



**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
TUESDAY, FEBRUARY 19, 2013
5:30 to 7:00 PM**

1. Call to Order
2. Work session with Park Board on Park and facility use fees
3. Public Comment
4. Adjourn



February 12, 2013

To: City of Whitefish Park Board

From: Karl Cozad, Director, Parks, Recreation, and Community Services

Re: Proposed Facility Use Fee Schedule as presented to City of Whitefish City Council
January 7, 2013

As you are all aware the City of Whitefish City Council did not take action to adopt or deny the proposed facility use fee schedule as presented on January 7, 2013, but rather chose to schedule a workshop with the Park Board to be held on February 19th at 5:30pm, just prior to the regularly scheduled city council meeting. The general topic for discussion at the workshop shall be the proposed fee schedule and the justification for the need of any modifications in the rates, or any new rates that are proposed. However, I feel that this is an excellent opportunity for the Park Board to express the overall challenges of providing quality services in the maintenance and operations of all of the park facilities that are under the responsibility of the Parks, Recreation, and Community Services Department. The public feedback that was received at the city council meeting on January 7, 2013 in opposition of any increases in fees was from three primary users of Depot Park; those being participants and sponsors of Farmers Market, Whitefish Chamber of Commerce (sponsor of Huckleberry Days, Oktoberfest), and the Whitefish Christian Academy (sponsor of 4th of July Art Show). They each presented valid points of concern in regards to their own specific events. Some had already distributed solicitations to vendors with entry fees; some had already submitted and paid their fees for their special events and others felt some inequities existed within the fee structure. What I took away from the meeting was that indeed a number of people did not agree with the fee proposal, but what I witnessed was the unanimous support of people in the audience toward the park facilities that we have available here in Whitefish. This fact should not be overlooked as we move forward with any future proposals.

As we move forward from this point in time, it should be noted that the majority of special event sponsors have submitted their applications for facility use and the appropriate fees have been paid for the 2013 season. The reason that I state this is to note that any changes to the existing fee schedule will not result in any significant increases in revenues.

I am going to suggest some alternatives, or modifications to our Facility Use Fee Proposal for the Park Board to consider and perhaps take action on prior to our workshop with the City Council. These alternatives are not in any order of priority.

1. Given that the majority of facility use fees for 2013 have been received that we table our current proposal, re-examine the fee structure for each facility and how it relates to current users and potential new users, and include any modifications in the fee schedule as part of our proposed 2013/2014 Budget Document as presented to City Council on May 13, 2013, for their consideration and approval at that time.
2. As proposed at the City Council meeting on January 7, 2013, we add an option of an hourly rental rate of \$25.00 per hour for Depot Park. This rate would be the same for community, or non-profit groups. This option would be of benefit to family groups who wish to use Depot Park for shorter periods of time, and special events that last a few hours as opposed to a full or half day.
3. Removal of classification of user groups, no longer designate Non-profit, Community, or for Profit. One fee schedule rate, if fees are charged to recover costs for maintenance, our costs for maintenance are not any different for non-profit, community, or for profit events.
4. Consider different facility use fee schedule based upon the use of the facility, i.e. event open to public with some space open for other uses; exclusive use of the facility but event is open to the public without charge; or exclusive use of the facility and an admission fee is charged to enter. (Definition of Event)
5. Removal of the \$500.00 Event Support Fee on multi- consecutive day events and replaced it with a \$500.00 cash deposit, to be paid at the time of application for facility use, with any damages to the facility or use policy violations being charged off of the deposit, as well as any additional city staff time beyond normal work assignments in support of the event being subject to a likewise charge.
6. Given the inequities of existing vendor fees for special events throughout the city and throughout the year, and that same inequity exists within certain special event, I would suggest that we ask the city to examine all current vendor opportunities and associated fees, (or none in some cases), and establish a consistent vendor policy and fee structure for all special events, should they occur on streets, parks, public facilities, and this be done by December 2013. In light of this suggestion, I would also recommend that we refrain from any vendor based fee at this time. (Event Size Based Fee)

7. Another alternative would be to retain the proposed fee increases to the existing fee schedule as presented to city council on January 7, 2013, with the addition of the hourly rate at Depot Park, and to withdraw the \$500.00 Event Support Fee, but retain the suggested cash deposit referred to in #5, and to withdraw the Event Size Based Fee (vendor fee).

As the Director of the Parks, Recreation, and Community Services Department I appreciate your time and thoughts regarding this very sensitive topic. Our charge is to operate a department with the responsibility to maintain our public facilities to the highest standards possible within our financial resources. User fees play a part in the development of our financial resource, but it incumbent upon all of us to examine all of our financial resources as we strive to improve the quality of our services. Please feel free to contact with comments, concerns, or questions.

Thank you

February 13, 2013

To: Chuck Stearns, City Manager
From: Karl Cozad, Director
Parks, Recreation, and Community Services

Re: Summary of Park Board February 12, 2013 meeting regarding the proposed facility use fee schedule as presented to City Council on Jan. 7, 2013

The City of Whitefish Park Board at their regularly scheduled meeting on Feb. 4, 2013 took the following action in regards to suggested alternatives relating to the proposed facility use fee schedule as outlined in a memo (see attached) from the Director of Parks, Recreation, and Community Services:

After considerable discussion the following motion was made and passed with a unanimous vote:

The Park Board endorses:

1. Given that the majority of facility use fees for 2013 have been received that we table our current proposal, re-examine the fee structure for each facility and how it relates to current users and potential new users, and include any modifications in the fee schedule as part of our proposed 2013/2014 Budget Document as presented to City Council on May 13, 2013, for their consideration and approval at that time.
2. As proposed at the City Council meeting on January 7, 2013, we add an option of an hourly rental rate of \$25.00 per hour for Depot Park. This rate would be the same for community, or non-profit groups. This option would be of benefit to family groups who wish to use Depot Park for shorter periods of time, and special events that last a few hours as opposed to a full or half day.
3. Removal of classification of user groups, no longer designate Non-profit, Community, or for Profit. One fee schedule rate, if fees are charged to recover costs for maintenance, our costs for maintenance are not any different for non-profit, community, or for profit events.
4. Consider different facility use fee schedule based upon the use of the facility, i.e. event open to public with some space open for other uses; exclusive use of the facility but event is open to the public without charge; or exclusive use of the facility and an admission fee is charged to enter. (Definition of Event)

5. Removal of the \$500.00 Event Support Fee on multi- consecutive day events and replaced with a \$500.00 cash deposit, to be paid at the time of application for facility use, with any damages to the facility or use policy violations being charged off of the deposit, as well as any additional city staff time in support of the event being subject to a likewise charge.

6. Given the inequities of existing vendor fees for special events throughout the city and throughout the year, and that same inequity exists within certain special event, I would suggest that we ask the city to examine all current vendor opportunities and associated fees, (or none in some cases), and establish a consistent vendor policy and fee structure for all special events, should they occur on streets, parks, public facilities, and this be done by December 2013. In light of this suggestion, I would also recommend that we refrain from any vendor based fee at this time. (Event Size Based Fee)

In specific regards to item #4, the Park Board feels that it is within their purview to establish the definition of the event by category as described and therefore apply the appropriate fee as assigned to such category.

In regards to item #6, they are requesting that city council give direction to pursue the development of a standardize application of vendors fees for all city facilities including parks, similar to the existing application of special event permits involving street closures and public parking facilities.

This page and the following three pages were part of the original proposal on January 7th.

EXHIBIT "A"
2013 Proposed Fee Schedule
City of Whitefish Department of Parks and Recreation

	<i>Nonprofit</i>				<i>Community</i>			
	Current Daily - Nonprofit	Proposed Daily - Nonprofit	Current Hourly - Nonprofit	Proposed Hourly - Nonprofit	Current Daily - Community	Proposed Daily - Community	Current Hourly - Community	Proposed Hourly - Community
Facility:								
<i>Armory Athletic Fields (per field)</i>	\$45.00	\$70.00	\$10.00	\$15.00	\$55.00	\$80.00	\$12.00	\$25.00
<i>Gazebos</i>	\$35.00	\$35.00	N/A	N/A	\$40.00	\$45.00	N/A	N/A
<i>Jack Zerr Baseball Fields</i>	\$45.00	\$45.00	\$10.00	\$10.00	\$55.00	\$55.00	\$12.00	\$12.00
<i>Roy Duff Armory Building</i>	\$175.00	\$200.00	\$25.00	\$25.00	\$220.00	\$250.00	\$30.00	\$35.00
<i>Saddle Club</i>	\$65.00	\$65.00	\$15.00	\$20.00	\$85.00	\$85.00	\$20.00	\$25.00
<i>Soccer Fields (per field)</i>	\$50.00	\$80.00	\$15.00	\$25.00	\$60.00	\$100.00	\$15.00	\$40.00
<i>Stumptown Ice Den</i>	\$430.00	\$430.00	\$40.00	\$40.00	\$540.00	\$540.00	\$55.00	\$55.00
<i>Tennis Courts</i>	\$50.00	\$55.00	\$10.00	\$15.00	\$60.00	\$70.00	\$15.00	\$20.00

	<i>Nonprofit</i>				<i>Community</i>			
	Current Daily - Nonprofit	Proposed Daily - Nonprofit	Current 1/2 Day - Nonprofit	Proposed 1/2 Day - Nonprofit	Current Daily - Community	Proposed Daily - Community	Current 1/2 Day - Community	Proposed 1/2 Day - Community
Park:								
<i>Baker Park</i>	\$75.00	\$100.00	\$40.00	\$50.00	\$100.00	\$150.00	\$50.00	\$75.00
<i>Depot Park</i>	\$150.00	\$225.00	\$75.00	\$115.00	\$200.00	\$300.00	\$100.00	\$150.00
<i>Kay Beller Park</i>	\$40.00	\$50.00	\$20.00	\$25.00	\$50.00	\$75.00	\$25.00	\$35.00
<i>Riverside Park</i>	\$75.00	\$100.00	\$40.00	\$50.00	\$100.00	\$150.00	\$50.00	\$75.00
<i>Soroptimist Park</i>	\$40.00	\$50.00	\$20.00	\$25.00	\$50.00	\$75.00	\$25.00	\$35.00

2013 Proposed Event Support Fee Schedule
City of Whitefish Department of Parks and Recreation

\$500.00 Event Support Fee For park use that involves multi-day events and requested electrical services or structural placement, *i.e.* , tents, staging, etc., for any event, single day or multi-day.

Event Size Based Fee For special events within park boundaries that involve vendors:

No charge	1 to 5	Vendors
\$100	6 to 15	Vendors
\$200	16 to 25	Vendors
\$300	26 to 35	Vendors
\$400	36 to 45	Vendors
\$500	46+	Vendors



January 7, 2013

Mayor Muhlfeld and Whitefish City Council
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Members of Whitefish City Council,

Recommendation to Increase Existing Park Use Fees and Establish New Park Use Fees for 2013

Introduction/History

The City of Whitefish Parks and Recreation Department has established a use fee schedule for all public parks and facilities. The fee schedule is reviewed and adjusted annually and adopted by City Council based upon recommendation from the City of Whitefish Park Board, and as required by Montana Code that governs the operation of local municipalities. Prior to 2010, the only fee associated with park use within the City of Whitefish Park System was a nominal application processing fee. In 2010, a fee schedule was adopted that was more reflective of recovering a portion of the costs associated with the operation and maintenance of the parks and facilities that fall within the jurisdiction of the Parks and Recreation Department. It is our intention to review such fees annually and make recommendation of any necessary adjustments in order to maintain a close relationship between the cost of producing the services and fees to be charged for such services. Generally speaking the vast majority of "fee paying users" are for special events that occur at one of our facilities, with the primary facility being Depot Park.

It is important to note that 96% of our Special Event users are from Non-Profit groups or organizations.

Current Report

Staff has prepared the recommended modifications to the existing 2012 fee schedule (**Attachment Exhibit A**) and the adoption of two new fee schedules as provided below:

1. Event Support Fee for park use that involves multi-day events and requested electrical services or structural placement, i.e. tents, staging, etc. for any event, single day or multi-day event. On numerous occasions special events that are scheduled to occur over a number of consecutive days will require the assistance of city staff which may include specialists that are not normally involved with the services provided by park maintenance staff. In addition, such events will often require Parks Department staff to perform substantial repairs to facility infrastructure as a result of damages due to misuse of the facility and the requirement of placing large structures within the park. **The proposed Event Support Fee shall be \$500.00 per event, regardless of the number of days of the event.**

2. **Event Size Fee** shall be implemented for special events that involve vendors that are within park boundaries. The proposed fee schedule shall be as follows:

1-5 vendors	no charge
6-15 vendors	\$100.00
16-25 vendors	\$200.00
26-35 vendors	\$300.00
36-45 vendors	\$400.00
46-+ vendors	\$500.00

Currently the Parks and Recreation Department does not receive an individual fee from special event vendors that are located within the boundaries of our facilities when such special events are staged and sponsored by someone other than the Parks and Recreation Department. By comparison, the Parks and Recreation Department does sponsor special activities at City Beach on July 4th and we do charge a vendor fee of \$75.00 per vendor for the ability to stage their booth in the City Beach parking lot for the day. Again, when reviewing the use of our facilities and related impacts to our facilities from such use, the number of vendors is a strong indicator as to the size of the event and what related expenses will occur in our efforts to maintain our facilities to an acceptable standard.

In comparison to other communities within our area, the City of Kalispell charges both an "event size" based fee and a vendor's fee for special events. For events that are larger than 500 participants a negotiated fee is determined, however for events that range from 200-500 the daily fee is \$360 plus individual vendor fees ranging from \$10-\$15 per event. In Columbia Falls, their rate schedule is also driven by the size of the event. For example an event that would draw 500 people would be \$400 per day plus a 10% administrative fee. When comparing our proposed rates to those communities in close proximity we are still the "best buy" in the valley.

I have included a comparison of 2012 charges and proposed fees to the historical events held at Depot Park for your reference. Again, please keep in mind the source of any new proposed fees and the relationship to what expenses are incurred as a result of their special event.

Financial Requirement

There is no financial requirement for implementing the new fee schedule or adopting the new fees.

Recommendation

It is staff recommendation, along with that of the City of Whitefish Park Board, that the City of Whitefish City Council approve the attached resolution approving the proposed fee adjustment to the established fee schedule and to establish the two proposed new fees as described.

Sincerely,

Karl Cozad, Parks and Recreation Director

2013 Fee Proposal and comparisons from past users and fees paid

Farmers Market

2012	19 dates @	*\$60.00 per date		\$1,140 total
2013	19 dates @	\$115.00 per date	\$2,185	
Proposed	19 dates @	Vendor fee \$200 (25 vendors in park)	\$3,800	\$5,000 total

July 4th Art Show

2012	4 dates @	\$150 per date		\$600 total
2013				
Proposed	4 dates @	\$225 per date Vendor fee (46 + vendors in park) Impact Fee	\$900 \$500 \$500	\$1,900 total

Huckleberry Days

2012	4 dates @	\$150 per date		\$600 total
2013	4 dates @	225 per date	\$900	
Proposed		Vendor fee (46+ vendors in park) Impact Fee	\$500 \$500	\$1,900 total

Oktoberfest

2012	7 dates @	\$150 per date		\$1,050 total
2013	7 dates @	\$225 per date	\$1,575	
Proposed		Impact Fee	\$ 500	\$2,075 total

Planner Compton-Ring said she talked to MDOT and they were satisfied with the existing access. The Planning Board held a public hearing on December 20th, and unanimously recommended approval subject to the conditions outline in the staff report.

Mayor Muhlfeld asked and Director Taylor said the business licenses are only required in the City limits and if the property is in the county they have to rely on the applicants to come to them.

Councilor Hildner asked and Planner Compton-Ring said staff gave the applicant a deadline to come in for a CUP and the applicant did. Councilor Hildner asked about the difference in the septic approval from when it was proposed to be a church to now. Planner Compton-Ring said the church wasn't able to get a septic permit. Councilor Hildner asked if there were fewer people getting exercise than attending church on one day. He said the map shows two drain field locations, but he doesn't see the location of the well. Planner Compton-Ring said the applicant could perhaps answer that for him. Councilor Hildner said he has some concerns about the traffic issue out there. Planner Compton-Ring said MDT did not think it would increase traffic significantly. Councilor Mitchell said the septic decision will be made by the county. Councilor Sweeney confirmed that the approval is conditional upon the applicant getting septic approval from the county and Planner Compton-Ring agreed.

Mayor Muhlfeld opened the public hearing.

Mike Bode, 915 Columbia Avenue, said he owns this property and he apologized for not getting the permit in sooner. He thought he was dealing with the county. He said their business is much smaller than the church. He said they hired a septic consultant and will put in a new septic if required. He said the sign has been taken down and the new lights will be up soon. Councilor Hildner asked and Mike Bode said the county said they can continue to operate until they get approval.

Mayor Muhlfeld closed the public hearing.

Councilor Mitchell offered a motion, seconded by Councilor Kahle, to approve a Conditional Use Permit (WCUO 12-13); Michael Bode's recreation facility within an existing warehouse type building at 5932 Hwy 93 South with the 7 conditions recommended by staff. The motion passed unanimously.

[Redacted text block]

Parks and Recreation Director Cozad said Doug Wise, the President of the Park Board, is present tonight. He said the parks fee schedule addresses all of the facilities they manage. They work to provide quality service and community experiences at these facilities. It is their objective to support these events; special events are a positive part of this community. The proposed fees are based on the impact to the facilities. The fee makes up about 4% of the Parks budget. They spend close to \$20,000 maintaining facilities and 55% comes from general funds, 41% is from greenway assessment and 4% is from event fees. They expect that the groups that use the facilities contribute to the support and rehabilitation of those facilities based on the impact. He said Depot Park is the crown jewel of the City parks system. Last year there were 11-12 major events that occurred at that sight in about 16 weeks. He said Councilor Sweeney once said they are loving this park to death. He said the challenge was how to

equitably charge each group. He said there is Farmer's Market that has 19 dates at 3 hours/date. Other events are 3-4 consecutive days. There isn't any one event that has a severe impact, but the accumulation of events doesn't allow for recovery time. He said this proposal was unanimously approved by the Park Board. The proposed Event Support Fee will be \$500.00 per event, regardless of the number of days of the event. The proposed Size Fee will be based on the number of even vendors (some require additional staff time and effort.) Some vendors and/or events have a negative impact to the infrastructure—driving stakes and/or running over sprinkler heads. Other communities charge by the number of vendors. He said the key point is that their charge is to maintain and protect these outstanding amenities in the community. He said that when the Park Board came up with this proposed fee schedule they forgot to include an hourly rate—they included half days and full days. He developed an alternative proposal that assigns an hourly rate to Depot Park that would bring the fees more in line with what they are used to, and he handed out a copy to the Council. He said Farmer's Market has a street closure and a per vendor charge that the City would only charge to the Farmer's Market once/year.

Manager Stearns clarified that Farmer's Market uses the park 3 hours/week. Director Cozad said it is exciting to have these events occur in Whitefish.

Councilor Mitchell asked about the fact that there is no impact fee for Farmer's Market and Director Cozad said it is because there are no additional staff hours required for the market—it is all handled by volunteers. Councilor Mitchell asked and Director Cozad said the electricity is included in the fee. Councilor Mitchell asked about the Special Events charge and Director Cozad said it is charged once/year by the administration. Councilor Mitchell asked and Director Cozad said the fees are in line with the other communities. Councilor Mitchell asked about the Master Plan and Director Cozad said the question is whether it is going to be an open green space or a place to host events. Councilor Mitchell said he knows grass won't work. He'd like to consider a fair amount of hardscape to allow them to have more events. Director Cozad said they identified using the street for hardscape, but some issues have come up that have changed that opportunity. Councilor Mitchell said he would like them to consider whether the Master Plan fits what the Council wants for the park. Councilor Sweeney said he is concerned that there is damage by some of the vendors and wondered if the City gets compensated. Director Cozad said they required a deposit to pay for damages in the past, but it is hard to determine where or when the damages occur. Councilor Sweeney talked about the fact that the tent occupies the park, but they aren't charged except for the days they use it. Councilor Kahle asked about the greenway assessment fee and Manager Stearns it is charged to all properties per front foot and goes toward park maintenance costs.

Councilor Hildner said they need to look at what the Master Plan says about Depot Park and its stated purpose. He appreciates that the new plan now includes at least some rest time for the park. Councilor Anderson said he also understood that the primary purpose was open space, with limited use. He said the management and maintenance plan is critical. He asked and Director Cozad said they propose to utilize a rotating system of layouts to give areas time to rest. The last thing the Park Board wants to do is be an obstacle to a successful event. Right now there are four multiple-day events planned in this park with rehabilitation time in between. Councilor Anderson asked and Director Cozad said there were 10-12 major events last year. Councilor Anderson asked what problems the fees are intended to solve. Director Cozad said the cumulative effect of events requires rehabilitation of facilities. Councilor Anderson said he understood that the use was causing higher maintenance costs. He said if the use goes down then perhaps the expense would be less.

Mayor Muhlfeld said the revised fee schedule from Director Cozad has hourly fees so the cost for Farmer's Market would be \$1140/year compared to \$5085/year. Director Cozad said the Farmer's Market got their application in early enough so they got to use the 2011 rate last year. Councilor Mitchell asked about the difference in fees and Director Cozad said the hourly rates give a more equitable rate for different events. Councilor Mitchell asked if Director Cozad thinks the park will grow grass and he said with proper management and care he hopes they can make it work. Councilor Kahle asked if the fee structure covers the actual impact to the Park and Director Cozad said they haven't broken down the parks budget by facility so it is difficult to assign a dollar value. He said they will bring the budget to the Council this year with a breakdown of where they spend their money by facility. Councilor Hyatt asked and Director Cozad said they spent about \$14,000 to re-sod Depot Park last year. He said it is about \$1/square foot prepped, installed and laid. He said the community may be willing to have a sod laying party, like they did in the Dog Park. Mayor Muhlfeld said from an equity point of view the alternative option is more appropriate.

Doug Wise, Park Board Chairman, said they have total support for Director Cozad and his staff for the jewels they provide and protect for the community. They have discussed how to maintain Depot Park as the crown jewel of this City. He said they are only asking a vendor to pay \$2.14/week. He said for Huckleberry Days or Whitefish Arts Festival they are only asking for \$19/vendor. These will help maintain the park. The board wants an equitable plan to maintain the park at a level the City wants.

Mayor Muhlfeld opened the public hearing and requested that each speaker hold their comments to the 3-minute limit as there is a large number in attendance who wish to speak.

Rhonda Fitzgerald, 412 Lupfer Avenue, said she has been the co-chair of the Downtown Farmer's Market committee. It is an incredible committee of volunteers and they partner with the City for this event. Economic Development offices may work to develop projects like this, but since Whitefish doesn't have an economic development department the volunteers have created this event. The market is a "third place," a desirable entity, an anchor for community interaction because it is free, highly accessible, offers food and drink, and is a meeting place for friends. There are three purposes to the market: proximity and synergy to businesses, social gathering place, and civic engagement that helps our community thrive. If the committee has funds left at the end of the year they help provide for money for the flower baskets, bike racks and other projects. She said there are 50 vendors on the lawn and it would be a \$500/hit. She said the Farmer's Market is a visible barometer and an emblem of community pride. She asked them not to raise the fees.

Jen Frandsen, 1648 West Lakeshore, said this will be her 3rd year volunteering for the market. She said the National Farmer's Market Coalition uses this market for their model. She said setting up the market downtown creates a place where the community wants to go. Farmers are able to bring their produce by trucks, park on the street, and because of the location near Depot Park it still allows a park-like atmosphere for those who attend. Locals sell their foods and crafts at the event. Children sell their painted rocks. This is a carefully orchestrated market that is highly organized by volunteers. If the fee is raised many of the locals, who often don't make very much money, will quit. She asked them not to break the market or the community.

Todd Kotila, Headmaster at Whitefish Christian Academy, said they run the Whitefish Arts Festival each year, but he wanted to speak as a member of the public. He said he agrees that the park is a wonderful asset. He said he understands that the term fee is a synonym for a tax and he doesn't think

that the fee at \$2/vendor is insignificant. He loves the Parks Department and Doug Wise. He asked, as Councilor Anderson did, what problem the fee structure solves. If the problem is money then he would ask the Council to fund the maintenance of the parks. He said resort tax revenue was up in town, so he suggested they use it to fund the maintenance. He said as a member of the public he opposes fees. He said to be equitable they would have to charge fees for dogs that poop in the dog park and wheel damage that occurs on the skate parks. He asked them not to raise the fees. Mayor Muhlfeld clarified that resort tax cannot be used for park maintenance; and only 5% of the revenues are allotted for park capital improvements.

Kevin Gartland, 307 Spokane Avenue, is the Director of the Chamber of Commerce and said if the intent of the policy is to kill off some of the seasonal events that bring people and money into Whitefish, then they are heading on the right track. He said they raised the fees 20% on Depot Park last year and now they want to raise it 50% and then add additional fees. He said the Council is looking at lowering impact fees because it impacts growth, then they are looking at raising fees for events that help bring people into the community. The City is digging into the pockets of the non-profits. He is disturbed that this project has come this far without more input from those affected. The Chamber urges them to reject the increase in fees and the maintenance plan fees. He said lower rates should be offered to the Chamber as well as to 501(c)3 organizations. He said the only additional staff time he is aware of is for wiring the park for electricity for special events. He asked whether the \$500 fee would go away when the park is updated and has electricity on site. He asked them to reject it.

