hot tub itself is sized for apx. 16 people so we are actually decreasing the amount of allowed people per space. The only difference is whether the people are in the water or not. Common experience is that people in the hot tub are generally relaxing usually lounging in a quieter more relaxed manner. Due to the overall nature of the hotel, we do not anticipate this being a high activity center of splashing or yelling. The hotel promotes a relaxing environment.
        ii. Hours of Hot tub operation is anticipated being from 8 a.m. to 11 p.m. This area will have security cameras allowing staff to monitor activities.

        iii. The hot tub is located over guest rooms and premium suites. Noise is a primary concern of the management and would be addressed immediately to limit the impact on guests. Finally, the area of the hot tub has larger railings and buffers to provide the required security and mitigate the issues of sound related to the hot tub. We see limited additional impact related to the hot tub than what is already approved for the existing patio space.

Describe any adverse impacts under the following categories.

a. Excessive traffic generation and/or infiltration of traffic into neighborhoods
    a. NA
b. Noise, vibration, dust, glare, heat, smoke, fumes, odors
    Please see the attached letter from Acoustic Treatments who has reviewed this issue. As outlined we have addressed noise in an appropriate manner.

7. What are the proposed hours of operation?
    a. 8 a.m. to 11 p.m.

8. How is the proposal compatible with the surrounding neighborhood and community in general in terms of the following:

a. Structural bulk and massing

The railing is already part of the existing building and due to its setback and screening it has limited visibility from ground level.

Scale

The hot tub is appropriate for the size of the hotel.

Context of existing neighborhood

The hotel is in the downtown core and an allowed use in the WB3 Zone and a hot tub is a typical use in a Hotel. The Downtowner Hotel across the street has had 2 hot tubs on its rooftop area for many years without known incident.

d. Density NA

e. Community Character

We feel that the additional of a hot tub only enhances the community character and provides a more viable hotel for downtown with a much needed amenity.

Additional Note from Judah Gersh:

In addition, the hot tub meets all of the requirements for a swimming pool found in Section 11-3-20. The hot tub will meet the setback requirement of the ordinance, and will also have fencing and gating that meets or exceeds the requirements of the ordinance. There are no specific regulations for hot tubs in the Code, so this ordinance regarding swimming pools is the closest applicable ordinance. Since the hot tub meets the fencing, gating, and setback requirements, it fully complies with the legal requirements that exist in the Code.

11-3-20: SWIMMING POOLS:

A. The intent of the requirements in this section is to make swimming pools inaccessible to small children for reasons of safety, and therefore, these requirements shall not be abridged except in a manner to exceed the specific requirements listed below:

1. All swimming pools shall be enclosed by a solid wall or fence, chainlink fence or wrought iron fence having vertical bars of at least one-half inch ($^1/_2$") cross section spaced no farther apart than four inches (4") between bars.

2. Required enclosure walls or fences shall be constructed so as to be unclimbable by children. Therefore, wood (woven) fences shall be prohibited where the boards or slats are horizontal; chainlink fences shall have interwoven slats.

3. All walls or fences shall not be less than five feet (5') nor more than seventy eight inches (78") in height except that at the discretion of the zoning administrator and after giving consideration to location, safety and effects on the neighborhood, a higher fence may be allowed.

4. No fence or wall shall have more than four inches (4") between the bottom of the wall or fence and the underlying ground.

5. Where possible, the ground underlying a fence or wall should be made impervious to any digging that a small child may attempt.

6. All gates shall be self-closing and shall have self-latching latches which shall be not less than four and one-half feet ($4^1/_2$') above the ground or otherwise inaccessible from the outside to small children.

B. In any single-family residence district, private swimming pools shall be in the side or rear yard and there shall be a distance of at least three feet (3') between any property line and the water's edge, provided that at no time shall a swimming pool be closer than twenty feet (20') to a public right of way.

C. No public swimming pool shall be located closer than twenty five feet (25') to any lot line of the lot on which it is situated. (Ord. A-407, 3-15-1982; amd. Ord. 05-01, 1-18-2005; Ord. 05-25, 11-21-2005)

Judah M. Gersh

Attorney at Law

Viscomi & Gersh, PLLP

121 Wisconsin Avenue

Whitefish, MT 59937

Phone: 406-862-7800

Fax: 406-862-7820

P.G.S./Broadcast Media Services
P.O. Box 8332
Missoula, Mt. 59807
Phone: (406) 493-1128 Mt. Cell#: 369-0134
E-mail: pgs1@bresnan.net

Acoustic Treatment
Vibration Isolation/ Noise Reduction
OSHA, ADA & FDA Compliance Testing
SITE DOSIMETRY & TESTING

6/1/16

Montana Creative
P. 406.862.8152
158 Railway St.
Whitefish, MT 59937

Attention: Aaron Wallace/ Jeff Badelt / Judah Gersh / Brian Averill / Dan
Re: Common Parlance Comparisons for Noise

This document shows a COMPARISON of Noise levels as defined by the scale on my NTi XL2 Sound Analysis Meter (Type 1 & 2) for purposes of clarifying the DECIBEL LEVEL associated with Noise Levels described here. It is a credible description of Noise Levels for the laymen, which helps to place such Noise Levels in a real world scenario.

This Comparison list of A Weighted (Background Composite) Noise Levels is supplied here to provide clarity in the discussion. There is currently no definable codified Noise Ordinance in the City of Whitefish, governing this Conditional Use. The table is below, lifted DIRECTLY from my Meter. / Skip @ PGS/BMS

0 dB	**Silence**
10 dB	**Sound proof Room**
20 dB	**Very calm room**
30 dB	**Whispering words**
40 dB	**Library**
50 dB	**Interior Noise in Car**
60 dB	**Large Stores, Talking**
70 dB	**NOISEY OFFICE**
80 dB	**Traffic on Busy Roadway**
90 dB	**LOUD Train Sounds**

As noted in the table above, most common Noise created surrounding the Hotel will readily eclipse ANY Noise that may be attributed to the rooftop Hot Tub.
This table is supplied to underscore the fact that Noises originating on the roof top are not interactive with any known site lines to residential areas adjacent to

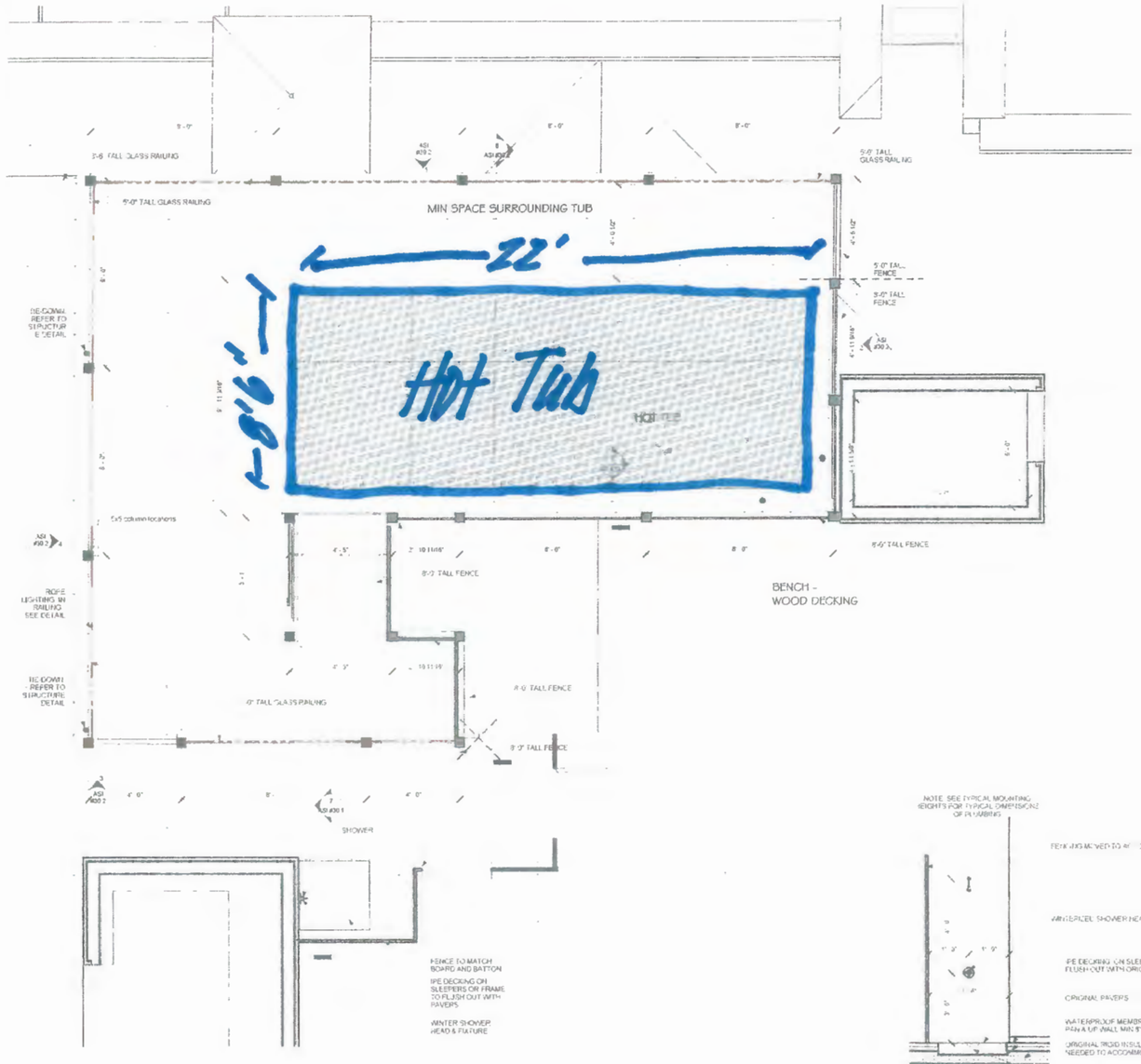
&/0r below the level of this installation. It simply is outside the realm of physical possibility for sound to travel downwards to the residential areas in question. Sound transmission is governed by the laws of physics & spatial geometry. The HEIGHT of this installation makes such downward migration a near physical impossibility. A site visit on Thursday has verified this fact to me.

I've authored or contributed to authoring more than 15 codified ordinances governing Noise in as many cities. To my knowledge the Conditional Use of the Hot Tub space on the Roof is not currently capable of proffering Noise to any adjacent areas currently I've examined./ Skip @ PGS/BMS

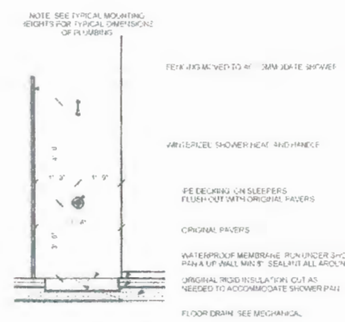
Charles G. Kahane, C.A.E. (Certificated Audio Engineer)
P.G.S./ Broadcast Media Services
P.O. Box 8332
Missoula, Mt 59807

← E. 2nd Street →

Spokane Avenue



1 ASI #30.1 HOT TUB PLAN 1 1/2" = 1'-0"



7 ASI #30.1 Roof Shower Section 1 1/2" = 1'-0"

proposed hot tub location

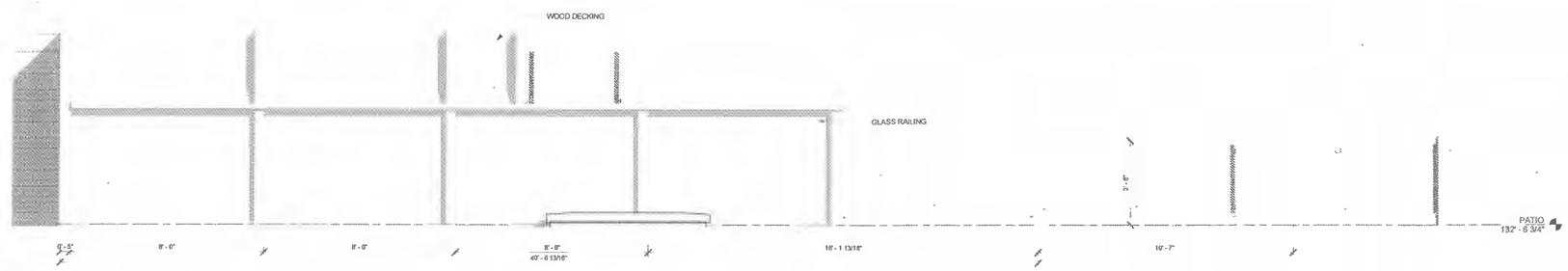
6 ASI #30.1 NORTH WEST ENTRANCE

CONSTRUCTION DOCUMENT SET

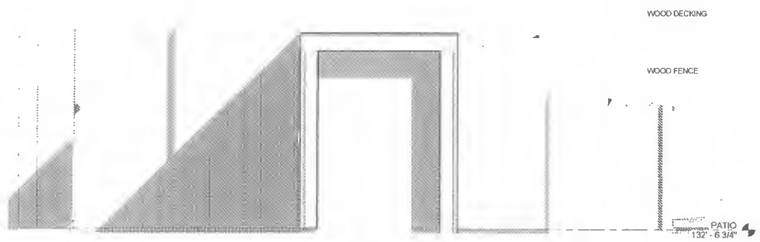
HOT TUB

BLOCK 46 HOTEL

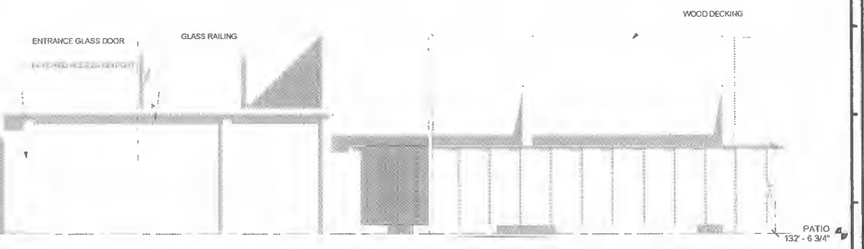
ASI #30.1



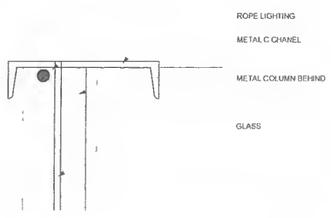
1 HOT TUB NORTH ELEVATION
ASI #30 21/2" = 1'-0"



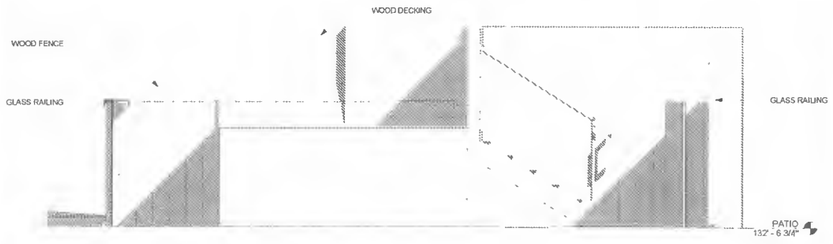
2 HOT TUB EAST ELEVATION
ASI #30 21/2" = 1'-0"



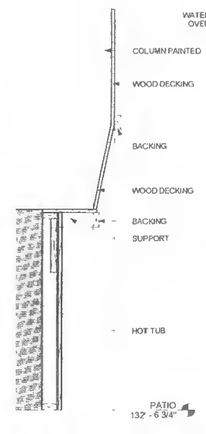
3 HOT TUB SOUTH ELEVATION
ASI #30 21/2" = 1'-0"



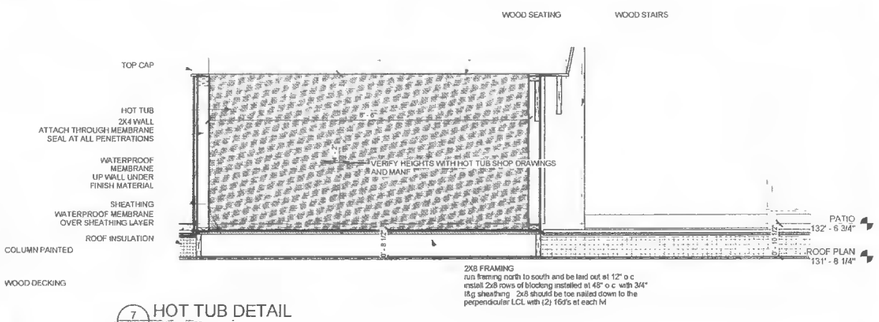
6 HOT TUB - RAILING CAP DETAIL
ASI #30 23" = 1'-0"



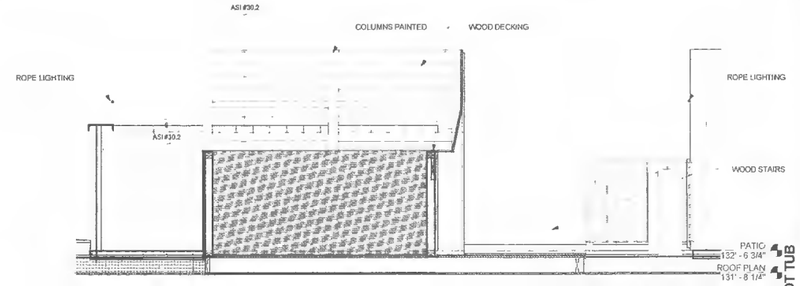
4 HOT TUB WEST ELEVATION
ASI #30 21/2" = 1'-0"



5 HOT TUB FENCE DETAIL
ASI #30 21" = 1'-0"



7 HOT TUB DETAIL
ASI #30 23/4" = 1'-0"



8 Section - HOT TUB
ASI #30 21/2" = 1'-0"

CONSTRUCTION DOCUMENT SET

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly licensed architect under the laws of the State of Montana. pradeepgw Wallace, Montana

14-10
Date 8 19 15
Reg No 3432
AARON J WALLACE

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Project Number 14-10
Date
Drawn By
Checked By
Revisions

Montana Creative
architecture + design
MONTANA CREATIVE
ARCHITECTURE +DESIGN
158 RAILWAY ST
WHITEFISH, MT 59937
406 862 8152
FAX# 406 862 8153

BLOCK 46 HOTEL
WHITEFISH, MT
HOT TUB
ASI #30.2

THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF DIAMOND SPAS INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF DIAMOND SPAS INC. IS PROHIBITED.

GENERAL INSTALLATION GUIDELINES

Stainless steel and copper can become hot if left in direct sunlight for extended periods of time. DSI recommends undermounting all outdoor spas.

NEVER LEAVE THE SPA UN-COVERED WHILE EMPTY
excessive heat can build up on the spa if it is not full of water. A solid or opaque covering will suffice. Heat damage is not covered under your warranty.

NEVER LEAVE CHILDREN UNATTENDED AROUND SPA

1) Spa must sit on a smooth, flat, level concrete pad. Pad should be a minimum of 4" thick an or as per the structural engineer.
2) The area under the hot tub unit and the equipment must have a waterproof pan or membrane that goes into a drain to prevent flooding or water damage to the region below.
3) Certain applications may use plywood decking and or other material for tub support.
4) PVC and conduit requirements are specified for each tub. Make sure that all underground lines are pressure tested prior to and during back fill.
5) DSI will specify the necessary space requirements for remote location equipment rooms. Equipment rooms are to be no more than 50' from the spa unless previously discussed with DSI. The room is recommended to be at or below the same elevation of the spa.
6) DSI recommends a floor drain in the spa vault and the equipment room vault.
7) Once you have the tub placed and level, connect all water, air and communication lines. All plumbing and communication lines are clearly labeled at the stub out location spa side as well as on the equipment package. DSI recommends that you fill and test the spa at this time to verify proper connection of all water, air and communication lines.
8) Upon inspection of all plumbing and conduits, you may now build the remaining retaining vault wall. Take appropriate precaution that the lines are not disturbed during back fill.
9) **It is the responsibility of the owner/user to provide clear and easy access on all sides of the spa for repair. Otherwise, all additional costs to service and repair the spa will not be incurred by DSI. Inspection ports and/or service access is very important, please take this recommendation into consideration. If you have any questions and or need design ideas please call Diamond Spas.**

Electrical

1) Electrical requirements are specified for each unit. Only a licensed qualified electrician should connect the power supply.
2) Some units require more than one supply circuit. All power supply circuits must be located in the same disconnect box. (per NEC) Disconnect box must be more than 5(five) feet away from the tub and less than 50(fifty) feet away and within sight of spa.
3) All spas require a continuous bond. All spas are shipped with a bond connection on the frame. This connection must be made in the field.
4) Never turn the power on to the spa if it is empty. The spa needs water to properly test and satisfy diagnostic computations.
5) All electrical supply to the tub must be GFCI protected.
6) Any nearby electrical outlets, windows, hand rails or metal fencing may have special bonding requirements. Consult your licensed qualified electrician.
7) The communication cables for touch pad, low voltage lighting and water level sensors must be housed in separate conduits from the power supply. Never run communication and line voltage wires together.

Gas

1) Gas requirements are specified with each unit. (where applicable)
2) Gas lines must follow guidelines and code requirements for your location.
3) Ventilation and combustion air needs are different for each unit. Please take time to check all proposed heater locations with your gas company or gas fitter to insure adequate combustion air and ventilation.

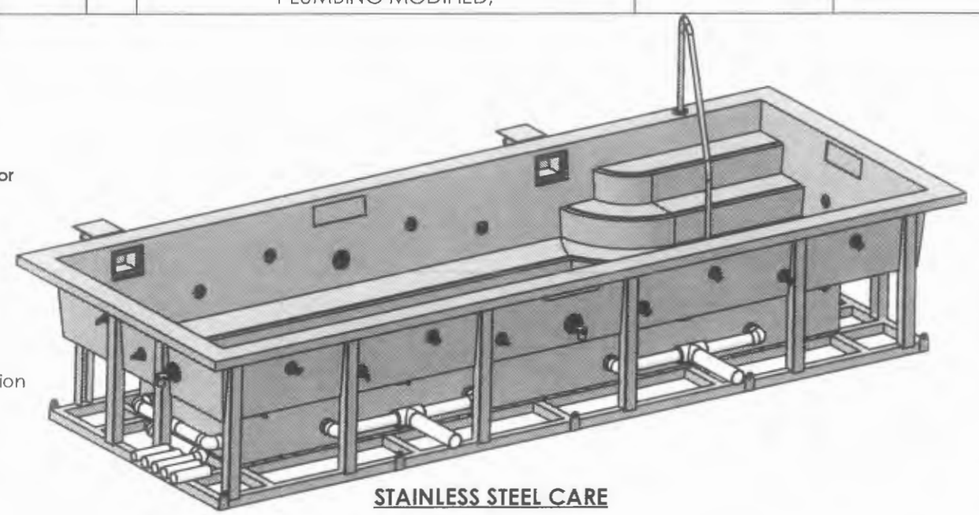
It is the responsibility of the client to make sure that all products are in compliance with local codes and regulations. Certain jurisdictions may require additional testing and/or listing. It is also the responsibility of the client to arrange and pay for any permits, permit fees, inspections and inspection fees. Consult your local governmental agencies for additional information.

Plumbing

1) Pipe materials for all pool recirculation and therapy lines to be schedule 40 PVC(ASTM D1785). PVC pipng shall be stamped with N.S.F. seal of approval. All plumbing fittings and pipe must be pressure rated.
2) Prior to connection to spa, all underground plumbing must be pressurized and maintain pressure for 24 hours minimum.
3) All plumbing stub-out locations will be labeled on drawing. Confirm location if applicable.
4) Never handle or lift tub by plumbing.

REVISIONS

REV.		DESCRIPTION	DATE	APPROVED
	A	Added the rest of the equipmentB1	12/10/2015	
	B	Removed SkirT	1/6/2016	
	D	STEPS, SEATS, FITTINGS, EQUIPMENT MODIFIED	2/19/2016	
	E	SKIMMERS, SUCTIONS, JETS, MOVED	2/24/2016	
	F	HANDRAIL LOCATION MODIFIED	2/25/2016	
	G	HANDRAIL LOCATION M ODIFIED, SKIMMER LOCATION MODIFIED, PLUMBING MODIFIED	2/29/2016	
	H	PLUMBING DETAILED, CHEMICAL FEEDER MODIFIEDB1	3/14/2016	
	J	EQUILIZER LINES REMOVED	3/15/2016	
	K	EQUIPMENT MODIFIED, HANDRAIL MODIFIED, PLUMBING MODIFIED,	5/3/2016	



STAINLESS STEEL CARE

1) Stainless steel is highly resistant to rust and corrosion. Stainless steel is extremely durable and with proper care and maintenance will maintain it's luster and appearance indefinitely.
2) DSI uses 316L or 304L grade stainless. Each unit has a random hand finish applied to it as all product is hand crafted, exhibiting a visible concise weld seam.
3) DSI recommends rinsing any exposed stainless steel with fresh water on a a regular basis to remove any salt air or pollution contaminate.
4) Minor build up and/or spotting is simply removed with regular care and a "Scotch-Brite" scouring pad.
5) NEVER use steel wool or steel brushes on a DSI product. These products are carbon steel and leave particles that will rust and create stains.
6) If you should notice any staining and/or discoloration on the stainless steel surface it must be removed immediately. Most discoloration and staining is removed with the "Scotch-Brite" scouring pad. After the area is cleaned rinse with fresh water and dry with a a soft cloth.
7) If you have any questions, please contact DSI at 1-800-951-7727

2904, Whitefish

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL: 304/316L Stainless Steel

FINISH: Rotary Hand Brushed

DRAWN: MR 5/3/2016

CHECKED: SK 5/3/2016

REVISION: K

SHEET: 1 OF 6

DIAMOND SPAS

4409 Coriolis Way
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fax. 1-866-605-2358

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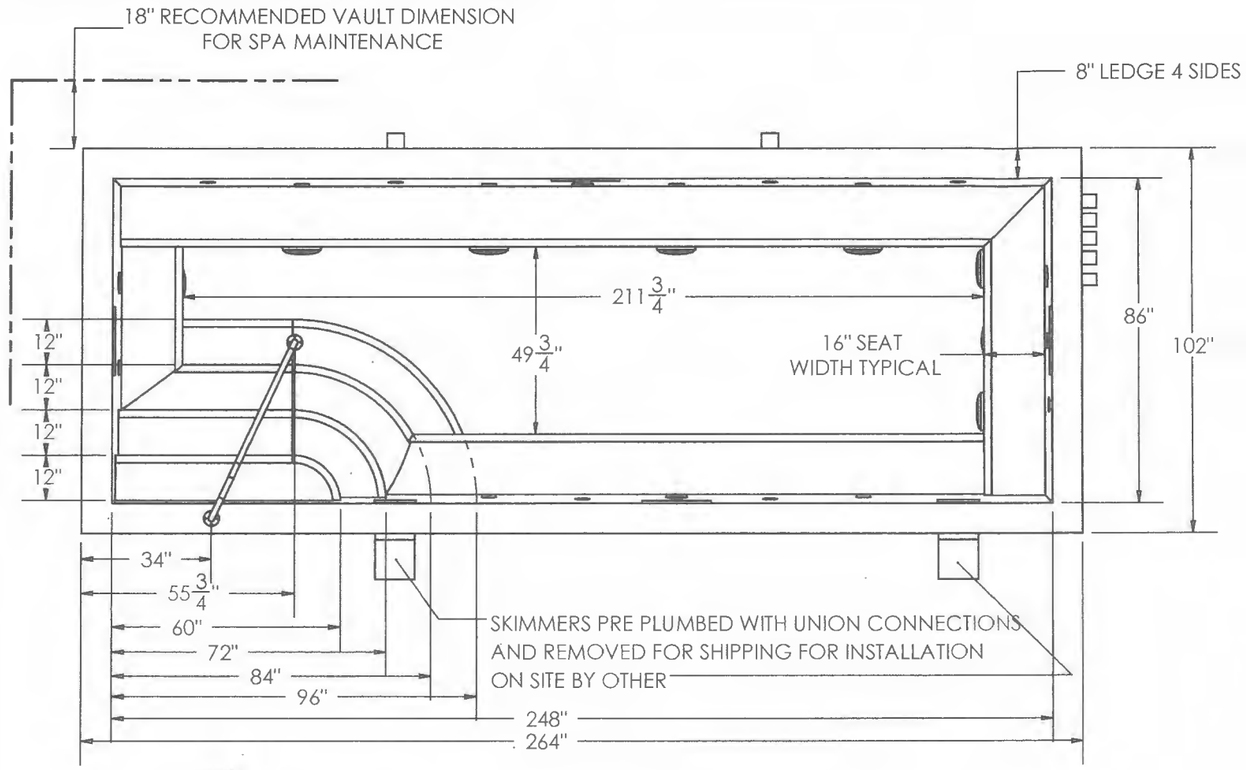

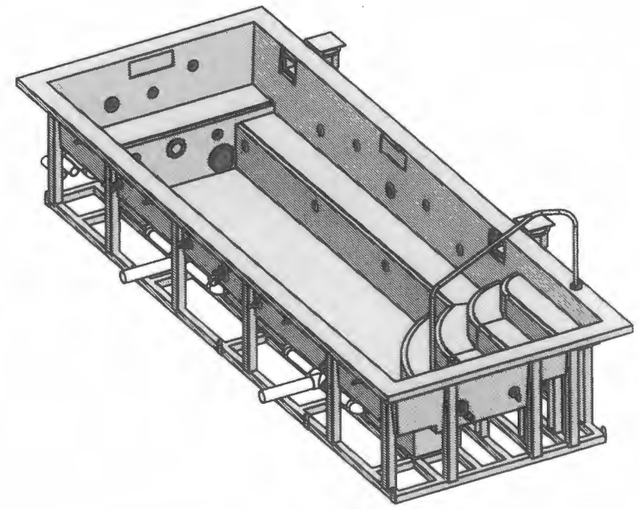

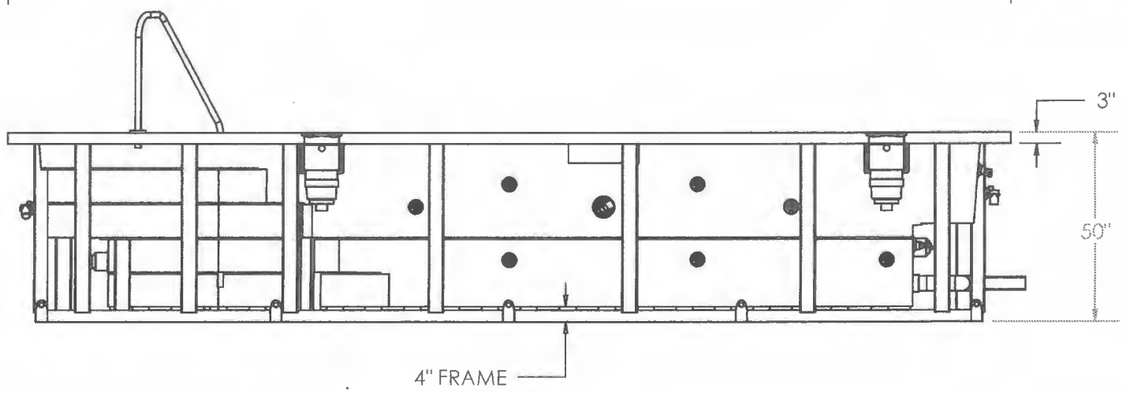

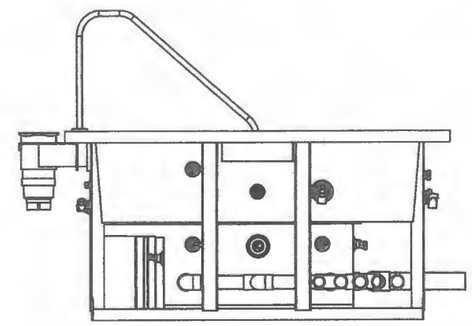

DATA	
Surface Area	146 sq.ft.
Spa Capacity	2470 gallons
Spa Water Weight	20606 lbs.
Spa Shell Weight	3835 lbs.
Spa Total Weight	24441 lbs

2904, Whitefish

NOTES:
- due to the custom nature and welding processes involved in fabrication, there may be some distortion or warping of the flat surfaces on our products.
- all inside weld seams will be visible.
- spa will be insulated with a 2-part polyurethane foam.
- standard foam, snap-lock cover to be supplied w/ spa.