Life Noell, 240 Dakota Avenue, said he speaks with full confidence in Director Cozad. He said when he worked on the Park Board he was discouraged that only about a dozen people attended Board meetings over the year. He said it is the second Tuesday of the month and people could attend. He asked for clarification if it is viable for the city to cover the \$20,000 for preserving the parks and the grass. He asked if they could use alternative locations for the Farmer's Market. He said there are 10 parks in town they could use. He said recreation is vital and he supports these events. He supports that they are a city of parks, but there is a cost to maintain them. He asked the community to keep an open mind about alternative locations. Depot Park is important and they need to take some of the burden off the Parks and Recreation Department.

Jan Metzmaker, 915 Dakota Avenue, said the Park Board has a lot of responsibilities heaped on them and they don't always get the funding they need. She said they have created a sustainable Farmer's Market committee and they are going to try to have a greener event. She hoped they wouldn't make the market unfeasible.

Shannon Fremont-Smith, 551 Haskill Basin, Whitefish Arts Festival director, said they are 100% volunteer run and they bring a lot to the community. She said the fee increase seems to focus on the damage to the park and not the benefits the event brings to the community. She said the new fees are terrible. They are already paying for 3.5 days and should not have to pay an additional fee. She said their applications went out in October and if she asked for an additional \$20 now, she would get calls. She said they would lose vendors. It is a substantial amount of money to the vendors. She said some organizations turned in their registrations today to avoid fees and she thinks to make it fair, new fees shouldn't go into effect until the first of a new year.

Ron Brunk, 130 E. 4th Street, said he is on the Park Board. He said they were asked to come up with a maintenance plan for the parks. Contrary to popular opinion they aren't out to shut down

Farmer's Market. He encouraged them to look at Director Cozad's hourly structure proposal. He said if they don't want to raise fees the Council could fund the budget so they can take care of \$14,000 worth of sod at Depot Park and all of the other parks. He said they asked Director Cozad how he came up with the fees and he said they are based on the events and the maintenance required for the events.

Rebecca Norton, 530 Scott Avenue, said she thinks they should keep talking about this after tonight. She doesn't think the fees are the best solution. She said Director Cozad started talking about this about 3 years ago. Maybe the people who are most impacted could work on the solutions to figure out how to finance the impact.

Tim Good, 230 Dakota Avenue, owner of the Cuisine Machine, said Farmer's Market is very busy for him. He said that is the only day of the week that they sell food to the public. He said the small vendors are part of what makes Farmer's Market special and the fees would affect them. He asked them not to make it hard for the little people to be there.

Ken Stein, 1495 Lion Mountain Drive, agreed with everyone about Farmer's Market. He said some of the other City facilities that are rented for birthdays need to be kept at a fee that is manageable for families or they will lose more revenue. He likes the idea of more hardscape.

Terry Feury, 930 Pack Rat Lane, said she is a volunteer for the Farmer's Market and raises money for the live music. She said the local businesses love to support live music for the community and for the children. She also sells her bread there and people come from as far as Eureka and Polson. They say they plan their whole trips into town based on the Farmer's Market event. She is opposed to the fee increase.

John Frandsen, 1648 West Lakeshore, read a letter from Marcus Duffy, who is in opposition. He said Jen spends 5 hours/week volunteering for the Farmer's Market. He said he doesn't know how this will be effective financially. He said it mixes up a process that works. He said the increase in fees may cause a net loss of revenue in the long run.

Judy Owsowitz, 6505 Farm to Market Road, said she appreciates the attempt Director Cozad has made to try to keep the fees reasonable. She said this is a great community-building event as Rhonda Fitzgerald said. She said businesses know they need to make the most money they can per square foot, but it doesn't happen everywhere in a store. There are some things that draw people into the business and some that make more money than others. She suggested that perhaps they charge more for people from out of state who launch their boats at City beach.

Sarah Lamb, 1545 Karrow Avenue, said she is a vendor at the market and her children are fourth generation Montanans. She said she is on the board for the Kalispell market and if they raise the fees 5x then they will not be comparable to the fees at the Kalispell or Columbia Falls markets. She said they will lose the local vendors who are the heart of the markets.

Pam Gerwe, 170 Blanchard Lake Drive, said she is a vendor at Farmer's Market and is involved in a lot of the agricultural events in the state. She said a lot of cities sponsor the infrastructure of the community's Farmer's Markets because they are a great asset to the community.

Ian Collins, 898 Blue Heron Drive, and Chair of the Heart of Whitefish, said Nancy Svenningsen and Rhonda Fitzgerald are the people who make the market happen. He said the Farmer's Market would have a \$14,000 increase if the original fees were charged. He was disappointed that this went on at the Park Board level without input from the people who run the Farmer's Market. It hurt the good will in the community. He hoped they would send a message to volunteer boards that when they are looking at serious issues like this that they include people who are being affected by them.

Matthew Smeltzer, 630 W. 3rd Street, said he runs competitive timing races and he has concerns about the fees he pays for his races. He said maybe they could break out the fees per event happening. He said if they sell beer, they pay \$10. If they break it down into individual items perhaps they could associate fees more equitably. He liked the ideas from Kevin from the Chamber. He hoped they would mull over ideas they've heard tonight. He agreed with Rhonda Fitzgerald that it is OK to treat different events differently. He said Director Cozad said this is 4% of the Parks budget and he doesn't think they need to make a big deal about this. He thought those who break something should pay for it. He thanked Director Cozad for working with them on events.

Chris Schustrom, 504 Spokane Avenue, read a letter, previously referred to, from Marcus Duffey. Marcus Duffey said Great Northern Brewing company has firsthand experience with the success and growth of the weekly downtown Farmer's Market. He said they've witnessed its growth and success and have been fortunate to have had its abundance overflow through their doorway. The Farmers' Market is a microcosm of what many want and believe to be right for Whitefish—a gathering of community to support one another and the businesses we operate here. He said the wear and tear on Depot Park is very apparent at times. He proposes that they allocate dollars that have already been collected by the businesses of Whitefish. He urged them to support events like the Farmer's Market and to exam current budget allocations.

Chris Schustrom said he thinks about raising funds for community events. He said you don't fund the Parks Department by raising fees in this manner. He served on the Park Board in the past. The Parks have grown and flourished and he urged the Council to provide better funding for the parks. He believes there should be fees based on whether it is a community event or a commercial event. He asked them to send this back to the Park Board to get community input on funding the parks and maintenance. He said they have had a lot of great community events and have improvements that need to take place, but those take maintenance money.

Mayor Muhlfeld closed the public hearing.

Mayor Muhlfeld called a recess from 9:30-9:40.

Councilor Anderson thanked everyone for their input. He said he appreciates the intense public opinions. Councilor Hyatt said he is on the Park Board and he has addressed this issue at the last few meetings. They know that 20,000 people impact Depot Park and there is a financial impact. They know there is a need to make sure the parks are maintained and funded. They keep adding projects to the Parks Department. This plan is the attempt to deal with maintaining the parks. He thinks they need to figure out how to fund this as a community. They know they need to have green grass. Councilor Sweeney said this brings up the reality that if they are going to have parks they need to figure out how to pay to maintain them. This provides a good discussion point. The fee increases may change the character of the events.

Councilor Sweeney said he would like to table this issue and find different ways to fund this. Councilor Kahle said he loves the public process. He loves the Farmer's Market. He thinks the fees are vital and have to be based on the impact to the park. He said perhaps Director Cozad could help them with that information. Councilor Mitchell said he doesn't go to Farmer's Market, but he is glad they have it. He said they are trying to deal with a usage fee. He questions the Master Plan's call for green space, because he would like to see this park used more. He said they can fund this with taxes. He said at some point the City budget is going to break because they keep trying not to raise taxes, but they will need to. He said it will hurt families. He said they feel like some of their venues should be treated differently. He read a comment from an attorney who said it is violating the basics of law to treat one group differently than another. He said it is wrong to prefer one over another. He also thinks the Park Board has been open about these meetings and Councilor Hyatt has been telling them this was an issue they were dealing with. He said if Farmer's Market is a boon for downtown then the businesses should chip in to help Farmer's Market with the fees. He said they have to have usage fees or raise taxes. He would like the public to come to the budget meetings as they try to figure out how to pay for things.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to postpone action on this Resolution No. 13-____; A Resolution to establish an increase in the public usage fee schedule and the establishment of a new event support fee schedule for the public's use of City parks, facilities and grounds until after the work session on the third Tuesday in February to bring the Council and Park Board together to figure this out.

Councilor Mitchell asked and Director Cozad clarified that current applicants pay the fees that are established at the date of their application, so everyone can come in at the rate they have right now, without a rate increase, if the Council postpones their action tonight. Councilor Kahle asked if they have the discretion to stop taking applications until the rate is determined. Manager Stearns said they can, but it will have an affect on all of those organizations that are trying to plan their events this year. Councilor Kahle said the Park Board didn't just pull this number out of their hat. The proposal was reached after a lot of discussion and thought by the Park Board. He thinks they need to decide on this sooner than later. Councilor Anderson said they can keep the fees where they are for a year, get more information from the staff on the actual impact and costs, and continue to take applications for this year. The businesses need some certainty moving forward. He would prefer that the Park Board analyze these things with robust public input. Councilor Hildner said he appreciated the input. If they postpone the decision it gives them time to consider the alternative proposal Director Cozad came up with at the beginning of his presentation. He said some people slipped their applications in today so it was under the old fee schedule, so he would like to see them hold the fee steady for a year so it is fair to all organizations.

Councilor Mitchell said if this gets postponed would it affect the number of events and Director Cozad said it would not because the Park Board makes the operations policies. They have already decided on a schedule that limits use to protect the park. Councilor Mitchell said the Park Board spent months on this. Councilor Kahle said if they use the previous fee schedule for this year, they need to create the new schedule and give everyone plenty of notification. He would like a work session in February. Councilor Sweeney said the key to this thing is the new Park Board management plan.

The motion passed 5-1 with Councilor Mitchell voting in opposition.

Chuck Stearns

From: Tom Muri [cmuri@bresnan.net]
Sent: Monday, January 07, 2013 10:52 AM
To: 'Chuck Stearns'; kcozad@cityofwhitefish.org; Mary VanBuskirk
Cc: 'John Muhlfeld'
Subject: More money sought for use of parks

I am writing in support of Karl Cozad, Director of Whitefish Parks, new fee schedule, but perhaps it can be phased in over three years to give current and future users the appropriate opportunity to build such increases into their plans and/or budgets.

I also disagree with Farmers Market organizer Rhonda Fitzgerald. Although she is deserving of tremendous credit for starting this very successful Market, when the city treats organizations differently, it is violating the most basic of constitutional concepts of "equal protection (treatment) under the law.

If the city does end up treating the Farmers Market differently in assessing fees, I would appreciate being informed as the different fee structure and the legal basis to do so.

Sincerely,

Tom Muri

PS—I cannot attend tonight's meeting as I'm on my way to Hawaii for a month, (Karl, will you be filling in for me this month?) but would like this email shared with the rest of the council members and made part of the public record testimony (minus the taunting of heading to Hawaii!

From: [Necile Lorang](#)
To: cstearns@cityofwhitefish.org
Subject: Fw: Public Hearing Comment from Lisa Jones
Date: Friday, February 08, 2013 9:25:32 AM

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

From: [Lisa Jones](#)
To: [necile lorang](#)
Sent: Monday, January 07, 2013 4:31 PM
Subject: Public Hearing Comment from Lisa Jones

Greetings City Council and Mayor,

I wanted to provide input on the subject of park fees. I understand the high cost of maintenance and infrastructure needs for Depot Park, but am concerned with the new fee schedule for users such as the Farmers Market for a couple of reasons:

- The market is an economic generator for Whitefish on Tuesday, it's stability is important to our small businesses.
- Providing access to fresh food is important to a healthy community and I don't think the Farmers can afford additional fees that would trickle down.
- Because the Heart of Whitefish partners with the City financially and with volunteer time on important planning and infrastructure projects (such as the Downtown Master Plan, flowers baskets on Central, Wayfinding signage), I don't think it would be wise to cut into one of the main funding sources for this non-profit which serves the city in many ways.

I hope you can find some other budgets or fees to cover the expenses needed to keep the park in good shape.

As always, thanks for volunteering your time for our fine town.

My Best, LJ

--

Lisa Jones
LJ Communications, Inc.
231 First Street, Suite F
Whitefish, Montana 59937
406.862.7977

From: [Necile Lorang](#)
To: cstearns@cityofwhitefish.org
Subject: Marcus Duffey - Park Fees.pdf
Date: Friday, February 08, 2013 9:31:58 AM
Attachments: [Marcus Duffey - Park Fees.pdf](#)

And this letter was brought to the meeting on 1-7-13.

N.

The message is ready to be sent with the following file or link attachments:
Marcus Duffey - Park Fees.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

*Rec'd at
Council Meeting
1-7-13*

Marcus Duffey
326 Somers Avenue (home)
2 Central Avenue, Great Northern Brewing Company, General Manager

January 7, 2013

Dear Councilmen,

We at the Great Northern Brewing Company have firsthand experience with the success and growth of the weekly downtown Farmers' Market. We've witnessed its growth and success, and we're fortunate to have had its abundance overflow through our doorway.

In many ways the downtown Farmers' Market is a microcosm of precisely what many of us want and believe to be right for Whitefish; a gathering of community members to enjoy our beautiful town, support one another, and support the businesses we operate here. Additionally, it is spearheaded by active and caring community members that strive to see that it is modeled to function responsibly and sustainably. What's more, the model works because it operates within an public/private relationship that allows for success; a business friendly environment that does not handicap events such as the Farmers' Market, yet stimulates the economic dollars that ultimately support public goods and services.

The wear and tear on Depot Park is at times very apparent. If we are to stop such wear and tear, I propose that we do so by allocating dollars that have already been collected by the businesses of Whitefish. Events such as the Farmers' Market, or concerts in the Park are already very expensive and risky for small businesses and organizations. Strapping addition costs onto these operations only handicaps healthy economic growth and ultimately smothers the many purposes of a green space such as Depot Park.

I urge the Council, not only as a businessman, but as an individual, to support events like the Farmers' Market by preventing the proposed daily fee. Instead, support our community's parks by examining current budget allocations.

Thank you.



Marcus Duffey
Great Northern Brewing Co.
406.863.1000 ext.5

cut into one of the main funding sources for this non-profit which serves the city in many ways.

I hope you can find some other budgets or fees to cover the expenses needed to keep the park in good shape.

As always, thanks for volunteering your time for our fine town.

My Best, LJ

--

Lisa Jones

LJ Communications, Inc.

231 First Street, Suite F

Whitefish, Montana 59937

406.862.7977

From: [Necile Lorang](#)
To: cstearns@cityofwhitefish.org
Subject: Fw: Whitefish Farmers Market
Date: Friday, February 08, 2013 9:27:26 AM

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

From: [Holly Apple](#)
To: nlorang@cityofwhitefish.org
Sent: Saturday, January 05, 2013 3:52 PM
Subject: Whitefish Farmers Market

To Whitefish City Council members,

It has come to my attention that the Tuesday evening downtown farmer's market is in danger of having their fees increased to an amount that could endanger the future of this wonderful weekly event.

There are farmer's markets in every community in the valley, however, the Tuesday market in Whitefish far surpasses the others in regards to quality of products as well as quantity and variety of vendors. Increasingly consumers have become more aware of the importance of shopping locally. The market also has become a meeting spot for people from all over the valley and all businesses in the downtown area benefit from increased foot traffic.

Please don't assess fees to the Whitefish Downtown Farmers Market that will severely limit that numbers of vendors that would be able to participate. Most of the vendors have very small businesses and could not afford higher fees. Take a stand to show that the city recognizes the benefit of this event and take steps preserve it for years to come.

Sincerely,

Holly Apple
828 Highland Dr
Whitefish, MT 59937
261-4512

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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on **Tuesday**, February 19, 2013, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 13-02. Resolution numbers start with 13-03.

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) COMMUNICATIONS FROM THE PUBLIC – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)
- 4) COMMUNICATIONS FROM VOLUNTEER BOARDS
- 5) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
 - a) Minutes from the February 4, 2013 Council regular session (p. 41)
- 6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
 - a) Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Big Mountain Village preliminary plat (p. 51)
 - b) Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Glades preliminary plat, phases 3-13 (p. 65)
- 7) COMMUNICATIONS FROM CITY MANAGER
 - a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 82)
 - b) Other items arising between February 13th and February 19th
 - c) Resolution No. 13-___; A Resolution approving Amendment No. 4 to the City's Flexible Benefit Plan (Cafeteria Plan) (p. 86)
- 8) COMMUNICATIONS FROM CITY ATTORNEY
 - a) Consideration of letting the prosecution contract with Hedman, Hileman, and Lacosta extend for two more years or giving notice to terminate the contract after June 30, 2013 (p. 109)

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item
- b) Discuss negotiations with Averill Hospitality on the possibility of constructing a boutique hotel on City owned land at 3rd Street and Central Avenue and designate City negotiators (p. 137)
- c) Letter from Bayard Dominick representing Whitefish School District #44 requesting that two hour parking on Pine Avenue near the high school be changed to faculty parking during the term of the high school construction (p. 143)
- d) Reconsider decision not to place the overhead utilities on the East 2nd Street reconstruction project underground (p. 147)
- e) Select one elected official member to participate on the selection committee for the Highway 93 West Corridor Plan consultant
- f) Select one or two elected officials to participate on the Hwy 93 West Corridor Plan steering committee
- g) Email and notice from Garrick Hansen regarding his property at the corner of 6th Street and Baker Avenue (p. 159)
- h) Letter from Sandra Alessi regarding City Cemetery and cremations (p. 162)

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



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

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.
- We are responsible for respectful and courteous dialogue and participation.
- We respect diverse opinions as a means to find solutions based on common ground.
- We encourage and value broad community participation.
- We encourage creative approaches to engage public participation.
- We value informed decision-making and take personal responsibility to educate and be educated.
- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.
- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.
- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09
February 20, 2007

"Cheat Sheet" for Robert's Rules

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



February 13, 2013

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

Mayor Muhlfeld and City Councilors:

Tuesday, February 19, 2013 City Council Agenda Report

There will be a special session with the Park Board on Park use and facility fees beginning at 5:30 p.m. We will provide food.

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

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

- a) Minutes from the February 4, 2013 Council regular session (p. 41)

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

This item is an administrative matter.

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

- a) Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Big Mountain Village preliminary plat (p. 51)

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

This office is in receipt of a letter from Dan Graves of the Whitefish Mountain Resort requesting a 24-month extension for the Big Mountain Village preliminary plat. The Big Mountain Village is an 11-lot resort/commercial subdivision on 12.638 acres located at the end of Big Mountain Road. Attached in the packet are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Whitefish City Council on March 5, 2007. In 2010, the Council granted an extension, as provided for the in

subdivision regulations in place at the time, until March 5, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires March 5, 2013.

Current Subdivision Regulations:

Upon passage of HB 522 in 2011, the Council adopted amendments to the Subdivision Regulations providing two options for extensions – first, a simple 2-year extension is permitted provided the developer can show continued good faith in working toward final plat. Second, if additional time is needed, a subsequent request may be made along with justification for the request. There are no timeframes identified in the regulations with this type of request, providing maximum flexibility for both the Council and the developer. Such requests are reviewed by the Council during a public hearing.

This subdivision was one part of the implementation plan to redevelop the core village area, as identified in the 2006 Big Mountain Neighborhood Plan adopted by the Council. The lots are proposed to be resort-related uses, new parking is proposed to be under the new buildings and the development is centered around a new skier ‘hub’ at the base of Chair One and Two. Part of the village redevelopment included ‘daylighting’ streams previously piped and construction of an overall stormwater management plan to direct sediment laden run-off away from streams to the former sewerage lagoons for treatment. The streams are an integrated amenity to the plan and an improvement to the current conditions.

Change in Standards:

Since 2007, when the Big Mountain Village Preliminary Plat was approved by the Whitefish City Council, certain regulations have been amended including the Water Quality Protection Regulations and the Subdivision Regulations. Below is a summary of items that have changed and are pertinent to this preliminary plat:

- The stream setback of 25-feet met the regulations in place at the time of the plat, but falls short of the 100-foot setback plus 10-foot setback in the current water quality protection regulations (WQPR). The WQPR provides the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- Some of the lots exceed 10% slope, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. A geotechnical investigation report was submitted along with the preliminary plat and focused on the development of Lot 1.
- Some of the lots exceed 30% slope, which isn’t permitted in the subdivision regulations. However, these slopes are manmade and it was anticipated that the topography would be re-worked and the proposed design of the future buildings was intended to serve as retaining walls to protect these slopes.

- The private access streets are proposed to be built within a 40-foot right of way versus the city standard of 50-feet. The Big Mountain Fire Department did not have any concerns with the roads.

Public Comment

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. As of the writing of this report, two comments have been received in opposition to the extension. These letters are attached to the report in the packet.

RECOMMENDATION: Staff respectfully recommends the Council **approve** the request to extend the Big Mountain Village for 24 months, expiring on March 5, 2015 based on the following findings of fact:

Finding 1: The 11-lot preliminary plat was approved by the Council on March 5, 2007. In 2010, the Council granted an extension, as provided for the subdivision regulations at the time, until March 5, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires March 5, 2013.

Finding 2: The preliminary plat supports and implements the 2006 Big Mountain Neighborhood Plan.

Finding 3: The stream setbacks met the urgency ordinance in the place at the time of the preliminary plat.

Finding 4: The stormwater management plan proposes to redirect stormwater away from stream toward the former sewer lagoons for treatment before discharging.

Finding 5: The project is surrounded by WSI property and no other development or third party will be harmed if the preliminary plat is extended.

This item is a quasi-judicial matter.

- b) Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Glades preliminary plat, phases 3-13 (p. 65)

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

This office is in receipt of a letter from Dan Graves of the Whitefish Mountain Resort requesting a 24-month extension for The Glades, Phases 3-13 preliminary plat. Phase 1 was platted in 2003 and Phase 2 was platted in 2008. Phase 2 was subsequently vacated, at the request of the owner, in 2011. Phases 3-13 are still remaining.

The preliminary plat now contains 21 single-family residential lots, 135 townhomes and 22 cabins on 55.73 acres located south of the Base Lodge on Big Mountain. Attached to this report are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Flathead County Commissioners on March 22, 2005. In 2008, the Whitefish Council granted an extension, as provided for in the subdivision regulations in place at the time, until March 20, 2009. The final plat for Phase 2 was approved by Council in August 2008. Pursuant to the Subdivision Regulations, the next phase of final plat was required to be filed within 2-years unless an extension was granted by the Council. The developer requested and received approval for an extension until August 18, 2011. Then on June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 18, 2013.

Current Subdivision Regulations:

Upon passage of HB 522 in 2011, the Council adopted amendments to the Subdivision Regulations providing two options for extensions – first, a simple 2-year extension is permitted provided the developer can show continued good faith in working toward final plat. Second, if additional time is needed, a subsequent request may be made along with justification for the request. There are no timeframes identified in the regulations with this type of request, providing maximum flexibility for both the Council and the developer. Such requests are reviewed by the Council during a public hearing.

This development is a residential subdivision with a combination of single family dwellings, townhouse and cabin-style units. The development stretches from the east near the Easy Rider chair (also known as Chair 9) and existing Glades subdivision, phase 1 to the west and south of the Base Lodge. Over 23 acres of the subdivision is maintained in open space along the stream and pond. Several new private roadways are proposed within the project including a loop road to the south of the Base Lodge and several cul-de-sacs. All roadways meet the city's private road standards; the project is served by the Big Mountain Water Company and the Big Mountain Sewer District.

Change in Standards:

This subdivision was approved prior to the 2006 Big Mountain Neighborhood Plan, Water Quality Protection regulations and current subdivision regulations.

The Big Mountain Neighborhood Plan, adopted by the Whitefish City Council, sets out locations for development, land uses, range of densities and transportation linkages. It is anticipated, as development proposals are submitted, development review would be dictated by both the neighborhood plan and the Big Mountain zoning designations.

Below is a summary of phases and their relationship to the 2006 Neighborhood Plan:

Phase:	Proposed in the 2004 Glades Subdivision	2006 Adopted Big Mountain Neighborhood Plan Designations
2 (now phase 3)	14 townhouse units/1 lot	No development in this area
3 (now phase 4)	42 townhouse units/1 lot	Development Pod 'P' density 20-30 units
4 (now phase 5)	16 townhouse units/1 lot	Now the North Valley Clinic and designated on the neighborhood plan as 'skier services'
5 (renamed phase 2)	At the request of the developer, vacated by the Council in 2011 (4-lot subdivision)	
6	10 townhouse units/1 lot	Development Pod 'R' density 20-30 units
7	22 cabins/1 lot	
8	41 townhouse units/1 lot	No development in these areas: Haskill Creek Preserve
9	12 townhouse units/1 lot	
10	9 single family units/9 lots	
11	5 single family units/5 lots	No development in this area
12	5 single family units/5 lots	No development in this area: Haskill Creek Preserve

Phase:	Proposed in the 2004 Glades Subdivision	2006 Adopted Big Mountain Neighborhood Plan Designations
13	2 single family units/2 lots	No development in this area
Total:	178 units on 28 lots	40-60 units

Below is a summary of other pertinent items that have changed related to this preliminary plat:

- Most of the development is setback from the stream. The buffer of 125-feet with a 10-foot setback is generally being met with the project. The regulations provide the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- There are a series of wetlands in this subdivision. Again the buffer of 125-feet with a 10-foot setback is being met in some areas of the preliminary plat, but large portions of Phases 3, 4 and 7 are located with the buffer. Similar to streams, wetland buffers could be averaged provided buffers are no less than 50-feet.
- Some of the lots exceed 10%, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. Staff could not locate any geotechnical reports associated with the preliminary plat.