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL: 304/316L Stainless Steel

FINISH: Rotary Hand Brushed

DRAWN: MR 5/3/2016

CHECKED: SK 5/3/2016

REVISION: K

SHEET: 2 OF 6

DIAMOND SPAS

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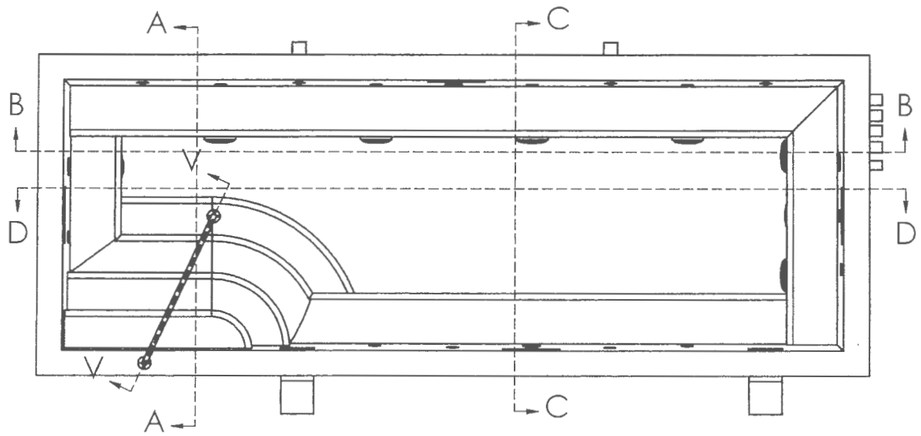
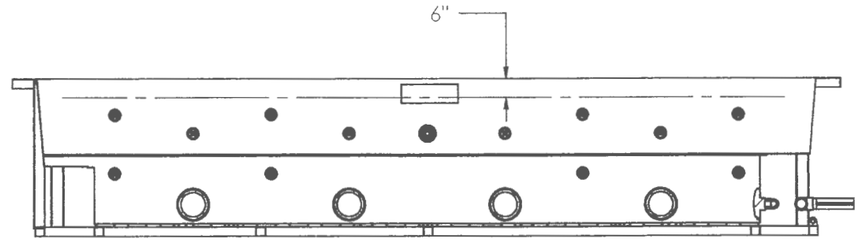
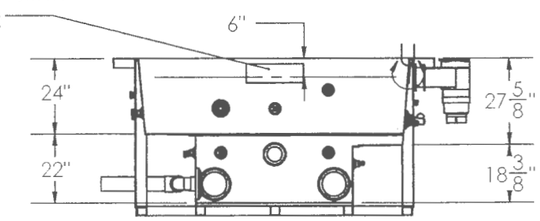


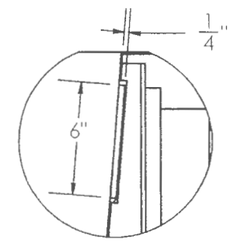


6" X 18" X 1/4" RECESS FOR WATER DEPTH AND NO DIVING TILES 4 SIDES
TILE BY OTHER

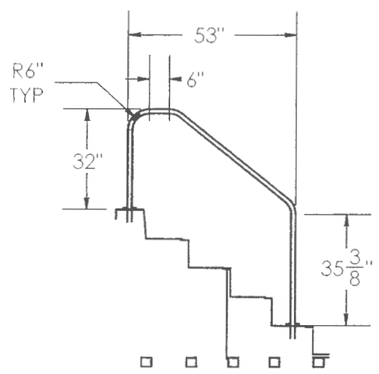
SECTION B-B
SCALE 1 : 60



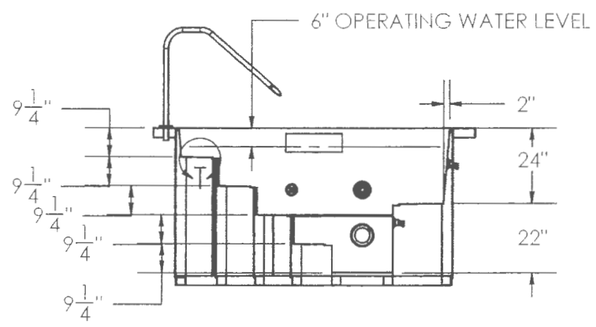
SECTION C-C
SCALE 1 : 60



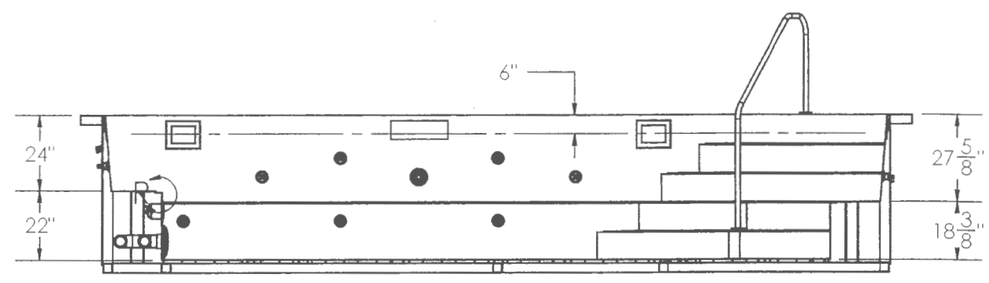
DETAIL U
SCALE 1 : 10
TILE RECESS
TILE BY OTHER



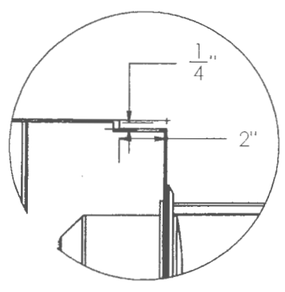
SECTION V-V
SCALE 1 : 60



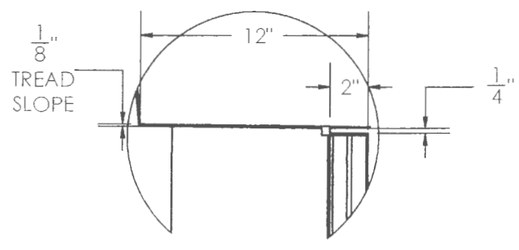
SECTION A-A
SCALE 1 : 60



SECTION D-D
SCALE 1 : 60



DETAIL R
SCALE 1 : 8
TILE RECESS
TILE BY OTHER



DETAIL T
SCALE 1 : 10
TREAD DETAIL

2904, Whitefish

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL: 304/316L Stainless Steel

FINISH: Rotary Hand Brushed

DRAWN: MR 5/3/2016

CHECKED: SK 5/3/2016

REVISION: K

SHEET: 3 OF 6

DIAMOND SPAS

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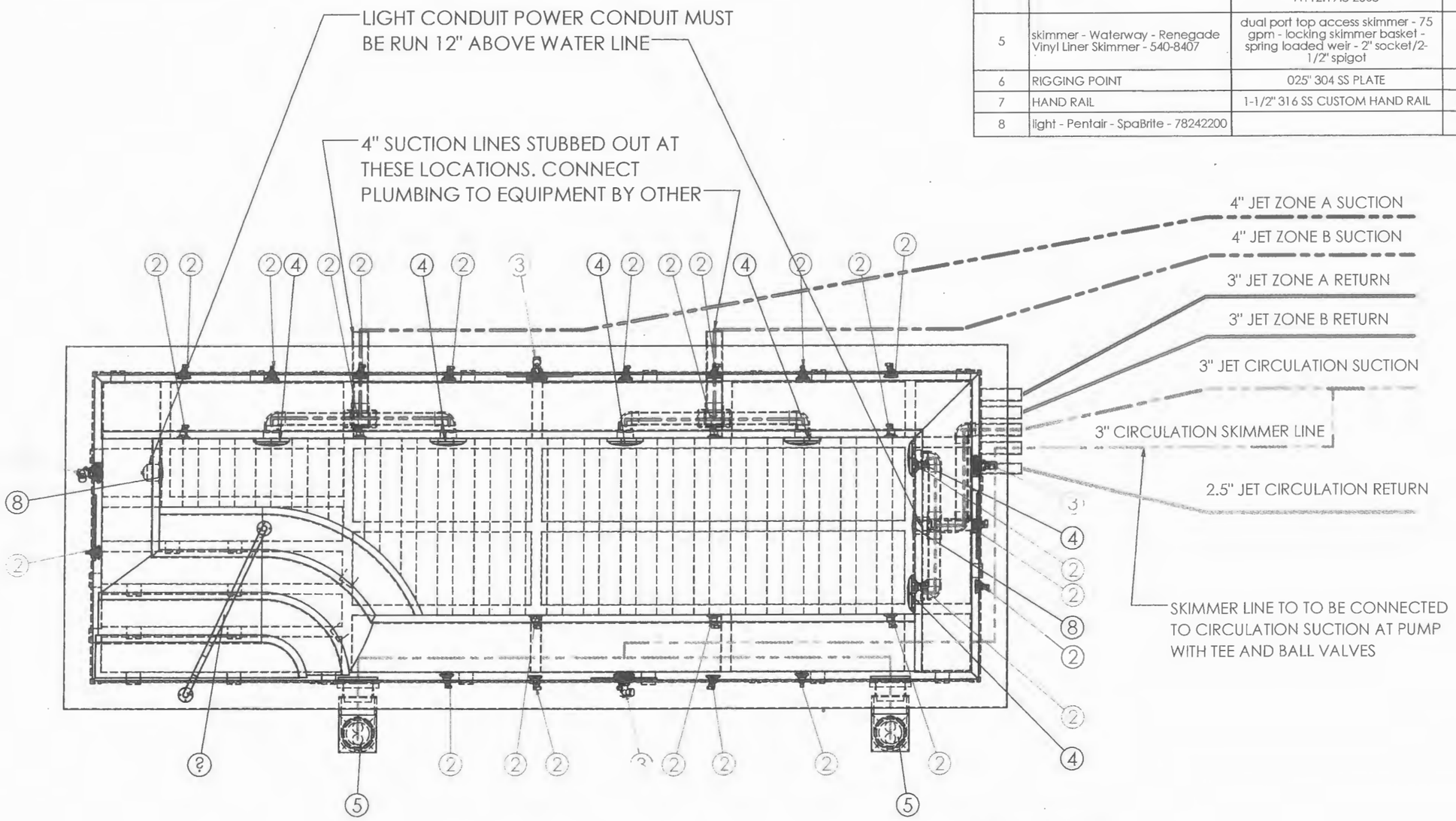
NOTE: VENTURI PLUMBED TO CHECK VALVE LOCATED UNDER SPA LEDGE

ITEM NO.	Equipment	DESCRIPTION	QTY.
1	SPA SHELL	12/14 GA 316 SS SPA SHELL WITH 304 SS SUPPORT FRAME	1
2	JET - WATERWAY - MINI STORM THREAD - ASSEMBLY DS P/N 228-0379 CPVC		24
3	jet - Waterway - DS P/N 212-2000	directional eyeball w/ 1" orifice - 1psi@30gpm	4
4	suction - Paramount - SDX	10" suction - 200GPM floor, 192GPM wall - VGB ASME A112.19.8-2008	6
5	skimmer - Waterway - Renegade Vinyl Liner Skimmer - 540-8407	dual port top access skimmer - 75 gpm - locking skimmer basket - spring loaded weir - 2" socket/2-1/2" spigot	2
6	RIGGING POINT	025" 304 SS PLATE	10
7	HAND RAIL	1-1/2" 316 SS CUSTOM HAND RAIL	1
8	light - Pentair - SpaBrite - 78242200		2



2904, Whitefish

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL
304/316L Stainless Steel

FINISH
Rotary Hand Brushed

DRAWN MR 5/3/2016

CHECKED SK 5/3/2016

REVISION K

SHEET 4 OF 6

DIAMOND SPAS

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EQUIPMENT AND RELATED ELECTRICAL REQUIREMENTS

Item No.	Equipment	QTY.	Description	Voltage	H.P./Amps	Notes
1	filter - Pentair - Clean & Clear plus - CCP520	1	520sq.ft. cartridge filter - 150gpm max. flow rate - NSF listed			requires 74" vertical height to remove filter cartridge for service/replacement
2	heater - Pentair - MasterTemp - 250 ASME PN 460771	1	Natural gas 250Kbtu gas heater w/ direct ignition.	230 volt		230V connection to control. requires connection to gas supply and venting as per manufacturers requirements.
3	pump - Pentair - WFE-6 - 011514	1	centrifugal pump and motor, 1-1/2 h.p., 105gpm @ 50 ft.TDH, 2" suction, 2" discharge	208-230 volt	9.6-8.8 amp	
4	pump - Pentair - WFE-12 - 011516	2	centrifugal pump and motor, 3 h.p., 143gpm @ 60 ft.TDH, 2" suction, 2" discharge	230 volt	15 amp	
5	chemical pump - Stenner - Peristaltic Pump 45M5	2	3-point roller peristaltic chemical pump	120 volt	2 amp	25 psi max operating pressure, 2.5-50 GPD, pump tube #5,
6	chemical feeder - Pentair - Intellichem	1	automated chemical management system with flow sensor	230 volt		
7	CLEAR COMFORT SANITIZER	1	SN:CCW100-150 1PMO76, MODEL: CCW100, FLOW RATE 5.5 LPM			60 HZ
8	Gauge - pressure and vacuum - 0-60 psi	3	Liquid filled pressure and vacuum combination gauge			0-60 psi pressure range 0-30 inHg vacuum range, 1/4-NPT male fitting
9	thermometer - pentair - inline 30-130 deg F	3	inline thermometer with nylon well, 30-130 deg F range			
10	flowmeter - Blue-White Industries - F30250P	1	clamp mount Acrylic Pitot Tube horizontal flowmeter			2.5" pvc mount, 60-240 GPM flow range
11	auto-fill control - Levelor - F1100	1	auto-fill control - input from sensor - 24VAC output to 1" solenoid valve	115/230 volt	1/.5 amp	115V connection to control. requires 1/2" backflow protected and freeze protected water line
12	control - Pentair - Compool LX802L	1	commercial pool control w/ dual time clocks and emergency shut-off	230 volt	<1 amp	

NOTES:
- spa requires (1x)230V 60A GFCI service @ equipment.
- spa shell and all equipment to be bonded w/ min. #6AWG bare copper conductor.
- Pumps must be at or below spa suction height to ensure correct pump operation
- **LX802L PROVIDED WITH 2X JET BUTTONS FOR DUAL ZONE CONTROL**

ALL EQUIPMENT PROVIDED TO BE PLUMBED AND INSTALLED ON SITE BY OTHER

2904, Whitefish

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL: 304/316L Stainless Steel

FINISH: Rotary Hand Brushed

DRAWN: MR 5/3/2016

CHECKED: SK 5/3/2016

REVISION: K

SHEET: 5 OF 6

DIAMOND SPAS

4409 Coriolis Way
Frederick, CO 80504
ph. 720-864-9115
1-800-951-SPAS
fax. 1-866-605-2358

THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF DIAMOND SPAS INC. ANY REPRODUCTION IN PART OR WHOLE WITHOUT THE WRITTEN PERMISSION OF DIAMOND SPAS INC. IS PROHIBITED.

Primary contact/project manager: _____

Phone #: _____ Email Address _____

Bill to Address: _____

City _____, State _____ Zip _____

Ship to Address: _____

City _____, State _____ Zip _____

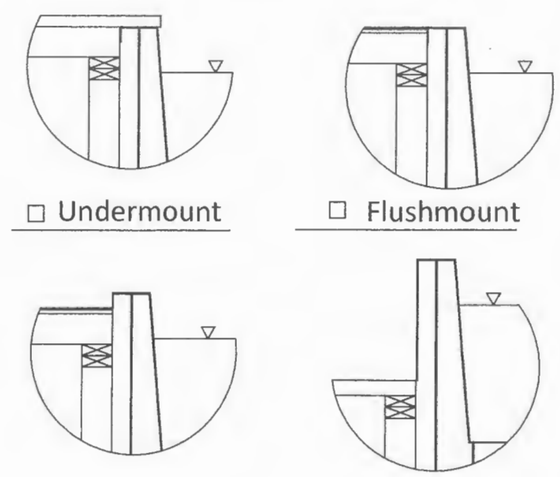
Foam cover color selection: _____

Autocover color selection: _____

Link -

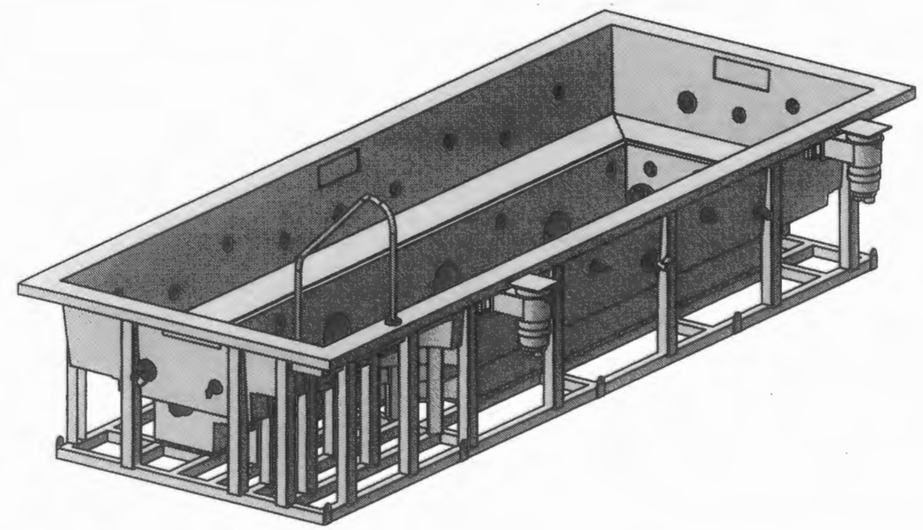
https://www.diamondspas.com/swimming-pool-spa-collection/custom-spas-hot-tubs/spa-cover-colors/

Selected Mounting Method



☐ Undermount ☐ Flushmount

☐ Self-rimming ☐ Skirting



"All service and repairs require access to the outside of the spa. The purchaser accepts the related responsibility for the method of access selected as part of the architectural design outside of the DSI scope of work. These drawings do not include access unless it is part of the metal fabrication we provide."

Access Methods below have been reviewed and considered (Checkbox) ☐ **Date** _____

ACCESS METHODS:

Construct a crawl space a person can enter to make repair, minimum 18" wide.

Plan to construct removable panels to gain access.

- Metal Panel constructed by DSI
- Panel Constructed by others

Plan for a method to slide, move, or hoist the spa to gain access.

Plan for demolition to occur to gain access.

Plan to hoist spa as necessary

Other method

NOTE: installer should test the spa for leaks prior to completing surrounding finishes.

REVIEWED BY: _____ DATE: _____

check one: ☐ revise and resubmit ☐ approved as drawn

By signing this page and checking "approved as drawn" I acknowledge that I have read and understand pages 1 through 6 in this document.

2904, Whitefish

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES. DO NOT SCALE DRAWING

MATERIAL: 304/316L Stainless Steel

FINISH: Rotary Hand Brushed

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DIAMOND SPAS

4409 Coriolis Way
Frederick, CO 80504
ph. 720-864-9115
1-800-951-SPAS
fax. 1-866-605-2358

J.S.M. Productions
P.O. Box 8332 Missoula, MT 59807
Phone: (406) 493-1128 Cell: (406) 239-5304
E-Mail: jsmpro@yahoo.com

OCT 13 2016

9/27/16

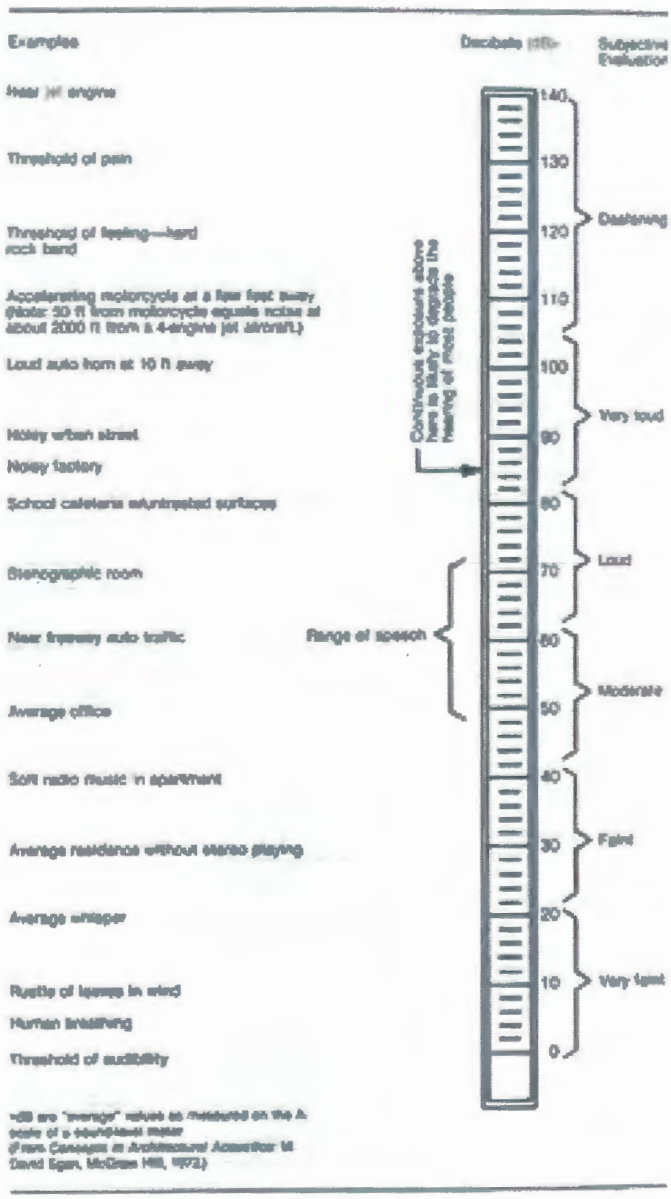
Whitefish Hotel Group
Firebrand Hotel
650 3rd St
Whitefish, MT 59937
(406) 863-1900

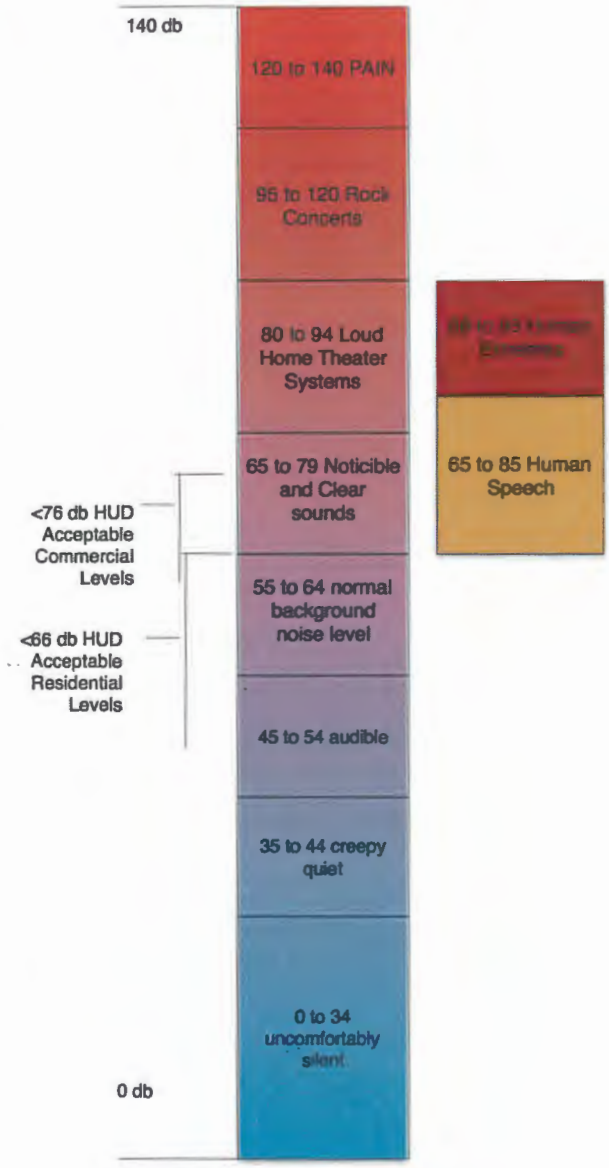
Whitefish Environmental Noise Assessment

On September 1st and 2nd of 2016, I took sound level readings and site observations in the City of Whitefish in the commercial and residential areas to the immediate East and South of the Intersection of Spokane and 2nd Street. These readings were taken at the request of the Firebrand Hotel and consisted mostly of background noise assessments to determine the base operating sound levels of the area. A large speaker was also played on the roof of the Firebrand to determine the possible effects of noise produced in the area planned for hot tub installation. This report contains my professional assessment of those tests and observations. A full copy of all readings I took those days are available from me upon request. Any assessments I make about the site can be verified in the plans or at the Firebrand Hotel itself.

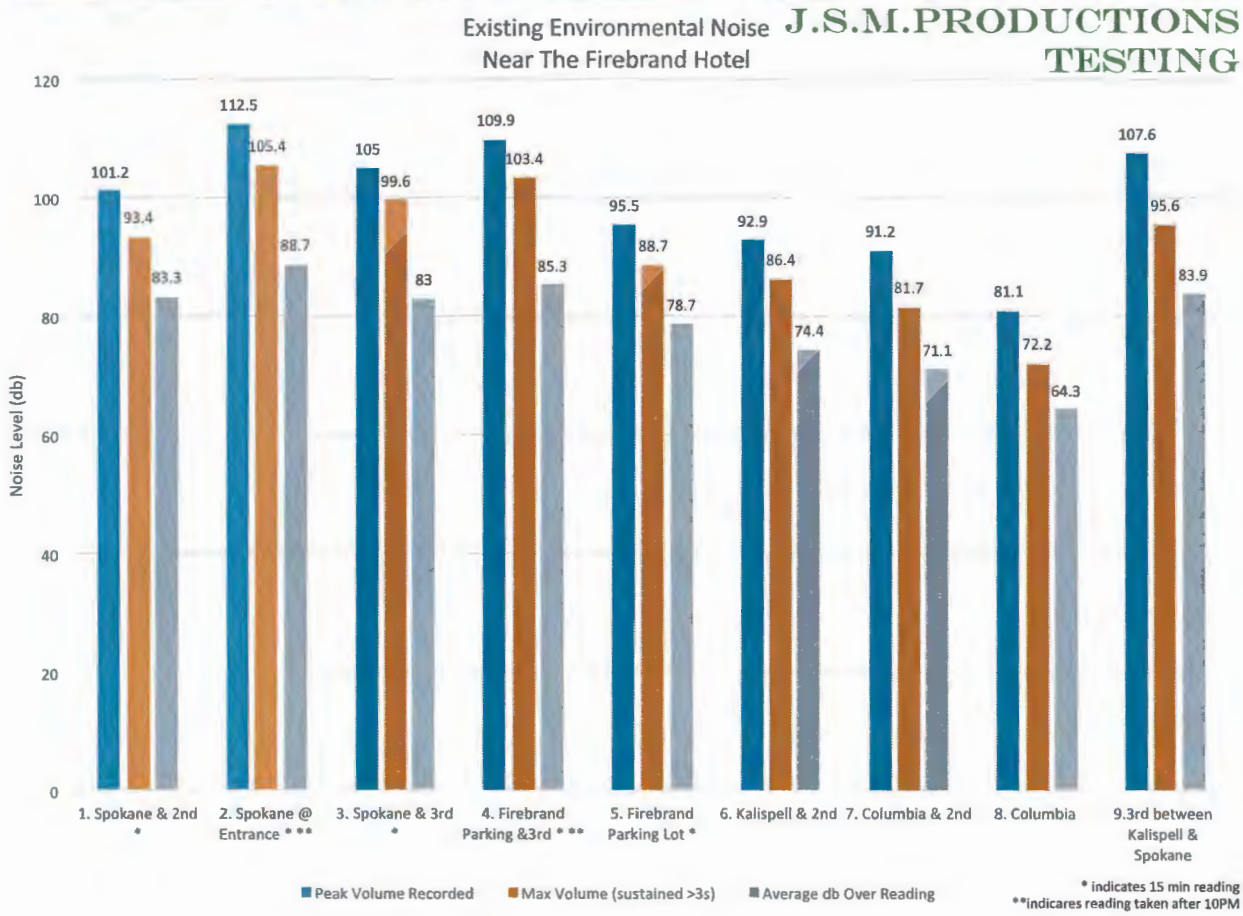
There are three basic parts to this assessment. First is to establish background noise levels for the area. In the second section I show the results of testing done on site with a noise source (large speaker) on the roof directed at the residential areas. Finally there will be a site assessment based on existing conditions as I witnessed them. The results of these three assessments are the reason I feel comfortable saying that if/when The Firebrand opens it's proposed rooftop amenities *testing shows you can expect no significant, discernible change in Noise Levels to the surrounding residential areas.*

In the City of Whitefish there are no defined noise standards, so for comparison I will use commonly accepted government standards. Below are reference graphs that show these standards. The one on the left is from the Housing and Urban Development (HUD) *Noise Guidebook.* This guidebook is available at https://www.hudexchange.info/resource/313/hud-noise-guidebook/ or upon request from HUD. The one on the left is one I created for customer reference.





There are many readings used to establish a background composite of an area as large as this. The public sidewalk immediately bordering the Firebrand hotel received most of the recordings to establish what that area is exposed to without outdoor commercial operation. Below is a map of where the readings were taken and the recorded background levels at each site.



The graph on the previous page shows actual Sound Pressure Levels (SPL) measured in Decibels (db) without any weighting applied. While the "Peak Volume Recorded" and the "Max Sustained Volume" are important the gray bar is the best representation of overall noise level. The differences are noticeable and the logarithmic nature of sound means that every 10 (db) of difference means double the volume. So in this case the intersection of Spokane (US 93) and 2nd (#1) (where the Firebrand is) has standard operating levels that are twice as loud as they are two blocks away at the intersection of Columbia and 2nd (#7).

One of the most mentionable things that you can see in that graph is the times of the loudest recordings. Spokane St. (US 93) in front of the Firebrand (#2) was often operating at these levels but this particular 15 minute recording was taken from 10:08 PM to 10:23 PM. recording is of the normal City operating SPL during the first hour of the City of Whitefish's "Disturbing the Peace Ordinance". *It would be nearly impossible for The Firebrand to exceed these levels under the proposed operation.*

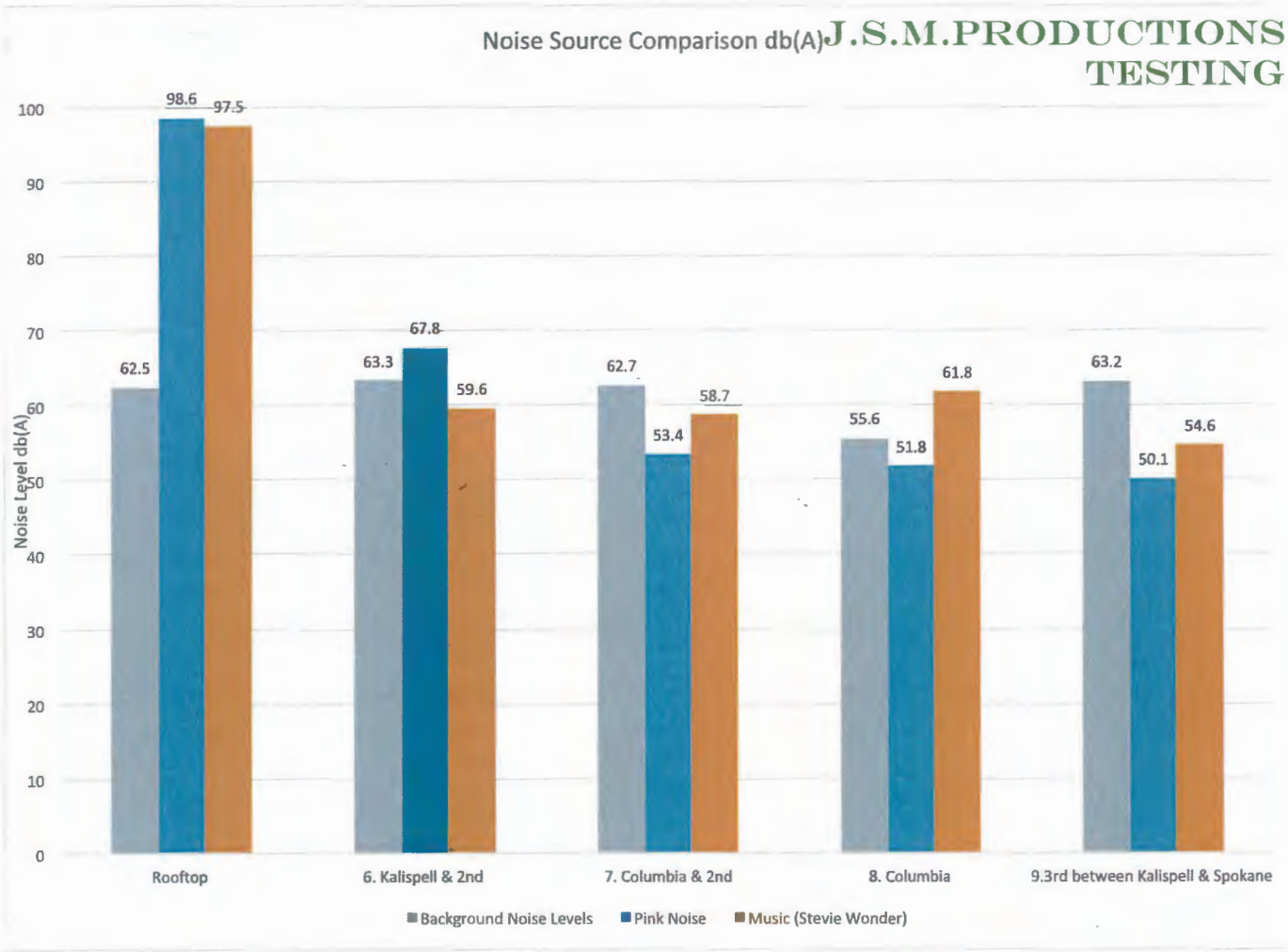
Another fact of that graph that deserves mention is that the readings taken around the area of the Firebrand are all very similar. Most of this can be attributed to topography but it does go to show that the normal operation of the city and the Firebrand is the same on most sides of their property. It indicates that the Firebrand should be able to reasonably expect to operate at the same SPL (db) on all sides of their property.

All of those readings are unweighted. To clarify, SPL is measured by the pressure created across the frequencies humans can hear. However our ear doesn't hear all frequencies equally. The ASTM standard is to adjust these readings to the A-Weighted Curve (db(A)). The use of db(A) gives us a more accurate look at what a human is hearing during any of these recordings. The graph on the following page shows the average db(A) for the same readings.This graph shows how the human ear perceives the same readings from above. You'll note that location #1 is still twice as loud as location #7, however because the frequencies on Spokane St. (#2) aren't as audible to the human ear, it is now a lower level. I think the most outstanding thing about this graph is that is shows that the background composite SPL db(A) is very similar across the entire area.

These readings are within what HUD defines as "Normally Acceptable" in their noise guidebook for the interface between Commercial and Residential levels. They are however on the upper end of these limits, this is to be expected due to the adjacent major US Highway in operation, as also described in the HUD guidebook.

The Peak and Max levels shown in the first graph indicate that the Highway can at any point reach well above those levels deemed "acceptable" without significantly altering the SPL db(A). Such peaks are similar to what is expected during the use of the rooftop facility at the Firebrand. It is in the following section that I show how these established levels compare to the levels recorded when I was creating noise in the area designated for the hot tub.

I introduced the noise source with a JBL EON 615 Powered Loudspeaker. It was mounted on a ProStage speaker stand so that the center of the speaker was approximately 5'6" above the ground at human ear and mouth level as described in ASTM E1527 testing standards. The ASTM Standards require the introduction of pink noise which is a consistent noise source, however I also performed the same tests with music (Stevie Wonder: 20th Century Masters) so that it would more accurately represent the actual use of this area. The graphs below show the most average readings taken 1 meter away from source, the effects of the source in the surrounding areas, and the standard averages that were also shown above.

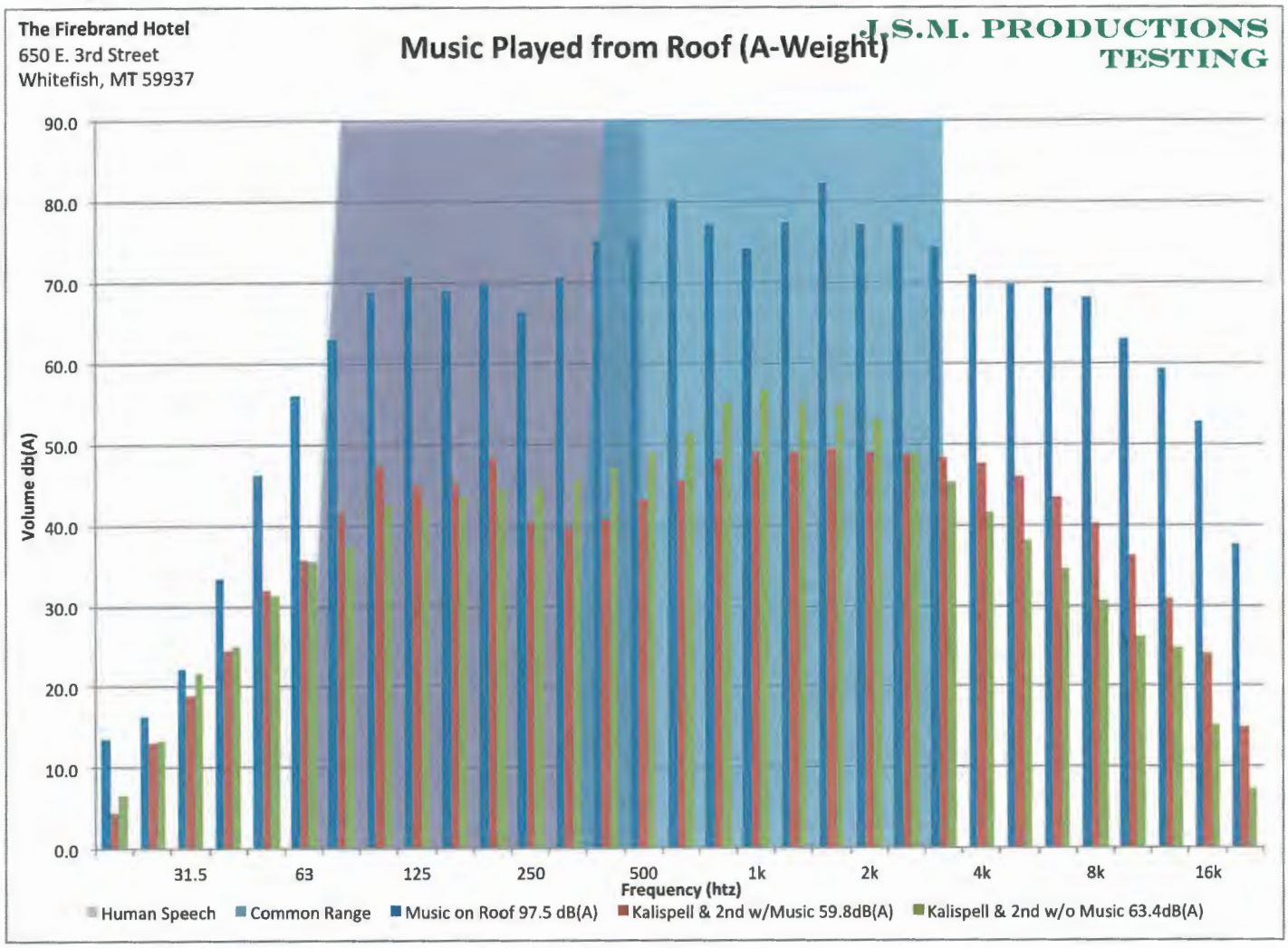


This comparison clearly shows that noise created at the area designated as the Firebrand Hotel Rooftop hot tub does not significantly add to the background noise level in the surrounding residential area. It also shows that background noise levels are constantly subject to traffic and other environmental effects.

At this point I'd like to note that readings taken at Kalispell & 2nd were also taken at location #11 with Pink Noise and Music, but that the readings at location #6 were actually louder and for the sake of consistency were the readings used for this graph. This is also the point to mention the lowest background reading I took over the course of two days. This was at Columbia St. (location #8) and was an amazing 47.1 db(A). This level is so low in an urban setting that it would make any noise noticeable. This then becomes a matter of perception and a good place to discuss the site evaluation.

We will start with the readings at Columbia St. (#8). The ASTM standards do not require that I test so far away from the site but I did at the request of the client who wanted to be sure that they were doing as much as possible to mitigate the effects they were having on the area. The pink noise readings that I took were 1 meter from the noise source and in similar conditions the SPL is expected to drop 6 db every time the distance doubles. The readings on Columbia St. (#8) were taken approximately 182.4 Meters away from the hot tub location. This means with an unobstructed view the 98.6 db(A) SPL from the roof would diminish to just 53.4 db(A), way below acceptable levels for a residential area as defined by HUD. It is worth noting that the view is not unobstructed. The source (hot tub) is surrounded by a 3 meter cedar sound barrier fence on the east and south sides that will deflect sound traveling in the direction of the residential areas. The North & West sides are also partitioned by 5' tall glass panels. The hot tub area is a rooftop location on the far Northwest corner of the building. this location starts the source above the surrounding residential area and uses the building as a way to prevent any noise created from being directed downwards towards the residential areas. There is a church, homes, and numerous trees in the line of sight between the Firebrand rooftop and where these recordings were taken, all of which deflect, diffuse, and absorb sound.

Normally when I arrive to evaluate a site my clients will ask if there is anything they could do to address their issue. In this case The Firebrand has already taken steps to mitigate their impact on the area. The designated area is on the northwest corner of the building as far from the residential areas as possible and as close as possible to the loudest existing noise source in the area (US-93 & 2nd). They also surrounded the area with a cedar fencing. This barrier creates a deflection limiting the power of the signal in those directions and casting a small "acoustic shadow". Cedar fencing is often sold as noise barrier fencing because the spongey rough cut structure of the wood lends itself sound absorption. Finally the usual commercial equipment (HVAC, vents, pumps, etc.) are all on the roof between the source and the residential areas, creating a wall of active sound similar to how we would use white noise for masking in an office space. *The design and orientation of the building will hinder sounds directed at the residential areas and direct most noise upwards or towards the commercial district.*



In this graph the purple area above indicates the extreme range of the normal human voice. The green area is the area Commonly known as the "Telephony Speech Range" which is the area we hear best at. These are the two areas that our ears and brains are trained to respond to (the A Weighted scale is designed to compensate for this). This means those are the frequencies most likely to distract a human. As you can see in the graph these are also the frequencies that traffic operates at in this area. Since the sounds we are most concerned with in this case are human voices it is important to indicate that just because someone perceives a noise as being louder it doesn't actually make it louder.

The home at the corner of Kalispell & 2nd (#11) has the most exposure to any rooftop noise created by The Firebrand. It is also one block from one of the busiest intersections in Whitefish. It happens to also be right next door to a school and performing arts center, across the street from a church, and "kitty-corner" from The Firebrand Hotel itself. It is bordered on three sides by commercial properties. I could not audibly discern any sounds coming from the hotel roof from the traffic sound on the street.

During the testing I became aware that Caseys has a rooftop bar & music nearby The Firebrand. I understand there has been some audible community noise from this facility, and understandably so. Without making a full assessment of Caseys I can only note site observations but it is surrounded by walls that push the sound in the direction of the residential neighborhood with no visible measures taken to deflect the sound away. The Firebrand facilities are on the rooftop (above the homes) and the only walls present are the sound barrier walls installed between the residential area and the hot tub. *Everything about the rooftop design of The Firebrand drives sound up, and not out.*

Conditions will determine some of the effects of transmission but it will affect all sounds equally. On occasion conditions may mean some sounds originating from the rooftop will make it to the surrounding area but not consistently and at greatly diminished power. The background levels found in this entire area were similar to what I would expect in the transition from commercial to residential, and the fact that the commercial area borders a major transportation throughway makes these readings remarkably low. It would be difficult for The Firebrand to create anywhere near as much sustained noise as US 93.

Due to existing background noise, site topography, the physics of sound, and the efforts taken by The Firebrand in creating noise barrier walls it would take intentional effort to raise the noise level long enough to "Disturb the Peace" at the neighboring residential properties. You should expect operation to easily be below commonly accepted government standards.

These tests were performed to the standards described in ASTM E1903 guidelines. The audio tests were performed with a NTI Audio XL2 analyzer with a MA 220 Microphone. The meter's license, calibration data, and microphone specs are available from Jeremy Fistrovich at Global Specialty Products at (952) 448-3808: 2480 Chaska Blvd, Chaska, MN 55318. All readings have an audio recording, SPL Log, and 3rd Octave frequency readouts. There were 72 readings recorded and all were taken when the rooftop area of the Hotel was not in operation in order to verify levels without the source in question. Readings were taken between; 4:15 pm and 11:00 pm on Sept 1, 2016 and; 6:00 am and 12:30 pm on Sept 2, 2016. The readings record a lot of information all of which establishes the background levels for an area. Most of these readings were recorded over 1 minute but there are several 5 and 15 minute recordings to verify that the levels found in the shorter readings were accurate. In most cases I have multiple readings of multiple areas. In these instances for this report I most often show the longest reading or the reading that is the closest to the average of the readings unless otherwise stated

The contents of this report are the property of Whitefish Hotel Group. This report was written by, all testing was performed by, and all test data is available from:

Devin Jackson
Jackson Sound Management Productions
jsmpro@yahoo.com
P.O. Box 8332
Missoula, MT 59807
406-239-5304

Wendy Compton-Ring

From: Bookworks <bookworks@bresnan.net>
Sent: Monday, October 17, 2016 2:33 PM
To: Wendy Compton-Ring
Subject: firebrand hot tub

Greetings,

Before the Firebrand was built, the owner of the building at 307 Spokane wanted to buy the property behind the building to create a parking lot. A lot used 8-5, m-f. That was turned down. Yet the Firebrand with inadequate parking and 24/7 disruption of the same neighborhood was approved.

The hot tub request was originally rejected by the city. But according to the WF Pilot, inspectors found pipe work laid during the building process. The city paperwork indicates the size of the hot tub as 22x8'6". That is not a hot tub - the size indicates a lap pool or small swimming pool.. That size indicates a large number of people, followed by a lot of noise and trash thrown off the roof.

As the former owner of the Pine Lodge Motel I can tell you about troubles with swimming pools and hot tubs. As owner of the Third St. Market building and owner of Bookworks in that building, and neighbor to the Downtowner, I can tell you about the noise, night and day from the hot tub. Guess how many beer bottles and other trash we clean off the top of our building.

The overall picture of the hot tub across from the school is another issue. No amount of plastic to hide it from view will be enough! Finally, whatever happened to the issue of alcohol being so close to a school. It was certainly an issue with the Downtowner several years ago.

Trash, noise and the school - I object!!

Cheryl Watkins
862- 4980

Wendy Compton-Ring

From: David Taylor
Sent: Monday, October 17, 2016 4:23 PM
To: Wendy Compton-Ring
Subject: FW: Firebrand Hot tub and Charging for parking

FYI

From: NH [mailto:whitefish4u2@gmail.com]
Sent: Monday, October 17, 2016 4:03 PM
To: David Taylor <dtaylor@cityofwhitefish.org>
Subject: Firebrand Hot tub and Charging for parking

Hello Dave Taylor,
The letter is regarding the Firebrand Hotel issues of a hot tub on the top Deck and also the additional parking fees for Parking on the premises of the Hotel for their own customers.

1. The City of Whitefish has responded with the wishes of members in the community multiple times for this same request for the Hot Tub. I wrote a letter regarding this once before. I ask that the request be denied again and for the last time.

Medically speaking, when Visitors come to Whitefish with it's high elevation from lower elevations, they become more drunk with less alcohol and quicker due to the lower Oxygen levels in the air. In addition, many tourists are drinking alcohol more on their holiday and then drinking more coffee to wake up in the morning. Both Alcohol and Caffeine are diuretics and lead to dehydration. People who are dehydrated have lower blood pressure and get also get drunk faster with less alcohol due to the lack of volume in their blood vessels. And finally, getting into a hot tub also hugely increases the effect of alcohol due to the peripheral vasodilation (dilation of blood vessels just under the skin) which lowers the blood pressure and cause that rosy pink skin. For multiple articles regarding this danger, google "Alcohol and Hot Tubs" and you will have pages of warnings to read. These are well known effects of alcohol on the body.

The outcome is that you have clients who get much more drunk and much faster with the behavior changes associated with being very drunk unexpectedly. It also may affect the driving of customers leaving the bar. I also think that a hot tub changes the entire ambiance of the top deck and invites
all customers and family members to enjoy the upper deck.

2. Firebrand is charging their customers a parking fee per day in the summer of $12/ day. Firebrand were clearly required in the approval process to provide parking for their customers on their premises. I was very clear in my letters in the beginning of the building process for this hotel that they would have to provide enough parking for their customers, their staff and the visitors of their customers AND NOT ON MY STREET, in front of my house! Coming and going at all hours of the night and day. I own 224 Columbia Avenue and I do not want the parking on my residential street to be filled with Firebrand staff or their customers or their customer's guests. I have heard that the staff at Firebrand tell the Firebrand customers that they can park for free on my street and other streets around the Hotel. That is not what was agreed when the City of Whitefish approved for this Hotel to be build and run.

I demand that you require that the hotel provide the parking for their customers and also for their staff that do not include using my street and the other neighboring residential streets as their private parking lot. Owners and occupants of houses near this hotel had to put up with the carpenters and labor building the hotel. They blocked the Tenant and Owners from having parking places on the street for their own friends and family. That was for a long time and that was enough.

Enough of Firebrand demands! I ask that you require that they own up to this obligation for providing parking and also to deny the hot tub as you have done many times in the past. I am seeing very little appreciation from Firebrand for

what the City has already offered and given them. They have no end to their demands and it is time for us to say no more.

Thanks you,
Nola Howard

Wendy Compton-Ring

From: Pat Carloss <patcarloss48@gmail.com>
Sent: Wednesday, October 19, 2016 8:26 AM
To: Wendy Compton-Ring
Subject: Firebrand hot tub

Hey Wendy, Emailing you to voice my support for hot tub on rootop of firebrand with stipulations in place such as 10 o'clock closing, etc. Also, thanks for the input and time from you and Dave on the project Dale and I are working on. Pat

Wendy Compton-Ring

From: Chris Gulick <gulick1970@gmail.com>
Sent: Wednesday, October 19, 2016 1:44 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel

To whom it may concern:

I am sending this letter in support of the new firebrand hotel. As a resident living very close to the hotel I am in full support of the FB and what it will bring into our community.
I know some concerns have been raised about noise and other inconveniences to the neighborhood but I personally have not been affected or bothered by any of the hotels activities.
It's a beautiful building that enhances the downtown area. Even the neighbors I've bumped into during the whole project that started out in a bit of a negative reaction to the hotel have turned around and continue to complement on how they like it.
It's a wonderful place for locals and tourists . And a great addition to our downtown.

Sincerely,
Chris Gulick
Kalispell Ave.

Wendy Compton-Ring

From: B.E.I. <cole@blackwellenterprisesinc.com>
Sent: Wednesday, October 19, 2016 1:59 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel

To Whom It May Concern,

This letter is to notify of my full support for the approval of the construction of a hot tup on the roof top of the Firebrand. This hotel has contributed tremendously to the community in helping bring in more visitors and jobs and the addition of the rooftop hot tub will allow them to offer a better resort environment to its guests.
I have reviewed the plans ,and the design and layout provides no outside impact or visibility to the public.
If Casey's can have a rooftop bar, I don't see any warrant to deny a hottub.

Thank You,

Cole Blackwell
President
Blackwell Enterprises, Inc.
CELL. 406.471.3081
OFF. 888.636.0003 EXT. 2
FAX. 866.839.8187

750 West 2nd Street, Suite F ~ Whitefish ~ Montana ~ 59937

United States ~ Canada

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Wendy Compton-Ring

From: Travis Taylor <Travis@glacierpayments.com>
Sent: Wednesday, October 19, 2016 2:23 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel

Importance: High

Dear City of Whitefish,

I am writing in support of the construction/approval of a rooftop hot tub at the brand new Firebrand Hotel in the City of Whitefish, Montana.

As a resident and business owner of Whitefish, Montana for 20 years now, I believe that the addition of a rooftop hot tub at the Firebrand Hotel would help boost the economy of our beautiful City. The rooftop hot tub, would cause not harm and or disruption to our beautiful resort community, in fact I believe it will help by bringing in new visitors to our community, which in turn will drive more money into our local businesses. By denying the hotel the ability to build a rooftop hot tub it will result in serious hardship for the hotel, as well as the City of Whitefish entirely. I have many friends, family and business associates who fly in from all over the world that I would like to recommend to our newest hotel, but without the proper accommodations I will not feel confident in doing so.

I am asking for your support in the building of the rooftop hot tub at the Firebrand Hotel, which will boost our local economy by bringing in ski groups, business personnel and additional revenue for our local businesses.

When the benefits are so great, it makes good sense to support a rooftop hot tub at our newest, most state of the art hotel in our beautiful City of Whitefish, Montana.

Thank you so much for your help.

Sincerely,

Travis Taylor | Chief Executive Officer – ETA CPP
tel: 800.651.0924 **ext.** 201 | **dir:** 406.545.2199
cell: 303.912.1018 | **fax:** 888.453.3992
travis@glacierpayments.com

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Wendy Compton-Ring

From: Erica Howard <Erica@glacierpayments.com>
Sent: Wednesday, October 19, 2016 2:53 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel

Dear City of Whitefish,

I am writing in support of the construction of a rooftop hot tub at the brand new Firebrand Hotel in the City of Whitefish, Montana.

As the administrative assistant of the #1 fastest growing company, Glacier Payments, I am asking that the addition of the rooftop hot tub at the Firebrand Hotel be approved. I am in charge of handling all travel arrangements for our clients who visit us here in Whitefish from all across the world. I am hoping to book rooms for our clients at the newest hotel in Whitefish but unfortunately without the proper accommodations it leaves me unable to do so. Please support our local businesses by allowing the construction of a rooftop hot tub at the brand new Firebrand Hotel.

Thank you so much.

Best,

Erica Howard | Administrative Assistant
tel: 800.651.0924 **ext.** 207 | **fax:** 888.453.3992
erica@glacierpayments.com

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www.glacierpayments.com

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Wendy Compton-Ring

From: Big Mountain Builders <marc@bigmtnbuilders.com>
Sent: Wednesday, October 19, 2016 2:54 PM
To: Wendy Compton-Ring
Subject: Firebrand Roof Hot Tub

Hi Wendy,

Brian and Sean Averill let me know there was some resistance to the Roof Hot Tub but honestly it seems like it would be such a great addition to that space and a great user experience for their guests. I would recommend approving that amenity as I think it would be a great asset to their guests.

Thanks,
Marc Daniels

Sent from my iPhone
Big Mountain Builders
Whitefish, MT
www.BigMountainBuilders.com

Wendy Compton-Ring

From: Darcy King <darcyqking@gmail.com>
Sent: Wednesday, October 19, 2016 3:53 PM
To: Wendy Compton-Ring
Subject: Firebrand Hotel Rooftop Hot Tub

Dear Ms. Compton-Ring,

I would like to show my support, and favor for an addition of a rooftop hot tub in the Firebrand hotel. Whitefish frequently is listed in polls, ratings, and trip recommendations as a first-class travel destination. I don't know about you, but I have never myself visited a hotel that did not have a hot tub area of some sort. While some may not like the idea of our area growing, or being so frequently visited, it is a reality.

For those in the service industry, we rely on a heavy customer base for our livelihood. Denying the hotel the option of a hot tub would greatly decrease client activity as they may be inclined to head to neighborhood hotels that do offer that luxury.

As a child, one of my favorite things to do was sit in the hot tub and watch the snow fall. Now, as an adult, if I were on vacation, I can't think of a more perfect end to the day than come down off the hill, soak sore, tired muscles, while taking in the impressive winter views Whitefish and the mountain has to offer from a prime vantage point. Not only would this amenity be unique to the area, but to hotels in Montana overall. I really can't think of a disadvantage.This simply is a fabulous service and convenience to offer skiers and vacationers alike.

Again, I fully support the Firebrand moving forward with the construction of the rooftop hot tub. I sincerely hope the decision is unanimous to move forward with this proposal.

Thank you so much,

Darcy King

Wendy Compton-Ring

From: timmy thomas <brothertimmy@yahoo.com>
Sent: Wednesday, October 19, 2016 9:47 PM
To: Wendy Compton-Ring
Subject: FIREBRAND ~ ROOFTOP

Wendy....

I am simply sending a note in support of THE FIREBRAND pursuing the ability to have a hot tub on the rooftop of their establishment. Frankly I am not quite sure why it would be an issue to have such a service in their boutique hotel. The overall product that is THE FIREBRAND (and Whitefish) would benefit from such an addition. If a place like CASEY'S can have an entire bar on their rooftop...which i can only assume has had issues with matter dropping down to the street....a hot tub isn't even the same league. I am in full support of THE FIREBRAND having said service. If you have any questions, do not hesitate to contact me.

Thanks in advance,

Timmy Thomas
Owner ~ The White Room
406-270-9185

Wendy Compton-Ring

From: Chris Hyatt <chris.hyatt.mt@gmail.com>
Sent: Thursday, October 20, 2016 11:44 AM
To: Wendy Compton-Ring
Subject: CUP for a Hot Tub on the FIREBRAND roof top

Hi Wendy,
I'm in support of the addition to the CUP for a Hot Tub on the FIREBRAND roof top. We over the last few years we have enjoyed the roof top bar at Casey's with our out of town guests. The rooftop experience for our guests has given them another view of our great community. Having a business on Spokane avenue I believe this fits into the resort atmosphere of our quaint downtown allowing skiers, bikers and hikers to soak after a long day of recreating here. Thank you for your time on this matter.

A request by Whitefish Hotel Group to amend Condition #22 of Condition Use Permit WCUP 14-11 in order to install a hot tub on the roof of the hotel. The property is zoned WB-3 (General Business District). It is addressed as 650 E 3rd Street and can be legally described as Whitefish Original Townsite, Block 46, Amended Lots 1-18 in S36, T31N, R22W. (WCUP 14-11A) Compton-Ring.