Of the eleven remaining phases of this preliminary plat, Phase 4 is the location of the current North Valley Clinic, Phases 2, 11 and 13 were removed from the neighborhood plan and Phases 8, 9, 10 and 12 are located wholly within the area designated as Haskill Creek Preserve. The Big Mountain Neighborhood Plan describes the Haskill Creek area:

“The Haskill Creek drainage below the Day Lodge is designated open space on the master plan. It is anticipated that this drainage will be utilized for hiking, walking, biking and ski trails. Structures other than resort related facilities supporting recreational activities or utilities are not anticipated within this green belt. The green belt varies from approximately 250-feet to 900-feet from either side of the streambed.”

Only Phases 3, 6 and 7 are located within the Neighborhood Plan as Development Pods ‘P’ and ‘R’.

Finally, this development lies in the upper reaches of 1st Creek, which is effectively the main channel of Haskill Creek. The confluences with 2nd Creek and 3rd Creek are a short distance downstream. The City of Whitefish has water rights on 1st, 2nd and 3rd Creeks and municipal water is currently drawn from 2nd

and 3rd Creeks. The 1st Creek water right has been utilized in the past and continues to be available for municipal water supply. It is therefore important to protect the water quality of 1st Creek from degradation by human activities.

Public Comment

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. As of the writing of this report, no comments have been received.

Staff has concerns with extending the entirety of The Glades preliminary plat since conditions have changes considerably since the plat was approved. Careful thought and consideration was put into the Neighborhood Plan, where development would be best located, the appropriate density and traffic circulation patterns. As the Neighborhood Plan was adopted as a part of the City's Growth Policy, it makes sense to honor the planning work and approval the Council gave in 2006 with this extension request.

RECOMMENDATION: Staff recommends the Council **approve – portions of the preliminary plat consistent with the Big Mountain Neighborhood Plan (phases 3, 6, and 7)** for 24 months, expiring on March 5, 2015 based on the following findings of fact:

Finding 1: The 178 units on 28-lot subdivision was approved by the Flathead County Commissioners on March 22, 2005. In 2008, the Council granted an extension, as provided for the subdivision regulations at the time, until March 20, 2009. In 2010, the Council granted an extension until August 18, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 18, 2013.

Finding 2: In 2006, the Whitefish City Council approved the Big Mountain Neighborhood Plan which sets out locations for development, land uses, range of densities and transportation linkages.

Finding 3: Phase 3, 6 and 7 support and implement the 2006 Big Mountain Neighborhood Plan.

Finding 4: The City of Whitefish has water rights on Haskill Creek including its reaches. The stream through this project, First Creek, is one of those reaches.

This item is a quasi-judicial matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 82)
- b) Other items arising between January 30th and February 4th
- c) Resolution No. 13-___; A Resolution approving Amendment No. 4 to the City's Flexible Benefit Plan (Cafeteria Plan) (p. 86)

Section 125 of the Internal Revenue Code allows governmental units to enact an employee benefit often called Cafeteria Plans whereby the employees are allowed to set aside some of their income from the City for specified uses such as known medical expenses, dependent care (e.g. day care), and health savings accounts using pre-tax dollars. Thus, the employee reduces his or her out of pocket costs for such expenses by the amount of income tax dollars saved in reducing his or her Adjusted Gross Income (AGI).

The City of Whitefish adopted such a plan beginning in October, 2003. The City Council approved a restated Flexible Benefits Plan on December 7, 2009 pursuant to Resolution No. 09-47. The City Council also approved Amendment No. 2 on September 20, 2010 pursuant to Resolution Number 10-43 which allowed employees with their own medical insurance policy to pay the monthly premiums through the Flexible Benefits Plan. The City Council also approved Amendment No. 3 on January 3, 2011 which changed the definition of "Dependent" and "Medical Expenses" to comply with new federal health care regulations.

Cafeteria Plans involve contributions only from the employee, the City of Whitefish does not contribute any funds to the plan. Any funds which the employee does not use by December 31st of each year are lost to them as the program is allowed by the IRS for each tax year with no carryover.

Our third party administrator for the Flexible Benefits Plan, Peak1 Administrators of Idaho has forwarded an amendment to our plan document related to reducing the maximum amount of employee contribution from \$3,000.00 per year in the past to \$2,500.00 beginning in 2013 to comply with new federal health care regulations. The proposed amended plan document is attached to the Resolution in the packet.

RECOMMENDATION: Staff respectfully requests the City Council enact a Resolution approving Amendment #4 to the Flexible Benefits Plan.

This item is a legislative matter.

COMMUNICATIONS FROM CITY ATTORNEY

- a) Consideration of letting the prosecution contract with Hedman, Hileman, and LaCosta extend for two more years or giving notice to terminate the contract after June 30, 2013 (p. 109)

From City Attorney Mary VanBuskirk's staff report:

Since 1991, the law firm of Hedman, Hileman & Lacosta, PLLP (Law Firm) has provided prosecutorial services on behalf of the City primarily before the Whitefish Municipal Court.

In 2007 the City of Whitefish contracted with the Law Firm on an hourly basis for legal services, based on their 2007 hourly rates, with a term of four years. Under the hourly basis, the City incurred prosecution costs of approximately \$88,377 in FY 2009, \$122,274 in FY 2010 and \$114,852 in FY 2011. (See attached 2007 Contract and invoice summary.)

In the final year of the 2007 Contract, the City sought a flat fee contract with the Law Firm seeking lower prosecution costs and budgetary predictability for the City. As a result, the Law Firm and the City negotiated a two-year term agreement (July 2011 through July 2013) setting an annual flat fee for legal services in the amount of \$90,000, plus \$3,600 for costs and expenses (billed monthly at the rate of \$7,500 and \$300). The City Council approved the terms of the 2011 Prosecuting Attorney Contract (2011 Contract) in the City's FY 2012 Budget. With City staff undertaking civil citations formerly handled as criminal charges by the Law Firm, and under the flat fee arrangement, the City incurred prosecution costs of \$93,637 in FY 2012. (See attached 2011 Contract.) For the term of the 2011 Contract, the Law Firm assigned primary responsibility for the delivery of prosecution services to Caleb Simpson, an associate. Clifton Hayden, a partner, was also available as the prior chief prosecutor under the 2007 Contract.

By the terms of the 2011 Contract, the contract would be automatically extended for an additional consecutive two-year term unless either party notified the other "at least four (4) months before the expiration of the current term, that that party desires to renegotiate or terminate the contract". Either party may exercise the right of renewal for an additional two years through June 30, 2015. The City Council may also review the Law Firm's "quality of performance, cost of services and such other matters as the Council deems appropriate" on an annual basis. Since the 2011 Contract expires on June 30, 2013, the four-month timeframe to provide the City's notice to renegotiate or terminate ends at the end of February 2013.

In order to assist the City Council in its consideration of the Law Firm's performance and services, staff requested a report from the Law Firm concerning the extent of its

prosecution services on behalf of the City. The Whitefish Police Department also provided feedback concerning the prosecution services. In addition, we sought the nature and extent of prosecution cases over the past two years from Shellee Abel, Clerk of the Municipal Court.

In response to our request, Mr. Hayden provided the attached Law Firm's January 24, 2013 Prosecution Contract Annual Review (Annual Review) indicating the Law Firm's interest in continuing the Contract on the same basis for an additional two years. Although the Law Firm no longer tracks billable hours (as a cost saving measure to the Law Firm since the prosecutorial services are billed at a flat monthly fee), Mr. Hayden provided the total number of criminal cases filed with the Municipal Court. In its Annual Review, the Law Firm reported its assessment that the FY 2011 and FY 2012 case load "has remained fairly consistent" with its commitment to continue its relationship with the City under the same terms of the 2011 Contract.

Ms. Abel provided the Municipal Court's reports and breakdown of the City's case numbers over the past three years as follows:

	Docket Nos. (Tickets)	Criminal Complaints	Search Warrants
2012	3,140	50	19
2011	2,971	44	17
2010	3,256	67	9

A copy of the Court's tally of total cases (both general and civil) and breakdown showing criminal matters is attached.

The Whitefish Police Department expressed its satisfaction for the professional nature of the Law Firm's prosecutorial services and desire to continue the Law Firm's Contract.

RECOMMENDATION: City staff respectfully recommends that the City Council approve the two-year renewal of the Contract for Prosecution Services by the Law Firm for FY 2014 and FY 2015, at the same annual flat fee of \$90,000 for legal services and \$3,600 for costs and expenses, with the Council's authorization for City staff to negotiate the terms for the renewal and Chuck Stearns, City Manager, to execute the two-year renewal on behalf of the City.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item

- b) Discuss negotiations with Averill Hospitality on the possibility of constructing a boutique hotel on City owned land at 3rd Street and Central Avenue and designate City negotiators (p. 137)
- c) Letter from Bayard Dominick representing Whitefish School District #44 requesting that two hour parking on Pine Avenue near the high school be changed to faculty parking during the term of the high school construction (p. 143)
- d) Reconsider decision not to place the overhead utilities on the East 2nd Street reconstruction project underground (p. 147)
- e) Select one elected official member to participate on the selection committee for the Highway 93 West Corridor Plan consultant
- f) Select one or two elected officials to participate on the Hwy 93 West Corridor Plan steering committee
- g) Email and notice from Garrick Hansen regarding his property at the corner of 6th Street and Baker Avenue (p. 159)
- h) Letter from Sandra Alessi regarding City Cemetery and cremations (p. 162)

ADJOURNMENT

Sincerely,



Chuck Stearns
City Manager

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WHITEFISH CITY COUNCIL MINUTES

February 4, 2013

7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Mitchell, Sweeney, Anderson, Hildner, Kahle and Hyatt. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Assistant City Manager/Finance Director Knapp, Planning and Building Director Taylor, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 12 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Ross Pickert to lead the audience in the Pledge of Allegiance.

Mayor Muhlfeld asked for a moment of silence in memory of community leaders Gary Elliott and David Sobba who recently passed away.

3. PRESENTATIONS – Presentation of plaques of appreciation to Jim and Lisa Stack for their years of service to the Whitefish Lake and Lakeshore Protection Committee

Mayor Muhlfeld said Jim Stack was appointed over 20 years by the County Commissioners. Lisa Stack administered the program for over 13 years and never accepted reimbursement. Mayor Muhlfeld said Jim applied the regulations impersonally and fairly. When taxes sky rocketed on lakeshore property Jim worked in Helena with Senator DePratu to make sure longtime Whitefish residents could stay in their homes. He rescued a London visitor in Whitefish Lake and then, along with the Shaw family, purchased a hover craft for the City to facilitate emergency rescues. Mayor Muhlfeld said Jim and Lisa administered the Lakeshore Committee with integrity and he thanked them for their service to Whitefish and their efforts to protect Whitefish Lake. He honored them with plaques of appreciation.

Lisa Stack said she is humbled by the recognition. She said she has seen a lot of people serve on this committee and spend countless hours. She said this honor recognizes their work as well. Jim Stack said no one who applies to a volunteer board imagines that they'll apply over and over again. He didn't get on the Lakeshore Committee out of a love for the lake. He got involved after he and Lisa were in a lakeshore violation situation. He got on the committee and thought he was going to change the rules, but instead, the committee changed him. The lakeshore regulations are a delicate balance between property owner rights and Whitefish's greatest asset—a clean, beautiful lake. He is proud of the organization and structure of the committee. There is now consistency in application approvals or denials. He said enforcement is more of an issue. No one should be able to get something without it meeting all the standards. He is also happy their committee has been apolitical. He thinks the regulations are getting more political and that concerns him. He said the lakeshore regulations are not about development versus anti-development and he hopes the County Commissioners hear this clearly. It is not an easy task to serve on this committee, but the individual members care about the quality of Whitefish Lake. He hopes they keep focused on protecting the lake.

- 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)

No one wished to speak.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner reported that the Bike/Ped committee met today. He said they will need some funding to do survey and engineering analysis to complete the feasibility report on the Riverside Condo trail location. They are working on the rough design for Skye Bridge prior to meeting with BNSF on right-of-way easement agreements. He said the committee unanimously voted to support the curved design on Dodger Lane/Veteran's Way to allow the neighbors to keep as many trees as possible. They also approved a motion recommending a bike/ped path be included in the Dodger Lane project. Estimated cost is \$16,000 and the question is where the money will come from. Potential volunteer projects for spring include: filter fabric removal and weed control along bike paths, sand/stain bridge railings, and work at the hospital site. He said Safe Routes to Schools is coming up in the spring and crosswalk improvements are coming to crossings near Central School.

Councilor Sweeney said the Whitefish Trail Committee met with the DNRC last week to talk in detail about the hopes and plans for new trails this summer. They hope to construct 6 new miles of trails with some type of parking area. They'd like to get the plans in place and ready in case funds become available.

Turner Askew, with the 911 Board, said they are reviewing their committees and by-laws and that were set up at the beginning; they are finding out some things don't work exactly as they thought they would. They have to have more law enforcement people on one board to have access to Justice Department legal matters. The public is welcome to come to meetings. Mayor Muhlfeld said he appreciates Turner Askew's service on this committee.

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

6a. Minutes from the January 22, 2013 Council regular session (p. 41)

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

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

7a. Continued Public Hearing - Recommendation from Impact Fee Advisory Committee to eliminate three Impact Fees established for city buildings – ESC, Park Maintenance Building, and future City Hall (p. 55)

Finance Director Knapp said he was available if they had questions. Councilor Hildner asked and Mayor Muhlfeld said they could ask questions of the committee.

Mayor Muhlfeld opened the public hearing.

Myra Appel, 61 Hummingbird Lane, represented the Impact Fee Committee. She said the Councilors have letters from Bill Halama and Don Kaltschmidt who also serve on the committee. She said she read the Florida Study where they suspended the Impact Fees for five years, but she didn't see how Whitefish compares to Florida.

Councilor Hildner said on page 55 of the packet her report says the perception is that Whitefish is too expensive. He asked if she could quantify that and she said she couldn't quantify it. She would say they've heard it from many people in the community. Councilor Hyatt said he served on that committee and he worked for Habitat for Humanity and it was much more expensive to build in Whitefish than in Columbia Falls. Councilor Hildner asked about the comment in the report about "small fees charged by the City" and she said it was a perception that the committee had. Councilor Mitchell asked who collected the information on page 67 comparing the three towns and Finance Director Knapp said he did. Councilor Mitchell said water is similar in all three towns, but Whitefish has lower stormwater fees. He said he knows there is an upgrade coming and Director Wilson agreed and said Columbia Falls and Kalispell have recently had stormwater upgrades. Director Wilson said Kalispell has reporting and public education requirements that may make their charge higher. Councilor Mitchell said he doesn't think the City fees are too bad right now, but he thinks they'll go higher when they upgrade the stormwater system. Finance Director Knapp said he did the 5-year update on the stormwater and they could be charging \$2100 for wastewater, but the Council chose to leave it where it was. The ESC fee is similar to what Kalispell charges for Police and Fire.

Turner Askew said he hears from contractors that it is more expensive to build in Whitefish; if any of them have done a remodel or new construction they know the charges to build and develop in Whitefish are high. There are permit fees and project costs that add up. He said the contractors tell him Whitefish is more expensive, so they add 10% to their bids.

Rebecca Norton, 530 Scott Avenue, said she is opposed to the elimination of these development fees; as a citizen she doesn't want to have to pay for it.

Mayor Muhlfeld closed the public hearing.

Councilor Hildner said he has done a lot of research. The Florida study is instructive. If they don't make any change at all the difference between the three cities is not terribly great. He said Kalispell is looking at a 16% increase in their water which will increase their impact fees by \$350. Their minimum fee on wastewater will grow soon and they will end up with an impact fee of anywhere from \$8469 and \$13,365. He said that keeps Whitefish in the ballpark. Statistics show that developers are still building in Whitefish. In the Council packet on Nov. 19, 2012, page 3, a report talks about the census and the service population. He thinks they should hold the line and not increase or decrease the impact fees.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to keep the impact fees as they are.

Councilor Mitchell asked for the dollar amount available in the TIF fund for City Hall and Director Knapp said about \$2.2 million in TIF funds and \$170,000 in Impact Fees. Councilor Mitchell asked about the Park Maintenance building and Finance Director Knapp said it was paid for from TIF funds and money from impact fees pays back that fund. Councilor Hyatt said the Impact Fee Advisory

Committee first presented their idea to remove these fees in November 2011. He said they've created fees to pay back a tax—the tax increment fund. That is why they recommended removing the three impact fees.

Councilor Anderson said sometimes it is hard to determine what is fueling growth. He said studies can be used to support or deny anything you want. He said recent figures in the Flathead Valley show that Whitefish is doing much better than the other communities, but it is hard to tell what is fueling that. He built here and it wasn't fun to write a check for the impact fees, but it didn't keep him from building here. He said there may be other ways to encourage growth, but he thinks it provides stability to leave the fees as they are; everybody pays their fair share. Councilor Sweeney said there might be a way to consolidate some of the fees. He said the impact fee total does not seem to be affecting growth in Whitefish. He doesn't see that Whitefish is at a disadvantage—they still have builders building here. He said impact fees help pay for the impacts of growth. Councilor Kahle said he respects the committee and the work they've done, but he disagrees that this is a growth-metering thing. He thinks each of the three fees discussed should be addressed individually. There is a number of funding mechanism ideas in the works for City Hall, and the ESC is already built. He wondered if the additional fees are being collected for expansion. He said they are paying back TIF funds for the Park Maintenance building and he thinks that is a reasonable action.

Mayor Muhlfeld asked Councilor Kahle if he wanted that discussion now because they do have a motion on the floor. Councilor Kahle said he was okay with seeing how the vote on the current motion goes.

Mayor Muhlfeld said he was involved with the 2007 Henderson study when they came up with the Impact Fees. In 2010 the City offered to rebate a portion of the impact fees for residential remodels, additions or small commercial projects. They only had three applications, so it didn't make a difference for those who wanted to build in Whitefish. He looked at the Kelly report for 2012 and Whitefish had 51 new single family homes compared to 54 in Kalispell. There has been an increase of 26.4% in Whitefish over Kalispell. The Whitefish fees are only \$86 higher than Kalispell. He said he appreciates the committee's time and effort spent on this, but he thinks it comes down to philosophical issues.

The motion was tied with Councilors Hildner, Anderson and Sweeney voting in favor and Councilors Mitchell, Kahle and Hyatt voting in opposition. Mayor Muhlfeld voted in favor and the motion passed 4-3.

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

8a. Consideration of approving an expanded scope of work for the East 2nd Street Reconstruction Project to include the construction and extension of Dodger Lane from Armory Road to East 2nd Street (p. 86)

Public Works Director Wilson said this has been mentioned before in a newsletter and one public meeting. In looking at construction issues, the need became apparent to relieve congestion during construction. For mitigation they are proposing a road that won't have curbs, gutters and lights; it is a 2-lane road with a bike/ped path on the east side. He said the engineer prepared a rough estimate to add the path, and came up with an additional \$16,000. He said Director Cozad thought there would be money by 2014 in the park portion of the Resort Tax to fund this bike path. He said the alignment idea came out of the 2007 Parks Master Plan. Staff foresees enough flexibility with pending projects and

sufficient funds available to include the Dodger Lane extension in the Street, Water and Stormwater budgets for FY14.

Councilor Anderson asked if the neighbors have been contacted and Director Wilson said he has talked with Chet Wram and the engineer spoke to Kyle Schellinger. Both neighbors have misgivings about increasing traffic, but they haven't expressed strong objections. The project engineers held a pre-construction public information meeting at the Armory last fall. Councilor Mitchell asked and Director Wilson said the \$16,000 will cover the bike/ped path. Councilor Hildner complimented Public Works for looking at Dodger Lane and working to protect the ponderosa pines. It is neighborly and improves the look of the road. He hopes they can come up with the money for the bike/ped path. Director Wilson said it was the Parks Department and Bruce Boody's design teams who came up with the good road design idea in their Master Plan.

Councilor Hildner offered a motion, seconded by Councilor Hyatt, to approve an expanded scope of engineering and construction work for the East 2nd Street Reconstruction Project to include the construction and extension of Dodger Lane from Armory Road to East 2nd Street, including a bike/ped path on the east side.

Councilor Anderson said page 87 indicates they'll allocate funds in 2014 and Director Wilson agreed. Manager Stearns said this also includes an amendment for Peccia and Associates for engineering design.

Councilors Hildner and Hyatt agreed to include Amendment No. 2 in their motion to approve the consultant contract with Robert Peccia and Associates, in an amount not to exceed \$51,500, for engineering design, bidding, construction engineering and related services necessary to complete this work as recommended by staff.

The motion, as amended, passed unanimously.

Councilor Kahle said he would like to re-visit the under-grounding of power lines from Armory Road down Second Street. He asked the Councilors to add an agenda item to discuss this at a future date with the Resort Tax Monitoring Committee because putting power underground during new construction is a City policy. The Councilors showed unanimous approval and Manager Stearns said he would contact members of the Resort Tax Monitoring Committee.

8b. Discussion of initiating a stormwater project on East 4th Street north of the high school and south of Memorial Park in conjunction with the high school's upcoming stormwater improvements as part of the high school reconstruction (p. 90)

Director Wilson presented a concept developed by the School District's engineering consultant for the New High School project, Jackola Engineering, and Public Works staff to improve storm drainage facilities along east 4th Street, north of the school. Although construction will not occur until FY14, he said a commitment is needed at this time if the City wishes to participate. Improvements will be paid out of Stormwater Fund.

It would be beneficial to both the School District and the City to improve drainage on East 4th Street as part of the New High School construction project. Drainage from the north high school parking lot and 4th Street currently flow directly to Cow Creek with no treatment. The drainage

improvements proposed by Jackola Engineering would collect drainage along Fourth Street and pipe it through the school property to Pine Avenue. The proposed system would collect drainage from most of the new high school project. The stormwater directed to Pine Avenue would then drain to the City's existing wetland detention pond at the south end of Pine. This pond would provide treatment and detention before releasing to Cow Creek.

The project would also include paving the gravel portion of 4th Street (along the north edge of the road). This area is currently used for student parking and special events. The proposed drainage system has been designed to facilitate the eventual reconstruction of Fourth Street. These drainage improvements will increase the life of the pavement and make it less expensive to rebuild. Standing water is a major cause of asphalt deterioration on streets throughout town.

The estimated cost of construction for the Fourth Street drainage improvements, including a 15% contingency, is \$126,666. The School District proposes the City participate in the cost upsizing a currently designed 8 inch stormwater main to 12 inch, as necessary to serve the expanded drainage area. This would be consistent with City policy and our Design Standards. The approximate cost of \$5,456 to upsize the pipe is included in the cost estimate shown above.

The FY13 Stormwater budget includes an estimated Ending Available Cash balance of \$1,044,744. Staff therefore anticipates sufficient funds to include this project in the upcoming FY14 budget. Construction of these drainage improvements is expected to occur during the summer and fall of 2013. He said the City would be required to pick up engineering costs which would be 10% or about \$12,500, bringing the total cost up to approximately \$138,000. Councilor Mitchell asked if they approve this will it affect the school's budget and Director Wilson said it won't change the cost to the school.

Toby Macintosh, with Jackola Engineering, said the new parking lot will drain across Fourth Street. They looked at keeping the drain water in Fourth Street, but it is too shallow. They have to go through the school site to have any slope. Councilor Anderson asked and Director Wilson said this street could use work, but it isn't on the horizon of their reconstruction priorities. He said they want to stop discharging directly into Cow Creek. Councilor Anderson asked if the school would have to do this anyway and Director Wilson said they would. Councilor Anderson asked and Director Wilson said everything in pink is the school's project on the map in their packet. The school would not upsize the pipe normally—it is what the City needs for drainage. It is to the City's advantage to upsize the pipe. Councilor Anderson said they have already given over \$2 million in TIF funds to the school and he wants to be sure they are not making any further contribution to the school. Director Wilson said the City is not doing the work for the school; they are just paying for a bigger pipe. Councilor Hildner said the cost to upsize from 8 to 12 inches is only \$5456. He said the City is including more paved parking for the school. Toby Macintosh said if this project doesn't go forward the school will improve the boulevard and put in curbs. He said they are approaching the City to ask if they want to improve the drainage all along Fourth Street. He said if the City doesn't want to do anything there is no impact to the school. Councilor Hildner asked and Director Wilson said this is definitely the best route. If they put the pipes in and leave gravel it will affect water quality down the road. He said the intent is to position it so it will line up with future curbs on Fourth Street.

Mayor Muhlfeld said they have received many public comments about the safety issues on Fourth Street in the past. Director Wilson said this is not a new paved roadway project. Councilor Mitchell asked and Director Wilson said the pipes will be extended and cement will be laid there.

Councilor Mitchell said Fourth Street is one of the worst roads and there is no drainage there. He said they need to at least increase the pipe size at this point. Councilor Hildner asked about the status on the stormwater retention pond and whether it needed rehabilitation. Director Wilson said they will look at the capacity issue. He said that under the City's construction standards there is no basis to require the high school to improve treatment downstream. They aren't increasing parking surface area. Mayor Muhlfeld said he thought the school project would be subject to a DEQ permit. Director Wilson said there may be a construction permit required. Toby Macintosh said there are some State stormwater regulations that they will have to comply with.

Councilor Kahle offered a motion, seconded by Councilor Mitchell, to authorize a commitment to the School District, whereby the City would participate in construction of the 4th Street Drainage Improvements Project at an estimated cost of \$126,666 plus an additional 10% for engineering costs in FY14 from the Stormwater Fund.