Chris

Christopher S. Hyatt
CIRCLE ARROW HOLDINGS
547 Spokane Avenue, Suite B, Whitefish, MT 59937
406.261.7541 **chris.hyatt.mt@gmail.com**

OCT 20 2016

Kevin & Debra Gartland

622 Somers Avenue
Whitefish, MT 59937

Oct. 18, 2016

Whitefish Planning Board
City of Whitefish
P.O. Box 158
Whitefish, MT 59937

Re: Firebrand Hotel's request for outdoor hot tub

Dear Board members:

We want to express our support for the Whitefish Hotel Group's application to install a hot tub on the roof of the Firebrand Hotel in downtown Whitefish.

We believe that the proponents have adequately addressed the noise concerns of local residents by locating the amenity at the west end of the building's rooftop, and by enclosing the patio with walls to deflect sound away from the residential area to the east.

The key to complying with the City's sound restrictions is self-enforcement by hotel staff, and the track record of these hoteliers – including the peaceful operation of outdoor pools and hot tub facilities for many years at The Lodge at Whitefish Lake – give us confidence that the peace-and-quiet of their neighbors (us included) will be respected.

With that said, 11 p.m. may be a bit late for the amenity to be available for guest usage. We would suggest that the hot tub (and patio) be closed at 10 p.m., which is consistent with the City's practice of enforcing of outdoor noise levels throughout the downtown area.

Respectfully submitted,

Debra A. Gartland

Kevin O. Gartland

Oct 30, 2016

To: City Council of Whitefish re: Firebrand request for Hottub

A few weeks ago, Firebrand hotel requested at the planning board meeting, a 16-person hot tub for their rooftop deck open from 8am to 11 pm. It was denied for the fourth or fifth time and today Firebrand is asking for the hottub at the Whitefish City Council meeting. At this time, the rooftop is not approved to have any music, gatherings/parties or events on the rooftop based on the approval by the Planning Board. They are also required to provide parking for their customers and employees as part of the approval process with the City of Whitefish.

During the planning board meeting, a representative for the Firebrand said that they would like to have music playing on the deck for ambiance. In addition, on the Firebrand website under this roof deck, they are advertising the following: "You may consider this unique setting for a wedding ceremony or social gathering." At this time, patrons are allowed by Firebrand to carry alcohol drinks in a glass from the bar into the rooftop deck. I don't know if they are allowed to carry their restaurant food to the rooftop as well? What other plans does Firebrand have in mind for the rooftop beyond the hottub? Music from multiple speakers, Live music? Weddings and meetings/presentations using microphones? Private parties??? Public parties? Will the use of the rooftop deck only be open to people staying at the hotel or can they have have groups of friends come to meet and use the hottub?

The Firebrand also has on their Website that they charge their patrons for parking on the premises $12/day parking for about 86 parking spots. This comes to $$94,170 for 3 months last summer. The Firebrand staff is believed to have told their customers where to go so that they could park on the residential streets for free. This goes against the agreement for approval of this hotel to provide parking for their customers and employees. It takes up the parking that could be used by the local people and creates noise from their employees and customers at all times of day or night in front or around their houses as they come to and from their parked card. I now ask that the City of Whitefish stop this practice to the detriment of the residents living near the Hotel.

Their are many unanswered questions regarding the Hot tub. Three impact the entire neighborhood including the school, church, pedestrians, drivers and nearby residents. These are noise pollution, the uninvited view of people in trunks and bikinis on the deck top by the school staff and children, pedestrians and drivers from 8am to 11pm (lit up at night) Will parkiing in the neighborhood be abused by the increase possible uses for the hot tub not yet defined?

Even more unanswered questions exist regarding how the Noise Polution will be heard by the people living nearby, children going to school, teachers, nearby businesses,

pedestrians or people attending church. These are all the **INVOLUNTARY LISTENERS.** They may hear what is called Plainly Audible Sound which is any noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of the citizens of and visitors to the city. The definition of Plainly Audible Sound is: Any sound for which the information content is unambiguously communicated to the listener, such as, but not limited to, understandable speech, comprehension of whether a voice is raised or normal, repetitive bass sounds, or comprehension of musical rhythms, without the aid of any listening device.

The human hearing of Sound is characterized by 1. Pitch (the perception of the relative pitch of two tones). 2 Loudness, which is intimately related to sound intensity but is not identical to it. 3. Sound Quality or timbre. Timbre is mainly determined by the harmonic content of a sound and the dynamic characteristics of the sound such as vibrato and the attack-decay envelope of the sound. The two reports provided by Firebrand were testing speaker decibels only which do not equate to what the Human ear can hear. Their tests lack the ability to measure intensity and are not able to predict what humans will consider Noise Polution. Noise from the hottub will reflect off of the solid brick School facade and will indeed **Reflect** the noise back into the residential neighborhood including the church. Another important parts of our experience with sound involve **Diffraction**. The fact that you can hear sounds around corners and around barriers involves both diffraction and reflection of sound. Diffraction in such cases helps the sound to "bend around" the obstacles. Like the base rhythm of the band or music causes waves to bend around obstacles causes them to spread out past small openings like holes in a glass fence.

It is essential that these tests be verified to be accurate and relevant to the problem of Noise Polution for our Neighborhood. There seemed to be inconsistencies regarding the sampling times of 15 minutes vs 1 minute, exact location and time of sampling, etc. More review of any Noise Polution reports will need to be done before any approval be made regarding this HotTub at this location.

Regards,
Nola Howard
224 Columbia Avenue
Whitefish, MT 59937

Wendy Compton-Ring

From: Jarett Hannon <newleafhomebuilders@gmail.com>
Sent: Monday, October 31, 2016 3:05 PM
To: Wendy Compton-Ring
Subject: Firebrand Hot Tub Request

Dear Wendy,

I am writing in full support for the request of the roof top hot tub at the Firebrand hotel. I believe it would be a great asset to the Hotel, attracting more guests and brining additional revenue to the City through lodging tax. It would be beneficial for the Hotel, City and the small businesses in the area.

Kind Regards,

Jarett Hannon
General Contractor
New Leaf Homebuilders LLC
406-270-6883

MURPH N HANNON
704C East 13th Street – 120
Whitefish, Montana 59937

November 1, 2016

City of Whitefish
Whitefish, MT

Attention: Wendy Compton Ring

Dear Wendy

I am writing this letter in support of the Firebrand Hotel's request to put a hot tub on the roof of the hotel.

The success of this hotel is good for the City of Whitefish in general. I have been in the hotel business, and believe that that a hot tub is essential for the hotel in attracting skiers during the winter months.

I don't believe that there will be any impact to the surrounding community as it is to be located on the roof and the hours of operation will be restricted. In addition it is in the best interest of the hotel to make sure their staff enforces proper conduct.

Yours truly

Murph Hannon

Wendy Compton-Ring

From: Troy Schultz <mteamfitness@gmail.com>
Sent: Tuesday, November 01, 2016 12:40 PM
To: Wendy Compton-Ring
Subject: Fire Brand

My wife and I frequent Whitefish all year. Hot tub upon a rooftop after skiing would be a fantastic amenity for a resort. I am all for it. I frequent all the restaurant and personal shops. A hot tub Up on the Rooftop would be first class style that Whitefish a hot tub Up on the Rooftop with her dad to the first-class style. In my opinion that's what Whitefish is all about

Chuck Stearns

From: Wendy Compton-Ring
Sent: Tuesday, November 01, 2016 1:26 PM
To: Michelle Howke; Chuck Stearns
Subject: FW: Firebrand

Public comment.

From: ryan swagar [mailto:ryan@venture51.com]
Sent: Tuesday, November 01, 2016 1:24 PM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Firebrand

Hi Wendy -

I wanted to reach out in regards to the proposed Firebrand rooftop hot tub.

I recently stayed at the Firebrand and was extremely disappointed that this hot tub was not installed yet. I learned from Sean Averill that this was because the city had not yet approved it.

This is a rooftop hot tub (not overlooking residential) and the reality is this is what people want to relax in after skiing during the day. It's a huge selling point for a hotel.

Whitefish has gotten better at realizing it is a major ski town and in order to compete with other ski towns it needs to be cutting edge. I would hardly call approving a rooftop hot tub cutting edge, but it's a step in the right direction.

Best regards,
Ryan

Ryan Swagar
Managing Partner
Venture51

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City of Whitefish
Department of Public Works
1005 W. 10TH Street, PO Box 158
Whitefish, MT 59937
(406) 863-2460 Fax (406) 863-2419

November 1, 2016

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Approval of the Rating Panel & Selection Panel to Recommend the Selection of a Firm or Firms for Engineering Services During 2016 – 2018.

Introduction/History

In 1990, the City Council adopted a policy for Selection of Consultants for services including, but not limited to architectural, engineering, surveying, auditing, accounting, and management consulting, where the services would exceed $10,000. This policy was amended and updated earlier this year. The revised policy increased the threshold for such contracts to $20,000, as provided for in §18-8-212(1) MCA.

Current Report

In accordance with the above-mentioned policy for consultant selection, the Public Works Department advertised for proposals from qualified consulting engineering firms to provide engineering services for a variety of projects to be designed and constructed in 2016-2018. Proposals for these projects were due by Friday October 21, 2016. These projects, which involve roadway, water, sanitary sewer, and storm sewer elements, are briefly described as follows:

Central Avenue Reconstruction Project: This project will include another phase of the "Shopping Loop" on Central Ave. from E. 3rd Street to E. 4th Street. This portion of the Downtown Business District Master Plan is intended to expand Central Avenue retail opportunities by providing additional retail sites in the Downtown District. Roadway, curbside parking, sidewalk and crosswalk enhancements will extend the Central Avenue streetscape south to E. 4th Street. The Central Avenue Reconstruction Project also aims to tackle the longstanding issue of the "Central Avenue Slump" that exists near the intersection of

Central Avenue and E. 6th Street. In addition to these major project objectives, water main replacement and asphalt overlays are proposed for the remainder of the Central Avenue between E. 4th and E. 6th.

Somers Avenue Reconstruction Project: Somers Avenue is the next roadway project in line for Resort Tax Funding. This project will include the Reconstruction of Somers Avenue from E. 2nd Street to E. 8th Street.

Flathead Avenue Roadway Extension: The west end of Flathead Avenue currently terminates about 375 feet west of O'Brien Avenue. The Public Works Department had envisioned Flathead Avenue continuing through to W. 18th Street. This 500' extension of roadway would greatly improve ingress/egress to the City shop by providing a much safer access than W. 18th Street. Extension of sanitary sewer beneath this new roadway would also provide sewer service to the City Shop, eliminating the use of the current septic system. The completion of these improvements will also serve to increase the value of the property adjacent to the City Shop.

Armory Road Drainage Improvements: This phase of the Armory Drainage Improvements includes regrading and reconfiguring the existing drainage ditches on the north side of Armory Road and along the east side of Armory Park.

Cast Iron Water Main Replacement Projects: The City has more than 50 miles of water pipelines, some of which are nearly 100 years old, and in need of replacement. This budget cycle includes the replacement of small diameter cast iron mains at 3rd Street west of Jennings, 4th Street west of Jennings and Montana Avenue north of Edgewood.

Greenwood to Columbia Sewer Replacement: This project is located in an easement between Greenwood Drive and Columbia Avenue along the east side of the HWY 93 corridor. The City has experienced historical maintenance issues and Sanitary Sewer Overflows (SSO's) as a result of significant growth and undersized pipe within this corridor. A sewer design must be developed to eliminate capacity deficiencies in this area of the sanitary sewer system.

South Whitefish Water Tank Evaluation: The most recent analysis of the City's water system indicated there was adequate capacity to meet our max day demand, however, additional storage on the south side of town would significantly increase the system's ability to meet desired fire flow demands. This additional storage capacity has become increasingly important with the recent surge in development along the HWY 93 South corridor.

Financial Requirement

It will be determined by the City during the consultant selection process whether engineering services will be contracted for each project individually, or if services for a certain group of project will be awarded to a single consultant. Either way, the terms of the contract(s), including cost, will be negotiated after a consultant is selected.

Recommendation

In accordance with the above-mentioned policy for consultant selection, a consultant R*ating Panel* made up of City staff, and other individuals approved by the City Council, will review the consultant proposals. It is recommended that Council appoint Craig Workman and Karin Hilding to serve on the *Rating Panel* for this RFP.

In addition, the policy requires that a *Selection Panel* be established to make the final selection in accord with the City's selection criteria. The *Selection Committee* must be comprised of the Department Director, one other staff person, and one elected official. It is recommended that Council appoint Craig Workman, Karin Hilding, and one council member to serve on the *Selection Panel* for this RFP.

Sincerely,

Craig Workman, P.E.
Director of Public Works

RESOLUTION NO. 16- 31

A Resolution of the City Council of the City of Whitefish, Montana, adopting revisions to the Consultant Selection Policy.

WHEREAS, the City Council created a Consultant Selection Policy on February 20, 1990; and

WHEREAS, said Consultant Selection Policy was amended on March 18, 1996 and other amendments to the Consultant Selection Policy were considered on May 16, 2005, but were not adopted; and

WHEREAS, the current Consultant Selection Policy is out of date and inconsistent with the State of Montana's procurement laws for Architectural, Engineering, and Land Surveying Services as found in Title 18, Chapter 8, Part 2, MCA; and

WHEREAS, City staff have reviewed the current Consultant Selection Policy and proposed some changes and the City Council has reviewed those changes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AS FOLLOWS:

Section 1: That the CONSULTANT SELECTION POLICY attached hereto as Exhibit "A," and incorporated herein by reference, is hereby adopted and approved.

Section 2: That all previous consultant selection policies are hereby repealed.

Section 3: This Resolution shall take effect immediately upon approval by the City Council.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 18TH DAY OF JULY, 2016.

JOHN M. MUHLFELD, MAYOR

ATTEST:

Michelle Howke

Michelle Howke, City Clerk

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 the threshold set by State law, currently found at Section 18-8-212(1), MCA. 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 accordance 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 the city's newspaper of record, placement on the City's website, and sending the notice to firms holding business licenses or listed in professional and yellow pages' telephone directories, as well as to those whom the City knows are interested.

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;

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; and

8. Other criteria, as appropriate.

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.

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 Department Director, one other staff person, and one elected official. , The Selection Committee will choose its own chairman. The final selection will require an affirmative vote of at least two of the three Selection Committee members.

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.

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.

8. Other. Other criteria appropriate to the project.

Making the Selection

1. The firms selected for an interview 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 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) – this method is required for any procurement done with funds from federal grants, even federal pass-through funds through the state;

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 or reviewed 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, staff will at least use firms with a business license, in the yellow pages of the telephone book, or as compiled by an on-line search.

Other Contract Services for Major Projects

Other professional services in excess of the threshold set by State law including but not limited to auditing, accounting, and management consulting, will use the above process.

All Contract Services Under the State Threshold

All contract services under the threshold set by State law will use the standard purchase order process rather than the consultant selection process, unless otherwise required by federal grant procurement procedures. Jobs will not be artificially split to avoid the consultant selection process.

Adopted: 20FEB90
Amended: 18MAR96
Amended: July 18, 2016

City of Whitefish
Department of Public Works
1005 Baker Avenue | PO Box 158
Whitefish, MT 59937
(406) 863-2460 | Fax (406) 863-2419

REQUEST FOR PROPOSALS

2016-2018 Engineering Services

- **Central Avenue Reconstruction Project**
- **Somers Avenue Reconstruction Project**
- **Flathead Avenue Roadway Extension**
- **Armory Road Drainage Improvements**
- **Cast Iron Water Main Replacement Projects**
- **Greenwood to Columbia Sewer Replacement**
- **South Whitefish Water Tank Evaluation**

CITY OF WHITEFISH, MONTANA

REQUEST FOR PROPOSALS

2016-2018 Engineering Services

Proposals Due: Friday 10/21/2016
Contact: Karin Hilding, Senior Project Engineer
Phone Number: (406) 863-2450
Email Address: khilding@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 engineering services for a variety of Public Works Projects. These projects involve roadway, water, sanitary sewer, and storm sewer elements. It will be determined by the City during the consultant selection process whether engineering services will be contracted for each project individually, or if services for a certain group of project will be negotiated. Proposals are due by **Friday October 21, 2016.**

PROJECT OVERVIEWS

Central Avenue Reconstruction Project

There are a variety of individual goals associated with this Project. First and foremost, is another phase of the "Shopping Loop" on Central Ave. from E. 3rd Street to E. 4th Street. This portion of the Downtown Business District Master Plan is intended to expand Central Avenue retail opportunities by providing additional retail sites in the Downtown District. Roadway, curbside parking, sidewalk and crosswalk enhancements will extend the Central Avenue streetscape south to E. 4th Street.

The Central Avenue Reconstruction Project also aims to tackle the longstanding issue of the Central Avenue Slump" that exists near the intersection of Central Avenue and E. 6th Street and Spokane Avenue. The original slope in this area was constructed in 1986 as part of a sewer system improvement project. Historically, this project area had experienced past slide activity extending back as far as 1934, thus the slope was constructed using structural gravel fill. Signs of movement in the form of pavement cracking, vertical displacements, and transverse cracking have been observed in this

area. A repair was then made in 1997 which involved the removal of the gravel fill and replacement with lightweight fill extending to a depth of approximately 15 feet. Unfortunately, this design approach was ineffective as a permanent solution and significant maintenance has been required since the repair was completed. The City is now looking to proceed with one of the options presented in the attached Geotechnical Investigation completed by TD&H.

In addition to these major project objectives, water main replacement and asphalt overlays are proposed for the remainder of the Central Avenue between E. 4th and E. 6th. The old cast iron water main with lead joints has had several leaks over the past few years. Central Avenue water main replacement plans have been designed between 3rd and 6th Street to a 95% review stage.

The scope of the engineering services for the *Central Avenue Reconstruction Project* will include surveying, public relations, conceptual design, final design, project estimating, bidding, and construction related services.

Somers Avenue Reconstruction Project

With the W. 7th Street Project nearing completion, Somers Avenue is the next roadway project in line for Resort Tax Funding. This project will include the Reconstruction of Somers Avenue from E. 2nd Street to E. 8th Street The proposed work includes approximately 2,500 linear feet of roadway, including new curb and gutter, new/restored sidewalks, and street lighting. Also included is an improved storm drainage system, sanitary sewer evaluation, new water main and services, landscape restoration, and other miscellaneous improvements.

The scope of the engineering services for the *Somers Avenue Reconstruction Project* will include surveying, public relations, conceptual design, final design, project estimating, bidding, and construction related services.

Flathead Avenue Roadway Extension

The west end of Flathead Avenue currently terminates about 375 feet west of O'Brien Avenue. The Public Works Department had envisioned Flathead Avenue continuing through to W. 18th Street. This 500' extension of roadway would greatly improve ingress/egress to the City shop by providing a much safer access than W. 18th Street. Extension of sanitary sewer beneath this new roadway would also provide sewer service to the City Shop, eliminating the use of the current septic system.

The scope of the engineering services for the *Flathead Avenue Roadway Extension Project* will include surveying, conceptual design, drafting of easements and exhibits, and assistance with easement/ROW acquisition.

Armory Road Drainage Improvements

The first phase of the Armory Drainage Improvements included locating and improving an existing storm main that drains from Armory Road north towards the wetlands near E. 2nd Street. Manholes were added to provide access to the existing storm drain and the outlet was improved. The next phase includes regrading and reconfiguring the existing drainage ditches on the north side of Armory Road and along the east side of Armory Park.

Construction drawings for this phase of the *Armory Road Drainage Improvements* are approximately 75% complete. Remaining work includes design completion, coordination with the Parks Department, easement acquisition, project estimating, bidding, and construction related services. City crews may be able to complete the construction.

Cast Iron Water Main Replacement Projects

The City has more than 50 miles of water pipelines, some of which are nearly 100 years old, and in need of replacement. To avoid future service disruptions, such as water main breaks, the aging pipelines are replaced or rehabilitated. The new pipelines will bring the existing water pipes or mains up to modern standards, accommodate community growth and reduce maintenance requirements. This budget cycle includes the replacement of small diameter cast iron mains at 3rd Street west of Jennings, 4th Street west of Jennings and Montana Avenue north of Edgewood.

The scope of the engineering services for the *Cast Iron Water Main Replacement Projects* will include surveying, design, project estimating, bidding, and construction related services.

Greenwood to Columbia Sewer Replacement

This project is located in an easement between Greenwood Drive and Columbia Avenue along the east side of the HWY 93 corridor. The City has experienced historical maintenance issues and Sanitary Sewer Overflows (SSO's) as a result of significant growth and undersized pipe within this corridor. A sewer design must be developed to eliminate capacity deficiencies in this area of the sanitary sewer system. The sewer capacity study for this area indicated significant wet weather capacity deficiencies with

potential of overflow. The study recommended upsizing the existing 8 and 10-inch diameter sewer mains. Besides using the typical open trench method, this project should consider trenchless techniques including pipe bursting and bore and jacking to upsize the existing pipelines.

The scope of the engineering services for the *Greenwood to Columbia Sewer Replacement* will include surveying, design, project estimating, bidding, and construction related services.

South Whitefish Water Tank Evaluation

The most recent analysis of the City's water system indicated there was adequate capacity to meet our max day demand. However, additional storage on the south side of town would significantly increase the system's ability to meet desired fire flow demands. This additional storage capacity has become increasingly important with the recent surge in development along the HWY 93 South corridor.

The scope of the engineering services for the *South Whitefish Water Storage Evaluation* will include a detailed storage analysis. In addition, the City would like to evaluate the best location for the new tank, and proceed with property negotiations for this project. Preliminary tank design and cost estimates will also be expected from the successful firm.

REQUIRED SERVICES

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 criteria for each project. Discussion and presentation of the project to the City Council may be required.
- Produce a detailed topographical survey for each project depicting important features, lot corners, utilities, etc.
- Conduct (or subcontract) soil investigations as necessary to determine soil type, condition and suitability.
- Prepare preliminary design drawings for discussion including a site plan and cross sections sufficient to depict each project.
- Prepare preliminary estimates of construction costs for each 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 each 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 each project along with an as built survey of the completed projects.

FORMAT AND CONTENT OF SUBMITTAL

Five (5) copies of the firm's proposal shall be submitted to the Whitefish Public Works Department, 1005 Baker Ave, PO Box 158, Whitefish, MT 59937, no later than **4:00 PM Friday, October 21, 2016**. Faxed or emailed 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.

30% - Overall quality of the proposal including clarity of the submittal and responsiveness to the Request for Proposals

30% - 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 Public Works projects
20% - Prior experience with similar projects
10% - The firm's past work for the City of Whitefish
10% - Office location for personnel who would be assigned to the project

Questions may be referred to Karin Hilding - Senior Project Manager, by telephone at 406-863-2450, or by email at khilding@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.

Advertised
10/7/2016 - City Website
10/12/2016 – Whitefish Pilot
10/19/2016 – Whitefish Pilot

RESOLUTION NO. 16- 31

A Resolution of the City Council of the City of Whitefish, Montana, adopting revisions to the Consultant Selection Policy.

WHEREAS, the City Council created a Consultant Selection Policy on February 20, 1990; and

WHEREAS, said Consultant Selection Policy was amended on March 18, 1996 and other amendments to the Consultant Selection Policy were considered on May 16, 2005, but were not adopted; and

WHEREAS, the current Consultant Selection Policy is out of date and inconsistent with the State of Montana's procurement laws for Architectural, Engineering, and Land Surveying Services as found in Title 18, Chapter 8, Part 2, MCA; and

WHEREAS, City staff have reviewed the current Consultant Selection Policy and proposed some changes and the City Council has reviewed those changes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AS FOLLOWS:

Section 1: That the CONSULTANT SELECTION POLICY attached hereto as Exhibit "A," and incorporated herein by reference, is hereby adopted and approved.

Section 2: That all previous consultant selection policies are hereby repealed.

Section 3: This Resolution shall take effect immediately upon approval by the City Council.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 18TH DAY OF JULY, 2016.

JOHN M. MUHLFELD, MAYOR

ATTEST:

Michelle Howke, City Clerk

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 the threshold set by State law, currently found at Section 18-8-212(1), MCA. 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 accordance 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 the city's newspaper of record, placement on the City's website, and sending the notice to firms holding business licenses or listed in professional and yellow pages' telephone directories, as well as to those whom the City knows are interested.

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;

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; and

8. Other criteria, as appropriate.

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.

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 Department Director, one other staff person, and one elected official. , The Selection Committee will choose its own chairman. The final selection will require an affirmative vote of at least two of the three Selection Committee members.

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.

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.

8. Other. Other criteria appropriate to the project.

Making the Selection

1. The firms selected for an interview 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 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) – this method is required for any procurement done with funds from federal grants, even federal pass-through funds through the state;

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 or reviewed 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, staff will at least use firms with a business license, in the yellow pages of the telephone book, or as compiled by an on-line search.

Other Contract Services for Major Projects

Other professional services in excess of the threshold set by State law including but not limited to auditing, accounting, and management consulting, will use the above process.

All Contract Services Under the State Threshold

All contract services under the threshold set by State law will use the standard purchase order process rather than the consultant selection process, unless otherwise required by federal grant procurement procedures. Jobs will not be artificially split to avoid the consultant selection process.

Adopted: 20FEB90
Amended: 18MAR96
Amended: July 18, 2016

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MANAGER REPORT

November 2, 2016

RESORT TAX COLLECTIONS

Resort Tax collections were up by 27.7% in August which equaled an increase of $118,794. August is our second largest Resort Tax collection month of the year, so a 27.7% increase is incredible. As you can see from the report attached to this memo in the packet, lodging increases with the two new hotels and other vacation rentals were $78,068 of the $118,794 increase. All three categories saw increases indicating increases in the derivative spending from people staying in the lodging. The 100 year anniversary of the National Park Service and Glacier National Park setting visitation records would also have a big effect on our increased collections.

For the year-to-date after two months of collections, we are 17.66% or $157,021 ahead of last year's collections.

QUARTERLY UPDATE ON CITY COUNCIL GOALS

I try to provide a quarterly update on the status of each of the City Council Goals. The goals were adopted on May 2, 2016 via Resolution No. 16-20.

Implement Downtown Master Plan (including viaduct enhancements) – The bicycle promenade by the Firebrand Hotel is completed. It won't be striped as a promenade until other sections of the promenade are completed. We are working on a Transportation Alternatives grant application to the Montana Department of Transportation (MDT) in order to an engineering estimate for Baker Street pedestrian underpass near the O'Shaughnessy Center. There is a $50,000 budget in the FY17 Tax Increment Fund to continue implementation of the Downtown Master Plan, especially for the zoning overlay and other possible zoning issues.

Downtown Parking (including this summer) – The parking structure is under construction. Given the Resort Tax figures from this summer, it appears that people and visitors were able to

find places to park. The City Council is deliberating the various options on lease parking in the Parking Structure.

Depot Park Phase II Redevelopment – The issue of demolishing the building was resolved by the City Council on October 3rd and removal or demolition will proceed. I will first seek bids to see if there is any interest in someone buying and moving the portion of the building that can be moved. Otherwise, we will contract for demolition next spring.

Hire New City Manager – the Mayor and City Council have decided to go back out again for advertisements with the hope that a new manager could start in January or February.

New Cemetery Development – As noted in my transmittal letter to the FY17 budget, with a drawdown of the year-end cash reserves budgeted, I did not feel that I could budget $20,000 for the beginning of the layout of a new Cemetery south of the Wastewater Treatment Plant.

PUD Process Re-write – The committee to rewrite the Planned Unit Development (PUD) section of the City Code is meeting 2-4 times per month. The moratorium on blended PUD's was extended until August 15, 2017.

Update Extension of Services Plan for Utilities and Annexation – This topic was on the agenda for the July 5th work session. The City Council wants to hold another work session to review possible changes to the urban growth boundary map. After that work session is held, further updates to the Extension of Services Plan will be done. We hope to hold that work session in the November to January time frame.

Wisconsin Avenue Corridor Study – The steering committee is meeting regularly. They are planning an open, public meeting at the Lodge at Whitefish Lake on November 9th.

Riverside Park protection and improvement for erosion – There was no budget approved for this work. There is talk that there may be some in-kind work or private donation to start this work.

Evaluate possibilities of new TIF Districts – Right now, this item would just be some conceptual brainstorming. In the future, if the general fund budget allows (can't use the current TIF funds for a new district outside the boundaries of the current TIF District), the City could hire a consultant (example given – Janet Cornish) to help set up one or two new districts. I tend to think the next district(s) will be smaller and in different areas of the City rather than one big district encompassing many areas. We would have to identify areas with blighted conditions.

Open Space Funding – no work is being done on this topic currently.

Climate Action Plan – There is a citizen committee, with two City Council members, meeting and working on this plan.

Birch Point Quiet Zone – The City Attorney, Public Works Director, and I recently met to go over the status of this project. After checking out options a little more, we may bring forward a

proposal to abandon doing an expensive quiet zone and propose a Wayside horn instead, but we are still investigating a couple of funding ideas for the quiet zone.

Begin review of zoning code – district by district – This project is a very big project and the Planning and Building Department has not begun any work yet.

Economic Development – Public Private Partnerships and targeted business assistance – It has been a busy, commercial construction season, but that is all private activity that we weren't involved in other than helping with site improvements (sidewalks, street trees, and promenade) at the Firebrand Hotel.

BNSF – cleanup of CECRA site, maintain good relationship on all issues, work on disaster preparedness – no recent news on these areas.

Water Quality Improvements and projects (AIS, Septic Leachate, Stormwater pond improvements) – Whitefish Lake Institute is building an addition on to the hovercraft garage at City Beach for the AIS inspectors – this project was funded with a donation. The City Council approved a limited, delayed annexation policy to encourage areas of Septic Leachate into Whitefish Lake to connect on to the wastewater treatment system.

Affordable Housing – The Chamber of Commerce has hired a consultant for a housing needs assessment using part of our $60,000 contribution and the draft report should be available in October. A CDGB grant application to provide funding for the second phase of the project – implementation tools, options, and plans was submitted earlier this summer and recently approved (see the letter from the Governor in this packet).

Growth Policy Implementation Items – The Hwy 93 West Corridor Plan was adopted and the Wisconsin Avenue Corridor study is underway. There are occasional text amendments to the zoning code which the planning staff works on when there is time, but development is booming right now, so there is not much time for other projects.