Councilor Mitchell said this is a good project. Councilor Hildner asked if the Fourth Street collector would take surface run-off from the fertilized athletic fields and Director Wilson said it will just be for run-off from the impervious surfaces. Councilor Anderson said the treatment of the water is a plus and Mayor Muhlfeld agreed. Mayor Muhlfeld said he met with Director Wilson about an upcoming RFQ asking that the Pine Street water treatment pond be evaluated, and Director Wilson said he talked with Mike Koopal today about this pond.

The motion passed unanimously.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 132)

Councilor Mitchell asked about the 1.7% CPI and wondered what they used last year. Manager Stearns said it was 2.7% last year and the Council agreed to the COLA of 3.7% for this year.

9b. Other items arising between January 30th and February 4th. None.

10. COMMUNICATIONS FROM CITY ATTORNEY

10a. Resolution No. 13-02; A Resolution further amending Resolution No. 11-05, which established an Ad Hoc Cemetery Committee, to expand the Committee's general purpose and to extend its duration an additional two years (p. 102)

City Attorney VanBuskirk said following the January 22, 2013 work session between the Council and this Committee, it was determined more time was needed for the Committee to work on their project. This resolution would expand the duration of this committee for two years and expands their purpose. They will evaluate possible additional services in the current location and continue searching for additional locations for the Whitefish Cemetery.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Resolution No. 13-02; A Resolution further amending Resolution No. 11-05, which established an Ad Hoc Cemetery Committee, to expand the Committee's general purpose and to extend its duration an additional two years.

Councilor Mitchell asked what they decided about the parcel they looked at and Manager Stearns said a committee met last Friday and decided to go forward with water testing this spring. Mayor Muhlfeld said they are also looking at a market analysis of that property.

The motion passed unanimously.

11. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11a. Standing budget item - None.

11b. Letter from Brian Averill of Averill Hospitality requesting to begin negotiations with the City of Whitefish on the possibility of constructing a boutique hotel on City owned land at 3rd Street and Central Avenue (p. 107)

Manager Stearns said all letters are placed on the agenda for informational purposes or for Council to give direction to staff if needed. He said if the Council wants staff to do so, they can establish a resolution to create a committee to negotiate with the applicants. If so, they would look for guidance on the composition of that committee. Councilor Mitchell asked and Manager Stearns said Manager Stearns, Finance Director Knapp and a few elected officials (2-3) would be good. Mayor Muhlfeld said he would like to remain part of the committee because he has been informally involved. He recommends a broad spectrum of the Council. Councilor Kahle asked and Manager Stearns said it would be about a one-year committee term. Mayor Muhlfeld said they are not committing the City to anything at this point. Councilor Mitchell said he would be in favor of a discussion. He thinks this would be good for the town. Councilor Kahle said he has met with the Averills on this and he would like to stay involved.

Councilor Sweeney said he would be happy to participate, but he thinks Councilor Anderson has some background in this and would be a great fit. Mayor Muhlfeld said one person could be an alternate. Councilor Anderson said he would like to get the resolution prepared and then they can talk about who should be seated there. Mayor Muhlfeld agreed. Councilor Anderson said a Mayor and two Councilors would be a good size. Councilor Hildner said there will be a fair amount of interest about this topic and he expects a lot of public input. He asked and City Attorney VanBuskirk said the request to set up a subcommittee is a legislative matter. Councilors may be contacted directly by the public about any legislative matter. Legislative matters differ from quasi-judicial matters. Non-public communications need to be avoided in quasi-judicial matters, which involve an applicant seeking a particular outcome concerning his or her land use. Manager Stearns said at this point the City is involved because they are the owners of the land. Hotels are a use by right in this zoning district. He said at this point any and all lobbying is fine. Councilor Hyatt said he thinks Mayor Muhlfeld needs to stay involved and he thinks two other Councilors will be adequate. Councilor Anderson abstained, but the rest of the Councilors indicated agreement to have the resolution creating the committee brought back to the Council.

Councilor Hyatt said the Winter Carnival Parade was wonderful. Councilor Sweeney said there have been no high school meetings since the Council last met. Councilor Hildner asked if there was a budget oversight meeting and Councilor Sweeney said they are in the process of preparing bid packages for Phase I which is the gym project and is separate from the bond. Councilor Mitchell said he spent a couple of hours today listening to an angry builder. He talked to the Building Department and wanted to thank them for their assistance; Krista was a great help.

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

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

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk

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



February 12, 2013

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

Mayor Muhlfeld and Councilors:

Request to Extend the Preliminary Plat for Big Mountain Village (WPP 06-67)

Request/Background:

This office is in receipt of a letter from Dan Graves of the Whitefish Mountain Resort requesting a 24-month extension for the Big Mountain Village preliminary plat. The Big Mountain Village is an 11-lot resort/commercial subdivision on 12.638 acres located at the end of Big Mountain Road. Attached to this report are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Whitefish City Council on March 5, 2007. In 2010, the Council granted an extension, as provided for the in subdivision regulations in place at the time, until March 5, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires March 5, 2013.

Current Subdivision Regulations:

Upon passage of HB 522 in 2011, the Council adopted amendments to the Subdivision Regulations providing two options for extensions – first, a simple 2-year extension is permitted provided the developer can show continued good faith in working toward final plat. Second, if additional time is needed, a subsequent request may be made along with justification for the request. There are no timeframes identified in the regulations with this type of request, providing maximum flexibility for both the Council and the developer. Such requests are reviewed by the Council during a public hearing.

Current Report:

This subdivision was one part of the implementation plan to redevelop the core village area, as identified in the 2006 Big Mountain Neighborhood Plan adopted by the Council. The lots are proposed to be resort-related uses, new parking is proposed to be under the new buildings and the development is centered around a new skier ‘hub’ at the base of Chair One and Two. Part of the village redevelopment included ‘daylighting’ streams previously piped and construction of an overall stormwater management plan to direct

sediment laden run-off away from streams to the former sewerage lagoons for treatment. The streams are an integrated amenity to the plan and an improvement to the current conditions.

Change in Standards:

Since 2007, when the Big Mountain Village Preliminary Plat was approved by the Whitefish City Council, certain regulations have been amended including the Water Quality Protection Regulations and the Subdivision Regulations. Below is a summary of items that have changed and are pertinent to this preliminary plat:

- The stream setback of 25-feet met the regulations in place at the time of the plat, but falls short of the 100-foot setback plus 10-foot setback in the current water quality protection regulations (WQPR). The WQPR provides the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- Some of the lots exceed 10%, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. A geotechnical investigation report was submitted along with the preliminary plat and focused on the development of Lot 1.
- Some of the lots exceed 30% slope, which isn't permitted in the subdivision regulations. However, these slopes are manmade and it was anticipated that the topography would be re-worked and the proposed design of the future buildings was intended to serve as retaining walls to protect these slopes.
- The private access streets are proposed to be built within a 40-foot right of way versus the city standard of 50-feet. The Big Mountain Fire Department did not have any concerns with the roads.

Public Comment

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. As of the writing of this report, two comments have been received in opposition to the extension. These letters are attached to the report.

Financial Requirement

None known. The project will be served by private roads, the Big Mountain Water Company and the Big Mountain Sewer District.

Recommendation:

Staff recommends the Council **approve** the request to extend the Big Mountain Village for 24 months, expiring on March 5, 2015 based on the following findings of fact:

Finding 1: The 11-lot preliminary plat was approved by the Council on March 5, 2007. In 2010, the Council granted an extension, as provided for the subdivision regulations at

the time, until March 5, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires March 5, 2013.

Finding 2: The preliminary plat supports and implements the 2006 Big Mountain Neighborhood Plan.

Finding 3: The stream setbacks met the urgency ordinance in the place at the time of the preliminary plat.

Finding 4: The stormwater management plan proposes to redirect stormwater away from stream toward the former sewer lagoons for treatment before discharging.

Finding 5: The project is surrounded by WSI property and no other development or third party will be harmed if the preliminary plat is extended.

Sincerely,



Wendy Compton-Ring, AICP
Senior Planner

Att: Extension Request Letter, January 23, 2013
Conditions of approval, March 5, 2005
Preliminary plat map, January 29, 2005
Email, Chris G Grant, 2-10-13
Email, Allyn Carlson, 2-11-13

c/w/att: Necile Lorang, City Clerk

c/w/o/att: Dan Graves, Whitefish Mountain Resort, PO Box 1400 Whitefish, MT
59937



WHITEFISH

MOUNTAIN RESORT

January 23, 2013

Wendy Compton-Ring
Senior Planner
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Extension of Subdivision Preliminary Plats – Big Mountain Village (WPP-06-67) & Glades, phases 3-13 (FPP-04-44)

Dear Wendy,

As you know, the following two preliminary plats have been previously extended:

- Big Mountain Village Plan – March 5, 2013
- The Glades at Big Mountain – August 18, 2013

Unfortunately, the real estate market for single family home lots has not rebounded much up “on the mountain”, and as a result I’d like to request another EXTENSION to these preliminary plats.

I offer up the following reasons for the request.

- 1) I don’t see that extending plat will have any detrimental impact to the public health, safety, or the general welfare of adjoining property owners.
- 2) The extension will not cause an increase in public costs because all of the roads are private and will not be maintained by the City of WF, but instead by Whitefish Mountain Resort. The water is serviced by Big Mountain Water Company, and the sewer by the Big Mountain Sewer District.
- 3) The extension will not place the subdivision in nonconformance with any adopted zoning regulations, growth policy or other adopted policies or regulations.
- 4) The financial impact of investing in these subdivisions to take to Final Plat at this time would be an unwise business decision and poor use of capital funds for WSI.
 - a) The current real estate market on the mountain for single family home lots remains soft. WSI has sold only 2 lots since December 2007 in Northern Lights West - phase I. Currently, there are 8 lots remaining with 4 of these being prime lake view lots indicating the soft market.
 - b) WSI certainly has other priorities for spending cash. We are currently planning for two large expenditures: a new lift and trail system, potentially starting this summer 2013, along with an expansion to the Base Lodge. Both of these expenditures are to address crowding on high volume days, which have been steadily growing. We need to provide

faster food service, more seating, spread skiers out over greater acreage, and reduce congestion at variance points on the mountain. These "growing pains" take precedent over starting both of these Final Plats in a lack-luster real estate market. If we don't address these operational issues soon, we could lose momentum in our growth, which is always difficult to restart.

- c) WSI was in a severe economic crisis in 2007 for a variety of reasons with one of these being attributed to spending vast amounts of money on real estate development. We spent the last 5 years "digging" the company out of this vast debt and certainly do not want to repeat the same mistakes when the marketplace is still soft.

Please understand that WSI's development land is vital to the shareholders' value. The Village Plan is probably the most important piece of development land on the mountain and The Glades is also a critical company asset. I hope that staff and the city council will approve both of these preliminary plat extensions. Enclosed please see two checks each representing the \$750 fee for the preliminary plat extension requests.

I look forward to hearing from you.

Best regards,



Dan Graves
President
Winter Sports Inc.



March 7, 2007

Winter Sports Inc.
Attn: Fred Jones
PO Box 1400
Whitefish, MT 59937

Subject: Big Mountain Village (WPP-06-67)

Dear Mr. Jones:

On March 5, 2007, the Whitefish City Council approved your request for a Preliminary Plat approval subject to 19 conditions of approval, enclosed herein. The preliminary plat approved was shown on a set of plans prepared by Sands Surveying dated January 29, 2007.

The preliminary plat is valid for a period of three years from the date of approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Compton-Ring".

Wendy Compton-Ring, AICP
Senior Planner

C: Sands Surveying, 2 Village Loop, Kalispell, MT 59901
Bechtle Slade PO Box 11385, Bozeman, MT 59715
Carver Engineering, 1995 3rd Ave E Kalispell, MT 59901
Ben DeVall, Big Mountain Fire District, 3790 Big Mountain Road
Whitefish, MT 59937
Public Works, City of Whitefish
Whitefish Fire Department, City of Whitefish

Attachment A
Big Mountain Village
WPP-06-67
Whitefish City Council Approved
March 5, 2007

The Whitefish City-County Planning Board recommends approval of the following conditions of approval:

1. Except as amended by these conditions, the development of the subdivision shall be in substantial conformance with the approved preliminary plat and labeled as "approved plans" by the city council.
2. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the 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.
3. A copy of any easements across private property (Alpenglow and Edelweiss) for the purposes of access shall be provided to the Whitefish Planning Department prior to finalizing the associated phases. In addition, any removed parking for the access roadways shall be replaced at the parking standard for the WBMV zoning district.
4. Roads shall be privately owned and maintained with curb, gutter and sidewalk. Street lighting shall be dark skies compliant. All roads shall be paved and be designed and certified by a licensed professional engineer.

5. A pedestrian and skier circulation plan shall be provided to the Whitefish Planning Department for review and approval prior to each phase of final plat. Such plan shall show how the various buildings will be connected and include the type of material used and the width.
6. The Big Mountain Fire Department shall approve the access and hydrant location. A written approval shall be submitted along with final plat applications.
7. Each phase of development shall receive site plan review approval prior to the start of construction
8. The following notes shall be placed on the face of the plat:
 - Building numbers shall be posted on the buildings in a clearly visible location.
 - All utilities shall be underground.
 - Unit owners are advised that they are moving into an area frequented by large and potentially dangerous wild animals. As such, owners are strongly encouraged to contact the Montana Department of Fish, Wildlife and Parks and obtain information on living with wildlife. The feeding of birds or other wildlife is discouraged as it may attract large predatory animals such as mountain lions and bears.
 - Buildings shall be constructed to maintain "defensible space" in accordance with City of Whitefish Subdivision Regulations.
 - All structures shall have only Class A or B fire-resistant roofing materials as rated by the National Fire Protection Association.
 - Roads shall remain open to the public.
9. This preliminary plat is valid for three years from Council action.
10. Common off-street mail facilities shall be provided by the developer and approved by the local post office.
11. The developer shall consult with the Flathead Conservation District regarding the relocation or modification of creeks or streams in the area of the proposed subdivision. A 310 Permit shall be secured if required.
12. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Big Mountain Water Company and Big Mountain Sewer District approving the water and sewage treatment facilities for the subdivision.

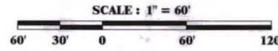
13. The City of Whitefish Public Works Department shall review and approve sewer, stormwater, grading and erosion control plans. An overall stormwater plan shall be submitted with Phase I. The water and road plans shall be implemented prior to and during any construction activities within the subdivision, which shall be certified by a licensed professional engineer.
14. 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.
15. The stream restoration plans shall be submitted to the Planning Department for review and approval prior to the start of any stream work. The plans shall include the detail of the earthwork and a landscaping plan.
16. Plans for placing a trail shall be submitted to the Planning Department for review and approval prior to their installation. Trails in the buffer shall be minimized to the greatest extent possible by meandering in and out of the buffer. Trails may not be constructed of a continuous impervious surface. Acceptable materials include: wood chips, gravel, pavers, grass-crete or untreated wood. No other encroachments into the buffer shall be allowed.
17. Submit a water quality monitoring to Whitefish Public Works Department on an annual basis. The exact location of the monitoring, what time of year the monitoring shall take place and what the report shall contain shall be determined by Public Works.
18. As final plats are submitted and day skier parking is removed, provide a plan showing how the day skier parking will be replaced near the day lodge.
19. The upkeep of the emergency egress road up to Big Mountain will be reviewed by the Big Mountain Fire District, in coordination with the Whitefish Fire Marshal, on an annual basis and upgrades to the road will be completed as recommended by the Big Mountain Fire Chief and Whitefish Fire Marshal.

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

JOB NO: 23491 (23470.dwg)
 DATE: JANUARY 29, 2007
 FOR/OWNER: WINTER SPORTS INC.

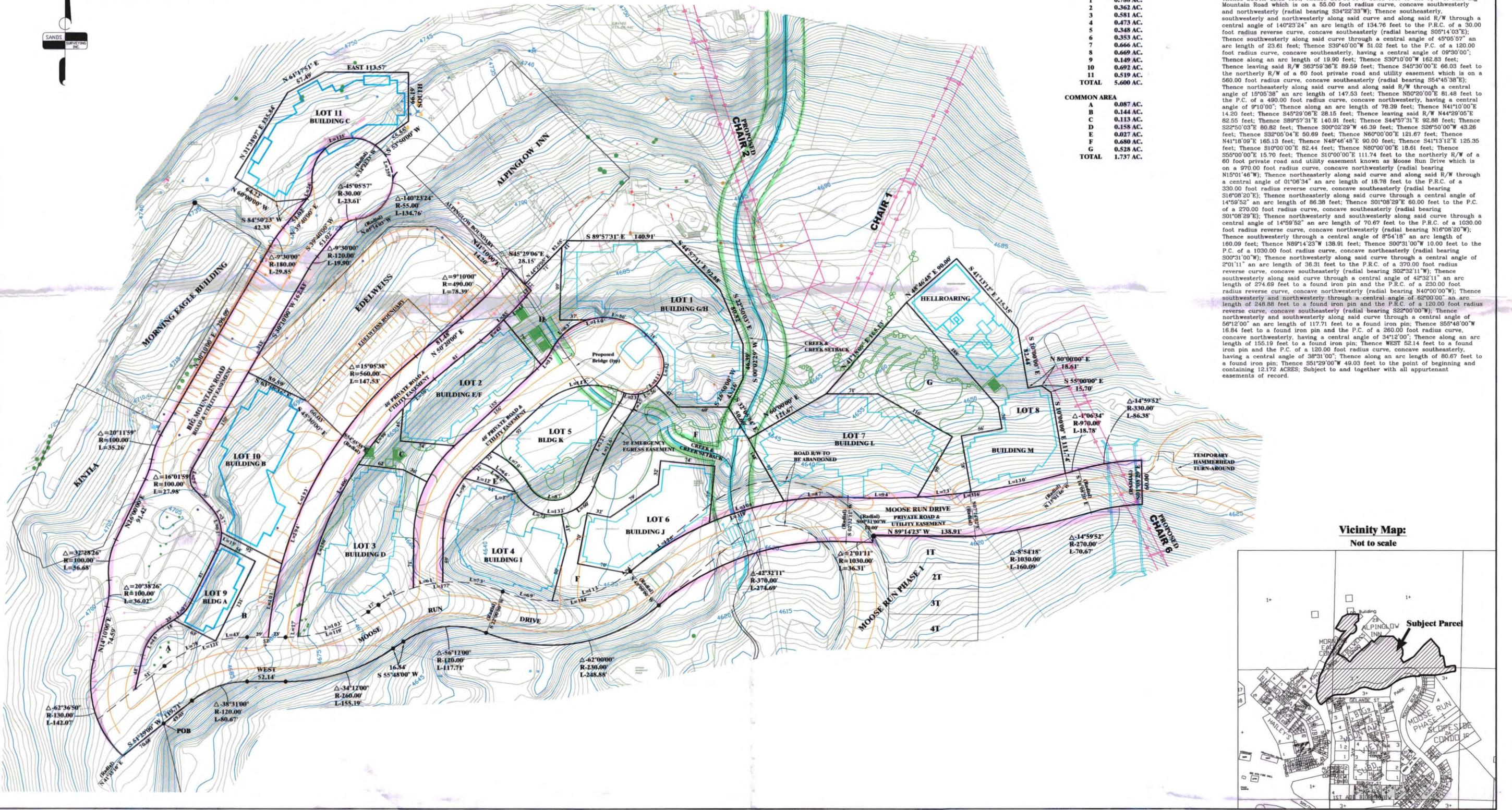
Preliminary Plat of: Big Mountain Village

in Gov't Lots 1 & 2, & S1/2NE1/4 of Sec. 2, T.31N., R.22W., P.M.,M.,
 Flathead County, Montana



Total Area: 12.172 Ac.
Lots (11): 5.600 Ac.
Roads: 4.835 Ac.
Total Common Area: 1.737 Ac.

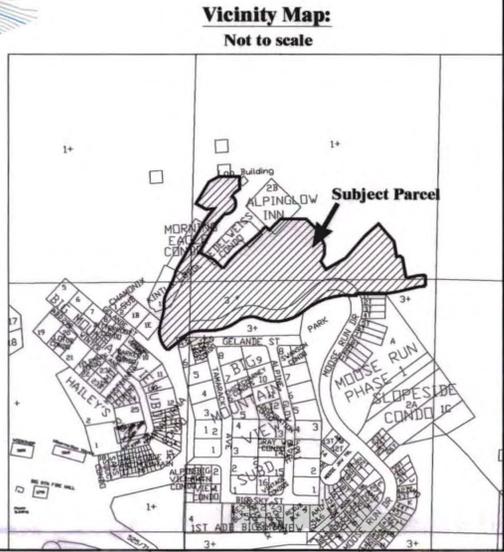
APPROVED
 CITY OF WHITEFISH
 PLANNING DEPARTMENT
 William King, Jr. for Whitefish City Council
 7-5-07



LOTS	ACRES
1	0.788 AC.
2	0.362 AC.
3	0.581 AC.
4	0.473 AC.
5	0.348 AC.
6	0.353 AC.
7	0.666 AC.
8	0.669 AC.
9	0.149 AC.
10	0.692 AC.
11	0.519 AC.
TOTAL	5.600 AC.

COMMON AREA	ACRES
A	0.087 AC.
B	0.144 AC.
C	0.113 AC.
D	0.158 AC.
E	0.027 AC.
F	0.680 AC.
G	0.528 AC.
TOTAL	1.737 AC.

DESCRIPTION:
 A TRACT OF LAND, SITUATED, LYING AND BEING IN GOVERNMENT LOTS 1 & 2 AND THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
 BEGINNING at the southerly R/W intersection of Big Mountain Road and Moose Run Drive which is a found iron pin; Thence S51°29'00"W 70.68 feet to the westerly R/W of Big Mountain Road which is on a 130.00 foot radius curve, concave northeasterly (radial bearing N41°33'10"E); Thence northeasterly and northeasterly along said R/W and along said curve through a central angle of 62°36'50" an arc length of 142.07 feet; Thence N14°10'00"E 74.59 feet to the P.C. of a 100.00 foot radius curve, concave northeasterly, having a central angle of 20°38'26"; Thence along an arc length of 36.02 feet to the P.R.C. of a 100.00 foot radius reverse curve, concave southeasterly (radial bearing N83°31'34"E); Thence northeasterly along said curve through a central angle of 32°28'28" an arc length of 56.68 feet; Thence N26°00'00"E 91.42 feet to the P.C. of a 100.00 foot radius curve, concave northwesterly, having a central angle of 16°01'59"; Thence along an arc length of 27.98 feet to the P.R.C. of a 100.00 foot radius reverse curve, concave southeasterly (radial bearing S80°01'59"E); Thence northeasterly along said curve through a central angle of 20°11'59" an arc length of 35.26 feet; Thence N30°10'00"E 296.09 feet to the P.C. of a 180.00 foot radius curve, concave southeasterly, having a central angle of 09°30'00"; Thence along an arc length of 29.85 feet; Thence N39°40'00"E 51.02 feet; Thence leaving said R/W S84°50'23"W 42.38 feet; Thence N60°00'00"W 64.22 feet; Thence N31°28'07"E 135.84 feet; Thence N61°17'51"E 57.49 feet; Thence EAST 113.57 feet; Thence SOUTH 66.19 feet; Thence S53°50'00"W 55.55 feet to the R/W of said Big Mountain Road which is on a 55.00 foot radius curve, concave southeasterly and northwesterly (radial bearing S34°22'33"W); Thence southeasterly, southwesterly and northwesterly along said curve and along said R/W through a central angle of 140°23'24" an arc length of 134.76 feet to the P.R.C. of a 30.00 foot radius reverse curve, concave southeasterly (radial bearing S05°14'03"E); Thence southwesterly along said curve through a central angle of 45°05'57" an arc length of 23.61 feet; Thence S39°40'00"W 51.02 feet to the P.C. of a 120.00 foot radius curve, concave southeasterly, having a central angle of 09°30'00"; Thence along an arc length of 19.90 feet; Thence S30°10'00"W 162.83 feet; Thence leaving said R/W S63°59'36"E 89.59 feet; Thence S45°30'00"E 66.03 feet to the northerly R/W of a 60 foot private road and utility easement which is on a 560.00 foot radius curve, concave southeasterly (radial bearing S54°45'38"E); Thence northeasterly along said curve and along said R/W through a central angle of 15°05'38" an arc length of 147.53 feet; Thence N50°20'00"E 81.48 feet to the P.C. of a 490.00 foot radius curve, concave northwesterly, having a central angle of 91°0'00"; Thence along an arc length of 78.39 feet; Thence N41°10'00"E 14.20 feet; Thence S45°29'06"E 28.15 feet; Thence leaving said R/W N44°29'05"E 82.55 feet; Thence S89°57'31"E 140.91 feet; Thence S44°57'31"E 92.88 feet; Thence S22°50'03"E 80.82 feet; Thence S00°02'29"W 46.39 feet; Thence S26°50'00"W 43.26 feet; Thence S32°05'04"E 50.89 feet; Thence N60°00'00"E 121.67 feet; Thence N41°18'09"E 166.13 feet; Thence N48°46'48"E 90.00 feet; Thence S41°13'12"E 125.35 feet; Thence S10°00'00"E 82.44 feet; Thence N80°00'00"E 18.61 feet; Thence S55°00'00"E 15.70 feet; Thence S10°00'00"E 111.74 feet to the northerly R/W of a 60 foot private road and utility easement known as Moose Run Drive which is on a 970.00 foot radius curve, concave northwesterly (radial bearing N15°01'46"W); Thence northeasterly along said curve and along said R/W through a central angle of 01°06'34" an arc length of 18.78 feet to the P.R.C. of a 330.00 foot radius reverse curve, concave southeasterly (radial bearing S16°08'20"E); Thence northeasterly along said curve through a central angle of 14°59'52" an arc length of 86.38 feet; Thence S01°08'29"E 60.00 feet to the P.C. of a 270.00 foot radius curve, concave southeasterly (radial bearing S01°08'29"E); Thence northwesterly and southwesterly along said curve through a central angle of 14°59'52" an arc length of 70.67 feet to the P.R.C. of a 1030.00 foot radius reverse curve, concave northwesterly (radial bearing N16°08'20"W); Thence southwesterly through a central angle of 8°54'18" an arc length of 160.09 feet; Thence N89°14'23"W 138.91 feet; Thence S00°31'00"W 10.00 feet to the P.C. of a 1030.00 foot radius curve, concave northeasterly (radial bearing S00°31'00"W); Thence northwesterly along said curve through a central angle of 2°01'11" an arc length of 36.31 feet to the P.R.C. of a 270.00 foot radius reverse curve, concave southeasterly (radial bearing S02°32'11"W); Thence southwesterly along said curve through a central angle of 42°32'11" an arc length of 274.69 feet to a found iron pin and the P.R.C. of a 230.00 foot radius reverse curve, concave northwesterly (radial bearing N40°00'00"W); Thence southwesterly and northwesterly through a central angle of 62°00'00" an arc length of 248.88 feet to a found iron pin and the P.R.C. of a 120.00 foot radius reverse curve, concave southeasterly (radial bearing S22°00'00"W); Thence northwesterly and southwesterly along said curve through a central angle of 56°12'00" an arc length of 117.71 feet to a found iron pin; Thence S55°48'00"W 16.84 feet to a found iron pin and the P.C. of a 260.00 foot radius curve, concave northwesterly, having a central angle of 34°12'00"; Thence along an arc length of 155.19 feet to a found iron pin; Thence WEST 52.14 feet to a found iron pin and the P.C. of a 120.00 foot radius curve, concave southeasterly, having a central angle of 38°51'00"; Thence along an arc length of 80.87 feet to a found iron pin; Thence S51°29'00"W 49.03 feet to the point of beginning and containing 12.72 ACRES; Subject to and together with all appurtenant easements of record.



Wendy Compton-Ring

From: Chris G L Grant <chrisglgrant@gmail.com>
Sent: Sunday, February 10, 2013 6:21 PM
To: wcompton-ring@CityOfWhitefish.org
Subject: Proposed Land Use Action; 'Big Mountain Village' preliminary plat

Dear Sir;

We own a condo in the Edelweiss (unit #111). I will not be in town on Tue., Feb 19, 2013 but wanted to pass along my comments regarding the 'Big Mountain Village' preliminary plat:

We purchased this property a couple years ago as it had unobstructed views of Whitefish lake and near ski-in/ski-out access to the two primary lifts at Whitefish Mountain. The proposed plat threatens both of these motivators. Buildings D, E/F, K, I, and J are all primarily in existing parking lots below our condo. These parking lots allow convenient parking access to the lifts for many skiers (primarily from the City of Whitefish and Kalispell). In the early morning and evenings they provide unobstructed views of the mountain side, City of Whitefish, and Whitefish Lake. Building G/H will have multiple negative impacts on our experience at Whitefish Mountain: limit access to the chairlifts, prevent ski access to easy runs (for our daughter), prevent access to the main lodge, and permanently obstruct our views down-mountain. Building C will replace the existing ski rental shop and Ed & Mully's – we hope these facilities will be included in the replacement building and that the vertical rise of the new building will not further limit our up-mountain views.

We are quite upset that Winter Sports Inc is looking to provide new properties to increase their bottom line at the expense of those who have been loyal in the past by acquiring earlier properties that were sold with the understanding that these would be the properties closest to the mountain with the best views.

Thank you for reviewing my comments
Chris Grant

Chris G L Grant
6477 Hwy 93 S, Suite 229, Whitefish, MT 59937
406-646-6520 primary (cell & home)
314-884-8448 alternate (cell & home)
ChrisGLGrant@gmail.com

Wendy Compton-Ring

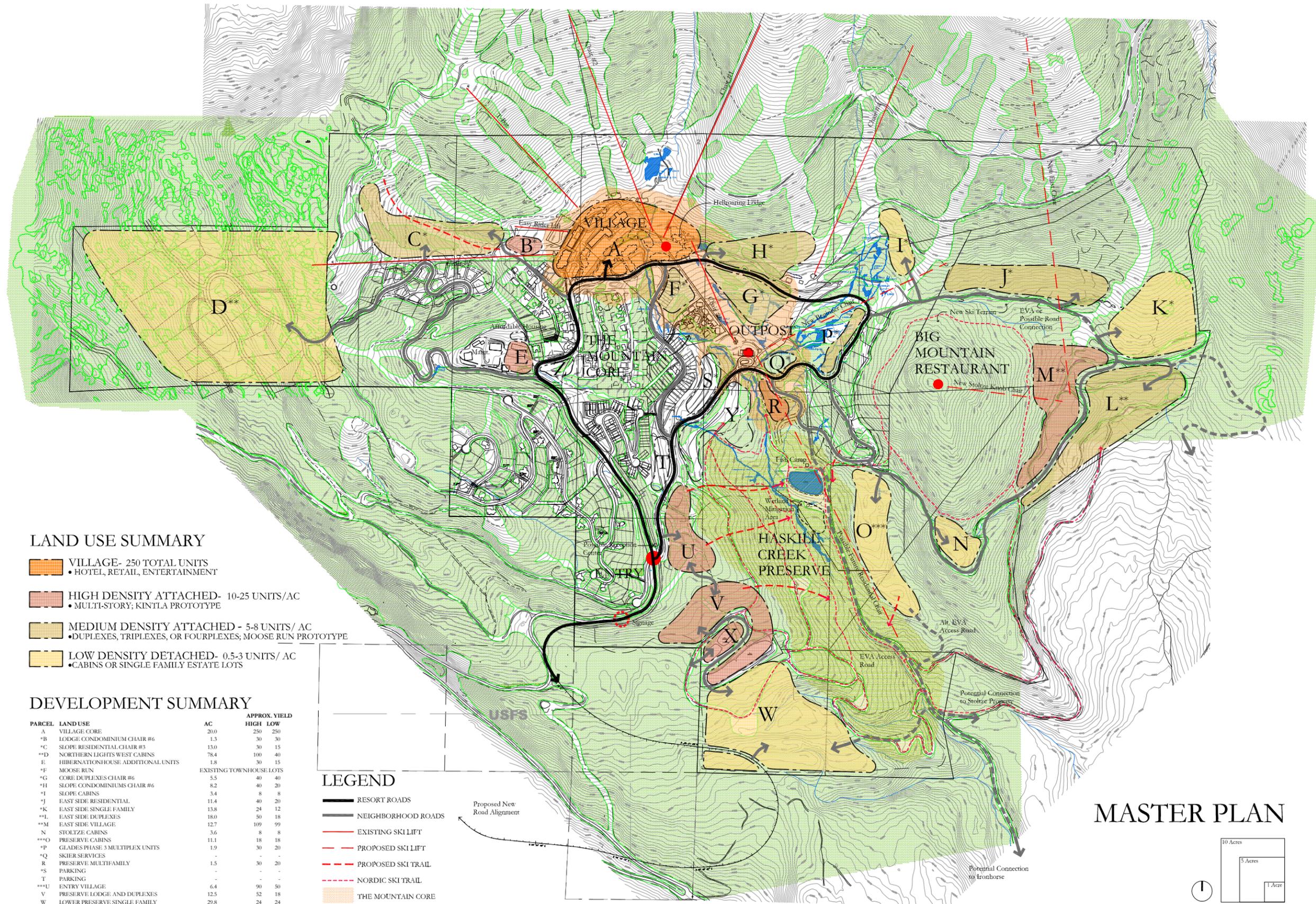
From: ALLYN CARLSON <carlsoncompanies@verizon.net>
Sent: Monday, February 11, 2013 10:20 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Big Mountain Village Plat extension

Gentlemen,

As an affected property owner, I do not think that a further extension of the preliminary plat approval serves any useful purpose, and I do NOT support any further extensions.

There have been extensive changes on Big Mountain since 2007 and the suitability of the current preliminary plat is questionable.

Regards,
Allyn Carlson
3889 Big Mountain Road, #101
Whitefish, MT



LAND USE SUMMARY

- VILLAGE- 250 TOTAL UNITS**
• HOTEL, RETAIL, ENTERTAINMENT
- HIGH DENSITY ATTACHED- 10-25 UNITS/AC**
• MULTI-STORY; KINTLA PROTOTYPE
- MEDIUM DENSITY ATTACHED - 5-8 UNITS/ AC**
• DUPLEXES, TRIPLEXES, OR FOURPLEXES; MOOSE RUN PROTOTYPE
- LOW DENSITY DETACHED- 0.5-3 UNITS/ AC**
• CABINS OR SINGLE FAMILY ESTATE LOTS

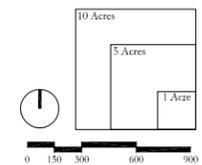
DEVELOPMENT SUMMARY

PARCEL	LAND USE	AC	APPROX. YIELD	
			HIGH	LOW
A	VILLAGE CORE	20.0	250	250
*B	LODGE CONDOMINIUM CHAIR #6	1.3	30	30
*C	SLOPE RESIDENTIAL CHAIR #3	13.0	30	15
**D	NORTHERN LIGHTS WEST CABINS	78.4	100	40
E	HIBERNATIONHOUSE ADDITIONAL UNITS	1.8	30	15
*F	MOOSE RUN EXISTING TOWNHOUSE LOTS	-	-	-
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*P	GLADES PHASE 3 MULTIPLEX UNITS	1.9	30	20
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R	PRESERVE MULTIFAMILY	1.5	30	20
*S	PARKING	-	-	-
T	PARKING	-	-	-
***U	ENTRY VILLAGE	6.4	90	50
V	PRESERVE LODGE AND DUPLEXES	12.5	52	18
W	LOWER PRESERVE SINGLE FAMILY	29.8	24	24
X	LOWER AFFORDABLE HOUSING	2.1	100	100
Y	PARKING	-	-	-
Z	PARKING	-	-	-
TOTALS		236.5 (Excluding Village Average)	1103	825

LEGEND

- RESORT ROADS
- NEIGHBORHOOD ROADS
- EXISTING SKI LIFT
- PROPOSED SKI LIFT
- PROPOSED SKI TRAIL
- NORDIC SKI TRAIL
- THE MOUNTAIN CORE
- HASKILL CREEK PRESERVE

MASTER PLAN



1/4 Mile
APPROXIMATE 5 MIN. WALK

1/2 Mile
APPROXIMATE 10 MIN. WALK

BIG MOUNTAIN

WHITEFISH, MONTANA

* DENOTES SKI-IN SKI-OUT PARCELS
 ** DENOTES SKI-IN PARCELS
 *** DENOTES SKI-OUT PARCELS

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



February 12, 2013

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

Mayor Muhlfeld and Councilors:

Request to Extend the Preliminary Plat for The Glades, Phases 3-13 (FPP 04-44)

Request/Background:

This office is in receipt of a letter from Dan Graves of the Whitefish Mountain Resort requesting a 24-month extension for The Glades, Phases 3-13 preliminary plat. Phase 1 was platted in 2003 and Phase 2 was platted in 2008. Phase 2 was subsequently vacated, at the request of the owner, in 2011. Phases 3-13 are still remaining.

The preliminary plat now contains 21 single-family residential lots, 135 townhomes and 22 cabins on 55.73 acres located south of the Base Lodge on Big Mountain. Attached to this report are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Flathead County Commissioners on March 22, 2005. In 2008, the Whitefish Council granted an extension, as provided for in the subdivision regulations in place at the time, until March 20, 2009. The final plat for Phase 2 was approved by Council in August 2008. Pursuant to the Subdivision Regulations, the next phase of final plat was required to be filed within 2-years unless an extension was granted by the Council. The developer requested and received approval for an extension until August 18, 2011. Then on June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 18, 2013.

Current Subdivision Regulations:

Upon passage of HB 522 in 2011, the Council adopted amendments to the Subdivision Regulations providing two options for extensions – first, a simple 2-year extension is permitted provided the developer can show continued good faith in working toward final plat. Second, if additional time is needed, a subsequent request may be made along with justification for the request. There are no timeframes identified in the regulations with this type of request, providing maximum flexibility for both the Council and the developer. Such requests are reviewed by the Council during a public hearing.

Current Report:

This is a residential subdivision with a combination of single family dwellings, townhouse and cabin-style units. The development stretches from the east near the Easy Rider chair (also known as Chair 9) and existing Glades subdivision, phase 1 to the west and south of the Base Lodge. Over 23 acres of the subdivision is maintained in open space along the stream and pond. Several new private roadways are proposed within the project including a loop road to the south of the Base Lodge and several cul-de-sacs. All roadways meet the city's private road standards; the project is served by the Big Mountain Water Company and the Big Mountain Sewer District.

Change in Standards:

This subdivision was approved prior to the 2006 Big Mountain Neighborhood Plan, Water Quality Protection regulations and current subdivision regulations.

The Big Mountain Neighborhood Plan, adopted by the Whitefish City Council, sets out locations for development, land uses, range of densities and transportation linkages. It is anticipated, as development proposals are submitted, development review would be dictated by both the neighborhood plan and the Big Mountain zoning designations.

Below is a summary of phases and their relationship to the 2006 Neighborhood Plan:

Phase:	Proposed in the 2004 Glades Subdivision	2006 Adopted Big Mountain Neighborhood Plan Designations
2 (now phase 3)	14 townhouse units/1 lot	No development in this area
3 (now phase 4)	42 townhouse units/1 lot	Development Pod 'P' density 20-30 units
4 (now phase 5)	16 townhouse units/1 lot	Now the North Valley Clinic and designated on the neighborhood plan as 'skier services'
5 (renamed phase 2)	At the request of the developer, vacated by the Council in 2011 (4-lot subdivision)	
6	10 townhouse units/1 lot	Development Pod 'R' density 20-30 units
7	22 cabins/1 lot	
8	41 townhouse units/1 lot	No development in these areas: Haskill Creek Preserve
9	12 townhouse units/1 lot	
10	9 single family units/9 lots	

Phase:	Proposed in the 2004 Glades Subdivision	2006 Adopted Big Mountain Neighborhood Plan Designations
11	5 single family units/5 lots	No development in this area
12	5 single family units/5 lots	No development in this area: Haskill Creek Preserve
13	2 single family units/2 lots	No development in this area
Total:	178 units on 28 lots	40-60 units

Below is a summary of other pertinent items that have changed related to this preliminary plat:

- Most of the development is setback from the stream. The buffer of 125-feet with a 10-foot setback is generally being met with the project. The regulations provide the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- There are a series of wetlands in this subdivision. Again the buffer of 125-feet with a 10-foot setback is being met in some areas of the preliminary plat, but large portions of Phases 3, 4 and 7 are located with the buffer. Similar to streams, wetland buffers could be averaged provided buffers are no less than 50-feet.
- Some of the lots exceed 10%, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. Staff could not locate any geotechnical reports associated with the preliminary plat.

Of the eleven remaining phases of this preliminary plat, Phase 4 is the location of the current North Valley Clinic, Phases 2, 11 and 13 were removed from the neighborhood plan and Phases 8, 9, 10 and 12 are located wholly within the area designated as Haskill Creek Preserve. The Big Mountain Neighborhood Plan describes the Haskill Creek area:

“The Haskill Creek drainage below the Day Lodge is designated open space on the master plan. It is anticipated that this drainage will be utilized for hiking, walking, biking and ski trails. Structures other than resort related facilities supporting recreational activities or utilities are not anticipated within this green belt. The green belt varies from approximately 250-feet to 900-feet from either side of the streambed.”

Only Phases 3, 6 and 7 are located within the Neighborhood Plan as Development Pods ‘P’ and ‘R’.

Finally, this development lies in the upper reaches of 1st Creek, which is effectively the main channel of Haskill Creek. The confluences with 2nd Creek and 3rd Creek are a short distance downstream. The City of Whitefish has water rights on 1st, 2nd and 3rd Creeks and municipal water is currently drawn from 2nd and 3rd Creeks. The 1st Creek water right has been utilized in the past and continues to be available for municipal water supply. It is therefore important to protect the water quality of 1st Creek from degradation by human activities.

Public Comment

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. As of the writing of this report, no comments have been received.

Financial Requirement

None known. The project will be served by private roads, the Big Mountain Water Company and the Big Mountain Sewer District.

Recommendation:

Staff has concerns with extending the entirety of The Glades preliminary plat since conditions have changes considerably since the plat was approved. Careful thought and consideration was put into the Neighborhood Plan, where development would be best located, the appropriate density and traffic circulation patterns. As the Neighborhood Plan was adopted as a part of the City's Growth Policy, it makes sense to honor the planning work and approval the Council gave in 2006 with this extension request.

Staff recommends the Council **approve – portions of the preliminary plat consistent with the Big Mountain Neighborhood Plan (phases 3, 6, and 7)** for 24 months, expiring on March 5, 2015 based on the following findings of fact:

Finding 1: The 178 units on 28-lot subdivision was approved by the Flathead County Commissioners on March 22, 2005. In 2008, the Council granted an extension, as provided for the subdivision regulations at the time, until March 20, 2009. In 2010, the Council granted an extension until August 18, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 18, 2013.

Finding 2: In 2006, the Whitefish City Council approved the Big Mountain Neighborhood Plan which sets out locations for development, land uses, range of densities and transportation linkages.

Finding 3: Phase 3, 6 and 7 support and implement the 2006 Big Mountain Neighborhood Plan.

Finding 4: The City of Whitefish has water rights on Haskill Creek including its reaches. The stream through this project, First Creek, is one of those reaches.

Sincerely,



Wendy Compton-Ring, AICP
Senior Planner

Att: Extension Request Letter, January 23, 2013
 Conditions of Approval, March 22, 2005
 Preliminary Plat Map, December 6, 2004
 Preliminary Plat Map Marked with Neighborhood Plan Designations

c/w/att: Necile Lorang, City Clerk

c/w/o/att: Dan Graves, Whitefish Mountain Resort, PO Box 1400 Whitefish, MT
 59937



WHITEFISH

MOUNTAIN RESORT

January 23, 2013

Wendy Compton-Ring
Senior Planner
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Extension of Subdivision Preliminary Plats – Big Mountain Village (WPP-06-67) & Glades, phases 3-13 (FPP-04-44)

Dear Wendy,

As you know, the following two preliminary plats have been previously extended:

- Big Mountain Village Plan – March 5, 2013
- The Glades at Big Mountain – August 18, 2013

Unfortunately, the real estate market for single family home lots has not rebounded much up “on the mountain”, and as a result I’d like to request another EXTENSION to these preliminary plats.

I offer up the following reasons for the request.

- 1) I don’t see that extending plat will have any detrimental impact to the public health, safety, or the general welfare of adjoining property owners.
- 2) The extension will not cause an increase in public costs because all of the roads are private and will not be maintained by the City of WF, but instead by Whitefish Mountain Resort. The water is serviced by Big Mountain Water Company, and the sewer by the Big Mountain Sewer District.
- 3) The extension will not place the subdivision in nonconformance with any adopted zoning regulations, growth policy or other adopted policies or regulations.
- 4) The financial impact of investing in these subdivisions to take to Final Plat at this time would be an unwise business decision and poor use of capital funds for WSI.
 - a) The current real estate market on the mountain for single family home lots remains soft. WSI has sold only 2 lots since December 2007 in Northern Lights West - phase I. Currently, there are 8 lots remaining with 4 of these being prime lake view lots indicating the soft market.
 - b) WSI certainly has other priorities for spending cash. We are currently planning for two large expenditures: a new lift and trail system, potentially starting this summer 2013, along with an expansion to the Base Lodge. Both of these expenditures are to address crowding on high volume days, which have been steadily growing. We need to provide

faster food service, more seating, spread skiers out over greater acreage, and reduce congestion at variance points on the mountain. These "growing pains" take precedent over starting both of these Final Plats in a lack-luster real estate market. If we don't address these operational issues soon, we could lose momentum in our growth, which is always difficult to restart.

- c) WSI was in a severe economic crisis in 2007 for a variety of reasons with one of these being attributed to spending vast amounts of money on real estate development. We spent the last 5 years "digging" the company out of this vast debt and certainly do not want to repeat the same mistakes when the marketplace is still soft.

Please understand that WSI's development land is vital to the shareholders' value. The Village Plan is probably the most important piece of development land on the mountain and The Glades is also a critical company asset. I hope that staff and the city council will approve both of these preliminary plat extensions. Enclosed please see two checks each representing the \$750 fee for the preliminary plat extension requests.

I look forward to hearing from you.

Best regards,



Dan Graves
President
Winter Sports Inc.

Flathead County
Board of Commissioners

(406) 758-5503

Joseph D. Brenneman
Gary D. Hall
Robert W. Watne



March 22, 2005

Ms. Johna Morrison, Interim Director
Flathead County Planning & Zoning Office
1035 1st Avenue West
Kalispell, Montana 59901

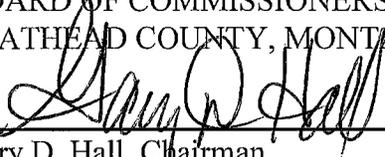
RE: Preliminary Plat for THE GLADES AT BIG MOUNTAIN, PHASES 2-13

Dear Ms. Morrison:

On this date, the Flathead County Board of Commissioners reviewed the preliminary plat of The Glades at Big Mountain, Phases 2-13. The Board of Commissioners has granted conditional approval to this request. A copy of the conditions, Exhibit A, is attached for your reference. This preliminary plat approval is in effect for three years and will expire on March 22, 2008.

Please be advised the applicant, if he so chooses, can appeal any of the conditions placed on this plat based on the Flathead County Subdivision Regulations, Section 7.6, as set forth in the attached Exhibit A-1.

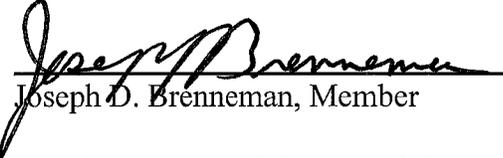
Sincerely,
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA



Gary D. Hall, Chairman



Robert W. Watne, Member



Joseph D. Brenneman, Member

Attachment: Exhibit A, Exhibit A-1

c: Glades Development, LLC
P. O. Box 1400
Whitefish, MT 59937

County Weed & Parks Dept.

Sands Surveying
2 Village Loop
Kalispell, MT 59901

County Road Dept.

EXHIBIT A

Conditions, upon which preliminary plat approval has been granted to The Glades at Big Mountain, Phases 2-13, this date of March 22, 2005, are as follows:

1. A secondary fire access road easement shall be obtained from the DNRC and recorded with the Clerk and Recorder. The road shall be constructed to minimum subdivision standards for emergency access roads. The road shall be completed prior to final plat.
2. All roads within the subdivision and the off-site portions providing access to the subdivision shall be constructed to comply with Flathead County Subdivision Regulations (Section 3.9) and shall be certified by a licensed professional engineer. All roads shall be paved.
3. All roads shall be privately owned and maintained, including snow removal to ensure safe two-way circulation year-round.
4. Road identification signs and traffic control devices such as stop and yield signs, shall be installed at each intersection in conformance with the requirements of the Flathead County Subdivision Regulations.
5. The following conditions shall be placed on the face of the final plat:
 - a. All house numbers shall be visible from the road either on the house or at the driveway entrance.
 - b. All lot owners shall provide and maintain "defensible space" in accordance with Flathead County Subdivision Regulations.
 - c. All structures shall have only Class A or B fire-resistant roofing materials as rated by the National Fire Protection Association.
 - d. Reasonable precautions shall be taken during construction and thereafter to prevent erosion and drainage problems. All disturbed areas shall be revegetated in accordance with a weed plan by Flathead County Weed & Parks.
 - e. All new utilities shall be installed underground.
 - f. Driveways shall not exceed 10% slope unless approved by the Big Mountain fire chief.

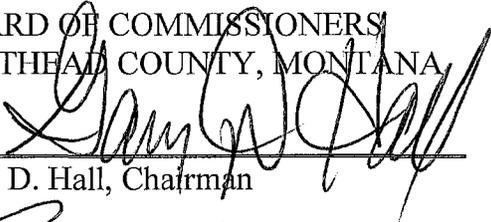
- g. Lot owners are advised that they are moving into an area frequented by large and potentially dangerous wild animals. As such, lot owners are strongly encouraged to contact the Montana Department of Fish, Wildlife & Parks and obtain information on living with wildlife.
- h. The feeding of birds or other wildlife is discouraged as it may attract large predatory animals such as lions and bears.
- i. Waiver of Protest
Participation in Special Improvement District

_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____ agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.

- 6. A drainage and erosion control plan shall be prepared by a licensed professional engineer and shall be approved by the Montana Department of Health & Environmental Sciences. The drainage system shall direct roadway runoff to catchment basins and road sanding debris shall be prevented from entering streams during spring melt. The approved erosion control plan shall be implemented prior to and during any construction activities within the subdivision, which shall be certified by a licensed professional engineer.
- 7. Big Mountain Water & Sewer District shall serve the subdivision. Water and sewer facilities shall be reviewed and approved by the Big Mountain Water & Sewer District, Flathead City-County Health Department, and the Montana Department of Environmental Quality.
- 8. All new utilities shall be installed underground.