Code Enforcement – The new Code Enforcement Officer/Building Inspector is Dave Perry and he began work in September. As he gets trained, he will devote more time to Code Enforcement.

City Beach Parking – in the last quarter, TD&H Engineering was hired to prepare a design for a parking lot on the property we bought last year at 55 Woodland Place. The Skye Park Bridge opened completely earlier this summer and that can help avoid the need for more parking at City Beach.

Ped-Bike Master Plan Update – the committee has been working on this and WGM was hired to prepare the update. The draft update is almost done and will start its review with the various committees.

Explore extent of waivers for utility contracts (aka annexation) – The West Lakeshore area was annexed earlier this summer and there will be a public hearing on the annexation of the Ramsey

area and other isolated properties on November 21st. That will end our wholly surrounded annexations for now, but there are still some annexations of properties that are on our water or sewer system that can be pursued.

Long Term Financial Planning and Sustainability – an ongoing project that will become more important as the Tax Increment District sunset in July, 2020 gets closer.

Consider a General Obligation Bond for Fire Equipment and precinct station – We may schedule a work session in the coming months on this topic.

Ambulance Fee evaluation – a draft report is currently being reviewed by staff, so a proposal to increase ambulance fees for the first time since 2012 should be coming forward soon.

Maintenance Programs for City Facilities – Jeff Brown is the Parks and Recreation Department facilities director. We have budgeted for another facilities technician position for City Hall and the Parking Structure when those buildings open. If that position has extra time, he or she could assume some of the ESC maintenance issues in the future.

Planning in-house priorities and text amendments – these are done as time allows.

City Hall – finish and move in – construction continues. The first week of April, 2017 is the targeted completion date, so move-in could occur after that date.

Water and Wastewater Rate increases – The water and wastewater rate increases were approved on September 6th.

Hwy 93 South Access Study – Public Works has contacted the Montana Department of Transportation about this project.

MEETINGS

Leadership Flathead (10/7) – I was on a panel speaking to the Leadership Flathead class of the Kalispell Chamber of Commerce. Other panelists were Doug Russell, Kalispell City Manager and the Honorable State Senator Mark Blasdel. We spoke to the class about various aspects of the upcoming State Legislature.

WAVE Board Meeting 10/13) – I attended the bi-monthly WAVE Board meeting as a board member. We reviewed the financial statements, discussed future projects and some capital projects, and approved a change to our by-laws.

Affordable Workforce Housing Task Force (10/18) – I attended a meeting of the task force at First Interstate Bank. Most of the meeting was to review and ask questions about the first draft of the Housing Needs Assessment with the consultants who prepared the

assessment. The next phase of the project, an Affordable Workforce Housing Plan was also discussed.

City Hall Building Steering Committee (10/19) – The committee met to go over some interior finish items. A presentation on the artistic tiles for behind the bench on 2nd Street were also reviewed and direction was given on the renderings. Other items that were either unfinished or updated were also discussed.

Impact Fee Advisory Committee (10/20) – The committee met for the first time in a while now that a quorum of members was possible. Dana has minutes of this meeting in this week's packet, so I won't repeat the discussion here.

UPCOMING SPECIAL EVENTS

December 9th – Christmas Stroll – Central Avenue 5:30 p.m. to 9:00 p.m.

REMINDERS

December 5th – Noon luncheon (location TBD) for presentation of Affordable Workforce Housing Needs Assessment (followed by a shorter presentation that night at the City Council work session).

December 15-16 – Reception and interviews for City Manager candidates

December 19th – City Council meeting cancelled. Happy Holidays.

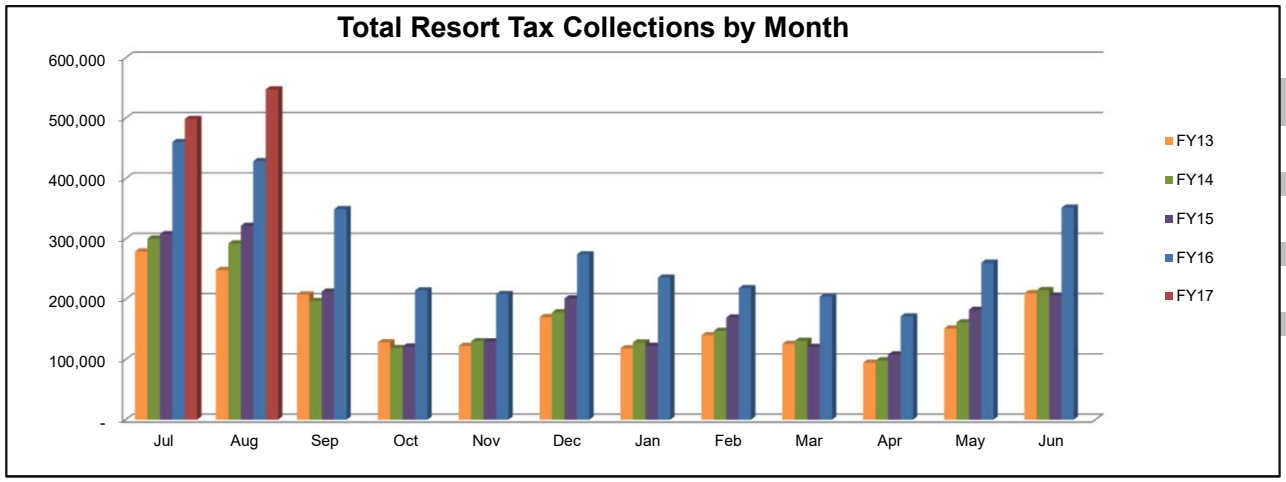
Chuck

Respectfully submitted,
Chuck Stearns, City Manager

Resort Tax Report
Reported in the Month Businesses Collected Tax

(Starting FY16 Resort Tax Rate Increased from 2% to 3%)

Month/Year	Lodging	Bars & Restaurants	Retail	Collected	% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Interest	Total
July 2014	84,053	104,935	118,876	307,864	2.5%		440	308,304
August 2014	93,049	117,674	111,016	321,739	10.0%		498	322,236
September 2014	49,804	84,149	78,813	212,767	7.9%	6.6%	246	213,013
October 2014	18,589	50,665	52,266	121,519	2.0%		604	122,123
November 2014	8,530	43,076	78,311	129,917	-0.3%		359	130,276
December 2014	20,944	74,617	105,885	201,446	13.0%	5.9%	293	201,739
January 2015	15,285	52,940	54,543	122,768	-4.2%		281	123,049
February 2015	25,805	74,286	69,705	169,795	15.1%		166	169,961
March 2015	16,336	51,183	53,368	120,887	-7.8%	1.6%	227	121,114
April 2015	11,755	50,637	45,835	108,227	10.0%		263	108,490
May 2015	23,911	61,756	96,773	182,441	13.0%		288	182,728
June 2015	39,483	78,394	88,316	206,194	-4.1%	4.6%	301	206,495
					YTD Compared to Last Year			
Total FY15	**$ 407,543**	**$ 844,313**	**$ 953,707**	**$ 2,205,564**	or	5.05%	**$ 3,966**	**$ 2,209,529**
FY14 vs FY15	6.04%	6.59%	3.32%	5.05%		$ 106,094	Taxable Sales FY15	$ 116,082,301
July 2015	117,769	166,601	176,012	460,383	-0.3%		377	460,760
August 2015	104,061	172,434	152,226	428,722	-11.2%		375	429,097
September 2015	113,548	112,210	123,398	349,156	9.4%	-2.0%	410	349,565
October 2015	28,753	95,909	90,167	214,829	17.9%		545	215,373
November 2015	12,917	65,378	130,291	208,586	7.0%		527	209,113
December 2015	27,515	112,463	134,468	274,446	-9.2%	2.7%	484	274,929
January 2016	26,527	105,037	104,312	235,876	28.1%		505	236,381
February 2016	30,945	85,771	101,640	218,356	-14.3%		500	218,856
March 2016	24,069	96,976	83,334	204,379	12.7%	6.2%	977	205,356
April 2016	18,683	77,007	75,952	171,643	5.7%		1,047	172,690
May 2016	33,058	95,579	131,878	260,515	-4.8%		1,112	261,628
June 2016	83,753	127,974	139,896	351,622	13.7%	5.2%	1,990	353,612
					YTD Compared to Last Year - See Note Below			
Total FY16	**$ 621,599**	**$ 1,313,338**	**$ 1,443,575**	**$ 3,378,512**		2.12%	**$ 8,849**	**$ 3,387,361**
FY15 vs FY16 (2% vs 2%)	1.68%	3.70%	0.91%	2.12%	or	$ 46,777	Taxable Sales FY16	$ 118,544,269
July 2016	117,574	200,804	180,232	498,610	8.3%		765	499,375
August 2016	182,129	188,792	176,595	547,516	27.7%		562	548,078
September 2016				-				-
October 2016				-				-
November 2016				-				-
December 2016				-				-
January 2017				-				-
February 2017				-				-
March 2017				-				-
April 2017				-				-
May 2017				-				-
June 2017				-				-
					YTD Compared to Last Year - See Note Below			
Total FY17	**$ 299,703**	**$ 389,596**	**$ 356,827**	**$ 1,046,126**		17.66%	**$ 1,328**	**$ 1,047,453**
FY16 vs FY17 (3% vs 3%)	35.10%	14.91%	8.71%	17.66%	or	$ 157,021	Taxable Sales FY17	$ 36,706,168
FY17 % of Collections	29%	37%	34%					
Grand Total	**$ 5,683,765**	**$ 11,740,167**	**$ 13,900,217**	**$ 31,324,149**			**$ 769,936**	**$ 32,094,636**
% of Total Collections	18%	37%	44%				2.5%	Average since '96



Total Taxable Sales Since 1996	$ 1,645,399,598
Total Collected	$ 32,907,992
5% Admin	$ 1,645,400
Public Portion	$ 31,262,592

NOTE: The increases from the prior year in FY16 are calculated at a 2% vs. 2% rate. However, the dollar figures collected are actual collections at the 3% rate. FY17 figures are all calculated and reported at 3% vs. 3%.

DRAFT 10/28/2016

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. 16-56, entitled: "RESOLUTION RELATING TO $779,000 SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NO. 167), SERIES 2017; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF AND AUTHORIZING THE PLEDGE OF THE REVOLVING FUND TO THE SECURITY 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 November 7, 2016, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____ _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____.

WITNESS my hand officially this ____ day of November, 2016.

_____
City Clerk

RESOLUTION NO. 16-56

RESOLUTION RELATING TO $779,000 SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NO. 167), SERIES 2017; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF AND AUTHORIZING THE PLEDGE OF THE REVOLVING FUND TO THE SECURITY 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. Prior Acts. Pursuant to Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), Ordinance No. 15-12 and Resolution Nos. 15-21 and 15-25, this Council has duly and validly created and established in the City a special improvement district designated as Special Improvement District No. 167 (the "District"), for the purpose of financing costs of certain local improvements consisting primarily of the design, engineering, construction and equipping of a new downtown parking structure, to include approximately 212 parking spaces and approximately 2,819 square feet of retail space and related improvements, to be located on Baker Avenue, between East 2nd Street and East 1st Street (the "Improvements") and paying costs incidental thereto (the "Incidental Costs"), including costs associated with the sale and the security of special improvement district bonds drawn on the District, the creation and administration of the District, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

1.02. Proposed Bond Issue. The City proposes to issue special improvement district bonds of the City drawn against the District in the maximum estimated principal amount of $779,000 to pay a portion of the costs of the Improvements and Incidental Costs (the "Bonds"). The Bonds are to be payable primarily from special assessments to be levied against property within the District, which property will be specially benefited by the Improvements. Assessments will be levied against the benefited property within the District in an amount not less than the amount necessary to pay as due the principal of the Bonds together with interest thereon. Some property owners in the District have, in lieu of paying assessments, prepaid the estimated amount of their assessments, thereby reducing the principal amount of the Bonds to be issued. The payments in lieu of assessments have been deposited in the construction fund relating to the Improvements.

The costs of the Improvements and Incidental Costs to be paid from proceeds of the Bonds are currently estimated as follows:

Construction	$ 750,000.00
Less Payments in lieu of Assessments	69,638.06
Project Costs to be Assessed	$ 680,361.94
Revolving Fund Deposit	38,950.00
Costs of Issuance	36,000.00
Administration Fees	23,370.00
Contingency	318.06
Total	$ 779,000.00

Section 2. Sale and Term of Bonds.

2.01. Pursuant to Sections 7-12-4204 and 17-5-107, Montana Code Annotated, this Council finds that it is in the best interests of the City to sell and issue the Bonds through a private negotiated sale to Glacier Bank and First Interstate Bank (together, the "Purchasers"), for the purposes described in Section 1. It is expected that the Bonds will be sold in two series, each in equal total principal amounts, one series to be denominated Special Improvement District Bond (Special Improvement District No. 167), Series 2017A (the "Series 2017A Bond") and the other series to be denominated Special Improvement District Bond (Special Improvement District No. 167), Series 2017B (the "Series 2017B Bond"), and that the Series 2017A Bond will be sold to Glacier Bank and the Series 2017B Bond will be sold to First Interstate Bank.

2.02. The Series 2017A Bond and the Series 2017B Bond (together, the "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 Bonds shall not exceed $779,000, meaning that the maximum aggregate principal amount of the Series 2017A Bond shall not exceed $389,500 and the maximum aggregate principal amount of the Series 2017B Bond shall not exceed $389,500; (2) the maximum interest rate on the Bonds, assuming the Bonds are and continue to be tax exempt and are designated as and continue to be qualified tax-exempt obligations under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, shall be equal to the interest rate computed by taking the twenty-year Federal Home Loan Bank of Des Moines Straight Line Amortizing Advances less than $15,000,000 Advance Rate as of the date of the Bond Purchase Agreement (as defined below), and adding thereto 120 basis points, but in any event and so long as bearing interest at a tax-exempt interest rate and being "bank qualified," not to exceed 4.50% per annum; (3) the purchase price of the Bonds shall be 100% of the principal amount thereof; and (4) the final stated maturity of the Bonds shall not be later than July 1, 2037. All costs of issuing the Bonds (including, without limitation, the fees and expenses of bond counsel) shall be paid by the City. Pursuant to Section 7-12-4189, M.C.A., the City is required to charge interest on special assessments at a rate equal to the average interest rate payable on the outstanding Bonds plus no less than 50 basis points per year.

2.03. The Mayor, the City Manager and the City Finance Director are hereby authorized and directed to approve the principal amounts, maturity dates or payment dates, interest rates and redemption provisions of the Bonds, subject to the limitations contained in Section 2.02. 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 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 2017A Bond and one with First Interstate Bank in connection with the Series 2017B 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 Bonds and the agreement of the City to sell the Bonds on such terms in accordance with the provisions thereof.

The form of the Bonds and the final terms and conditions thereof shall be prescribed by a subsequent resolution to be adopted by this Council.

Section 3. Pledge of Revolving Fund. In Resolution No. 15-21, adopted on July 20, 2015, this Council found it to be in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and authorized the City to enter into the undertakings and agreements authorized in the Act in respect of the Bonds, based on the factors required to be considered under Section 7-12-4225(4) of the Act. Those findings and determinations are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge and that the City will pledge the Revolving Fund to payment of the principal of and interest on the Bonds.

PASSED AND APPROVED by the City Council of the City of Whitefish, Montana, this 7th day of November, 2016.

_____
Mayor

Attest: _____
City Clerk

MEMORANDUM
#2016-031

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Parameters Resolution – Setting forth the parameters and limits for the sale of SID #167 bonds to First Interstate Bank and Glacier Bank

Date: October 28, 2016

Introduction/History

The City Council created Special Improvement District #167 in 2015 to provide partial funding of $750,000.00 for the construction of the Parking Structure. A prior City Council initially wanted downtown businesses to "have some skin in the game" or have some financial obligation for the Parking Structure beyond the Tax Increment property taxes that they might pay.

During our 2015 negotiations with First Interstate Bank and Glacier Bank for their purchase of the two Tax Increment bond issues to finance the City Hall/Parking Structure project, both banks expressed an interest in possibly buying the parking structure SID bonds. One of the banks had bought a 20 year RSID bond in 2015 from Flathead County for a road construction project on Big Mountain. In the past, banks were not very interested in 20 year, fixed interest rate bonds, but I think their investment portfolios are so diversified now, tax-exempt interest is also a good investment, and they get Community Reinvestment Act points for investing in local bonds, so banks are more interested now in municipal bonds.

We allowed property owners in SID #167 an opportunity to pay off their assessments entirely before we issued bonds in order to allow them to avoid paying any interest. Fifteen (15) property owners did pay off their assessments early which totaled $69,638.06. That allows us to reduce the total amount of bonds that we have to issue for SID #167.

On October 3, 2016, the City Council approved working with First Interstate Bank and Glacier Bank on the sale of SID #167 bonds.

Current Report

With the early pay off of assessments, the Sources and Uses of funds for SID #167 are as follows:

Uses of Funds

SID $ to Parking Structure	$ 680,361.94[1]
Issuance Costs	36,000.00
Revolving Fund contribution (5% of principal)	38,950.00
Underwriter's Discount	0.00
Administration Fees (3% of principal)	23,370.00
Contingency	318.06
Total of SID #167 Bond Size	$ 779,000.00
Sources of Revenue – SID #167 bond sale	$ 779,000.00

The next step in the bond issuance is to adopt a "parameters" Resolution which sets out the parameters and limits of the bond issue. Dorsey and Whitney, our bond counsel, has prepared such a resolution for the negotiated sale of the bonds to the two banks. This resolution delegates authority to the Mayor, myself, and the Finance Director to set the pricing and interest rate for the bond sale and sign those details in a Bond Purchase Agreement with the banks. We are scheduled to price the interest rate on the bonds on Tuesday, November 29th and execute two Bond Purchase Agreements with the banks on that day, provided that the interest rates and other details of the bond issue are within the parameters in this Resolution. After that occurs, we will come back to the City Council on December 5th for adoption of the final Resolution authorizing the sale of the bonds. We are then scheduled to close on the bond sale on January 5, 2017.

The term sheet from the banks is also attached to this report in the packet.

Financial Requirement

The financial requirements are shown above in the Sources and Uses of Funds statement.

Recommendation

Staff respectfully recommends the City Council approve Resolution No. 16-56, A Resolution relating to $779,000 Special Improvement District Bonds (Special Improvement District No.

[1] ($69,638.06 of early payments in full is deposited to Parking Structure construction fund)

167), Series 2017; authorizing the issuance and private negotiated sale thereof and authorizing the pledge of the revolving fund to the security thereof

attachments

RECEIVED
SEP 19 2016
BY: CCS

First Interstate Bank
306 Spokane Avenue
Whitefish, MT 59937

GLACIER BANK
319 2nd St
Whitefish, MT 59937-0100

September 14, 2016

City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: SID Bond #167 Purchase

Dear Chuck:

First Interstate Bank and Glacier Bank have reviewed your request for the SID #167 bond issue. The Banks are pleased to provide you with the following commitment outlined below:

Amount:	Up to $880,000.00
Term:	Twenty years.
Rate:	3.77% for twenty years as of September 14, 2016. Rate to be spread off the twenty year Federal Home Loan Bank of Des Moines Straight Line Amortizing Advance < $15M Index + 120bp. Rate can be locked up to 30 days prior to issuance. 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 4.97%. The spread will increase to the twenty year Federal Home Loan Bank of Des Moines Straight Line Amortizing Advance < $15M Index + 240 bp.
Fee:	Bond counsel, document preparation and other issuance costs will be paid by the City of Whitefish. There will be no additional fees charged by First Interstate Bank or Glacier Bank.

Requirements:

Payments:
Principal and interest payments due semi-annually.

Security:
Secured by the SID Revolving Fund.

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,

Brenden Craig
Vice President, First Interstate Bank

Shane Moss
Vice President, Glacier Bank

Staff Report

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

From: Dana Smith, Finance Director

Date: September 22, 2016

Re: Annual Impact Fee Report to the City Council

Introduction

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

Current Report

Impact Fee Cash Balance
The following table details the cash balance for each type of impact fee as of June 30, 2015, June 30, 2016, and the corresponding dollar amount change from the prior year:

Impact Fee Description	Cash Balance 6/30/15	Cash Balance 6/30/16	Dollar Change
Paved Trails	$ 163,437	$ 39,534	($123,903)
Park Maintenance Bldg.	3,250	2,013	($1,237)
Emergency Services Ctr.	117,834	119,373	$1,539
City Hall	55	108,098	$108,043
Stormwater	115,727	80,996	($34,731)
Water	954,156	1,091,177	$137,021
Wastewater	219,078	289,556	$70,478
Total	$1,573,537	$1,730,747	$157,210

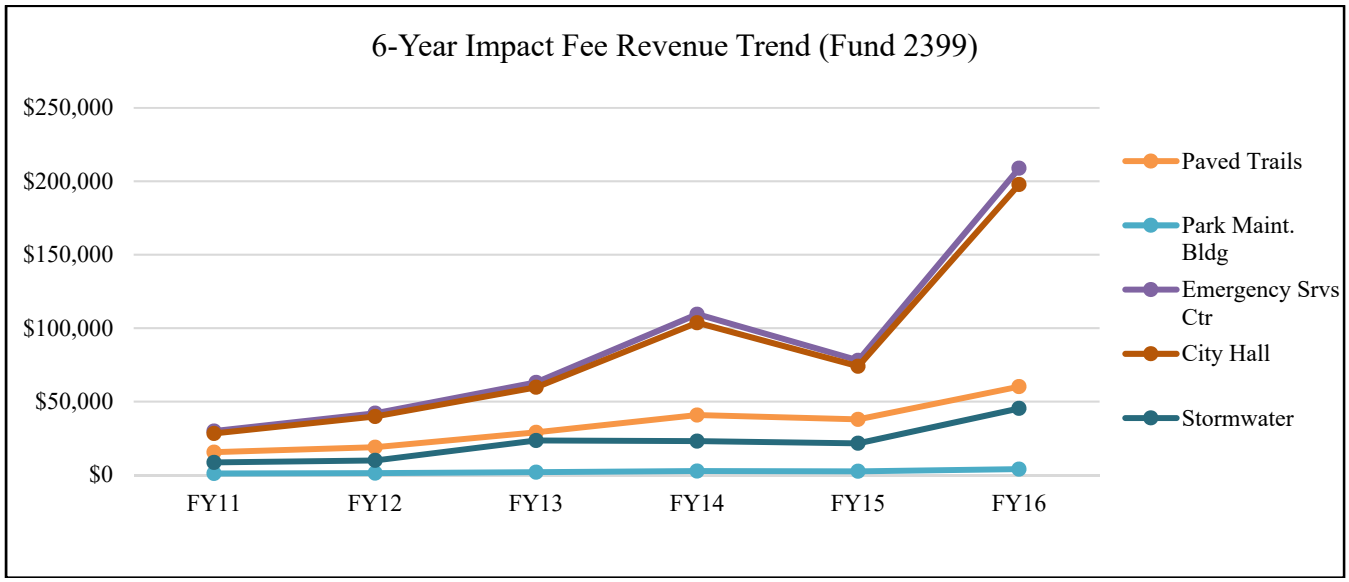
Overall cash balance for impact fees increased from FY15 to FY16. Cash balance for a few types of the impact fees decreased due to increased spending on new projects in FY16 and increased transfers to other funds to pay previously incurred debt. While cash balance (reserves) is appropriate when projects are planned in the near future, it is generally accepted that the revenue generated from impact fees be spent within five years. Since developers pay impact fees to help fund capital improvements related directly to their increased demand on public facilities it is important to identify projects that expand capacity in a reasonable time after receipt of the impact fee payments. Currently, the water impact fee cash reserves are being closely monitored since they have continued to grow by significant amounts with minimal use. Staff is looking at accelerating projects that are eligible for water impact fees including those identified in the Capital Improvement Plan (attached) and the possible extinguishment of debt that was previously incurred for impact fee eligible projects. All other impact fees are currently being used or have projects planned in the near future.

Impact Fee Revenue

The sources of revenue for impact fees are primarily from new construction and remodels that expand the number of dwelling units or usable square footage space. In addition, water and wastewater impact fees are also collected on new connections to the system.

The following table details the revenue and interest earned for those impact fees accounted for in the Impact Fee Fund (2399):

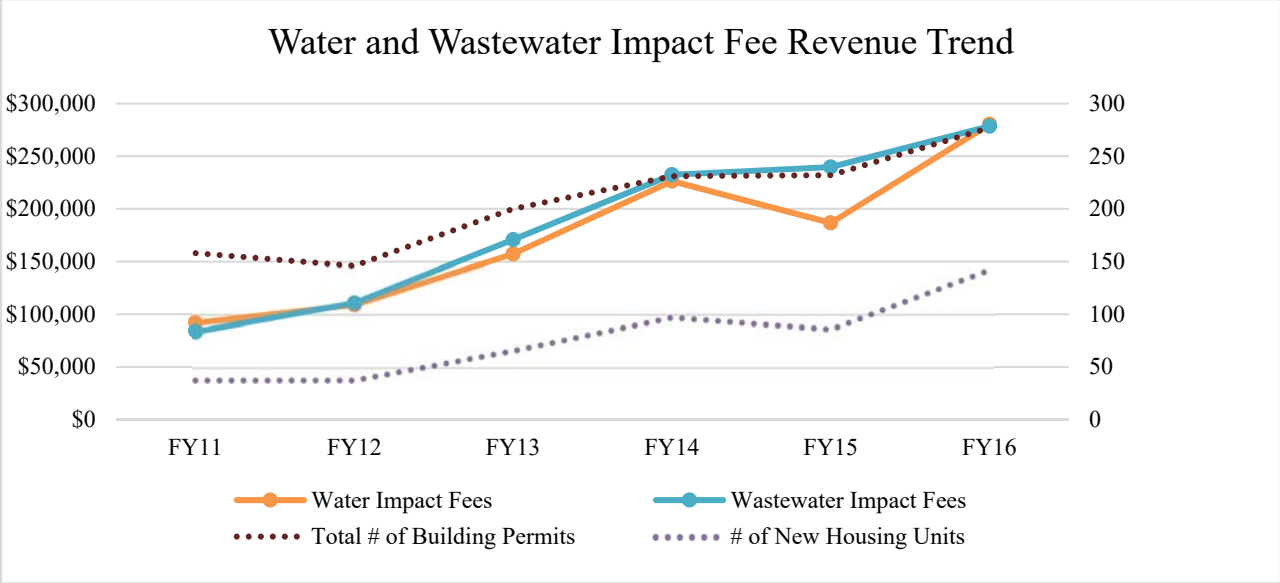
Impact Fee Description	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Revenue
Paved Trails	$22,313	$15,577	$18,945	$29,049	$40,837	$37,890	$60,203	$224,814
Park Maintenance Bldg.	644	1,036	1,260	1,932	2,716	2,520	4,004	14,112
Emergency Services Ctr.	75,827	29,892	42,074	63,038	109,464	78,050	208,862	607,207
City Hall	71,274	28,311	39,850	59,705	103,682	74,082	197,839	574,743
Stormwater	26,620	8,606	9,919	23,525	23,070	21,576	45,355	158,670
Total	**$196,678**	**$83,422**	**$112,047**	**$177,249**	**$279,769**	**$214,118**	**$516,263**	**$1,579,546**
Interest - Fund Total	*7,407*	*2,482*	*2,085*	*921*	*1,938*	*1,891*	*1,584*	*18,307*
Total Fund Revenue	**$204,085**	**$85,904**	**$114,132**	**$178,170**	**$281,707**	**$216,010**	**$517,847**	**$1,597,853**



As many of you know, Whitefish has continued to see strong building and growth over the past few years, which is evident in the year-end impact fee revenue figures that all exceeded budget expectations. Impact fees, other than water and wastewater, finished the year with more than 200% of the budgeted revenue for FY16. The emergency services center and city hall impact fees have seen an overall bigger jump due to commercial building and growth since those are the other impact fees in the above graph that are assessed on both dwelling units and commercial properties. One significant factor regarding impact fee revenue was the early receipt of impact fees from a large development in the community that was not anticipated for FY16.

In addition to the impact fees discussed above, the City also charges water and wastewater impact fees that are accounted for separately in the water and wastewater funds. The following table details the water and wastewater impact fees collected and interest earned:

Impact Fee Description	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Revenue
Water Impact Fees	$ 148,596	$ 92,267	$ 109,445	$ 157,333	$ 226,365	$ 186,708	$ 280,349	$ 1,201,065
Interest	*6,481*	*3,376*	*2,952*	*1,249*	*2,273*	*2,140*	*3,618*	22,090
Total Fund Revenue	**$ 155,077**	**$ 95,643**	**$ 112,398**	**$ 158,583**	**$ 228,638**	**$ 188,849**	**$ 283,967**	**$ 1,223,155**
Wastewater Impact Fees	$ 164,975	$ 84,246	$ 111,137	$ 170,870	$ 232,422	$ 239,754	$ 278,569	$ 1,281,972
Interest–Water Impact Fee	*7,178*	*3,251*	*2,908*	*1,199*	*1,920*	*1,099*	*864*	18,420
Total Fund Revenue	**$ 172,153**	**$ 87,496**	**$ 114,046**	**$ 172,070**	**$ 234,342**	**$ 240,853**	**$ 279,433**	**$ 1,300,392**



The water and wastewater impact fees completed the year with revenues totaling 187% and 139% of the FY16 budget, respectively. In the graph above, the number of building permits issued and the number of new housing units is included to show the strong relationship between impact fees and building permits. Furthermore, the sharper decrease in water impact fees compared to wastewater impact fees in FY15 is not an error, but instead is due to the varying credits given for existing fixtures for the water impact fee verses the wastewater impact fee.

In addition to the different type of impact fees charged, administrative expenses incurred when collecting the impact fees are charged to developers at a rate of 5% in addition to the impact fee rates. The administrative charges are deposited into the general fund or the respective enterprise funds. Below are the admin fee collections since the impact fees were established:

Fund	FY08-FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Admin Fees Collected
General	$10,566	$4,171	$5,602	$8,894	$14,212	$10,714	$25,489	$79,648
Water	8,278	4,667	5,556	7,030	11,356	9,395	14,016	60,298
Wastewater	8,934	4,290	5,664	8,587	11,655	12,163	13,821	65,114
Total 5% Admin Fees	$27,778	$13,128	$16,822	$24,511	$37,223	$32,272	$53,327	$205,061

Currently all impact fee revenues are trending higher in the first couple months of FY17, which is a great forecaster of strong building permits and continued growth in the City.