9. The number and placement of fire hydrants shall be reviewed and approved by the Big Mountain fire chief. The developer shall submit a letter from the fire chief stating all conditions have been met.
10. Open space of 27.85 acres shall be given in perpetuity to meet the parkland requirements of the Flathead County Subdivision Regulations.
11. A common mail delivery site(s) shall be provided for the subdivision at a location(s) approved by the Whitefish Postmaster and shall be calculated in the final plat. When mail delivery is provided on Big Mountain, provide common mailbox facilities and vehicular pull-off area in accordance with Flathead County Subdivision Regulations.
12. All addresses and road names will be in accordance with resolution #1626. All names and addresses will be reviewed and approved by the county plat room and will appear on the final plat.
13. Any wetlands and streams shall be delineated on the final plat. No structures shall be located in these portions. Any stream crossings may be subject to permitting from the Department of Natural Resources & Conservation.
14. The developer shall dedicate a walk path along one side of the roads from the residences to the ski hill.
15. This approval is valid for three (3) years from the date of preliminary approval.

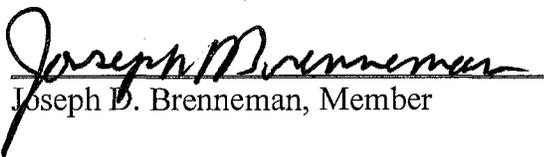
BOARD OF COMMISSIONERS
FLATHEAD COUNTY, MONTANA



Gary D. Hall, Chairman



Robert W. Watne, Member



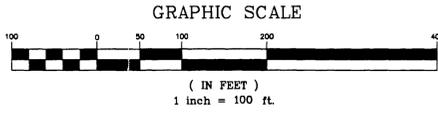
Joseph D. Brenneman, Member

BY: SANDS SURVEYING INC.
 2 VILLAGE LOOP
 KALISPELL, MONTANA 59901
 PH:(406) 755-6481

PRELIMINARY PLAT OF THE GLADES AT BIG MOUNTAIN PHASES 2-13

IN THE NW 1/4 & SW 1/4 OF SECTION 1, T.31N., R.22W., P.M., M.
 FLATHEAD COUNTY, MONTANA

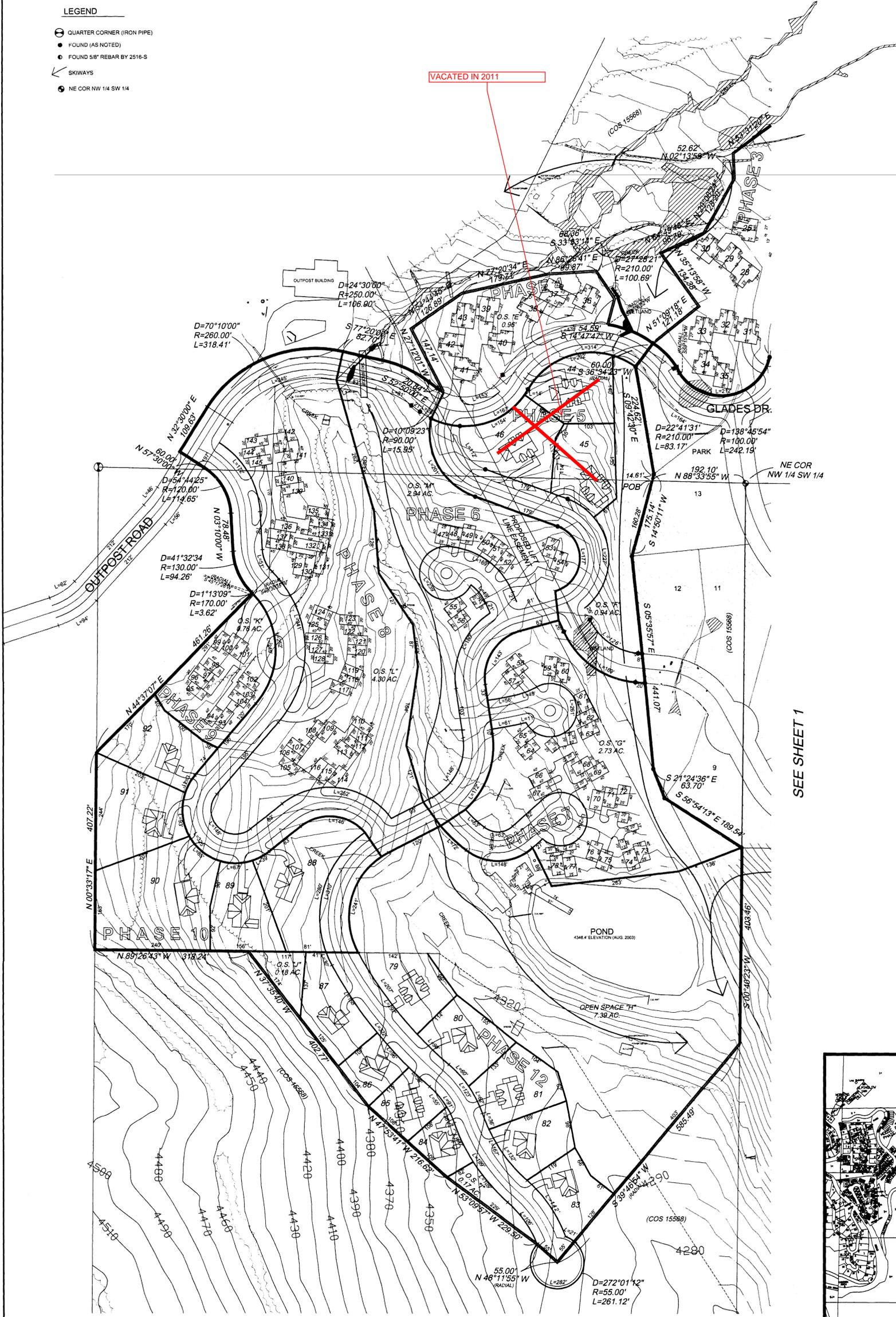
JOB# 23480 (201711.DWG, GLADES2-PREPLAT.DWG)
 FOR: BIG MOUNTAIN DEVELOPMENT CO.
 DATE: DECEMBER 6, 2004
 DESIGNED BY: DESIGN WORKSHOP INC.



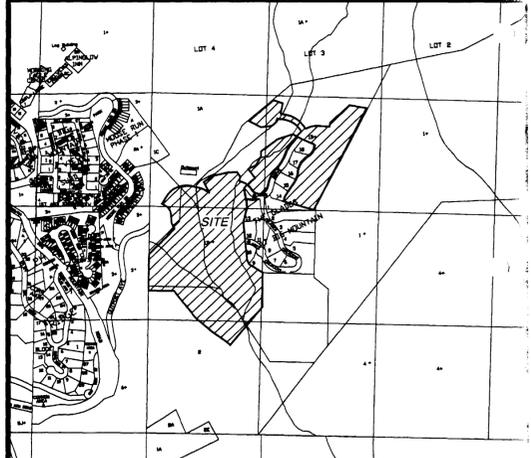
LEGEND

- ⊙ QUARTER CORNER (IRON PIPE)
- FOUND (AS NOTED)
- FOUND 5/8" REBAR BY 2516-S
- ← SKIWAYS
- ⊙ NE COR NW 1/4 SW 1/4

VACATED IN 2011



SEE SHEET 1

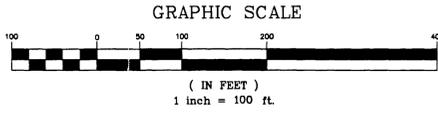


BY: SANDS SURVEYING INC.
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 PH:(406) 755-6481

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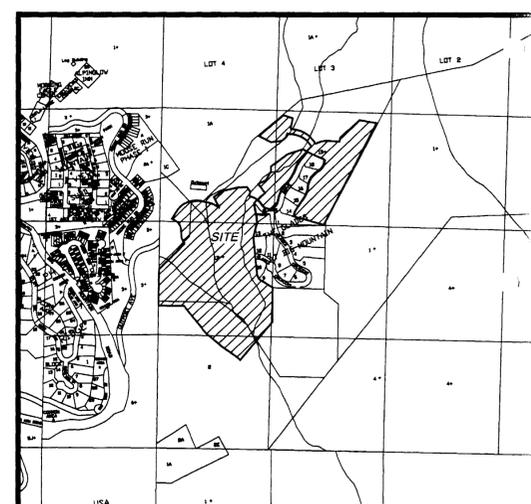
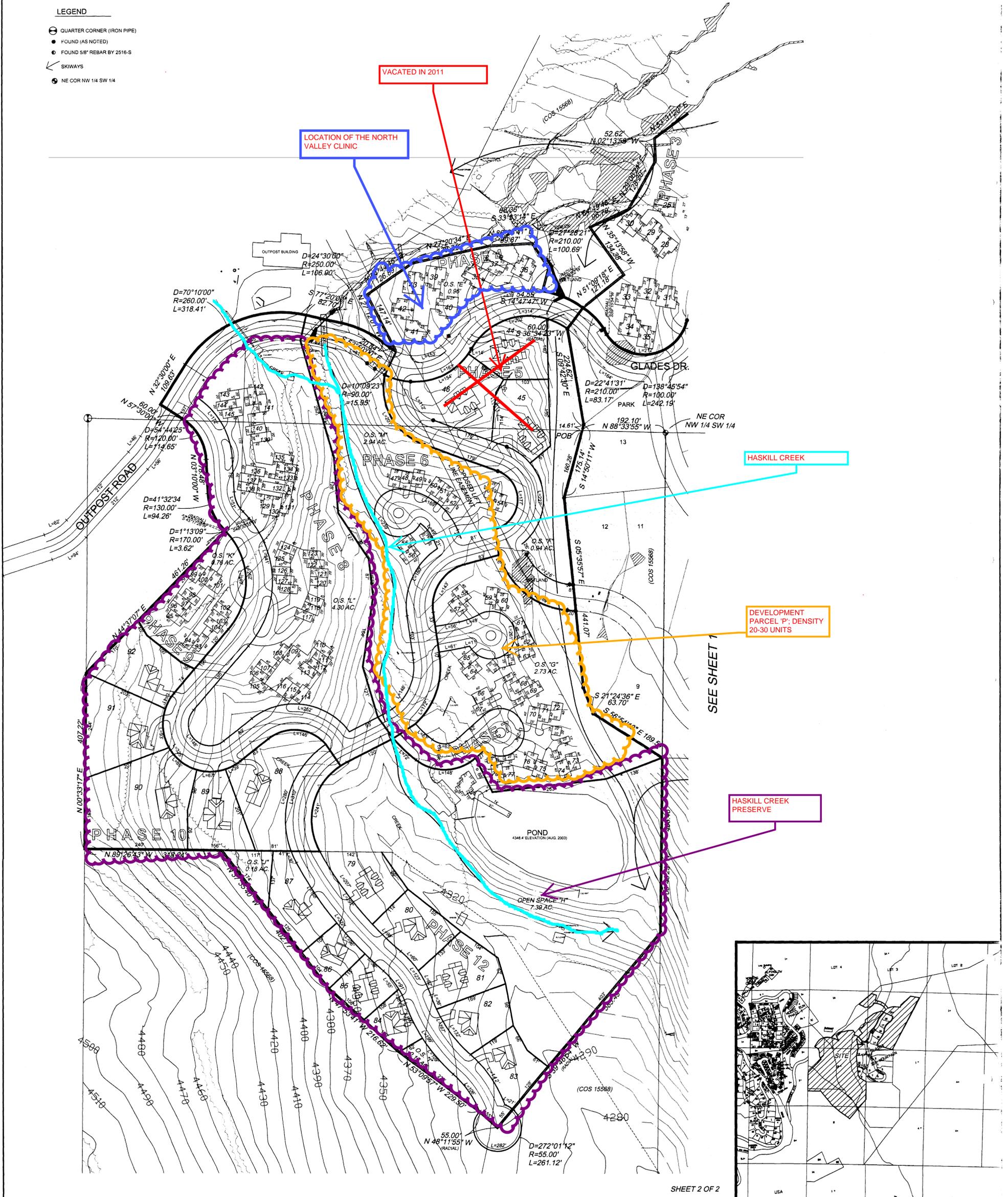
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 FLATHEAD COUNTY, MONTANA

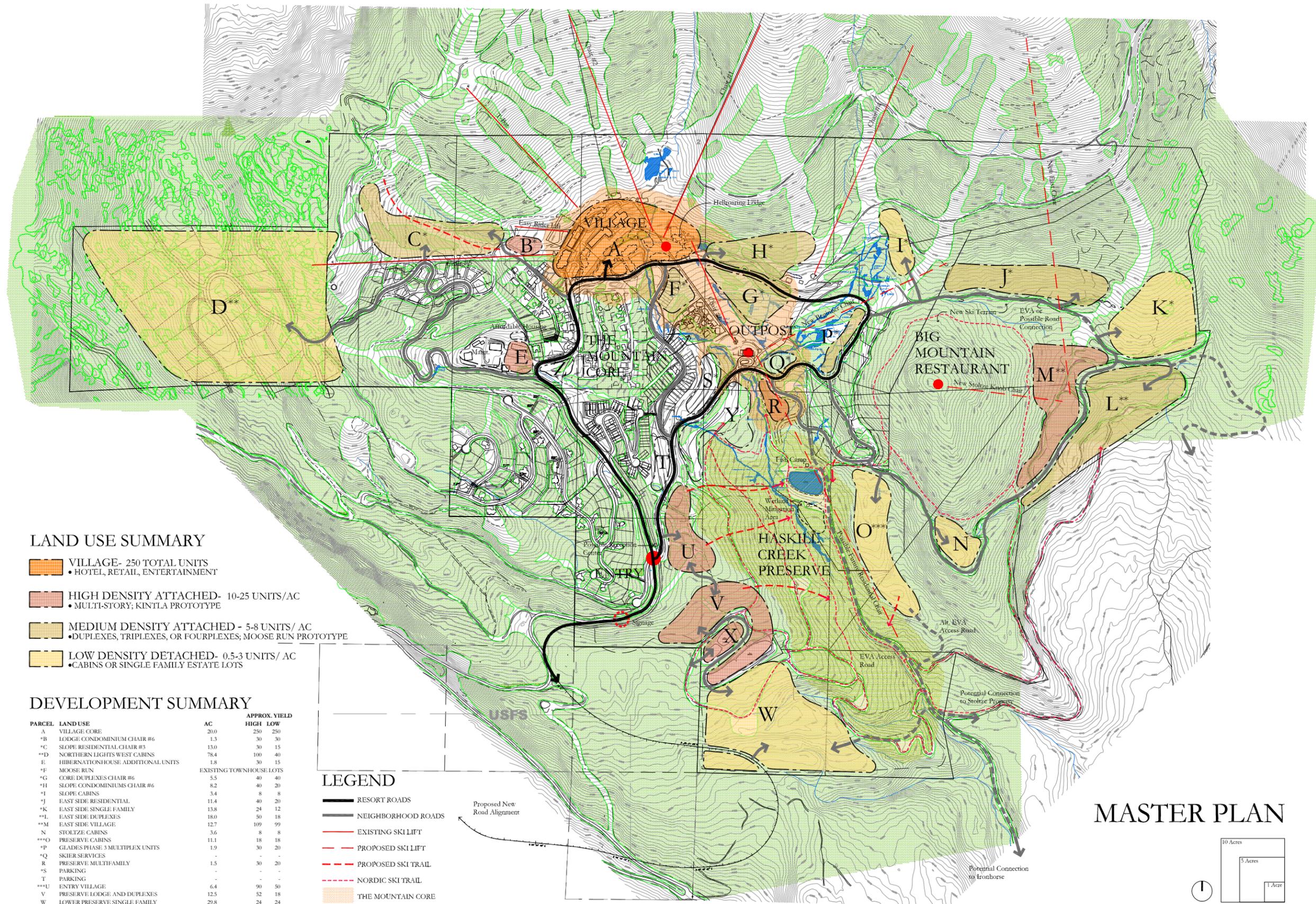
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- FOUND (AS NOTED)
- FOUND 5/8" REBAR BY 2516-S
- ← SKIWAYS
- ⊙ NE COR NW 1/4 SW 1/4





LAND USE SUMMARY

- VILLAGE- 250 TOTAL UNITS**
• HOTEL, RETAIL, ENTERTAINMENT
- HIGH DENSITY ATTACHED- 10-25 UNITS/AC**
• MULTI-STORY; KINTLA PROTOTYPE
- MEDIUM DENSITY ATTACHED - 5-8 UNITS/ AC**
• DUPLEXES, TRIPLEXES, OR FOURPLEXES; MOOSE RUN PROTOTYPE
- LOW DENSITY DETACHED- 0.5-3 UNITS/ AC**
• CABINS OR SINGLE FAMILY ESTATE LOTS

DEVELOPMENT SUMMARY

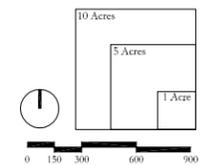
PARCEL	LAND USE	AC	APPROX. YIELD	
			HIGH	LOW
A	VILLAGE CORE	20.0	250	250
*B	LODGE CONDOMINIUM CHAIR #6	1.3	30	30
*C	SLOPE RESIDENTIAL CHAIR #3	13.0	30	15
**D	NORTHERN LIGHTS WEST CABINS	78.4	100	40
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TOTALS		236.5 (Excluding Village Average)	1103	825

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- PROPOSED SKI LIFT
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* DENOTES SKI-IN SKI-OUT PARCELS
 ** DENOTES SKI-IN PARCELS
 *** DENOTES SKI-OUT PARCELS

MASTER PLAN



1/4 Mile
 APPROXIMATE 5 MIN. WALK
 1/2 Mile
 APPROXIMATE 10 MIN. WALK

BIG MOUNTAIN

WHITEFISH, MONTANA

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MANAGER REPORT

February 13, 2013



WHITEFISH HOUSING AUTHORITY – BNSF HOUSES

Whitefish Housing Authority Director SueAnn Grogan submitted a pay request and we have paid the final \$10,000 draw on the two year, \$30,000 of Tax Increment Funds which was appropriated to WHA. They spent \$11,501 to match a state planning grant for their new Five Year Plan which was completed last year. The rest of the funds will be put towards the restoration of the BNSF houses. \$12,965 has been spent so far on the closing costs and the rehab of one of the BNSF houses – the newer one at the corner of Railway and O’Brien. The Whitefish Housing Authority is still deciding on how to proceed with the other two, more dilapidated houses on 1st Street.

RESORT TAX

December’s Resort Tax collections were \$170,492 which is 12% or \$18,766 higher than December of 2011. For the year to date at the halfway point of the year, total collections are 9.6% or \$101,194 ahead of the December 31, 2011 figure. A table and chart showing collection trends is attached to this report in the packet.

5TH MONDAY MEETING WITH OTHER JURISDICTIONS

Flathead County and Columbia Falls have discussed resuming the meetings of the three municipalities and the county which were once held when 5th Mondays occurred in a month. The next opportunity will be April 29th, so please mark your calendars for that possible meeting. One topic which may be on for that evening would be a presentation on the mapping of septic tank locations around Flathead County and discussing which areas might be areas to consider for community septic systems or for connecting to a wastewater treatment plant by extending wastewater main lines to the area.

PHARMECEUTICAL DROP-OFF BOX AT POLICE DEPARTMENT

With the help of Mayre Flowers and the Flathead Waste-Not project, we were able to secure grant funds from the Montana Department of Justice to install a pharmaceutical drop-off box in the Police Department at 275 Flathead Avenue. The drop-off box, pictured below, provides a

safe and secure way for citizens to drop off unwanted pharmaceuticals rather than put them in the landfill or down the toilet which affects the Whitefish River.



MEETINGS

Flathead Regional Wastewater Management Group (2/5) – John Anderson and I attended this meeting of this group of Flathead Basin counties, wastewater plant operators, and interested parties which was formed a couple of years ago with a Flathead County grant. The discussion focused on how and whether to continue meeting and whether there were any projects which the group wanted to pursue. One suggestion was to give a presentation on the septic mapping project to the elected officials of all four local governments in Flathead County so they could see the hot spots of pollution. That presentation may be done at the proposed 5th Monday meeting on April 29th.

Focus Group meeting on re-use of former North Valley Hospital site for higher education (2/6) – I attended a focus group meeting sponsored by Don DuBeau, Jeanne Tallman, Sam and Julie Baldrige on the possible re-use of the former NVH site for a higher education facility. They have retained a consulting firm, the Education Alliance, to help them with a feasibility analysis of such a use for the former NVH site. The session was mostly for them to explain the concept and then hear from community members on the possible use. They especially wanted to hear what types of higher education programming citizens felt would be most useful for a small, higher education facility.

BBER Economic Outlook Seminar (2/15) - I will attend the University of Montana's Bureau of Business and Economic Research (BBER) annual Economic Outlook seminar on Friday, February 15th at the Hilton Garden Inn in Kalispell.

UPCOMING SPECIAL EVENTS

REMINDERS

Second City Council meeting in February is Tuesday, February 19th because of Presidents Day holiday on Monday, February 18th.
City Hall is closed on Monday, February 18th.

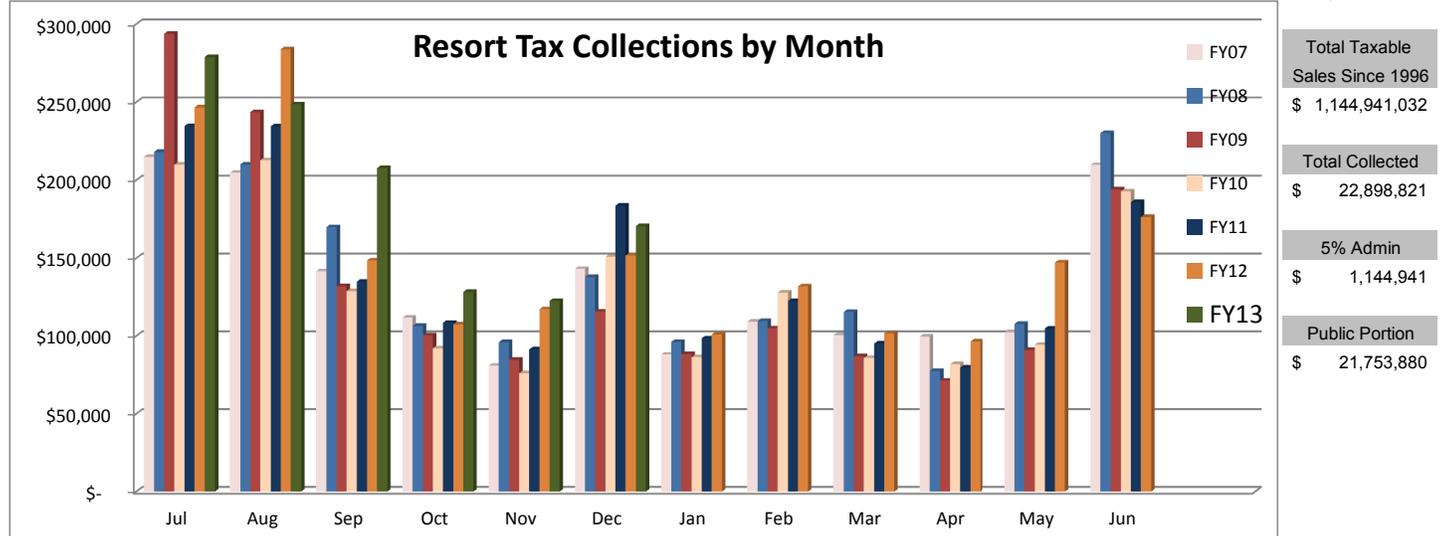
Respectfully submitted,



Chuck Stearns
City Manager

Resort Tax Report
Reported in the Month Businesses Paid Tax

Month/Year	Lodging	Bars & Restaurants		Retail	Collected	% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Interest	Total
		Restaurants	Restaurants						
Dec-07	10,816	49,480		77,577	137,873			4,412	142,284
Nov-08	9,860	38,110		36,751	84,721	-12%		19,888	104,609
Dec-08	9,787	45,089		60,863	115,739	-16%	-11.6%	8,635	124,374
Jan-09	8,160	38,948		41,320	88,428	-8%		1,532	89,960
Total FY09	\$ 269,389	\$ 587,889		\$ 749,573	\$ 1,606,851			\$ 139,585	\$ 1,746,436
FY08 vs FY09	-4.1%	-7.2%		-1.5%	-4.1%			TaxableSalesFY09	\$ 84,571,113
Nov-09	8,147	34,146		33,709	76,002	-10%		5,571	81,573
Dec-09	9,602	45,090		96,087	150,778	30%	6.0%	5,433	156,211
Jan-10	6,901	39,401		40,031	86,333	-2%		3,120	89,452
Total FY10	\$ 245,171	\$ 563,798		\$ 730,393	\$ 1,539,362			\$ 53,679	\$ 1,593,041
FY09 vs FY10	-9.0%	-4.1%		-2.6%	-4.2%			TaxableSalesFY10	\$ 81,019,064
Oct-10	17,637	44,457		46,418	108,512	18%		6,551	115,063
Nov-10	7,248	45,396		38,718	91,362	20%		17,292	108,654
Dec-10	14,380	70,881		98,404	183,664	22%	20.3%	1,413	185,077
Jan-11	8,686	40,117		49,679	98,482	14%		1,276	99,758
Total FY11	\$ 274,688	\$ 651,321		\$ 747,615	\$ 1,673,624			\$ 38,004	\$ 1,711,629
FY10 vs FY11	12.0%	15.5%		2.4%	8.7%			TaxableSalesFY11	\$ 88,085,492
Jul-11	56,106	90,212		100,325	246,642	5%		\$ 979	\$ 247,621
Aug-11	85,621	91,408		106,860	283,889	21%		7,833	291,722
Sep-11	28,154	58,830		61,535	148,519	10%	12.4%	593	149,112
Oct-11	17,944	45,919		43,610	107,473	-1%		496	107,969
Nov-11	14,351	39,054		63,758	117,162	28%		479	117,641
Dec-11	16,531	51,195		84,000	151,726	-17%	-1.9%	526	152,252
Total First 6 Months	218,707	376,617		460,088	1,055,412				
Jan-12	10,032	44,089		46,905	101,026	3%		515	101,541
Feb-12	14,585	56,427		60,780	131,793	8%		578	132,371
Mar-12	11,008	42,952		47,682	101,643	7%	5.9%	557	102,200
Apr-12	9,353	39,367		47,657	96,377	21%		610	96,987
May-12	15,461	51,207		80,526	147,194	40%		6,993	154,187
Jun-12	35,584	68,403		72,472	176,460	-5%	13.4%	625	177,085
Total FY12	\$ 314,731	\$ 679,063		\$ 816,110	\$ 1,809,903			\$ 20,785	\$ 1,830,688
FY11 vs FY12	15%	4%		9%	8.1%			TaxableSalesFY12	\$ 95,258,076
Jul-12	69,418	94,341		115,149	278,908	13%		\$ 643	\$ 279,551
Aug-12	53,361	92,463		102,812	248,636	-12%		444	249,080
Sep-12	57,000	77,503		73,232	207,734	40%	8.3%	533	208,267
Oct-12	24,519	54,631		49,137	128,288	19%		434	128,722
Nov-12	8,099	40,326		74,122	122,547	5%			
Dec-12	15,490	66,046		88,956	170,492	12%	11.9%		
Total FY13	\$ 227,887	\$ 425,310		\$ 503,409	\$ 1,156,606			\$ 2,054	\$ 865,621
YTD vs Last Year	12.7%	30.7%		33.9%				TaxableSalesFY13	\$ 60,873,993
FY13 % of Collections	20%	37%		44%				\$ 742,968	\$ 19,510,104
Grand Total	\$ 3,852,896	\$ 8,068,131		\$ 9,832,852	\$ 21,753,880				3.4% Average interest
% of Total Collections	18%	37%		45%					



RESOLUTION NO. 13-____

A Resolution of the City Council of the City of Whitefish, Montana, approving Amendment No. 4 to the City's Flexible Benefit Plan (Cafeteria Plan).

WHEREAS, pursuant to Resolution No. 09-47, adopted December 7, 2009, the City Council approved a restated Flexible Benefit Plan (Cafeteria Plan) which has been amended by Resolution No. 04-01, as Amendment No. 1, Resolution No. 10-43, as Amendment No. 2, and Resolution No. 11-03, as Amendment No. 3;

WHEREAS, the maximum amount permitted for flexible spending accounts was reduced from \$3,000 to \$2,500, requiring an amendment to the Cafeteria Plan; and

WHEREAS, the proposed amendment is contained in the document entitled "AMENDMENT NUMBER FOUR TO CITY OF WHITEFISH FLEXIBLE BENEFIT PLAN," on file with the City Clerk; and

WHEREAS, Amendment No. 4 will adopt the following change:

The maximum amount you may contribute each year to your Health Care Reimbursement Account is the maximum amount permitted (\$2,500 through the end of 2013 as compared to \$3,000 for prior years because of a change in federal law).

WHEREAS, the City Manager has reviewed the proposed amendment, and has recommended that it be approved by the City Council.

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

Section 1: Amendment No. 4 to the Flexible Benefit Plan effective immediately and presented at this meeting is hereby approved and adopted, and the City Manager is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

Section 2: The City Manager or designee shall act as soon as possible to notify employees of the City of the adoption of this Amendment No. 4 to the Flexible Benefit Plan by delivering to each employee a copy of the summary description of the changes in the Plan in the form of the Summary Plan Description-Material Modifications presented at this meeting, which form is hereby approved.

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2013.

Bill Kahle, Deputy Mayor

ATTEST:

Necile Lorang, City Clerk

MEMORANDUM

#2013-014



To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

A handwritten signature in blue ink that reads "Chuck Stearns".

Re: Staff Report – Restated Flexible Benefits Plan Amendment #4

Date: February 8, 2013

Introduction/History

Section 125 of the Internal Revenue Code allows governmental units to enact an employee benefit often called Cafeteria Plans whereby the employees are allowed to set aside some of their income from the City for specified uses such as known medical expenses, dependent care (e.g. day care), and health savings accounts using pre-tax dollars. Thus, the employee reduces his or her out of pocket costs for such expenses by the amount of income tax dollars saved in reducing his or her Adjusted Gross Income (AGI).

The City of Whitefish adopted such a plan beginning in October, 2003. The City Council approved a restated Flexible Benefits Plan on December 7, 2009 pursuant to Resolution No. 09-47. The City Council also approved Amendment No. 2 on September 20, 2010 pursuant to Resolution Number 10-43 which allowed employees with their own medical insurance policy to pay the monthly premiums through the Flexible Benefits Plan. The City Council also approved Amendment No. 3 on January 3, 2011 which changed the definition of “Dependent” and “Medical Expenses” to comply with new federal health care regulations.

Cafeteria Plans involve contributions only from the employee, the City of Whitefish does not contribute any funds to the plan. Any funds which the employee does not use by December 31st of each year are lost to them as the program is allowed by the IRS for each tax year with no carryover.

Current Report

Our third party administrator for the Flexible Benefits Plan, Peak1 Administrators of Idaho has forwarded an amendment to our plan document related to reducing the maximum amount of employee contribution from \$3,000.00 per year in the past to \$2,500.00 beginning in 2013 to comply with new federal health care regulations. The proposed amended plan document is attached to the Resolution in the packet.

Financial Requirement

There is no cost for this change to the policy.

Recommendation

Staff respectfully requests the City Council enact a Resolution approving Amendment #4 to the Flexible Benefits Plan.

attachments

CITY OF WHITEFISH
FSA
SUMMARY PLAN DESCRIPTION

1/1/2013

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Peak1 Administration

CITY OF WHITEFISH
FSA
SUMMARY PLAN DESCRIPTION

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INTRODUCTION

City of Whitefish (the "Company") established the City of Whitefish FSA (the "Plan") effective 1/1.

Although the purpose of this document is to summarize the more significant provisions of the Plan, the Plan document will prevail in the event of any inconsistency.

ELIGIBILITY FOR PARTICIPATION

Eligible Employee

You are an "Eligible Employee" if you are employed by City of Whitefish or any affiliate who has adopted the Plan. However, you are not an "Eligible Employee" if you are any of the following:

A self-employed individual (including a partner), or a person who owns (or is deemed to own) more than 2 percent of the outstanding stock of an S corporation.

A leased employee.

A non-resident alien who received no U.S. earned income.

You are an "Eligible Employee" for purposes of the Premium Conversion Account on the date you become eligible to receive benefits from the contracts described for Premium Conversion Accounts in the Section titled "BENEFITS" below; but only if you are not a self-employed individual (including a partner) and you are not a person who owns (or is deemed to own) more than 2 percent of the outstanding stock of an S corporation.

Date of Participation

You will become a Participant eligible to receive benefits from the Plan on the first day of the calendar month coincident with or next following the date you first perform an hour of service as an Eligible Employee.

However, you will become a Participant eligible to make contributions and receive benefits from the Premium Conversion Account on the date you become eligible to receive benefits from the contracts described for Premium Conversion Accounts in the Section titled "BENEFITS" below.

You will stop being a participant eligible to receive benefits from the Plan on the date you are no longer an Eligible Employee or the date you terminate employment with the Company.

ELECTIONS

In General

When you become eligible to participate in the Plan, you may begin contributing to the Plan. All contributions will be credited to an account established in your behalf. Your contributions to the Plan are not subject to federal income tax or social security taxes.

Please note that while you may enjoy certain tax benefits, there may be some drawbacks to participation in the Plan. For instance, participation in the Plan may lower your social security benefits. You should consult with your professional tax/financial advisor to determine the consequences of your participation in this Plan.

Election Procedures

When you are first eligible to participate in the Plan, you must return a completed election form to the Plan Administrator on or before the date specified by the Plan Administrator.

After you are first eligible to participate in the Plan you will generally only be able to change your elections as of the beginning of each Plan Year. Prior to the start of each Plan Year, the Plan Administrator will provide an election form to you. In order to participate in the Plan for the next Plan Year, you must return the completed election form to the Plan Administrator on or before the date specified by the Plan Administrator. However, see "Modification of Elections" below for situations where you may modify elections at a time other than the beginning of a Plan Year.

If, as of the start of a Plan Year, you have not returned an election form by its due date, you will be deemed to have elected not to participate in the Plan for that Plan Year.

Modification of Elections

Generally speaking, you may only revise your elections as of the start of a Plan Year. However, in certain situations you may modify your elections upon a "change in status". A brief listing of events that constitute a change in status follows. Please note that there are several conditions and/or limitations that apply to the events listed below. Please contact the Plan Administrator if you have any questions or believe that you may qualify for an election change. A change in status includes:

Change in your marital status.

Change in the number of your dependents.

Change in employment status.

A dependent satisfies or ceases to satisfy eligibility requirements.

Change in your place of residence.

Commencement or termination of an adoption proceeding.

Court judgment, decree, or order.

Entitlement to Medicare or Medicaid.

Significant cost or other coverage changes.

You take leave under the FMLA

If you have a change in status, you may modify an election in your Health Care Reimbursement Account but your new annual contribution amount may not be less than the amount previously reimbursed at the time of the election change.

In addition, your election for your premiums will be automatically adjusted for any change in the cost of contracts as permitted by applicable law.

BENEFITS

Premium Conversion Account

When you become eligible to participate in the Plan, the Plan will establish a Premium Conversion Account in your name. This Account will be credited with your contributions and will be reduced by any payments made on your behalf. This account may be used to pay premiums on the contracts listed below:

Individually-owned Medical

If a contract is offered in conjunction with a Company-sponsored benefit plan, you will be eligible to make contributions to the Premium Conversion Account only if you are also eligible to participate in the applicable Company-sponsored plan, it is described above and you are eligible to participate in this Plan.

In the event of a conflict between the terms of this Plan and the terms of a contract, the terms of the contract (or the benefit plan under which it is established) will control.

Health Care Reimbursement Account

When you become eligible to participate in the Plan, the Plan will establish a Health Care Reimbursement Account in your name. This Account will be credited with your contributions and will be reduced by any payments made on your behalf. You will be entitled to receive reimbursement from this account for eligible expenses incurred by you, your spouse and dependents, if any. A dependent is generally someone who you may claim as a dependent on your federal tax return and also includes a child who is under the age of 27 through the end of the calendar year. You may receive reimbursement for eligible expenses incurred at a time when you are actively participating in the Plan.

The entire annual amount you elect to contribute for the Plan Year for the Health Care Reimbursement Account less any reimbursements already disbursed will be available for reimbursement. The maximum amount you may contribute each year is the maximum amount permitted (\$2,500 through the end of 2013).

Eligible expenses generally include all medical expenses that you may deduct on your federal income tax return, although health insurance premiums are not an eligible expense for the Health Care Reimbursement Account. Medicines or drugs are eligible expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin (unless otherwise excluded). You will not be reimbursed for any expenses that are (i) not incurred in the Plan Year, (ii) incurred before or after you are eligible to participate in the Plan, (iii) attributable to a tax deduction you take in a prior taxable year, or (iv) covered, paid or reimbursed from any other source.

Dependent Care Assistance Account

When you become eligible to participate in the Plan, the Plan will establish a Dependent Care Assistance Account in your name. This Account will be credited with your contributions and will be reduced by any payments made on your behalf. You will be entitled to receive reimbursement from this account for dependent care assistance. Dependent care assistance is defined as expenses you incur for the care of a qualifying individual. A qualifying individual is a dependent who is under age 13 or a spouse or dependent who lives with you and is physically or mentally incapable of caring for himself/herself. However, these expenses only qualify if they allow you to be gainfully employed.

Not all expenses qualify as dependent care assistance. Only expenses that are excludable from income under federal tax may qualify as dependent care assistance. Some examples of expenses that qualify are:

Before and after school programs

Care in your home or someone else's home (as long as the care giver is not your spouse or dependent and is age 19 or older)

Licensed child care center

Nursery school or pre-school

Summer day care (not overnight)

Please contact the Plan Administrator before enrolling in the Plan to confirm that the expenses for which you will seek reimbursement will qualify as dependent care assistance.

You will not be reimbursed for any expenses that are (i) not incurred in the Plan Year, (ii) incurred before or after you are eligible to participate in the Plan, (iii) attributable to a tax credit you take for the same expenses, or (iv) covered, paid or reimbursed from any other source.

The maximum amount of expense that may be contributed/reimbursed in any Plan Year is \$5,000 (\$2,500 if you are married and filing a separate return). The amount payable may also not be greater than the amount of your earned income or the earned income of your spouse. Special rules apply in the case of a spouse who is a student or incapable of caring for himself/herself.

You generally must file a Form 2441 to determine whether any part of your Dependent Care Assistance Account is taxable. Please note that participation in the Plan may prevent you from taking a tax credit for the same expenses. You should consult with your professional tax/financial advisor to determine the consequences of your participation in this Plan.

Coordination with Other Plans

All claims for benefits that are covered by an insurance policy must be made to the insurance company issuing such insurance policy.

Limits on Certain Employees

If you are a highly paid employee or an owner of the Company, federal law may impose limits on your eligibility to participate in the Plan and/or the benefits you may receive from the Plan.

FORFEITURES

Plan Year/Termination

Any amounts remaining in your account at the end of the Plan Year will be forfeited after all claims are paid. In addition, any balance remaining in your account on the date you terminate employment with the Company will be forfeited after all claims are paid.

Grace Period

However, the unused balance in your account that remains at the end of a Plan Year may be used for expenses that you incur during the grace period. The grace period is the 2-1/2 month period after the end of the Plan Year.

CLAIMS

Deadlines

You must submit claims for reimbursement within 90 days after the end of the Plan Year.

However, the unused balance in your account that remains at the end of a Plan Year may be used for expenses that you incur during the grace period. The grace period is the 2-1/2 month period after the end of the Plan Year. You must submit claims incurred during the grace period for reimbursement within 90 days after the end of the grace period.

Documentation of Claims

Any claim for benefits must include all information and evidence that the Plan Administrator deems necessary to properly evaluate the merits of the claim. The Plan Administrator may request any additional information necessary to evaluate the claim.

Method and Timing of Payment

To the extent that the Plan Administrator approves a claim, the Company may either (i) reimburse you, or (ii) pay the service provider directly. The Plan Administrator will pay claims at least once per year. The Plan Administrator may provide that payments/reimbursements of less than a certain amount will be carried forward and aggregated with future claims until the reimbursable amount is greater than a minimum amount. In any event, the entire amount of payments/reimbursements outstanding at the end of the Plan Year will be reimbursed without regard to the minimum payment amount.

Where to Submit Claims

All claims must be submitted to Peak1 Administration LLC at 7600 Mineral Drive, Suite 450, Coeur d'Alene, ID 83815. The telephone number is 866-315-1777.

Refunds/Indemnification

You must immediately repay any excess payments/reimbursements or any payments/reimbursements that are taxable to you. You must reimburse the Company for any liability the Company may incur for making such payments, including but not limited to, failure to withhold or pay payroll or withholding taxes from such payments or reimbursements. If you fail to timely repay an excess amount and/or make adequate indemnification, the Plan

Administrator may: (i) to the extent permitted by applicable law, offset your salary or wages, and/or (ii) offset other benefits payable under this Plan.

Beneficiary

If you die, your beneficiaries or your estate may submit claims for Eligible Expenses for the portion of the Plan Year preceding the date of your death. You may designate a specific beneficiary for this purpose. If you do not name a beneficiary, the Plan Administrator may pay any amount to your spouse, one or more of your dependents or a representative of your estate.

Claim Procedures for Health Benefits

Application for Benefits. You or any other person entitled to benefits from the Plan (a "Claimant") may apply for such benefits by completing and filing a claim with the Plan Administrator. Any such claim must be in writing and must include all information and evidence that the Plan Administrator deems necessary to properly evaluate the merit of and to make any necessary determinations on a claim for benefits. The Plan Administrator may request any additional information necessary to evaluate the claim.

Timing of Notice of Denied Claim. The Plan Administrator shall notify the Claimant of any adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the Plan for up to 15 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the Claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

Content of Notice of Denied Claim. If a claim is wholly or partially denied, the Plan Administrator shall provide the Claimant with a notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) any material or information needed to grant the claim and an explanation of why the additional information is necessary, (4) an explanation of the steps that the Claimant must take if he wishes to appeal the denial including a statement that the Claimant may bring a civil action under ERISA, and (5): (A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the Claimant upon request; or (B) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

Appeal of Denied Claim. If a Claimant wishes to appeal the denial of a claim, he shall file an appeal with the Plan Administrator on or before the 180th day after he receives the Plan Administrator's notice that the claim has been wholly or partially denied. The appeal shall identify both the grounds and specific Plan provisions upon which the appeal is based. The Claimant shall be provided, upon request and free of charge, documents and other information relevant to his claim. An appeal may also include any comments, statements or documents that the Claimant may desire to provide. The Plan Administrator shall consider the merits of the Claimant's presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Plan Administrator may deem relevant. In considering the appeal, the Plan Administrator shall:

(1) Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;

(2) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

(3) Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(4) Provide that the health care professional engaged for purposes of a consultation under Subsection (2) shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual.

The Plan Administrator shall notify the Claimant of the Plan's benefit determination on review within 60 days after receipt by the Plan of the Claimant's request for review of an adverse benefit determination. The Claimant shall lose the right to appeal if the appeal is not timely made.

Denial of Appeal. If an appeal is wholly or partially denied, the Plan Administrator shall provide the Claimant with a notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits, and (4) a statement describing the Claimant's right to bring an action under section 502(a) of ERISA. The determination rendered by the Plan Administrator shall be binding upon all parties.

Claim Procedures for Non-Health Benefits

Application for Benefits. You or any other person entitled to benefits from the Plan (a "Claimant") may apply for such benefits by completing and filing a claim with the Plan Administrator. Any such claim must be in writing and must include all information and evidence that the Plan Administrator deems necessary to properly evaluate the merit of and to make any necessary determinations on a claim for benefits. The Plan Administrator may request any additional information necessary to evaluate the claim.

Timing of Notice of Denied Claim. The Plan Administrator shall notify the Claimant of any adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim. This period may be extended one time by the Plan for up to 90 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 90-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision.

Content of Notice of Denied Claim. If a claim is wholly or partially denied, the Plan Administrator shall provide the Claimant with a written notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) any material or information needed to grant the claim and an explanation of why the additional information is necessary, and (4) an explanation of the steps that the Claimant must take if he wishes to appeal the denial including a statement that the Claimant may bring a civil action under ERISA.

Appeal of Denied Claim. If a Claimant wishes to appeal the denial of a claim, he shall file a written appeal with the Plan Administrator on or before the 60th day after he receives the Plan Administrator's written notice that the claim has been wholly or partially denied. The written appeal shall identify both the grounds and specific Plan provisions upon which the appeal is based. The Claimant shall be provided, upon request and free of charge, documents and other information relevant to his claim. A written appeal may also include any comments, statements or documents that the Claimant may desire to provide. The Plan Administrator shall consider the merits of the Claimant's written presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Plan Administrator may deem relevant. The Claimant shall lose the right to appeal if the appeal is not timely made. The Plan Administrator shall ordinarily rule on an appeal within 60 days. However, if special circumstances require an extension and the Plan Administrator furnishes the Claimant with a written extension notice during the initial period, the Plan Administrator may take up to 120 days to rule on an appeal.

Denial of Appeal. If an appeal is wholly or partially denied, the Plan Administrator shall provide the Claimant with a notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits, and (4) a

statement describing the Claimant's right to bring an action under section 502(a) of ERISA. The determination rendered by the Plan Administrator shall be binding upon all parties.

CONTINUATION RIGHTS

Military Service

If you serve in the United States Armed Forces and must miss work as a result of such service, you may be eligible to continue to receive benefits with respect to any qualified military service.

COBRA

Under Federal law, you, your spouse, and your dependents may be entitled to COBRA continuation coverage in certain circumstances. Please see the "COBRA NOTICE" that is attached to the end of this Summary Plan Description for important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. The COBRA NOTICE generally explains COBRA continuation coverage and when it may become available to you. The Plan Administrator will inform you of these rights, if any, when you terminate employment.

FMLA

If you go on unpaid leave that qualifies as family leave under the Family and Medical Leave Act you may be able to continue receiving health care benefits.

YOUR RIGHTS UNDER ERISA

As a participant, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). This federal law provides that you have the right to:

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites and union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration if a 5500 is required to be filed by the plan.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Continue health care coverage for yourself, spouse or dependents if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review this Summary Plan Description and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

In addition, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining your benefits or exercising your rights under ERISA.

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a medical child support order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

MISCELLANEOUS

Qualified Medical Child Support Orders

In certain circumstances you may be able to enroll a child in the Plan if the Plan receives a Qualified Medical Child Support Order (QMCSO). You may obtain a copy of the QMCSO procedures from the Plan Administrator, free of charge.

Loss of Benefit

You may lose all or part of your account if the unused balance is forfeited at the end of a Plan Year and if we cannot locate you when your benefit becomes payable to you.

You may not alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which you may expect to receive, contingently or otherwise, under the Plan, except that you may designate a Beneficiary.

Amendment and Termination

The Company may amend, terminate or merge the Plan at any time.

Administrator Discretion

The Plan Administrator has the authority to make factual determinations, to construe and interpret the provisions of the Plan, to correct defects and resolve ambiguities in the Plan and to supply omissions to the Plan. Any construction, interpretation or application of the Plan by the Plan Administrator is final, conclusive and binding.

Taxation

The Company intends that all benefits provided under the Plan will not be taxable to you under federal tax law. However, the Company does not represent or guarantee that any particular federal, state or local income, payroll, personal property or other tax consequence will result from participation in this Plan. You should consult with your professional tax advisor to determine the tax consequences of your participation in this Plan.

Privacy

The Plan is required under federal law to take sufficient steps to protect any individually identifiable health information to the extent that such information must be kept confidential. The Plan Administrator will provide you with more information about the Plan's privacy practices.

ADMINISTRATIVE INFORMATION

1. The Plan Sponsor and Plan Administrator is City of Whitefish.

Its address is 418 2nd Ave E, Whitefish, MT 59937.

Its telephone number is 406-863-2400.

Its Employer Identification Number is 81-6001325.

2. The Plan is a welfare benefit plan which has been designated by the sponsor as its plan number 501.
3. The Plan's designated agent for service of legal process is the chief officer of the entity named in paragraph 1. Any legal papers should be delivered to him or her at the address listed in paragraph 1. However, service may also be made upon the Plan Administrator.
4. The Company's fiscal year and the plan year ends on 12/31.

COBRA NOTICE

In General.

This notice contains important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. This notice generally explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it. The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage can become available to you when you would otherwise lose your group health coverage. It can also become available to other members of your family who are covered under the Plan when they would otherwise lose their group health coverage.

What is COBRA Continuation Coverage?

COBRA continuation coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage must pay for COBRA continuation coverage.

If you are an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because either one of the following qualifying events happens:

Your hours of employment are reduced, or

Your employment ends for any reason other than your gross misconduct.

If you are the spouse of an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because any of the following qualifying events happens:

Your spouse dies;

Your spouse's hours of employment are reduced;

Your spouse's employment ends for any reason other than his or her gross misconduct;

Your spouse becomes entitled to Medicare benefits (under Part A, Part B, or both); or

You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they lose coverage under the Plan because any of the following qualifying events happens:

The parent-employee dies;

The parent-employee's hours of employment are reduced;

The parent-employee's employment ends for any reason other than his or her gross misconduct;

The parent-employee becomes entitled to Medicare benefits (Part A, Part B, or both);

The parents become divorced or legally separated; or

The child stops being eligible for coverage under the plan as a "dependent child."

When is COBRA Coverage Available?

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. When the qualifying event is the end of employment or reduction of hours of employment, death of the employee, or the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), the employer must notify the Plan Administrator of the qualifying event.

You Must Give Notice of Some Qualifying Events

For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days after the qualifying event occurs. You must provide this notice to Peak1 Administration LLC at 7600 Mineral Drive, Suite 450, Coeur d'Alene, ID 83815. The telephone number is 866-315-1777.

How is COBRA Coverage Provided?

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each qualified beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage on behalf of their spouses, and parents may elect COBRA continuation coverage on behalf of their children.

The COBRA continuation coverage lasts only until the end of the plan year in which the qualifying event occurs. COBRA continuation coverage may only be elected under this plan if, as of the date of the qualifying event, the maximum benefit available under the plan for the remainder of the plan year is more than the maximum amount that the Plan could require as payment to maintain coverage for the remainder of that plan year.

If You Have Questions

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to the contact or contacts identified below. For more information about your rights under ERISA, including COBRA and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at www.dol.gov/ebsa. (Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website.)

Keep Your Plan Informed of Address Changes

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

Plan Contact Information

Peak1 Administration LLC
7600 Mineral Drive, Suite 450, Coeur d'Alene, ID 83815
866-315-1777

V-3.00

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Staff Report

February 11, 2013

To: Mayor Muhlfeld and City Councilors

From: Bill Dial, Chief of Whitefish Police Department *Bill Dial*
Mary VanBuskirk, City Attorney *MVB*

Re: Continuation of Prosecutorial Services Contract
with Hedman, Hileman & Lacosta, PLLP



Introduction/History.

Since 1991, the law firm of Hedman, Hileman & Lacosta, PLLP (Law Firm) has provided prosecutorial services on behalf of the City primarily before the Whitefish Municipal Court.

In 2007 the City of Whitefish contracted with the Law Firm on an hourly basis for legal services, based on their 2007 hourly rates, with a term of four years. Under the hourly basis, the City incurred prosecution costs of approximately \$88,377 in FY 2009, \$122,274 in FY 2010 and \$114,852 in FY 2011. (See attached 2007 Contract and invoice summary.)