Impact Fee Uses

Impact fees may be spent for public improvements including, but not limited to, planning, land acquisition, right of way acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural services, permitting, financing, administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized with a useful life of 10 years of more. Impact fees may also be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs (MCA 7-6-1603).

Impact fees may not be used for the operation or maintenance of public facilities. Remodeling, rehabilitation or other improvements to an existing structure or for rebuilding damaged structures is not allowed unless there is an increase in units that service demand and the impact fees are used only for the net increase between the old and new demand.

FY16 Impact Fee Expenditures

The following table details the FY08-FY16 impact fee expenditures:

Expenditures/Transfers	FY08 - FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total Expenditures
Paved Trails	$ -	$ -	$ -	$ -	$ -	$3,913	$184,460	$188,373
Park Maintenance Bldg.	-	1,701	1,264	1,935	-	2,000	5,250	12,149
Emergency Services Ctr.	-	108,788	42,169	-	43,578	90,000	207,834	492,369
City Hall	-	-	-	-	-	384,356	90,055	474,411
Stormwater	-	-	-	-	-	-	80,538	80,538
Total Impact Fee Fund	$ -	**$110,489**	**$43,433**	**$1,935**	**$43,578**	**$480,269**	**$568,136**	**$1,247,840**
Water Impact Fee	-	-	-	-	-	3,333	146,946	146,946
Wastewater Impact Fee	-	-	-	-	198,388	495,715	208,954	903,057
Total Enterprise Funds	**$ -**	**$ -**	**$ -**	**$ -**	**$198,388**	**$499,048**	**$355,900**	**$1,050,002**

The park maintenance building and emergency services center impact fees are transferred to the tax increment financing district fund (TIF) on an annual basis since the TIF either paid the original expenditures or incurred debt related to those building projects. When the TIF sunsets in 2020 these impact fees could be used to help expand both the emergency services center and parks maintenance building. Departments at both locations have expressed a need for additional storage.

In FY15 the city hall impact fee cash balance at year-end, for the first time, was transferred to the city hall/parking structure construction fund due to the start of construction. An annual transfer will continue to be made to that fund until completion of the project, contingent on the annual budget approval by Council. After the project is completed, the city hall impact fees could be redirected to the TIF to help repay the outstanding debt obligations from the project. When the TIF sunsets in 2020 and all debt obligations for the new city hall have been repaid, the city hall impact fees could either be accumulated to expand City Hall by adding the third level, repealed and no longer collected, or the Council could temporarily stop assess the city hall impact fee until the time comes that a project to expand city hall is identified and upcoming.

Paved trails impact fees will continue to be used for expansion of the City's trail system. In FY16, $165,000 was allocated to the Skye Park Bridge Project and the FY17 Budget includes $65,034 available for the completion of two stairways and other trail related projects.

Stormwater impact fees were used for the Monegan Stormwater Project in FY16. and, although, no projects were budgeted in FY17, State Park Road will be a significant improvement that expands the Stormwater system and will be eligible for Stormwater impact fees as a partial funding source.

Before FY14, plant investment fees were expended on capital improvement projects. Starting in FY14 wastewater impact fees were used for various projects that expanded the capacity of the wastewater system. From FY14 through FY15 various capital projects were partially funded by impact fees that included: the HWY 93 Utility Improvements Project, the Birch Point Lift Station design, and the 2014 Wastewater System Project. In FY16 the City continued to utilize wastewater impact fees for the Birch Point Lift Station Project, the Cow Creek Sewer Extension, and the shop building expansion. The FY17 Budget provides for wastewater impact fees to be expended on any additional HWY 93 Utility Improvements Project costs related to a final change order up to $50,000, a small amount of the shop expansion carryover from FY16, and half of the cost of the sewer main upgrades north of the hospital (Greenwood to Columbia). The new wastewater treatment plant that is in the planning stages will likely be eligible for partial funding from wastewater impact fees, but the amount is still to be determined. Only the amount of capacity expansion will be eligible.

In FY15, the final amounts remaining from the water plant investment fees were spent on a portion of the Highway 93 Utility Improvements Project. In addition, a small amount of water impact fee cash balance was expended for the first time on that project. In FY16 projects that were funded partially by water impact fees included the shop expansion and the Lion Mountain Loop Interconnect. The FY17 Budget only includes the carryover from FY16 for the shop expansion. The Capital Improvement Plan (attached) identifies projects that are eligible for impact fees and planned within the next five years. The primary project is the expansion of the water system at the south end of the City. Staff is working to ensure the water impact fees are used not only in a timely manner, but that all eligible projects are identified too.

Recommendation

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

Impact Fee Advisory Committee Meeting Minutes *(Draft)*
City Hall – 1005 Baker Avenue
Thursday, October 20, 2016, 10:00 a.m.

1. CALL TO ORDER – Jen Frandsen called the meeting to order. Committee members Jen Frandsen, Patrick Nagle, and Dana Smith were present. City staff present was City Manager Chuck Stearns. There were no public attendees.

2. SELECT CHAIRPERSON, VICE CHAIRPERSON, AND SECRETARY – Discussion occurred regarding who would like the positions.

   MOTION - Jen moved to select Jen Frandsen as Committee Chair, Patrick Nagle as Vice Chair, and Dana Smith as Secretary. Dana seconded. Unanimously approved.

3. REVIEW AND APPROVE MINUTES – Jen noted a correction on page three of the minutes (first paragraph, first sentence) should read "asked why" instead of "as why."

   MOTION - Jen moved to approve the minutes with the noted correction. Dana seconded. Jen and Dana voted in favor and Patrick abstained.

4. ANNUAL IMPACT FEE REPORT – Dana reviewed the Impact Fee Report she prepared for the Committee. Chuck elaborated on some of the projects for Committee members.

   Jen had follow up questions to the report regarding the continuation of City Hall Impact Fees after the project is complete and after the Tax Increment District sunsets in 2020. Jen noted the amount potentially collected over five years could total half of the estimated cost of the third floor addition to City Hall. Chuck stated that is a Council's policy decision, but after the TIF City Hall Impact Fees could be saved for future City Hall expansion, repealed, or temporarily discontinued until a project was identified and reinstate the City Hall Impact Fees.

   Jen asked about what projects are identified for water impact fees. Chuck described the future purchase of land south of Whitefish and the improvements to that property for the water system, as well as the additional module at the water treatment plant that is less defined at this time, but is an anticipated necessary expansion. Dana described the Capital Improvement Plan (CIP) and noted that the CIP identified both of those projects with water impact fees as a partial source of funding.

   Jen requested that, with the approval of the Committee, the annual report reflect how we will spend-down the water impact fee cash balance to show citizens how we intend to use the $1 million dollars we currently have on-hand.

   Chuck described various future projects and plans for impact fees. Dana stated she would add the pages from the CIP for the Water Fund to the annual impact fee report and the related discussion.

   The Committee members accepted the annual report and requested the additions discussed be made before presenting it to the Council for approval at the November 7th City Council Meeting.

DRAFT

5. COMMENTS FROM COMMITTEE MEMBERS – Jen asked if there were any other comments.

   Dana discussed the need for a 5-year update next fiscal year that is required by the City Code and State Statues. She is concerned about staff time constraints for an internal update that would include recalculation of impact fees. She would like the Committee to consider recommending the use of a consultant to do next year's update, which also brings in an external point of view since it has been over 10 years since the last study by an outside party.

   Jen asked about the cost and Chuck estimated about $50,000. Jen noted that the recent water and wastewater rate studies and the Bike and Pedestrian Master Plan update should have a lot of the information needed for this 5-year rate study and update for impact fees.

   Patrick asked if there was a possibility for the City and a similar community to hire a consultant together for an update to save some costs of a new study and update. Chuck said he could check with Kalispell who has the closest impact fees compared to Whitefish.

6. OTHER BUSINESS – Jen reviewed the minutes and motions from the prior year to make sure all items were addressed this year including Committee involvement in the budget process, Committee member advertising and vacancy issues, and continued spending of impact fees.

7. PUBLIC COMMENT – None.

8. ITEMS FOR NEXT AGENDA – The Committee discussed the need for an earlier meeting in FY18 to work on the 5-year update.

   MOTION – Jen moved to recommend to the City Council to hire a consultant for FY18 for a rate study and update on impact fees. Patrick seconded. The motion passed unanimously.

9. ADJOURNMENT – Jen adjourned the meeting.

DRAFT

Water - Projected Capital Needs FY 2017 - FY 2021

Date: 03/16/2016

#	Project	Description & Justification	Total Cost	FY17	FY18	FY19	FY20	FY21	Future	Funding Source (s) Impact Fees	Cash*	Finance	Total
	Treatment/Supply												
T1	South Water Reservoir - Land Acquisition	Purchase land for new reservoir south of railroad tracks	$ 150,000	$ 150,000							$ 150,000		$ 150,000
T2	South Water Reservoir - Design and Construction	New reservoir south of railroad tracks (schedule based on future water demands)	$ 2,700,000		$ 200,000	$ 2,500,000				$ 1,250,000	$ 650,000	$ 800,000	$ 2,700,000
T3	Water Treatment Plant Expansion	Expand treatment capacity - Previously estimated at $5 million	TBD						TBD				TBD
	Distribution												
D1	Grouse Mountain/Mountain Park Interconnect	Enhance system grid & eliminate Mountain Park Booster Station	$ 175,000	$ 175,000						$ 122,500	$ 52,500		$ 175,000
D2	Cast Iron Water Main Replacement	Replace small diameter cast iron mains Montana Street north of Edgewood	$ 350,000	$ 350,000							$ 350,000		$ 350,000
D3	8th Street/10th Street Interconnect	Improve system looping	$ 100,000	$ 100,000						$ 15,000	$ 85,000		$ 100,000
D4	Cast Iron Water Main Replacement	Replace small diameter cast iron mains at 3rd Street west of Jennings, 4th Street west of Jennings, Montana Avenue north of Edgewood	$ 500,000	$ 500,000							$ 500,000		$ 500,000
D5	Central Avenue Water Main Replacement (w/asphalt patch)	Replace small diameter cast iron mains at 3rd to 5th Street	$ 175,000	$ 175,000							$ 175,000		$ 175,000
D6	Cast Iron Water Main Replacement	Replace small diameter cast iron mains West 4th Street Jennings to Karrow Avenue	$ 350,000		$ 350,000						$ 350,000		$ 350,000
D7	Karrow Avenue Loop - Design & Construct	Install new water main to improve distribution in the south and southwest areas of town	$ 1,000,000				$ 1,000,000					$ 1,000,000	$ 1,000,000
D8	Whitefish Urban Project-US93 - Design & Construct	Upgrade water distribution system in conjunction with reconstruction of U.S. Highway 93, between 13th Street & 2nd Street (930)	TBD						TBD				TBD
D9	Armory Road Watermain Railroad Crossing	Engineering & construction to extend water main north to Edgewood	TBD						TBD				TBD
	Pumping Stations												
P1	Whitefish Lake Pump Station - Add Pump	Increase lake water pumping capacity	TBD						TBD				TBD
	Equipment												
E1	Auma Actuators	Replacement	$ 18,000	$ 18,000							$ 18,000		$ 18,000
E2	Streaming Current Monitor	Replacement	$ 10,000	$ 10,000							$ 10,000		$ 10,000
E3	Locator	Replacement - Total $6,000, split $3,000 each water & sewer	$ 9,000	$ 3,000		$ 3,000		$ 3,000			$ 9,000		$ 9,000
E4	Handheld Meter Reader	Replacement - Total $5,500 split $2,750 each water & sewer	$ 8,250	$ 2,750		$ 2,750		$ 2,750			$ 8,250		$ 8,250
E5	Mobile Drive Unit	Replacement - Total $6,500 split $3,250 each water & sewer	$ 3,250	$ 3,250							$ 3,250		$ 3,250
E6	Excavator - Replace 1987 J.Deere 595	Replacement for unit #43 - Total $90,000, split $30,000 Street/Water/Sewer	$ 30,000	$ 30,000							$ 30,000		$ 30,000
E7	Pickup, 4x4 - New Ford F150 XL	New truck for City Hall Staff - Total $27,000, split $9,000 Street/Water/Sewer	$ 9,000	$ 9,000							$ 9,000		$ 9,000
E8	Particle Counters	Replacement	$ 22,000	$ 22,000							$ 22,000		$ 22,000
E9	Liquid Polymer Feeder	Replacement	$ 9,000	$ 9,000							$ 9,000		$ 9,000
E10	Online Chlorine Analyzer		$ 10,000		$ 10,000						$ 10,000		$ 10,000
E11	VFD 50 HP Pump	Replacement	$ 50,000		$ 50,000						$ 50,000		$ 50,000
E12	Pickup, 4x4 (Flatbed) - Replace 2002 Ford F350 XL	Replacement for unit #8 - Total $30,000, split $10,000 Street/Water/Sewer	$ 10,000			$ 10,000					$ 10,000		$ 10,000
E13	SUV - Replace 2006 Ford Freestyle	Replacement for unit #5 - Total $27,000, split $9,000 each Street/Water/Sewer	$ 9,000			$ 9,000					$ 9,000		$ 9,000
E14	Pickup, 4x4 - Replace 2003 Ford F150 XL	Replacement for unit #16 - Total $27,000, split $9,000 each Street/Water/Sewer	$ 9,000			$ 9,000					$ 9,000		$ 9,000
E15	Pressure Washer - Replace 2008 Landa OHWA-18024A	Replacement for unit #85 - Total $9,000, split $3,000 each Street/Water/Sewer	$ 3,000			$ 3,000					$ 3,000		$ 3,000
E16	SUV - Replace 2006 Ford Escape	Replacement for unit #1 - Total $25,000, split $8,000 Street, $8,500 each Water/Sewer	$ 8,500			$ 8,500					$ 8,500		$ 8,500
E17	Pressure Washer - Replace 2001 Landa MHP4-3000	Replacement for unit #84 - Total $9,000, split $3,000 each Street/Water/Sewer	$ 3,000			$ 3,000					$ 3,000		$ 3,000
E18	Pickup, 4x4 - Replace 2004 Ford F150 XL	Replacement for unit #18 - Total $27,000, split $9,000 each Street/Water/Sewer	$ 9,000			$ 9,000					$ 9,000		$ 9,000
E19	Dump Truck, 12 Yard - 1994 Kenw. T-450	Replacement for unit #27 - Total $120,000, split $40,000 Street/Water/Sewer [940]	$ 40,000			$ 40,000					$ 40,000		$ 40,000
E20	Dump Truck – Replace 2004 FRTLNR FL112	Replacement unit #29 - Total $110,000, split $40,000 Street, $35,000 each Water/Sewer	$ 35,000				$ 35,000				$ 35,000		$ 35,000

Water - Projected Capital Needs FY 2017 - FY 2021

Date: 03/16/2016

#	Project	Description & Justification	Total Cost	FY17	FY18	FY19	FY20	FY21	Future	Funding Source (s) Impact Fees	Cash*	Finance	Total
E21	Fork Lift - Replace 2001 Toyota 672A	Replacement unit #62	$ 10,000				$ 10,000				$ 10,000		$ 10,000
E22	Loader - Replace 1998 Case 621BXT	Replacement for unit #42 - Total $156,000, Split $52,000 each Street/Water/Sewer [940]	$ 52,000				$ 52,000				$ 52,000		$ 52,000
E23	Van - Replace 2008 Chevy Express	Replacement for unit #20 - Total $36,000, split $12,000 each Street/Water/Sewer	$ 12,000				$ 12,000				$ 12,000		$ 12,000
E24	Dump Truck - Replace 2005 Ford F750	Replacement for unit #24 - Total $39,000, split $13,000 Street/Water/Sewer [940]	$ 13,000				$ 13,000				$ 13,000		$ 13,000
E25	Turbidimeters	Replacement	$ 16,000					$ 16,000			$ 16,000		$ 16,000
E26	Dump Truck - Replace 2004 Stearling LT9500	Replacement for unit #28 - Total $120,000, split $40,000 Street/Water/Sewer	$ 40,000					$ 40,000			$ 40,000		$ 40,000
E27	Backhoe - Replace 2001 Cat 430D	Replacement for unit #44 - Total $90,000, split $30,000 Street/Water/Sewer	$ 30,000					$ 30,000			$ 30,000		$ 30,000
E28	Shoring - Replace 1994 GME	Replacement for unit #312 - Total $12,000, split $6,000 each Water/Sewer	$ 6,000					$ 6,000			$ 6,000		$ 6,000
	Other												
IT1	Wireless Mesh & Expansion of Backup Equipment	Mobile nodes, stationary nodes (Total $30,000, split $15,000 each Water/Sewer) (932)	$ 15,000	$ 15,000							$ 15,000		$ 15,000
IT2	PLC Hardware/Software Upgrades		$ 70,000	$ 35,000	$ 35,000						$ 70,000		$ 70,000
IT3	Automatic Reading System	System to collect city wide meter readings (- Total $150,000, split $75,000 each Water/Sewer	$ 75,000			$ 75,000					$ 75,000		$ 75,000
			$ 6,069,000	$ 1,607,000	$ 645,000	$ 2,597,250	$ 1,122,000	$ 97,750	$ -	$ 1,387,500	$ 2,881,500	$ 1,800,000	$ 6,069,000

* Cash column includes cash funded projects or projects where the funding mechanism is still to be determined.

Priorty Legend

T# **Treatment Project Priority**
D# **Distribution Priority**
P# **Pumping Project Priority**
E# **Equipment Priority**
IT# **Information Technology Project Priority**

Beginning Available	$ 920,000	$ 2,341,226		$ 3,261,226
Projected over 5 years	$ 467,500	$ 540,274	$ 1,800,000	$ 2,807,774
Total Available	$ 1,387,500	$ 2,881,500	$ 1,800,000	$ 6,069,000
Additional Restricted/Unrestricted Funding Available	*$ 282,500*	*$ 1,429,726*	*$ -*	

Total FY 2017	$ 1,607,000
Total FY 2018	$ 645,000
Total FY 2019	$ 2,597,250
Total FY 2020	$ 1,122,000
Total FY 2021	$ 97,750
Future	TBD
Total Required	$ 6,069,000
Net Available (Deficiency)	$ -
Percent Funded with Debt Financing	**100%**

Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Dana Smith, Finance Director

Date: October 28, 2016

Re: 1st Quarter Financial Report for Fiscal Year 2017

This quarterly financial report provides a summary version of the financial results of the City during the first quarter of Fiscal Year 2017 (FY17). The first section is an overview of the City's financial condition specifically related to property tax supported funds. Subsequent sections provide further analysis and details of the first quarter ended September 30, 2016.

Financial Condition – Property Tax Supported Funds

An analysis of available cash in property tax supported funds provides an effective insight into the City's financial condition. The following table lists the FY15 first quarter cash balance in column (a), the FY16 first quarter cash balance in column (b) and the FY17 first quarter cash balance in column (c) for comparison purposes.

Cash Balance in Property Tax Supported Funds

	a	*b*	*c*	*d (c-b)*
	Sept 30, 2014 Cash Balance	Sept 30, 2015 Cash Balance	Sept 30, 2016 Cash Balance	One Year Change
General	$480,030	$387,182	$175,361	($211,821)
Parks & Recreation	($98,681)	($116,917)	($50,502)	$66,415
Law Enforcement	$54,871	$68,785	$26,720	($42,065)
Library	$51,342	$79,966	$82,603	$2,637
Fire & Ambulance	$236,677	$294,282	$109,073	($185,208)
	$724,239	$713,298	$343,255	($370,042)

Total cash in property tax supported funds as of September 30, 2016 decreased by $370,042 or 51.9% compared to the balance on September 30, 2015. The decrease in the General, Law Enforcement, and Fire & Ambulance Funds are described below, as well as the improvement from the prior year for the Parks & Recreation Fund.

General Fund – Historically, the General Fund has a net loss during the first quarter with expenditures exceeding revenues. This trend continues to be the case for the first quarter of FY17 and the net loss has not increased substantially from the past year (J33). However, the General Fund cash balance compared to a year ago has decreased by $211,821 or 55%. This significant decrease is primarily due to the General Fund starting the fiscal year off with less cash than the prior year, which is the direct result of providing for a spend-down of cash reserves in the FY16 Budget. The continued spend-down of cash for operating costs (not one-time capital costs) in the General Fund has continued to occur in the FY17 Budget, but at a lower rate than FY16.

Parks & Recreation Fund – The Parks & Recreation Fund had a negative cash balance as of September 30, 2016 (H72), but it has improved from the prior year's first quarter cash balance by $66,415, or 57%. The trend of negative cash balance in the first quarter is predominantly due to the timing of startup costs that must be incurred prior to a significant portion of the revenue being collected. The improvement noted this year is the result of contracting out the management services of the ice rink, which typically had significant startup costs in the first quarter. As in the past, the negative cash balance (short-term borrowing) is not a concern for us now since it is simply a timing of revenue collections verses expenditures. By the third quarter cash is projected to have a positive balance once again. Ideally, no funds would have a negative cash balance at any point during the year, but the General Fund currently has monies available to temporarily fund the purchases in the first quarter year for the Parks & Recreation Fund.

Law Enforcement Fund – There was an overall decrease in the cash balance of $42,065 or 61% compared to the September 30th balance in the prior year in the Fund. Although revenues exceeded expenditures for the quarter by $49,293 (H80), that is about $52,315 less than the prior year (J80). Thus, with a low cash balance to start the year and only a 4% increase in revenues compared to the 17% increase in expenditures, a decrease in cash balance can be expected. Grant reimbursements are expected to be received in the coming month for expenditures that were made during the first quarter (such as the COPS Grant).

Fire & Ambulance Fund – Like the General Fund, the Fire and Ambulance Fund ended the first quarter of FY17 with a lower cash balance than the prior year by $185,208, or 63%. There are two main reasons for this significant decrease. The first reason is the Fund started the year off with about $109,000 less than the prior year due to the budgeted spend-down of cash on hand in the FY16 Budget and the delayed receipt of cash from ambulance service charges. The second reason is the decrease in the amount that revenues exceeded expenditures for the quarter. Expenditures were up 34% for the fund while revenues were only up 11%. While the decrease in cash balance may seem unsettling, the projections for this Fund indicate that this is not a major concern since the FY17 Budget provides for cash balance to increase over the course of the year and we have yet to collect the FY17 property taxes that will be due in November and May.

Summary – The City finances remain in generally good condition. Although the decrease in the total cash balance from the prior year for property tax supported funds looks concerning at first glance, most of this change is expected and will improve during the next quarter. The significant decrease in cash balance will not require departments to reduce spending that is already budgeted, but it reinforces the importance of monitoring the finances of the City to make sure big changes are expected.

During any given year, we must make sure that budgeted revenues are received during the year as anticipated. An example this year is the recent settlement between Northwest Energy and the Department of Revenue that reduced the taxable value for Whitefish after the final budget was approved. This settlement will impact our property tax collections for FY17, but the amount is not significant when spread among the funds that directly receive property tax revenue (General, Library, Fire & Ambulance, and Fire Pension). Therefore, this loss can be absorbed and no budget amendments are necessary. Other local governments, however, are facing a much more serious challenge with this settlement compared to Whitefish. Some local governments will need to consider reducing spending in FY17. This settlement further supports the need for cash reserves, specifically within the General Fund, or the least restricted fund of the City.

Financial Highlights

- Municipal court fines and forfeitures are 36% of the FY17 Budget compared to only 25% of the FY16 Budget during the same three-month period. In addition, fines and forfeitures are 39% higher than the prior year. The specific cause of this increase is unknown, but it appears bringing the prosecution services in-house has proven to be very successful.

- License and permit revenues in the Building Code Fund are down about 29% from the prior year, but are at 24% of the FY17 budget. Last year was a very strong year with a lot of commercial and residential activity.

- Impact fee revenue is also down from the prior year's first quarter by 44%, but the revenue is 35% of the budget for FY17. Impact fees follow building permits so this decrease is not surprising, especially following last year's strong commercial and residential growth. The total 35% of budgeted revenue is further broken down among the various impact fees as follows: Paved Trails (57% of budget), Park Maintenance Building (48% of budget), Emergency Service Center (33% of budget), City Hall (32% of budget), and Stormwater (22% of budget).

- As of September 30, 2016, planning fees were at 35% of the expected revenue for FY17.

- The Resort Tax collections are 42% of the FY17 budget after the first quarter. A large portion of the increase is noted in lodging, which is due to the addition of two new hotels in downtown. Assuming this trend continues, there may be additional property tax relief in FY18 since any amount collected over the budgeted amount must be returned to taxpayers as additional property tax relief.

- Water impact fees are at 34%, while wastewater impact fees are at 31% of the FY17 budget. However, compared to the first quarter of FY16, water impact fees are down 24% and wastewater impact fees are down 25%. Again, like other impact fees, these follow the building permit trends too.

- Ambulance Service Charges are 27% of the budget and up 71%, or $130,522. This significant increase is the result of the prior year being down due to the delayed ambulance billing. Compared to FY15, the ambulance revenues are actually down by about 12%, but staff is currently working on a rate study for ambulance services and will present a recommended rate increase to the Council this year.

Expenditure Review

Total expenditures by fund were at or below the typical percentage of budget authority to be used (20-25% for most funds) as of September 30, 2016. The Resort Tax Fund was somewhat higher than prior years (42% of budgeted expenditures) due to the timing of the W 7th Street Project.

In addition to the fund totals, a review of line-items revealed very few issues. The timing of weather and programs can skew the percentage of budget used at the end of the first quarter. For example, more trail work is done in the first part of the fiscal year during the summer months. We will continue to monitor repair and maintenance expenses as this tends to be one of the more heavily used line-items, but most are within a reasonable amount. In the mid-year report, if items are deemed to be more than a timing issue, more detail will be provided.

Additional Detailed Analysis

The following discussion further highlights the attached three spreadsheets.

General Fund Revenue (line 8 to 17)
Total General Fund revenues are 14% of the FY17 Budget and have increased by 4% from the first quarter of the prior year. The increase in revenue is primarily noted in fines and forfeitures from the Whitefish Municipal Court. Property tax revenues have remained flat and are projected to decrease in the next quarter since the budget reduced property taxes because of the additional tax relief from the 25% of the additional 1% of Resort Tax collected in the prior year. Thus, the Resort Tax Fund transfer will increase from the prior year and offset the reduced property tax revenue in the second quarter in the General Fund.

General Fund Expenditures, Net Revenue, & Cash (line 19 to 34)
Total General Fund expenditures are on track at 24% of the FY17 budget.

The General Fund cash balance was $175,361 compared to $387,182 at the end of the prior year's first quarter (see J34). The graph on page 1 of the spreadsheets shows the General Fund cash balance trends for the past three years. December, January, June, and July are months that tend to have higher cash balances due to the collection of property taxes. As mentioned before, building cash reserves to a minimum of 12% or more each year (mostly in the General Fund) is important to ensure an adequate cash balance throughout the year.

Other Property Tax Supported Funds (p.2, line 72 to 98)
The funds supported by property taxes had a net loss with expenditures exceeding revenues at the end of the first quarter. Combined revenues and expenditures for the property tax supported funds, other than the General Fund, were 20% and 21% of the budget, respectively.

When compared to a year ago, these funds experienced an overall decrease in cash with detailed discussion above. Also, compared to the prior year, overall revenues and expenditures have increased, but expenditures increased at a higher rate which resulted in the overall net loss at the end of the first quarter.

Other Tax, Fee, & Assessment Supported Funds (p.2, line 104 to 145)
These funds located on the second half of the second page of the spreadsheet, receive no general property tax support.

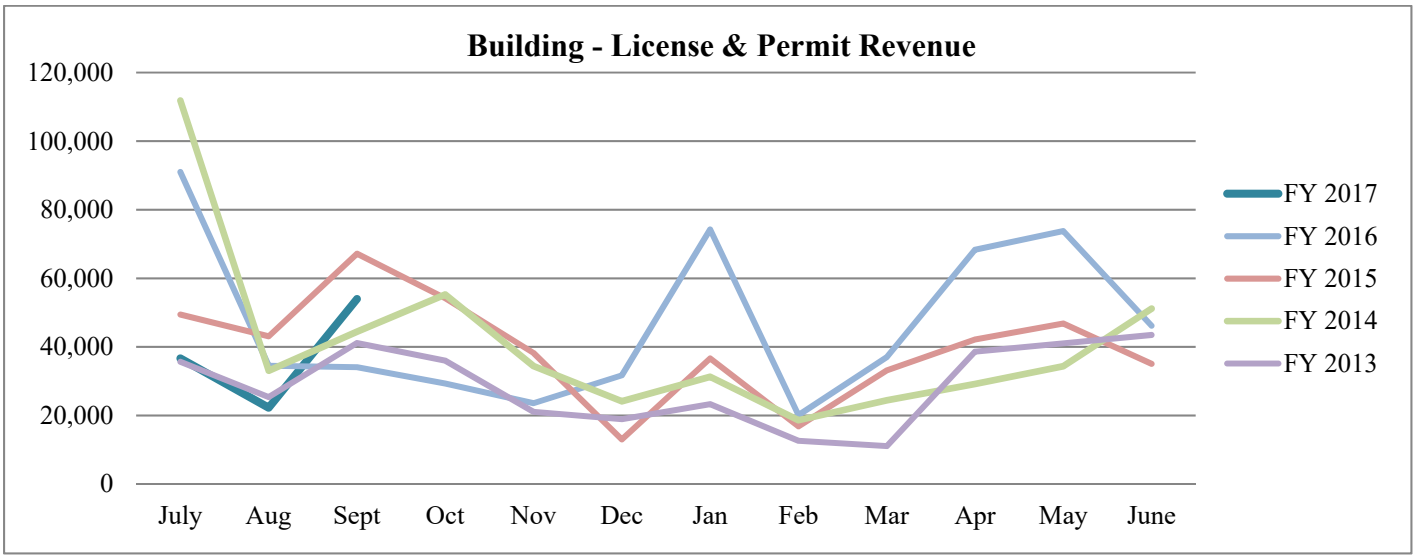
Resort Tax collections are 42% of the budgeted revenues as of the end of the first quarter of FY17. Compared to the prior year there is a sizeable increase in revenue. This increase is due to an in increase in businesses operating within the City, specifically lodging accommodations. Expenditures are also tracking significantly higher due to the timing of the W. 7th Street Reconstruction Project. Prior to the start of construction, there was a concern that the cash available for street improvements may be insufficient during the month of August since only two months of revenue would be collected and most the project costs would have been paid. Since the invoices would still need to be paid regardless of cash balance for street improvements, short-term borrowing within the Fund was identified as a possibility. However, at the end of the quarter, the Resort cash balance related to street improvements totaled $219,314. Although still possible, it is unlikely that any type of short-term borrowing will be necessary. Furthermore, the cash balance as of September 30, 2016 for Trail and Park Improvements totaled $287,233, which is adequate for all park and trail related projects.

Street and Alley operations continue to be in good financial condition. Expenditures decreased by 67% because of two years' worth of street overlays having been completed in the summer of 2015 and minimal street repairs completed this past summer.

During the first quarter, the *Tax Increment Fund* had an expected, but significant decrease in cash balance of 42% or $1,206,017. This significant decrease was the result of the year-end transfer of cash from the TIF Fund to the City Hall and Parking Structure Fund to help pay for the project. Overall the fund had higher net growth in the first quarter of FY17 compared to FY16, but this will change as the fund receives property taxes and transfer additional cash to help pay debt service on outstanding TIF bonds. The spend-down of cash in this fund is budgeted for FY17.

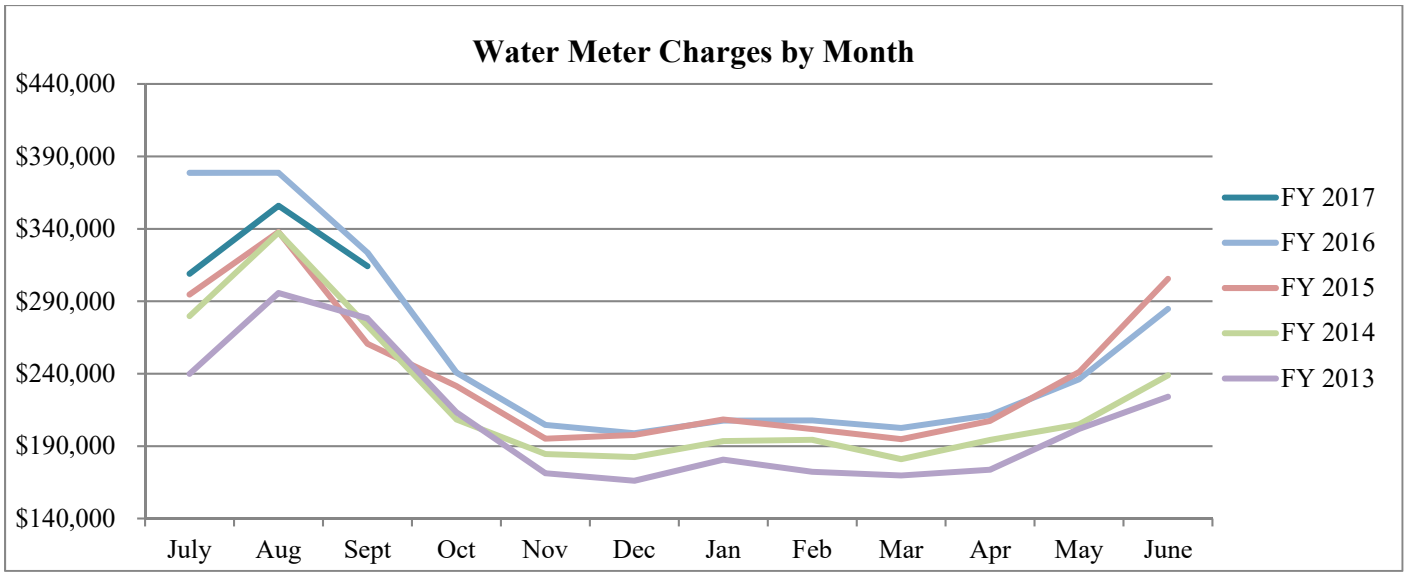
Impact Fee revenues have decreased $57,007 (J122) compared to the first quarter of FY16. This decrease is likely due to the slight slow-down of commercial and residential development projects compared to last year. However, overall building remains strong so this may improve come spring.

The *Building Code Fund* cash balance has increased by 115% from the first quarter of FY16. This increase is occurred because of the increased building activity in FY16 and the Fund no longer being indebted to the General Fund. As discussed earlier, revenue has taken a slight down-turn, but it is tracking as expected with the FY17 Budget. There were significant commercial projects that paid building permits and other related fees in FY16 including the City Hall/Parking Structure project, two new hotels, and various other projects throughout the City. The timing of future development in FY17 is hard to predict, but considering last year was an amazing year it may be difficult for building revenue to exceed or even meet the prior year figures.



Enterprise Funds (p.3, line 151 to 177)

Metered water sales are down 9%, or $101,736, while wastewater service charges are down 3%, or $20,501. As depicted in the graph below, water sales increased significantly in June 2015, which continued through September 2015. The opposite is true for June 2016 through September 2016. The decline in revenue in the first quarter is attributable to the decreased consumption of water by customers during this past summer, which was likely do to the lower temperatures and wet nature of the summer months compared to the prior year. This change in usage also affects the wastewater rates, but not by the same degree due to irrigation being the main use of water in summer. Both water and wastewater revenues will grow throughout this year because of the approved rate increases that went into effect as of October 1, 2016.



Capital expenditures in the Water and Wastewater Funds are higher than the prior year first quarter and will vary based on the projects in progress. During the first quarter, capital expenditures include the Columbia Avenue Bridge Project, the shop expansion, the Birch Point Lift Station Project, and the Wastewater I & I Project.

With the change in management of billing for refuse services, the solid waste fund has seen a decrease in cash, revenues and expenditures as anticipated. Cash remaining in the fund will continue to cover costs associated with recycling and any other expenditures that are related to refuse service.

Capital Project Funds (p.3, line 180 to 183)
The City Hall and Parking Structure Fund has continued to see activity increase from prior years. Currently expenditures are 21% of the budget, but will likely increase so that most of the budget is spent by April of 2017, shortly after the anticipated project completion. In January, the Special Improvement District 167 bonds will be issued as one of the final funding mechanisms for this project.

Summary

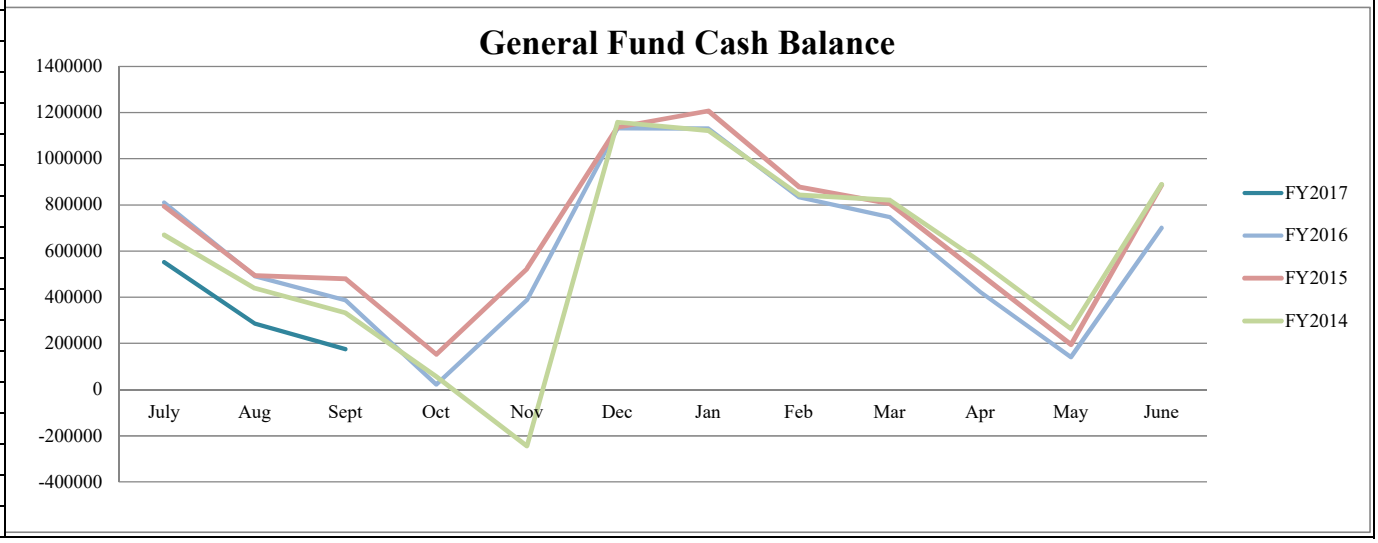
Overall the City's finances remain in generally good condition with areas to monitor during the remainder of the fiscal year. The City is continuing to feel the effects of the recession lifting with additional City staff positions being added in FY17, an increase in return on our investments, the continuation of a strong building environment, and the Resort Tax collections increasing despite the Canadian exchange rate not being at its most favorable for tourism from Canada.

If you have any questions regarding this quarterly update or would like additional information, please email me at dsmith@cityofwhitefish.org or give me a call at 406-863-2405.

CITY OF WHITEFISH
Quarterly Financal Review
1st Quarter of Fiscal Year 2017
July 1, 2016 - September 30, 2016

25% of Fiscal Year Complete

	YTD Sep 30, 2014		YTD Sep 30, 2015		YTD Sep 30, 2016			
	Dollars	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
General Fund Revenues								
Property Taxes	$322,544	16%	$256,217	12%	$257,496	13%	$1,279	0%
Total Licenses and Permits	$3,662	6%	$3,928	6%	$4,399	6%	$471	12%
Intergovernmental Revenue	$196,550	24%	$201,949	24%	$210,026	24%	$8,077	4%
Charges for Services	$79,208	33%	$75,589	34%	$65,676	26%	($9,913)	-13%
Fines and Forfeitures	$59,928	26%	$55,826	25%	$77,610	36%	$21,784	39%
Miscellaneous	$2,380	5%	$1,680	3%	$373	1%	($1,308)	-78%
Investment Earnings	$4,377	29%	$3,709	25%	$6,502	27%	$2,793	75%
Resort Tax & SID RevolvingTransfer In	$0	0%	$0	0%	$0	0%	$0	0%
Total General Fund Revenues	$668,648	16%	$598,899	14%	$622,081	14%	$23,182	4%
General Fund Expenditures								
Municipal Court	$63,404	21%	$61,611	21%	$70,811	24%	$9,200	15%
Prosecution Services	$23,400	21%	$0	0%	$0	0%	$0	0%
Administrative Services	$15,576	20%	$20,990	20%	$22,187	20%	$1,197	6%
Total Resort Tax Admin	$6,100	122%	$5,355	82%	$950	15%	($4,405)	-82%
Legal Services	$8,334	20%	$20,316	19%	$12,388	22%	($7,928)	-39%
Community Planning	$67,355	17%	$73,210	19%	$81,080	20%	$7,870	11%
Transfer to Park Fund	$215,419	31%	$162,809	25%	$168,145	25%	$5,335	3%
Transfer to Law Enforcement Fund	$471,250	25%	$521,250	25%	$539,250	25%	$18,000	3%
Transfer to Fire Fund	$203,750	25%	$208,750	25%	$208,750	25%	$0	0%
Transfer to Library Fund	$8,593	25%	$8,593	25%	$8,593	25%	$0	0%
Cemetary/Other	$14,295	18%	$14,305	16%	$15,299	14%	$994	7%
Total General Fund Expenditures	$1,097,475	25%	$1,097,189	24%	$1,127,452	24%	$30,263	3%
General Fund Revenues Less Expenditures	($428,827)		($498,290)		($505,371)		($7,080)	-1%
General Fund Operating Cash Balance	$480,030		$387,182		$175,361		($211,821)	-55%
Prop Tax Supported Funds (no General) Net	$58,397		$23,992		($85,921)		($109,912)	
Prop Tax Supported Funds (no General) Cash	$244,209		$326,116		$167,895		($158,221)	
Total General & Prop Tax Supported Funds Net	($370,430)		($474,299)		($591,291)		($116,993)	
Total General & Prop Tax Supported Funds Cash	$724,239		$713,298		$343,255		($370,042)	



	A	D	E	F	G	H	I	J	K
69		Sep 30, 2014		Sep 30, 2015		Sep 30, 2016			
70	**Property Tax Supported Funds**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
72	Parks and Rec Operating Cash Balance	(98,681)		($116,917)		($50,502)		$66,415	57%
73	Parks, Rec & Community Services Revenues	362,425	21%	$313,004	17%	$279,740	19%	($33,265)	-11%
74	Parks, Rec & Community Services Exp.	428,178	27%	$505,877	29%	$411,268	28%	($94,609)	-19%
75	Revenues less Expenditures	(65,754)		($192,872)		($131,528)		$61,344	
76									
77	Law Enforcement Operating Cash Balance	54,871		$68,785		$26,720		($42,065)	-61%
78	Law Enforcement Revenues	472,324	19%	$541,148	21%	$563,930	21%	$22,782	4%
79	Law Enforcement Expenditures	434,693	18%	$439,541	17%	$514,638	19%	$75,097	17%
80	Revenues less Expenditures	37,631		$101,607		$49,293		($52,315)	
81									
82	Library Operating Cash Balance	51,342		$79,966		$82,603		$2,637	3%
83	Library Revenues	39,184	19%	$35,024	16%	$33,686	15%	($1,339)	-4%
84	Library Expenditures	44,629	19%	$51,727	20%	$58,597	21%	$6,870	13%
85	Revenues less Expenditures	(5,445)		($16,703)		($24,911)		($8,208)	
86									
87	Fire & Ambulance Cash Balance	236,677		$294,282		$109,073		($185,208)	-63%
88	Fire & Ambulance Taxes, Penalty and Interest	87,930	16%	$70,046	14%	$59,897	11%	($10,149)	-14%
89	Ambulance Services Revenue	359,692	36%	$183,204	17%	$313,726	27%	$130,522	71%
90	Total Fire & Ambulance Revenue	845,991	23%	$674,555	19%	$747,892	21%	$73,337	11%
91	Fire & Ambulance Expenditures	754,026	20%	$542,595	15%	$726,665	20%	$184,070	34%
92	Revenues less Expenditures	91,964		$131,959		$21,226		($110,733)	
93									
94	**Total Property Tax Supported Funds (not including General Fund)**								
95	Total Property Tax Supported Cash	$244,209		$326,116		$167,895		($158,221)	-49%
96	Total Property Tax Supported Revenue	$1,719,924		$1,563,732		$1,625,247		$61,515	4%
97	Total Property Tax Supported Expenditures	$1,661,527		$1,539,740		$1,711,168		$171,428	11%
98	Revenues less Expenditures	$58,397		$23,992		($85,921)		($109,912)	
99									
100	**Other Tax, Fee & Assessment Supported Funds**								
104	Resort Tax Operating Cash Balance	$2,008,450		$2,681,501		$1,691,978		($989,524)	-37%
105	Resort Tax Collections	$844,710	40%	$1,095,892	33%	$1,397,750	42%	$301,858	28%
106	Resort Tax Investment Earnings	$1,184	24%	$1,162	23%	$2,198	37%	$1,037	89%
107	Resort Tax Expenditures and Transfers	$698,221	22%	$74,802	1%	$1,617,519	42%	$1,542,717	2062%
108	Revenues less Expenditures	$147,673		$1,022,253		($217,571)		($1,239,823)	
109									
110	Street and Alley Operating Cash Balance	$1,156,395		$1,005,848		$1,251,653		$245,804	24%
111	Street and Alley Revenues	$296,376	22%	$272,584	20%	$261,009	19%	($11,575)	-4%
112	Street and Alley Expenditures	$234,141	11%	$685,405	32%	$223,564	12%	($461,841)	-67%
113	Revenues less Expenditures	$62,236		($412,821)		$37,445		$450,266	
114									
115	Tax Increment Operating Cash Balance	$1,919,356		$2,866,937		$1,660,920		($1,206,017)	-42%
116	Tax Increment Property Taxes, Penalty & Interest	$852,921	18%	$783,324	15%	$859,430	16%	$76,106	10%
117	Total Tax Increment Revenues	$860,049	17%	$788,756	14%	$864,644	15%	$75,888	10%
118	Tax Increment Expenditures & Transfers	$940,259	15%	$355,697	5%	$225,191	3%	($130,506)	-37%
119	Revenues less Expenditures	($80,210)		$433,059		$639,453		$206,394	
120									
121	Impact Fees Cash Balance	$747,965		$529,586		$409,488		($120,098)	-23%
122	Impact Fee Collections - Revenues	$83,403	36%	$129,282	55%	$72,275	35%	($57,007)	-44%
123	Impact Fee Collections - Expenditures	$0	0%	$0	0%	$12,801	3%	$12,801	0%
124	Revenues less Expenditures	$83,403		$129,282		$59,474		($69,809)	
125									
126	Street Lighting #1 Operating Cash Balance	$42,348		$34,448		$28,411		($6,038)	-18%
127	Street Lighting District #1 (Rsdntl) Revenues	$12,442	16%	$9,538	12%	$8,865	10%	($673)	-7%
128	Street Lighting District #1 (Rsdntl) Exp.	$14,520	17%	$17,699	22%	$16,826	18%	($873)	-5%
129	Revenues less Expenditures	($2,077)		($8,162)		($7,961)		$201	
130									
131	Street Lighting #4 Operating Cash Balance	$26,749		$12,621		$10,248		($2,372)	-19%
132	Street Lighting District #4 (Cmmrcial) Revenues	$11,504	17%	$10,048	14%	$10,724	13%	$676	7%
133	Street Lighting District #4 (Cmmrcial) Exp.	$15,091	17%	$15,926	19%	$11,504	13%	($4,422)	-28%
134	Revenues less Expenditures	($3,587)		($5,878)		($780)		$5,098	
135									
136	Building Code Operating Cash Balance	95,975		$98,942		$212,732		$113,790	115%
137	Payable to the General Fund	(171,699)		($21,158)		$0		$21,158	
141	License and Permits Revenues	160,097	38%	$159,617	30%	$112,878	24%	($46,739)	-29%
142	Building Code Expenditures without C. Falls	70,414	19%	$76,619	17%	$74,504	17%	($2,115)	-3%
143	*Columbia Falls Contract Revenues*	18,210	46%	$18,877	38%	$18,498	25%	($379)	-2%
144	*Columbia Falls Contract Expenditures*	6,986	23%	$7,502	18%	$9,441	18%	$1,939	26%
145	Revenues less Expenditures	100,907		$94,373		$47,431		($46,942)	

	A	D	E	F	G	H	I	J	K
148		Sep 30, 2014		Sep 30, 2015		Sep 30, 2016			
149	**Enterprise Funds**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
151	Water - Operating Cash Balance	$1,604,914		$3,035,328		$3,542,683		$507,354	17%
152	Water - Debt Reserve Cash Balance	$921,856		$650,125		$1,494,928		$844,803	130%
153	Water - Metered Water Sales	$893,197	36%	$1,080,909	38%	$979,173	32%	($101,736)	-9%
154	Water - Operating Revenues	$1,006,130	36%	$1,119,386	37%	$1,071,294	32%	($48,092)	-4%
155	Water - Operating Expenditures	$393,350	23%	$368,949	21%	$394,411	21%	$25,461	7%
156	Operating Revenues less Expenditures	$612,780		$750,437		$676,883		($73,553)	
158									
159	Non Operating Revenue	$259	52%	$350	0%	$343,287	41%	$342,937	97982%
160	Water Capital Expenditures	$226,884	13%	$7,832	0%	$196,247	15%	$188,415	2406%
161	Water Debt Service	$0	0%	$0	0%	$0	0%	$0	0%
162									
163	Wastewater - Operating Cash Balance	$729,826		$1,609,322		$1,915,069		$305,747	19%
164	Wastewater - Debt Reserve Cash Balance	$333,013		$225,152		$260,469		$35,317	16%
165	Wastewater - Sewer Service Charges	$631,623	30%	$723,825	30%	$703,323	30%	($20,501)	-3%
166	Wastewater - Operating Revenues	$732,766	32%	$736,367	23%	$716,016	30%	($20,351)	-3%
167	Wastewater - Operating Expenditures	$328,062	16%	$356,506	22%	$396,267	21%	$39,761	11%
168	Operating Revenues less Expenditures	$404,704		$379,861		$319,749		($60,112)	
169									
170	Non Operating Revenue	$112	0%	$0	0%	$221,619	8%	$221,619	0%
171	Wastewater Capital Expenditures	$427,526	17%	$394,163	11%	$109,606	2%	($284,556)	-72%
172	Wastewater Debt Service	$0	0%	$0	0%	$0	0%	$0	0%
173									
174	Solid Waste Operating Cash Balance	$122,098		$161,548		$149,530		($12,019)	-7%
175	Solid Waste Revenues	$204,382	27%	$210,815	26%	$248	124%	($210,567)	-100%
176	Solid Waste Expenditures	$189,197	25%	$200,635	25%	$4,079	19%	($196,555)	-98%
177	Revenues less Expenditures	$15,184		$10,180		($3,831)		($14,012)	
178									
179	**Capital Project Funds**								
180	City Hall/Parking Structure Project Cash Balance	$2,180,767		$1,914,001		$5,958,577		$4,044,576	211%
181	City Hall/Parking Structure Project - Revenues	$1,482	1%	$7,271	0%	$60,384	3%	$53,113	730%
182	City Hall Project/Parking Structure - Expenditures	$73,415	7%	$390,654	3%	$2,108,083	21%	$1,717,429	440%
183	Revenues less Expenditures	($71,934)		($383,383)		($2,047,699)		($1,664,316)	

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OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

received
10/6/16 CS

October 4, 2016

Charles Stearns, City Manager
City of Whitefish
PO Box 158
Whitefish, MT 59937

RE: Notice of Community Development Block Grant Program Grant Award

Dear Mr. Stearns,

On behalf of the State of Montana, it is my pleasure to notify you that the City of Whitefish has been selected for a Community Development Block Grant planning grant award in the amount of $40,000 to prepare an Affordable Workforce Housing Plan.

All planning grant awardees will be contacted directly with more information in the coming weeks by program staff. If you have any questions, please contact the Community Development Division of the Montana Department of Commerce, at 406-841-2770 or by email at DOCCDBG@mt.gov.

Congratulations and good luck on the successful completion of your project.

Sincerely,

STEVE BULLOCK
Governor

ecc: Kevin Gartland, Whitefish Chamber of Commerce Executive Director

STATE CAPITOL • P.O. BOX 200801 • HELENA, MONTANA 59620-0801
TELEPHONE: 406-444-3111 • FAX: 406-444-5529 • WEBSITE: WWW.MT.GOV

Chuck Stearns

From: Michelle Howke
Sent: Monday, October 17, 2016 8:01 AM
To: Whitefish City Council
Cc: Chuck Stearns
Subject: FW: Ameerica in Bloom
Attachments: AIB general awards press release 2016 (1).pdf

From: Alex Pearl [mailto:alexpearl@sbcglobal.net]
Sent: Sunday, October 16, 2016 3:14 PM
To: Michelle Howke <mhowke@cityofwhitefish.org>
Subject: Ameerica in Bloom

Dear Mayor Muhfeld and member of Council,

I would like to introduce you and the citizens of Whitefish, Montana to America in Bloom, a national awards program that fosters community involvement, improvement to quality of life, and civic pride.

Whitefish like so many cities and towns across the United States already has activities and resources that fit America in Bloom's spirit and judging criteria. What the program does is bring all community efforts that improve the quality of life under an umbrella that creates a sense of unity. All participants make great strides by working together to improve their communities. Community involvement is critical to long term success. Communities compete in population groups and are evaluated by professionally trained judges in six categories — floral displays, environmental efforts, heritage preservation, urban forestry, landscape, and overall community impression. I invite you take action. View our website www.AmericainBloom.org, review our literature, and attend our symposium and awards. In 2017 the Symposium will be held in the award winning city of Holliston, Massachusetts, October 5-7. Write to aib@americainbloom.org (or call 614-487-1117) to have sent to you the "America in Bloom Startup Kit". The free kit contains unique tools to assist you as you rally community leaders, enlist local businesses and engage municipal leaders.

The package contains:

- The "participation guide" - describing the National Awards Program, registration fees and forms.
- A CD with the tools to make your community aware of the events.
- The America in Bloom Annual Report that provides you information as to the 250 towns and cities in 41 states across our nation that have been involved over the past 15 years.

As a founding member of America in Bloom and one of the judges, I am more than open to discussing with you the benefits for Whitefish becoming a member of the America in Bloom family, planting pride in our communities. Attached is the list of 2016 winners.

Sincerely,
Alex Pearl
Founding Board Member, America in Bloom

Apearl06@gmail.com
937-681-3110 (EST)

MEDIA RELEASE

FOR IMMEDIATE RELEASE

For more information, contact Laura Kunkle
aib@AmericaInBloom.org
614-453-0744

October 8, 2016

America in Bloom Awards Results Announced

(COLUMBUS, OH): Top honors for the prestigious 2016 America in Bloom National Awards Program were announced at the annual awards held in Arroyo Grande, CA on October 8.

All participants were evaluated on six criteria: overall impression, environmental awareness, heritage preservation, urban forestry, landscaped areas, and floral displays. Additionally they were judged on their community involvement across municipal, residential, and commercial sectors. America in Bloom is the only national awards program that sends specially trained judges to personally visit participants. In addition, each participant receives a detailed written evaluation that can be used as a guide to future improvements.

The following awards were given: population category winners, outstanding achievement awards, special awards, community champion, and YouTube video award.

Population category winners are:

Town	Population Category
Castle Rock, WA	<3,000
Lewisburg, VA	3,000-5,000
Logan, OH	5,000-10,000
Morro Bay, CA	10,000-14,000
Holliston, MA	14,000-20,000
Calabasas, CA	20,000-30,000
Midland, MI	30,000-50,000
Lexington, KY	>50,000
Gallipolis, OH	Champions* – Small
Washington, MO	Champions* – Medium

*The Champions categories are for towns that have a combination of any three: population category win and/or outstanding achievement awards.

New members of the Circle of Champions are: Holliston, MA; Calabasas, CA; Winter Park, FL; Belpre, OH; and Logan, OH.

Outstanding Achievement Award winners are:

Town	**Award**
Winter Park, FL	Heritage Preservation
Saratoga, CA	Urban Forestry
St. Charles, IL	Landscaped Areas
Belpre, OH	Overall Impression
Holland, MI	Environmental Efforts
Edmonston, MD	Community Involvement
Greenwood, SC	Floral Displays

Special Award winners are:

Town	**Award**
Arroyo Grande, CA	Best Example of Water Wise Gardening
Brewton, AL	Best Adaptive Reuse of an Historic Structure
Catskill, NY	Best Program for Engaging Young People
Henderson County, NC	Most Striking Public Wall Mural
Holland, MI	Coolest Downtown
Ironton, OH	Best Use of Local Bloom Committee Logo
Morro Bay, CA	Best Heritage Tree Program
Newtown Square, PA	Best Combination of Plants in Hanging Baskets
Venice, FL	Most Successful Implementation of a New Project
Washington, MO	Most Impressive Pollinator Garden

John R. Holmes III Community Champion Award: Tim Kant, former mayor of Fairhope, AL.

YouTube video award: Castle Rock, WA.

For a full list of results, go to www.Americainbloom.org.

America in Bloom executive director, Laura Kunkle, said, "America in Bloom is helping towns and cities of all sizes achieve their potential. Every year our participants raise the bar, and the accomplishments and progress shown by this year's group is again remarkable. These are, without a doubt, some of the best places to live in America."

To date, 250 communities from 41 states have participated in the program and more than 22 million people have been touched by it.

Registrations for the 2017 national awards program can be submitted until February 28, 2017. Eligible participants include towns, cities, college and university campuses, business districts, military installations, and recognized neighborhoods of large cities.

America in Bloom is an independent, non-profit 501(c)(3) organization dedicated to promoting nationwide beautification programs and personal and community involvement through the use of flowers, plants, trees, and other environmental and lifestyle enhancement.

For more information, visit www.AmericaInBloom.org.

###

The following pages were handed out at the City Council meeting the night of the meeting. They are included here as an addendum to the packet.

Michelle Howke

From: Wendy Compton-Ring
Sent: Wednesday, November 02, 2016 8:29 AM
To: Michelle Howke
Subject: FW: Firebrand Hotel

From: Scott Strellnauer [mailto:scott@purewestmt.com]
Sent: Tuesday, November 01, 2016 2:19 PM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Firebrand Hotel

Wendy,
I wanted to send a note to support the hot tub spa location on the top of the Firebrand hotel. I think it is a great amenity to the property and will help attract skiers and others to stay at the Firebrand. It is my understanding that the hot tub would be limited in use times to a late night of 11pm. I hope you will consider allowing this I can see this as a benefit for those staying there. The hotel will be a great economic boon to the downtown area and I hope you can support this. Thanks, Scott

Scott Strellnauer
President/Broker
PureWest Real Estate
Scott@purewestmt.com
406-249-3557

DM&L Datsopoulos, MacDonald & Lind, P.C.
LAW OFFICES | EST. 1974

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Milton Datsopoulos
Dennis E. Lind
William K. VanCanagan
Rebecca L. Summerville
David B. Cotner
⅄ Terance P. Perry
◦▸ Molly K. Howard
Trent N. Baker
Peter F. Lacny
Nathan G. Wagner
Joseph R. Casillas
George H. Corn
Kyle C. Ryan
◦ Brian M. Lebsock
• Jason A. Williams
⅄⅄ Anna C. Conley

Darla J. Keck [Of Counsel]
Ronald B. MacDonald [1946-2002]

⅄ Also admitted in Massachusetts
▸ Also admitted in North Dakota
◦ Also admitted in Washington
• Also admitted in Idaho
⅄⅄ Contract Counsel

November 2, 2016

Via Email [ajacobs@cityofwhitefish.org]
and U.S. Mail
Ms. Angela Jacobs, Esq.
Whitefish City Attorney
P.O. Box 158
Whitefish, Montana 59937-0158

RECEIVED
NOV 03 2016
BY: City - AJ

Re: Our Client: Montana Development Group
Block 46 Hotel Project
Our file no. 23938.001

Dear Ms. Jacobs:

Please be advised that this law firm represents the Montana Development Group (hereinafter referred to as "MDG") in connection with the above-referenced project in the City of Whitefish. I understand that there will be a City Council meeting on November 7, 2016 at which time the Council will be deciding whether or not my client will be permitted to construct a hot tub on the roof of the hotel. I have reviewed the pertinent background information concerning this matter and wanted to take this opportunity to express my client's concerns about the approval process and to explain its legal position in advance of the upcoming meeting. For the reasons discussed below, our client has claims against the City for substantial monetary damages and I believe it will beneficial for the Council to consider this information before rendering a decision on the permit.

As you are aware, within each zoning district there is a list of permitted uses which can be commenced on a property without additional zoning review and a separate list of conditional uses. Conditional uses require additional review through a Conditional Use Permit ("CUP") prior to commencement as the uses may have a greater impact on the surrounding neighborhood, traffic and roadways, or include additional performance standards. The CUP process is very costly, time consuming and highly unpredictable. As such, the absence of a CUP requirement was material to our client's decision to purchase the property. Our client would not have closed or proceeded with the hotel project if it had known that a CUP was required.

Our client hired Aaron Wallace of Montana Creative to provide architectural and design services for the project. Through Mr. Wallace, our client contacted Mr. David Taylor back in April 2014 about how the property was zoned and whether the project would require MDG to obtain a CUP. Mr. Taylor was the Whitefish Planning Director at that time and he began making a series of representations that no CUP is required. Between April and August, our client was engaged in its due diligence. Mr. Taylor's representations during this time period were material to our client's decision to ultimately close on its purchase of the property on August 15, 2016.

Later in August 2014, Mr. Taylor confirmed his representations in writing. On August 20, 2014, Mr. Taylor emailed Mr. Wallace and confirmed that "no CUP would be required unless you exceed 15,000 square feet as you are outside what is defined as the Old Town Central District." A copy of Mr. Taylor's email is attached as **Exhibit 1**. A CUP is only required if the square footage exceeds 15,000. Mr. Taylor's confirmation was consistent with our client's conclusion that the applicable zoning regulations outline the WB3 Old Town District from Baker to Spokane and that the ordinance definitions define the center of the street as the border of the zoning districts. Accordingly, our client's property and project fall outside of the Old Town Central District and no CUP is required.

Our client was also in contact with Mr. Eric Mulcahy of Sands Surveying, Inc. in the spring 2014. Mr. Mulcahy is a Certified Land Planner. On September 23, 2014, Mr. Mulcahy emailed Mr. Taylor and advised of our client's desire to construct a "flagship" hotel on the property. Mr. Mulcahy inquired as to whether the regulations would preclude our client from partnering with a "name brand" hotel company. Mr. Taylor responded by email the following day and advised that "the code" does not contain any "formula/chain restrictions" that would apply to MDG's hotel. A copy of the email exchange is attached as **Exhibit 2**. In short, Mr. Taylor represented to our client in an abundantly clear fashion that the hotel was not considered a restricted use. Our client reasonably and foreseeably relied on Mr. Taylor's representations in deciding to purchase the property and proceed with the hotel project.

Then, just a couple of months later, Mr. Taylor completely altered his position. He emailed Mr. Wallace on November 19, 2014 and surprisingly stated that he "concluded that Block 46, the location of your hotel project, is within the Old Town Central district." A copy of this email is attached as **Exhibit 3**. Not only did Mr. Taylor recant his prior representations to

our client, but his analysis is wrong. Our client engaged Doug Peppmeir, PE of TD&H Engineering to assess the dispute. Mr. Peppmeir noted glaring inconsistencies between the ARC standards and the zoning regulations and corresponding maps. Mr. Peppmeir ultimately agreed that Mr. Taylor's analysis is faulty. A copy of Mr. Peppmeir's analysis is attached as **Exhibit 4**.

Mr. Taylor altered his position *after* our client closed on its purchase of the property and had entered into multiple contracts and made considerable commitments to the project. There were multiple emails between Mr. Taylor and Mr. Wallace between August and November 2014 wherein Mr. Taylor confirmed the 15,000 square foot size limitation. Our client entered into a contract for a marketing and feasibility study in order to determine appropriate design criteria. Upon completion of this study, our client had the project appraised, costed and it applied for financing. After obtaining financing, our client entered into a contract with Rocky Mountain Builders for the construction of the hotel. All of this had to be redone when the City changed its position and suddenly demanded that our client go through the CUP process and construct an independent boutique hotel that includes a corner promenade and designating parking. The cost to our client associated with the City's misrepresentations and our client's detrimental reliance thereon approximates $3 million.

Notably, Mr. Taylor's analysis is dependent upon his interpretation of "the history and intent of the zoning code and ARC standards." However, the role of the judge when interpreting statutes is "to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or to omit what has been inserted. Thus, the Court must first look to the statute itself. If the language is clear and unambiguous, the statute speaks for itself and there is nothing left for the Court to construe." *Montana Contractors' Ass'n v. Dept. of Highways*, 220 Mont. 392, 394, 715 P.2d 1056, 1058 (1986). As Mr. Taylor originally concluded, the Whitefish Zoning Map and regulations very clearly show that MDG'S property falls outside of the Old Town Central District. As such, there is no need for any consideration of the alleged intent underlying the regulations. No text amendment was made to incorporate the substance of the alleged intent upon which Mr. Taylor relied in changing his position. MDG made important decisions and moved the project forward based on the City's representations that Block 46 is not subject to a 7,500 sf CUP requirement. The City cannot utilize ARC review standards to define zoning districts and there is no merit to the argument that the ARC review standards overrule the zoning regulations in place.

When this dispute first came to a head back in 2014, our client hesitantly elected to go through the CUP process in order to mitigate costs and avoid the significant delays associated with litigation. At that time, the City recognized that MDG probably would prevail in court but also pointed out that obtaining a favorable ruling would likely take many years. Our client therefore agreed to apply for a CUP despite having no obligation to do so. Our client did so despite multiple verbal and written representations by Mr. Taylor over the course of many months that a CUP was not required. Beyond subjecting itself the burdensome and costly CUP

process, our client also agreed to cut ties with the Marriott and instead to construct a non-chain/formula hotel.

We are now two years down the road and the singular issue seems to be whether or not our client should be permitted to construct a hot tub on the roof of the hotel. Not being able to construct a hot tub on the roof will detrimentally affect the hotel's occupancy and may call into question the economic viability of the project as a whole. We are aware of no regulation or other valid basis which would warrant the denial of our client's pending application. Apparently, certain people have expressed concerns about noise that may stem from the hot tub area. Such concerns are entirely unfounded. The reports prepared by our client's professionals confirm the same.

Our client firmly believes that it has a strong case to seek a declaratory judgment that no CUP was required in the first instance and for substantial monetary damages. Even on the outside chance that the City was to prevail on this issue, our client still has valid claims for estoppel and misrepresentation. Mr. Taylor misrepresented important facts to our client who is an innocent party. At all times relevant, Mr. Taylor was authorized to act on behalf of the City. Our client relied on his false statements to its detriment and is now faced with the prospect of having its application denied. The City is accountable for the misstatements and errors of its administrative official. If our client were to prevail in litigation, the CUP and all related restrictions would be void and our client could consider all options for the project, including revisiting a partnership with a "name brand" hotel company. Any litigation will necessarily include a claim for substantial damages, as well as costs and fees.

The simpler and preferable solution would be for the City to approve the construction of the hot tub as requested. I am in receipt of the November 1, 2016 from Senior Planner, Wendy Compton, wherein the Staff recommends that the original conditions of CUP approval be maintained (i.e., no amendment of Condition # 22 to allow the rooftop hot tub). Obviously, we disagree with the recommendation. As noted above, our client's position is that a CUP is not required and that there is no basis or reason for denying the application. MDG respectfully requests that this correspondence be presented to the Council for review in advance of any decision on the application.

Thank you for your time and consideration to this very important matter.

Please feel free to contact me with any questions or concerns.

Sincerely,

William K. VanCanagan

Enc.

Cc: Montana Development Group (via email)

Kaetlyn Wargo

From: Bill VanCanagan
Sent: Monday, October 24, 2016 7:20 AM
To: Kaetlyn Wargo
Cc: Jill Johnson
Subject: FW: Review of block 46

Bill VanCanagan, Shareholder

DM&L

Datsopoulos, MacDonald & Lind, P.C.
201 W. Main Street, Suite 201 Missoula, MT 59802
Phone: 406.728.0810 | Fax: 406.543.0134

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From: Dan Averill [mailto:danlaverill@yahoo.com]
Sent: Saturday, October 22, 2016 5:38 PM
To: Bill VanCanagan <bvancanagan@dmllaw.com>
Subject: Fwd: Review of block 46

fyi

Begin forwarded message:

From: Aaron Wallace <awallace@mt-creative.com>
Subject: FW: Review of block 46
Date: November 20, 2014 at 1:08:27 PM EST
To: Dan Averill <danlaverill@yahoo.com>

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Wednesday, August 20, 2014 4:27 PM
To: Aaron Wallace; wcompton-ring@cityofwhitefish.org
Cc: 'Jeff Badelt'
Subject: RE: Review of block 46

Aaron,
The building footprint is the area of the building measured at the exterior foundation wall line on the first floor. Anything enclosed by a roof is part of the building – so it would include attached areas with roofs (but not cantilevers or the roof overhangs). So a drive under portico would be included since it has a roof and is supported by columns. An outside pool would also be part of the building footprint if it is covered at all. We define building as 'a structure having a roof supported by columns or walls...'.
Dave

EXHIBIT
1

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Wednesday, August 20, 2014 12:43 PM
To: David Taylor
Cc: Jeff Badelt (Jeff@mtdevgroup.com)
Subject: RE: Review of block 46

David,
I just want to make sure that I design the building correct accordingly and to meet the 15,000 ft mark.
The 15,000 sf footprint is for interior square footage measured to the outside of the wall framing for the first floor footprint only.
The 15,000 sf does not include covered areas or overhangs or porticoes or drive under areas.
The 15,000 sf does not include areas such as an outside pool.
These standards are what we have used on other projects but I don't want to find out later that we missed something.
Thanks
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Wednesday, August 20, 2014 11:01 AM
To: Aaron Wallace
Cc: wcompton-ring@cityofwhitefish.org; 'Jeff Badelt'
Subject: RE: Review of block 46

Aaron,
I agree with you, no CUP would be required unless you exceed 15,000 square feet as you are outside what is defined as the Old Town Central District. You will need to comply with components of the WB-3, site review, and get ARC approval. There is also the matter of applying to vacate the alley, which would need to be accomplished early in the process and prior to building permit approval.
Dave

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Tuesday, August 19, 2014 3:10 PM
To: 'David Taylor'
Cc: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org> (wcompton-ring@cityofwhitefish.org); Jeff Badelt (Jeff@mtdevgroup.com)
Subject: Review of block 46

Dave,
I would like to review with you block 46 and how it would be triggered into the CUP requirements. It is our interpretation that the zoning guidelines outline the WB3 old town district from baker to Spokane and by the ordinance definitions the center of the street defines the districts. Accordingly Block 46 sits on the outside of the old town district and should not be required to meet any of the old town district WB3 zoning requirements but will need to meet the Architectural Review old town district requirements and the rest of the WB3 requirements.
Please let me know what works for you.
Thanks
Aaron

Aaron Wallace AIA

Montana Creative
architecture + design

P. 406.862.8152
158 Railway St.
Whitefish, MT 59937

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2 Village Loop
Kalispell, MT 59901
Ph. (406) 755-6481
Fax (406) 755-6488

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Wednesday, September 24, 2014 8:23 AM
To: 'Eric H. Mulcahy'
Subject: RE: One more question

In reading the code, I see the formula/chain restrictions only applying to restaurants and retail stores. Hotels would not have that same restriction. They would obviously have to get ARC approval on their design, etc. Are they aware the Averills are moving ahead with their downtown hotel plans on Block 46? Seems like a sudden glut of hotels with the new Hampton Inn getting built this spring too.
Dave

From: Eric H. Mulcahy [mailto:eric@sandssurveying.com]
Sent: Tuesday, September 23, 2014 10:55 AM
To: David Taylor
Subject: One more question

Hi Dave I had one more question for you. I have some clients that are looking to construct a hotel in the WB-3 (General Business District). They are contemplating partnering with a flagship hotel chain. In reading the zoning regulations there is a prohibition on "formula retail" and "formula restaurant" chains. However the definition does not appear to have the same prohibition on Hotels, the definition appears specific to retail and restaurants only. Is this your reading as well? Would these clients be able to partner with a "name brand" hotel company? I don't believe they would be using corporate architecture or corporate uniforms if the partnership was made.

Eric H. Mulcahy, AICP
Sands Surveying, Inc.
2 Village Loop
Kalispell, MT 59901
Ph. (406) 755-6481
Fax (406) 755-6488

EXHIBIT
tabbies
2

5. Per the ARC District definitions and map, when they say "both sides" of the street on some blocks they extend the boundary only mid block and on others (like Block 46) they extend it across the entire block? For example along Baker Ave. the Old Town Central district only extends to the west half a block but along Spokane it extends to the east all the way to Kalispell Ave. Why would these be different? I would argue that by definition the east half of block 46 is not part of the Old Town Central District which is also reflected by the WR-4 zoning on the residential lots. If that is the case, then the hotel footprint would fall half in the Old Town Central and half in the WB-3 zone. How would this be reviewed then?
6. There is also the statement within the ARC standards that the Old Town District is all zoned WB-3. If we are being told that per the ARC standards that Block 46 is within the Old Town Central district, then does this change the zoning of the WR-4 lots to WB-3 then? If so, does that change how you would approach developing the entire block?

I think there are way to many inconsistencies with the regulations as they currently exist and I don't think the explanation provided by the City addresses these. I find it interesting that when Dave first reviewed the regulations he agreed with our interpretation and said that we were not within the Old Town Central district, but now he has completely changed his opinion? If the zoning administrator is having difficulty interpreting the regulations then there is obviously still some issues that need to be addressed. To me there are still more questions that need to be answered. Let me know what you guys think.

Thanks,

Douglas Peppmeier, PE | Vice President / Regional Manager
TD&H Engineering
450 Corporate Drive, Suite 101 | Kalispell, MT 59901
t:406.751.5246 | c:406.212.0671
www.tdhengineering.com

>>> Aaron Wallace <awallace@mt-creative.com> 11/19/2014 2:40 PM >>>
Jeff, I would review this with your attorneys. From an architectural standpoint it is out of my hands.
Sorry,
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Wednesday, November 19, 2014 2:36 PM
To: Aaron Wallace
Cc: 'Jeff Badelt'
Subject: RE: dwg's

Aaron,
Following my consideration and review of the Whitefish City code and standards, I wanted to provide my response to your past inquiries.
Footprint.
Brick is a structural element, so it's part of the foundation if its carried down to it. Footprint is the building area measured where the walls or columns hit grade. If your brick load is carried down to a notch in your footing, then the face of brick would be the same as the foundation wall.
Old Town Central sub-districts.
In my review of the history and intent of the zoning code and ARC standards, I have concluded that Block 46, the location of your hotel project, is within the Old Town Central district. This conclusion has followed my review of the 2008 and 2009 zoning text amendments.
The 2008 zoning text amendment for the WB-3 was done in conjunction with an amendment to the ARC standards as an implementation of the Downtown Master Plan. The 'Old Town Central' and 'Old Town Railway' sub-districts were created at that time for the both the WB-3 and the ARC Standards, and the boundaries adopted at that time were identical and consistent for both. The intent was clear

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that the ARC design districts and the WB-3 business districts coincided. Both the zoning code and the ARC standards defined the Old Town Central District as Spokane to Baker, Railway to Third in 2008.
In May of 2009, a new amendment to the ARC standards was brought to the Planning Board and City Council and adopted by ordinance in August as an update of the zoning code. That amendment reformatted the standards, and further modified the boundaries of the 'Old Town Central' sub-district, expanding it to both sides of Baker and Spokane. This was the new language identifying the boundary of the Old Town District for our regulations:
There are three distinct Design Districts within the Old Town District. These are the Central, South and Railway.
The Central District is located on Central Avenue between 4th Street and Depot Street, west side of Spokane Avenue
between 4th Street and 3rd Street, both sides of Spokane Avenue 3rd Street to Depot Street, east side of Baker Avenue between 4th Street and 3Rd Street, both sides of Baker Avenue between 3rd Street and Railway Street. This area is the heart of the Old Town District and is characterized by 1 ½ to 2 story mixed-use buildings with retail on the main floor and offices or residential on the 2nd story.
According the Zoning Code, 11-3-3 of the Special Provisions chapter, Architectural Review Standards are part of the city zoning regulations and have the same weight as the zoning code.
C. Applicability: The architectural design standards supplement the city's zoning regulations as a stand alone document. The city adopted the architectural design standards by ordinance as zoning regulations and have the same force and effect as all of the city's zoning regulations.
We have spent several days researching information regarding the 2008 code amendment that amended both the 'intent' and the bulk and scale requirements of the WB-3 zone as well as the ARC standards. In our review of the zoning regulations we follow the general rules of construction. We pursue the intention of the City Council whenever possible. If provisions look inconsistent, we allow a particular provision to govern a general provision. The latter provision governs the former and so on. Applying these principles, it is, my opinion as the zoning administrator that your project falls under all special provisions and requirements of the Old Town Central district for both zoning and architectural review. As a result, your project is indeed within the Old Town Central district and your building would require a conditional use permit if it exceeds 7,500 sq feet.
It should also be noted that if the hotel project has a full service bar (serving hard liquor), a conditional use permit will be required. That could be done in conjunction with another CUP if required. Also, any restaurant within the hotel must be consistent with our 'formula retail/restaurant' prohibition in the WB-3.
If you have any further questions before submitting your application for your project, please contact me.
Dave
David Taylor, AICP
Director, Planning & Building
City of Whitefish
510 Railway Street
PO Box 158
Whitefish, MT 59937
(406)863-2416
| *Please consider the environment before printing this e-mail.*

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Wednesday, November 19, 2014 11:12 AM
To: David Taylor
Cc: Jeff Badelt (Jeff@mtdevgroup.com)
Subject: RE: dwg's
David,
Do you have any resolution on the 15k sf issue?
Thanks
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Monday, November 17, 2014 3:52 PM
To: Aaron Wallace
Subject: RE: dwg's
If you have brick on the outside, then we would measure to the outside of that where it meets the dirt. That would be the footprint. Also, a heads up that the city attorney is stating that the Old Town Central district includes both sides of Spokane as that is how the ARC standards, which were adopted by ordinance, defines it. Meeting with her today. Will clarify tomorrow.

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Monday, November 17, 2014 9:17 AM
To: David Taylor
Subject: RE: dwg's
Great. thanks, we will be doing a foundation plan easier for you to determine. In the latest room revision we actually made the building slightly smaller (2.5 inches on south wall) allowing for a bit more wiggle room.
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Friday, November 14, 2014 4:18 PM
To: Aaron Wallace
Cc: bminnich@cityofwhitefish.org; 'Wendy Compton-Ring'
Subject: RE: dwg's
Aaron,
We can't officially determine if its under 15,000 sq foot of a footprint until we get a final foundation plan and first floor plan submitted with dimensions. What I got using the polyline tool for area based on your explanation of layers is 14994.3, but its tough to tell where the studs are in some areas, especially the northeast corner where the wall treatment looks thicker or the walls aren't shown at all. All I can say is you better give yourself some wiggle room, because if your drawings show its pretty close to 15K give or take an inch, we'll have to further evaluate. If we have to do an 'as built' afterwards to determine the actual footprint area and then find its over, then there would be major issues, including the need for a CUP then which would then perhaps require some demolition if denied.
Dave

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Friday, November 14, 2014 3:26 PM
To: David Taylor
Subject: RE: dwg's
If you wanted I would happy to do it in front of you at our office.
Thanks
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Friday, November 14, 2014 3:06 PM
To: Aaron Wallace
Subject: RE: dwg's
Do you guys have a foundation plan yet? That would make measuring this a lot easier.

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Thursday, November 13, 2014 2:33 PM
To: David Taylor
Subject: RE: dwg's
Very close.
Attached is the 2007 version.
Please let me know if you come up with something different and we will adjust to get under that number but I think we have it.
Thanks
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Thursday, November 13, 2014 2:29 PM
To: Aaron Wallace
Subject: RE: dwg's

Cutting it close there, pard. ☺ Thanks for providing the files in Autocad format. Unfortunately, we only have Autocad 2007, so we would need either a dxf file or a dwg saved in a compatible format with 2007. If you could resend us the files in one or the other of those formats, that would be awesome. Thanks.

Dave

From: Aaron Wallace [mailto:awallace@mt-creative.com]
Sent: Thursday, November 13, 2014 9:32 AM
To: 'David Taylor'; bminnich@cityofwhitefish.org; Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org> (wcompton-ring@cityofwhitefish.org)
Cc: Jeff Badelt (Jeff@mtdevgroup.com)
Subject: dwg's

David, Baily, Wendy,

Attached is the current plan set showing the floor plans in dwg. A2.1 shows the first floor. Please review and let me know if you have any questions.

Please note the following:

As dave has outlined the sf tabulation is the outside edge of concrete of the first floor. On our projects we line up our outside face of stud with the outside face of concrete. As such the sf tabulation for this building can be tabulated by finding the outside face of stud on the outside walls and following that around the building. The computer program we use creates walls that have all the various layers of that wall so if you look closely you will see sheathing and exterior finish layers and to get the correct sf, it is important to find that stud wall layer. To hopefully make it easier, I have created a gray filled region on the first floor, following that line around the building. My system tells me that the total sf is 14,992.97 sf. You are happy to use that but you will probably want to confirm. For a couple of reasons we have pulled the building's west wall 2" to the east so that the overall building width is now 260'10" Again if you have any questions concerns or get any different numbers than I am showing I am happy to adjust. I realize that we are close to that 15k mark and have ways to meet that requirement depending on your findings.

Thanks

Aaron

Aaron Wallace AIA

Montana Creative
architecture + design

P. 406.862.8152
158 Railway St.
Whitefish, MT 59937

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privileged and confidential information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Many decisions were made and the project moved forward based on your review and associated correspondence outlining that you were in agreement that Block 46 was outside the 7,500 sf CUP requirement. In the architectural review packet and in discussions this week it was clearly outlined that planning had determined that we were to be held to a 15,000 sf footprint before CUP, suddenly this changed based on further review of the correlation between zoning and architectural review standards and their "intentions" of amendments in 2009. Whatever the intent was at that time, the current zoning ordinance which we base our design and development requirements on clearly outlines that boundary of this special district is the center of the road of Spokane and does not include Block 46. Please see the attachments. The maps and districts outlining Architectural review standards do not define zoning districts and overlap in very inconsistent manners of zoning and cannot be used as a defining factor of actual zoning districts. We understand that the documents are set to be used in conjunction but each has their own purpose. Zoning defines what uses are allowed in what districts, associated setbacks for those districts and allowed square footages of those districts and what and where CUP requirements are needed. Architectural review standards do not define any of these attributes but requires us to refer to zoning guidelines to address these issues. Saying that Architectural review standards and its maps and districts and its varying intentions defines CUP and sf requirements in this issue is just incorrect. Direct pages from zoning define the WB-3 district, its special district and its allowed uses and what would trigger a CUP. From a professional standpoint how are to determine any applicable zoning requirements moving forward if we cannot base our decisions on what is written clearly in zoning but have to refer to "intent" of decisions that were made 5 years ago and overlays of districts that do not line and no clearly defined documentation? Can we just start using Architectural design standards and its mapping and districts to define zoning uses and standards?

At this time I have been informed that unless this can be resolved in our favor today it is likely the project is dead, which I anticipate would have serious ramifications for all involved. I would like to know how to proceed and review this with the city, hopefully immediately. To my understanding this is the only issue that would require us to proceed with a CUP. Please contact me at your earliest convenience in how to resolve this issue.

Thank you,
Aaron Wallace

From Doug:

Jeff/Aaron,

I understand Dave's thought process below however, if that was the intent then it seems to me they should have made a text amendment to the zoning regulations also and not just the ARC standards. As it exists today, they have several different definitions for the area in question:

1. There is the Whitefish Zoning Map (Block 46 is zoned WB-3 & WR-4)
2. There is a written description of two "unique commercial areas" (Old Town Central district being one) within the WB-3 zoning. The boundary of this unique commercial area is defined by streets. The rules for interpretation of boundaries clearly state that the boundary line shall be deemed to be the center line of such street. There is no mention or reference to the ARC Standards definition.
3. There is the ARC District map which indicates that all of Block 46 is within one of the "distinct design districts" (Old Town Central district). This area does not match the zoning regulations or zoning map.
4. There is a written description of each of the distinct ARC Districts, however these descriptions do not match the ARC District map.

EXHIBIT
4

5. Per the ARC District definitions and map, when they say "both sides" of the street on some blocks they extend the boundary only mid block and on others (like Block 46) they extend it across the entire block? For example along Baker Ave. the Old Town Central district only extends to the west half a block but along Spokane it extends to the east all the way to Kalispell Ave. Why would these be different? I would argue that by definition the east half of block 46 is not part of the Old Town Central District which is also reflected by the WR-4 zoning on the residential lots. If that is the case, then the hotel footprint would fall half in the Old Town Central and half in the WB-3 zone. How would this be reviewed then?
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I think there are way to many inconsistencies with the regulations as they currently exist and I don't think the explanation provided by the City addresses these. I find it interesting that when Dave first reviewed the regulations he agreed with our interpretation and said that we were not within the Old Town Central district, but now he has completely changed his opinion? If the zoning administrator is having difficulty interpreting the regulations then there is obviously still some issues that need to be addressed. To me there are still more questions that need to be answered. Let me know what you guys think.

Thanks,

Douglas Peppmeier, PE | Vice President / Regional Manager
TD&H Engineering
450 Corporate Drive, Suite 101 | Kalispell, MT 59901
t:406.751.5246 | c:406.212.0671
www.tdhengineering.com

>>> Aaron Wallace <awallace@mt-creative.com> 11/19/2014 2:40 PM >>>
Jeff, I would review this with your attorneys. From an architectural standpoint it is out of my hands.
Sorry,
Aaron

From: David Taylor [mailto:dtaylor@cityofwhitefish.org]
Sent: Wednesday, November 19, 2014 2:36 PM
To: Aaron Wallace
Cc: 'Jeff Badelt'
Subject: RE: dwg's

Aaron,
Following my consideration and review of the Whitefish City code and standards, I wanted to provide my response to your past inquiries.
Footprint.
Brick is a structural element, so it's part of the foundation if its carried down to it. Footprint is the building area measured where the walls or columns hit grade. If your brick load is carried down to a notch in your footing, then the face of brick would be the same as the foundation wall.
Old Town Central sub-districts.
In my review of the history and intent of the zoning code and ARC standards, I have concluded that Block 46, the location of your hotel project, is within the Old Town Central district. This conclusion has followed my review of the 2008 and 2009 zoning text amendments.
The 2008 zoning text amendment for the WB-3 was done in conjunction with an amendment to the ARC standards as an implementation of the Downtown Master Plan. The 'Old Town Central' and 'Old Town Railway' sub-districts were created at that time for the both the WB-3 and the ARC Standards, and the boundaries adopted at that time were identical and consistent for both. The intent was clear

Michelle Howke

From: Wendy Compton-Ring
Sent: Monday, November 07, 2016 11:49 AM
To: Michelle Howke
Subject: FW: Firebrand

-----Original Message-----
From: KK Jense [mailto:kk_jense@yahoo.com]
Sent: Monday, November 07, 2016 11:47 AM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Firebrand

Dear City,
I am writing in support of putting a hot tub on the roof of the firebrand. I feel we should support any local businesses that are making our downtown a better place to visit. Please consider this addition to the Firebrand, for they have turned an ugly corner into a great addition to our downtown.

Thank You,
KK Jense
President/Founder
Proof Research ™

Michelle Howke

From: Wendy Compton-Ring
Sent: Monday, November 07, 2016 1:42 PM
To: Michelle Howke
Subject: FW: Firebrand rooftop Hot Tub

From: Chelsi Blackwell [mailto:chelsi@purewestmt.com]
Sent: Monday, November 07, 2016 1:40 PM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Firebrand rooftop Hot Tub

Dear City of Whitefish,

I am writing in support of the construction/approval of a rooftop hot tub at the Firebrand Hotel in the City of Whitefish, Montana.

As a resident and business owner in Whitefish, Montana for over 10 years, I believe that the addition of a rooftop hot tub at the Firebrand Hotel would help boost the economy of our beautiful City. I do not believe that a rooftop hot tub would cause any disruption to our community, in fact I believe it will help by bringing in new visitors to our community, which in turn will drive more money into our local businesses. By denying the hotel the ability to build a rooftop hot tub it will result in serious hardship for the hotel and therefore affect job security within our community.

I am asking for your support in the building of the rooftop hot tub at the Firebrand Hotel, which will boost our local economy by bringing in ski groups, business personnel and additional revenue for our local businesses. As a resident and business owner I believe that the pro's far outweigh any possible cons to allowing the Firebrand Hotel a rooftop hot tub and I 100% support the idea of the rooftop hot tub.

Thank you so much for your time and help.

Thank you,

Chelsi Blackwell
C. 406.471.8712
www.purewestmt.com

Michelle Howke

From: Wendy Compton-Ring
Sent: Monday, November 07, 2016 2:54 PM
To: Michelle Howke
Subject: FW: Rooftop hot tub at the Firebrand.

From: Claudia Neal [mailto:claudia5neal@gmail.com]
Sent: Monday, November 07, 2016 2:38 PM
To: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Subject: Rooftop hot tub at the Firebrand.

This is to urge support for the rooftop hot tub at the Firebrand. It is a great attraction for winter skiers and snowboarders. This is a significant attraction for the hotel, which brings in significant revenue to the town for local businesses.

Please support this item.

Claudia Neal

City Beach Summary	Day Pass	Season Pass	Total
2016	$4,947.50	$5,024.00	$9,971.50
Number of Passes Sold	990	125	
Operating Dates	May 28, 2016	Sept. 5, 2016	
Total Days			100 days
Total Days Open			79 days
Total Day Closed to weather			21 days
Total Days Closed 6.13-8.16			12 days
2015	$5,525.00	$5,200.00	$10,725.00
Number of Passes Sold	1105	130	
Operating Dates	June 13, 2015	August 16, 2015	
Total Days			65 days
Total Days Open			64 days
Total Day Closed to weather			1 day