In the final year of the 2007 Contract, the City sought a flat fee contract with the Law Firm seeking lower prosecution costs and budgetary predictability for the City. As a result, the Law Firm and the City negotiated a two-year term agreement (July 2011 through July 2013) setting an annual flat fee for legal services in the amount of \$90,000, plus \$3,600 for costs and expenses (billed monthly at the rate of \$7,500 and \$300). The City Council approved the terms of the 2011 Prosecuting Attorney Contract (2011 Contract) in the City's FY 2012 Budget. With City staff undertaking civil citations formerly handled as criminal charges by the Law Firm, and under the flat fee arrangement, the City incurred prosecution costs of \$93,637 in FY 2012. (See attached 2011 Contract.) For the term of the 2011 Contract, the Law Firm assigned primary responsibility for the delivery of prosecution services to Caleb Simpson, an associate. Clifton Hayden, a partner, was also available as the prior chief prosecutor under the 2007 Contract.

By the terms of the 2011 Contract, the contract would be automatically extended for an additional consecutive two-year term unless either party notified the other "at least four (4) months before the expiration of the current term, that that party desires to renegotiate or terminate the contract". Either party may exercise the right of renewal for an additional two years through June 30, 2015. The City Council may also review the Law Firm's "quality of performance, cost of services and such other matters as the Council deems appropriate" on an annual basis. Since the 2011 Contract expires on June 30, 2013, the four-month timeframe to provide the City's notice to renegotiate or terminate ends at the end of February 2013.

Current Report.

In order to assist the City Council in its consideration of the Law Firm's performance and services, staff requested a report from the Law Firm concerning the extent of its

prosecution services on behalf of the City. The Whitefish Police Department also provided feedback concerning the prosecution services. In addition, we sought the nature and extent of prosecution cases over the past two years from Shellee Abel, Clerk of the Municipal Court.

In response to our request, Mr. Hayden provided the attached Law Firm's January 24, 2013 Prosecution Contract Annual Review (Annual Review) indicating the Law Firm's interest in continuing the Contract on the same basis for an additional two years. Although the Law Firm no longer tracks billable hours (as a cost saving measure to the Law Firm since the prosecutorial services are billed at a flat monthly fee), Mr. Hayden provided the total number of criminal cases filed with the Municipal Court. In its Annual Review, the Law Firm reported its assessment that the FY 2011 and FY 2012 case load "has remained fairly consistent" with its commitment to continue its relationship with the City under the same terms of the 2011 Contract.

Ms. Abel provided the Municipal Court's reports and breakdown of the City's case numbers over the past three years as follows:

	Docket Nos. (Tickets)	Criminal Complaints	Search Warrants
2012	3,140	50	19
2011	2,971	44	17
2010	3,256	67	9

A copy of the Court's tally of total cases (both general and civil) and breakdown showing criminal matters is attached.

The Whitefish Police Department expressed its satisfaction for the professional nature of the Law Firm's prosecutorial services and desire to continue the Law Firm's Contract.

Recommendation.

City staff respectfully recommends that the City Council approve the two-year renewal of the Contract for Prosecution Services by the Law Firm for FY 2014 and FY 2015, at the same annual flat fee of \$90,000 for legal services and \$3,600 for costs and expenses, with the Council's authorization for City staff to negotiate the terms for the renewal and Chuck Stearns, City Manager, to execute the two-year renewal on behalf of the City.

Attachments

**CITY OF WHITEFISH
PROSECUTING ATTORNEY CONTRACT**

THIS CONTRACT, effective this 1st day of July, 2007, by and between the City of Whitefish, a Municipal Corporation, hereinafter referred to as "City", and the firm of Hedman, Hileman & Lacosta, PLLP, Attorneys at Law, of Whitefish, County of Flathead, Montana, hereinafter referred to as "Contractor";

WITNESSETH:

WHEREAS, the City requires legal counsel to prosecute criminal matters before the City Court of Whitefish, the District Court of Flathead County, and the Montana Supreme Court; and

WHEREAS, the Contractor desires to represent the City in its needs; and

WHEREAS, the City Council is authorized specifically by the City Charter to retain an attorney on terms mutually agreeable to the City and the Contractor;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. Representation: The Contractor shall act as Prosecutor for the City of Whitefish and will be responsible for representation of the City before the Whitefish City Court or any appeals therefrom. The Contractor is not expected to represent the City on civil matters including, but not limited to litigation, zoning, planning, development, construction, municipal assessments, special improvement districts, bond sales, annexation, disability claims, liability claims, workers compensation, and election law.

2. Conflicts: The Contractor shall not represent any defendant in any court appearance in which the City is an adverse party.

3. Compensation to Contractor: It is understood the Contractor shall be paid as follows:

a. Attorney Compensation. The City shall pay as compensation to Contractor the rate of \$100.00 per hour for attorney services from July 1, 2007 through June 30, 2009. The City shall pay as compensation to Contractor the rate of \$105.00 per hour for attorney services from July 1, 2009 through June 30, 2011; and an additional \$5.00 per hour increase for each extension thereafter.

b. Paralegal Compensation. The City shall pay as compensation to Contractor the rate of \$50.00 per hour for paralegal services through the term of this agreement.

- c. Billing and Payment. The Contractor shall submit to the City detailed monthly statements describing all of the attorney and paralegal time described above. The City shall compensate the Contractor by the 10th day of the month following that in which the services were provided.

4. Routine Expenses: The parties acknowledge that the Contractor will incur out-of-pocket expenses which are specifically and directly attributable to City matters, such as local travel costs, copies, postage, and long distance telephone calls, and the Contractor is entitled to be reimbursed for such expenses. The parties acknowledge that in order for the Contractor to maintain a level of proficiency in the area of municipal law, the Contractor must acquire or incur necessary equipment, books, professional fees, continued legal education training, and periodicals that specifically deal with the area of municipal law, whether it be civil or criminal, and the Contractor is entitled to be reimbursed for such expenses. Rather than itemize all of such expenses each month, the parties agree that it would be in their best interests to agree upon a fixed monthly reimbursement to Contractor. The sum of Three Thousand Six Hundred Dollars (\$3,600.00) annually has been budgeted for these expenses; to be paid in monthly installments of Three Hundred Dollars (\$300.00) per month for said expenses.

5. Extraordinary Expenses: The parties acknowledge that the Contractor may also incur extraordinary out-of-pocket expenses, particularly in the area of litigation. The Contractor shall be entitled to reimbursement from the City for out-of-pocket expenses incurred in connection with such matters, including but not limited to court costs, deposition fees, travel costs, extraordinary copies, postage, and long distance telephone calls. The Contractor shall include such reimbursable expenses on its detailed statement, reflecting the attorney time involved, and the City shall reimburse such expenses by the 10th day of the month following that in which the expenses were incurred.

6. Substitute: The Contractor shall be responsible for having available at no cost to the City a substitute Contractor, acceptable to the City Council, to perform his duties in his absence.

7. Independent Contractor: It is understood that the Contractor is an independent contractor and not an employee of the City.

8. Insurance: The Contractor agrees to carry for the duration of this agreement professional and/or malpractice insurance in the amount not less than \$1,000,000.00. The foregoing insurance policy shall contain sixty (60) day notice of cancellation providing that notice shall be given the City not less than sixty (60) days prior to any termination or material modification of coverage.

9. Non-Discrimination in Employment and Client Services: During the performance of the contract, the Contractor agrees that no person shall, on grounds of race, creed, color, national origin, sex, marital status, age, religion or on the presence of any sensory, mental or physical handicap, be excluded from full employment rights with

the Contractor. Neither shall the Contractor discriminate against any employee or applicant for employment for the above reasons; provided, however, that prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved.

10. Non-Discrimination in Provided Services: The Contractor shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical handicap:

- a. Deny any individual services or benefits provided under the contract;
- b. Subject any individual to segregation or separate treatment in any manner related to his or her receipt of any services or other benefits provided under the contract;
- c. Deny any individual an opportunity to participate in any program or services provided by the contract.

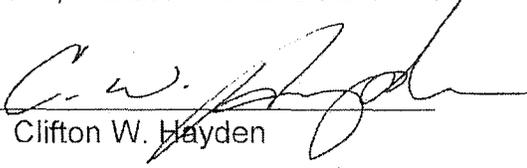
11. Suspension or Termination: If either party fails or neglects to fully comply with the provisions of the contract the other party may suspend or terminate the contract pending corrective acts or investigation. Upon and until the time of termination, the Contractor shall proceed quickly and in reasonable and efficient manner to complete all assignments given to it. The Contractor shall, in a professional manner, transfer all work in progress to the City or to any Contractor designated in writing by the City at the request of the City.

12. Term and Renegotiation: The term of this contract shall be for four (4) years, from July 1, 2007 through June 30, 2011. Upon the expiration of the initial term of this contract and thereafter, this contract shall be automatically extended for additional consecutive two (2) year terms, unless either party notifies the other party, in writing, and at least four (4) months before the expiration of the current term, that that party desires to renegotiate or terminate this contract. If such notice is given as provided above, then this contract shall terminate on June 30 of the current term, unless the parties enter into a written contract extending or modifying this contract.

13. Annual Contractor Review: The Contractor may be reviewed upon an annual basis by the City Council. The quality of performance, cost of services and such other matters as the Council deems appropriate shall be subject to review.

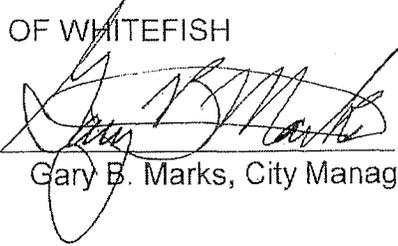
IN WITNESS WHEREOF, the parties have hereunder set their hands and seals the day and year first above written.

HEDMAN, HILEMAN & LACOSTA

By: 
Clifton W. Hayden

By: 
William E. Hileman Jr.

CITY OF WHITEFISH

By: 
Gary B. Marks, City Manager

Hedman, Hileman and Lacosta Invoices

	City		Resort		Monthly	
	Prosecution	Paralegal	Taxes	General	Cost Reimb.	Total
Jun-12	\$7,500.00				\$300.00	\$7,800.00
May-12	\$7,500.00				\$300.00	\$7,800.00
Apr-12	\$7,500.00				\$300.00	\$7,800.00
Mar-12	\$7,500.00				\$300.00	\$7,800.00
Feb-12	\$7,500.00			\$36.57	\$300.00	\$7,836.57
Jan-12	\$7,500.00				\$300.00	\$7,800.00
Dec-11	\$7,500.00				\$300.00	\$7,800.00
Nov-11	\$7,500.00				\$300.00	\$7,800.00
Oct-11	\$7,500.00				\$300.00	\$7,800.00
Sep-11	\$7,500.00				\$300.00	\$7,800.00
Aug-11	\$7,500.00				\$300.00	\$7,800.00
Jul-11	\$7,500.00				\$300.00	\$7,800.00
FY 2012 Totals	\$90,000.00	\$0.00	\$0.00	\$36.57	\$3,600.00	\$93,636.57
Average	\$7,500.00			\$3.05	\$300.00	\$7,803.05
Jun-11	\$5,978.99	\$3,275.00	\$65.00	\$530.25	\$300.00	\$10,149.24
May-11	\$4,998.00	\$675.00			\$300.00	\$5,973.00
Apr-11	\$7,068.40	\$3,500.00			\$300.00	\$10,868.40
Mar-11	\$4,483.50	\$2,785.00			\$300.00	\$7,568.50
Feb-11	\$7,436.91	\$2,352.50	\$10.00	\$84.00	\$300.00	\$10,183.41
Jan-11	\$5,108.25	\$2,827.50	\$606.75		\$300.00	\$8,842.50
Dec-10	\$4,698.75	\$3,565.00	\$747.75		\$300.00	\$9,311.50
Nov-10	\$6,487.00	\$2,825.00	\$1,014.75		\$300.00	\$10,626.75
Oct-10	\$5,916.75	\$2,587.50	\$123.25		\$300.00	\$8,927.50
Sep-10	\$6,200.25	\$3,562.50	\$312.50	\$42.00	\$300.00	\$10,417.25
Aug-10	\$6,546.75	\$2,962.50	\$967.50		\$300.00	\$10,776.75
Jul-10	\$6,998.25	\$3,437.50	\$471.00		\$300.00	\$11,206.75
FY 2011 Totals	\$71,921.80	\$34,355.00	\$4,318.50	\$656.25	\$3,600.00	\$114,851.55
Average	\$5,993.48	\$2,862.92	\$359.88	\$54.69	\$300.00	\$9,570.96
Jun-10	\$3,212.50	\$7,381.50	\$835.75		\$300.00	\$11,729.75
May-10	\$4,767.00	\$4,050.00	\$1,194.50	\$220.50	\$300.00	\$10,532.00
Apr-10	\$10,657.50	\$2,712.50	\$582.75	\$120.75	\$300.00	\$14,373.50
Mar-10	\$6,083.35	\$3,487.50		\$105.00	\$300.00	\$9,975.85
Feb-10	\$8,142.20	\$4,775.00			\$300.00	\$13,217.20
Jan-10	\$5,872.25	\$2,787.50			\$300.00	\$8,959.75
Dec-09	\$7,875.00	\$3,225.00			\$300.00	\$11,400.00
Nov-09	\$5,376.00	\$3,050.00			\$300.00	\$8,726.00
Oct-09	\$3,353.00	\$2,237.00			\$300.00	\$5,890.00
Sep-09	\$4,922.00	\$2,850.00			\$300.00	\$8,072.00
Aug-09	\$4,670.00	\$3,787.00		\$40.00	\$300.00	\$8,797.00
Jul-09	\$7,476.00	\$2,825.00			\$300.00	\$10,601.00
FY 2010 Totals	\$72,406.80	\$43,168.00	\$2,613.00	\$486.25	\$3,600.00	\$122,274.05
Average	\$6,033.90	\$3,597.33	\$217.75	\$40.52	\$300.00	\$10,189.50
Jun-09	\$2,338.00	\$3,800.00			\$300.00	\$6,438.00
May-09	\$3,733.00	\$2,912.00			\$300.00	\$6,945.00
Apr-09	\$4,765.00	\$3,700.00			\$300.00	\$8,765.00
Mar-09	\$4,662.00	\$2,612.00			\$300.00	\$7,574.00
Feb-09	\$4,115.00	\$4,125.00		\$70.00	\$300.00	\$8,610.00
Jan-09	\$4,845.00	\$3,482.00			\$300.00	\$8,627.00
Dec-08						\$8,307.55
Nov-08						\$4,740.00
Oct-08						\$4,722.50
Sep-08						\$9,117.60
Aug-08						\$6,217.50
Jul-08						\$8,312.50
FY 2009 Totals	\$24,458.00	\$20,631.00	\$0.00	\$70.00	\$1,800.00	\$88,376.65
Average	\$2,038.17	\$1,719.25	\$0.00	\$5.83	\$150.00	\$7,364.72

**CITY OF WHITEFISH
PROSECUTING ATTORNEY CONTRACT**

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WITNESSETH:

WHEREAS, the City requires legal counsel to prosecute criminal matters before the Municipal Court of Whitefish, the District Court of Flathead County, and the Montana Supreme Court; and

WHEREAS, the Contractor desires to represent the City in its needs; and

WHEREAS, the City Council is authorized specifically by the City Charter to retain an attorney on terms mutually agreeable to the City and the Contractor;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. Representation: The Contractor shall act as Prosecutor for the City of Whitefish for criminal misdemeanor acts and will be responsible for representation of the City before the Whitefish Municipal Court or any appeals therefrom. The Contractor is not expected to represent the City on civil matters including, but not limited to litigation, zoning, planning, development, construction, municipal assessments, special improvement districts, bond sales, annexation, disability claims, liability claims, workers compensation, and election law.

2. Conflicts: The Contractor shall not represent any defendant in any court appearance in which the City is an adverse party.

3. Compensation to Contractor: It is understood the Contractor shall be paid for attorney and paralegal services at a flat rate of \$90,000.00 per year, in monthly installments of \$7,500.00. The Contractor shall submit to the City a monthly invoice for the flat rate monthly installments. The City shall compensate the Contractor by the 10th day of the month following that in which the services were provided.

4. Routine Expenses: The parties acknowledge that the Contractor will incur out-of-pocket expenses which are specifically and directly attributable to City matters, such as local travel costs, copies, postage, and long distance telephone calls, and the Contractor is entitled to be reimbursed for such expenses. The parties acknowledge that in order for the Contractor to maintain a level of proficiency in the area of municipal law, the Contractor must acquire or incur necessary equipment, books, professional fees,

continued legal education training, and periodicals that specifically deal with the area of municipal law, whether it be civil or criminal, and the Contractor is entitled to be reimbursed for such expenses. Rather than itemize all of such expenses each month, the parties agree that it would be in their best interests to agree upon a fixed monthly reimbursement to Contractor. The sum of Three Thousand Six Hundred Dollars and No/100th's (\$3,600.00) annually has been budgeted for these expenses; to be paid in monthly installments of Three Hundred Dollars (\$300.00) per month for said expenses.

5. Extraordinary Expenses: The parties acknowledge that the Contractor may also incur extraordinary out-of-pocket expenses, particularly in the area of litigation. The Contractor shall be entitled to reimbursement from the City for out-of-pocket expenses incurred in connection with such matters, including but not limited to court costs, deposition fees, travel costs, extraordinary copies, postage, and long distance telephone calls. The Contractor shall include such reimbursable expenses on its monthly invoice and the City shall reimburse such expenses by the 10th day of the month following that in which the expenses were incurred.

6. Substitute: The Contractor shall be responsible for having available at no cost to the City a substitute Contractor, acceptable to the City Council, to perform his duties in his absence or because of any conflict of interest.

7. Independent Contractor: It is understood that the Contractor is an independent contractor and not an employee of the City.

8. Insurance: The Contractor agrees to carry for the duration of this agreement professional and/or malpractice insurance in the amount not less than \$1,000,000.00. The foregoing insurance policy shall contain sixty (60) day notice of cancellation providing that notice shall be given the City not less than sixty (60) days prior to any termination or material modification of coverage.

9. Non-Discrimination in Employment and Client Services: During the performance of the contract, the Contractor agrees that no person shall, on grounds of race, creed, color, national origin, sex, marital status, age, religion or on the presence of any sensory, mental or physical handicap, be excluded from full employment rights with the Contractor. Neither shall the Contractor discriminate against any employee or applicant for employment for the above reasons; provided, however, that prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved.

10. Non-Discrimination in Provided Services: The Contractor shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental or physical handicap:

- a. Deny any individual services or benefits provided under the contract;

- b. Subject any individual to segregation or separate treatment in any manner related to his or her receipt of any services or other benefits provided under the contract;
- c. Deny any individual an opportunity to participate in any program or services provided by the contract.

11. Suspension or Termination: If either party fails or neglects to fully comply with the provisions of the contract the other party may suspend or terminate the contract pending corrective acts or investigation. Upon written notice thereof, the opposing party shall respond within 10 days. If after the ten (10) days, the responding party has failed to answer or comply, the other party may suspend or terminate the contract upon 30 days written notice. Upon and until the time of termination, the Contractor shall proceed quickly and in reasonable and efficient manner to complete all assignments given to it. The Contractor shall, in a professional manner, transfer all work in progress to the City or to any Contractor designated in writing by the City at the request of the City.

12. Term and Renegotiation: The term of this contract shall be for two (2) years, from July 1, 2011 through June 30, 2013 with a right of renewal, at the option of the parties, for an additional two (2) years through June 30, 2015, upon mutually agreeable terms. Upon the expiration of the initial term of this contract and thereafter, this contract shall be automatically extended for additional consecutive two (2) year terms, unless either party notifies the other party, in writing, and at least four (4) months before the expiration of the current term, that that party desires to renegotiate or terminate this contract. If such notice is given as provided above, then this contract shall terminate on June 30 of the current term, unless the parties enter into a written contract extending or modifying this contract.

13. Annual Contractor Review: The Contractor may be reviewed upon an annual basis by the City Council. The quality of performance, cost of services and such other matters as the Council deems appropriate shall be subject to review.

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals the day and year first above written.

HEDMAN, HILEMAN & LACOSTA, PLLP

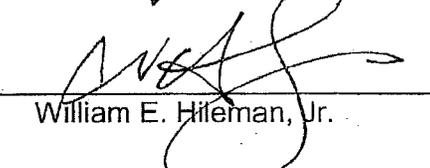
CITY OF WHITEFISH

By: 

Clifton W. Hayden

By: 

Charles C. Stearns, City Manager

By: 

William E. Hileman, Jr.

CITY OF WHITEFISH PROSECUTING ATTORNEY CONTRACT

Page 3

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DONALD E. (GENE) HEDMAN
WILLIAM E. HILEMAN, JR.
SUSAN M. LACOSTA
CLIFTON W. HAYDEN
CALEB E. SIMPSON

PLEASE REPLY TO WHITEFISH OFFICE

EUREKA OFFICE
311 DEWEY AVENUE
P.O. BOX 390

EUREKA, MONTANA 59917-0390
TELEPHONE (406) 296-2530

WILFRIED L. ROYER
Of Counsel

January 24, 2013

LEO FISHER
1921 - 2001

Mary Van Buskirk
City Attorney
City of Whitefish, Montana 59937

VIA HAND DELIVERY

RE: Prosecution Contract Annual Review.

Dear Mary:

Pursuant to the City's request for an annual review report, we present the following information. As the City is aware, we no longer track billable hours based on the contract being a flat fee. Thus, many of the details regarding time spent in hearings, trials, telephone conferences, correspondence etc. are simply not available.

However, we were able to identify total cases filed, provided by the court, and formal case files opened within our office. During the calendar year 2010, the total number of cases filed with the court was 3352. Of those cases, 67 were formal criminal complaints, as opposed to notices to appear. Of the 2010 cases filed, 231 resulted in formal litigation files as opposed to simply being handled on an appearance basis, in court and otherwise. During the calendar year 2011, the total number of cases filed with the court was 3053 cases, of which 44 were formal criminal complaints. Of the 2011 cases, 225 resulted in formal litigation files being opened. Again, this figure does not include cases handled on an appearance basis. During the calendar year 2012, the total number of cases filed with the court was 3221 of which 50 were formal criminal complaints. Of the 2012 cases filed, 235 resulted in formal firm litigation files. Based on the foregoing, it appears that the firm's case load has remained fairly consistent.

The court was also able to provide us with a breakdown of types of cases filed. Copies of the breakdowns are enclosed. We have also provided information regarding the number of jury trials, bench trials and other hearings, which is enclosed.

The firm stands behind its commitment for the final two years as contemplated when we agreed to a flat fee contract. Although the current agreement will renew automatically absent termination, enclosed you will find an Addendum (Notice of Renewal). The firm looks forward to continuing its relationship with the City. Thank you.

Sincerely,

Hedman, Hileman & Lacosta, PLLP

A handwritten signature in black ink, appearing to read "C.W. Hayden", with a long horizontal flourish extending to the right.

Clifton W. Hayden

Enclosures

cc: Mayor & City Council
City Manager

Jury Trials

2010 May-December:

1. Wolgemuth - HJ
2. Tice -Conviction
3. Syzmanski -Conviction
4. Torres -Partial Conviction
5. Crail -Conviction
6. Day -NG

2011

1. Wolgemuth -HJ

2012

1. Tutcsch -Conviction
2. Hineman -Conviction
3. Jackson -Conviction

Pre-Trial Motion to Suppress/Dismiss

-At least 31

Appeals to DC

1. Jentile -2010
2. Hasson-2011
3. Sneeringer-2012

Bench Trials

1. Numerous

Abel, Shellee

From: Abel, Shellee
Sent: Thursday, January 24, 2013 10:24 AM
To: 'Clif Hayden'
Subject: FW: case numbers

Hi Clif!
Caleb wanted you to have a copy of this as well.
Have a great day!
Shellee

From: Abel, Shellee
Sent: Thursday, January 24, 2013 10:21 AM
To: 'Caleb Simpson'
Subject: case numbers

Caleb, here are the numbers I have gathered for 2010, 2011 and 2012.

Here are the numbers for 2012: Docket #'s (tickets) 3140
Criminal Complaints 50
Civil 12
Search Warrants 19
TOTAL: 3221

Compared to 2011: Docket #'s (tickets) 2971
Criminal Complaints 44
Civil 21
Search Warrants 17
TOTAL: 3053

Compared to 2010: Docket #'s (tickets) 3256
Criminal Complaints 67
Civil 20
Search Warrants 9
TOTAL: 3352

Hope this helps!

Shellee

Filings By Statute Report

Municipal

Case Type: All, Case Subtype: All

From 1/1/2010 to 12/31/2010

All Revisions, All Statutes

Selected Report Type: ORDINANCE - Totals Only

Total Statute

-
- 1 Parking - No Parking
 - 11 Failing to Comply with Resort Tax
 - 4 Disturbing the Peace
 - 15 Disturbing the Peace -Noise/ Urinating in Public/Fighting
 - 28 No Dog License
 - 32 Dog at Large/Dog at Large City Beach Area(50.00bond)
 - 1 Animal Nuisances - Barking Dogs
 - 12 Speeding
 - 1 Standing/Parking Restrictions - At any place where official signs prohibit parking
 - 11 Parking - Prohibited Zones
 - 4 Obstructing Traffic
 - 12 Parking Restrictions: Leaving Vehicle on Street (24hrs)
 - 1 Parking Restrictions - Temporary No Parking Areas
 - 12 Manner of Parking - (right hand side of the street)
 - 3 Manner of Parking - Compact/SubCompact
 - 14 Parking - No Parking (City Beach Area)
 - 24 Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
 - 1678 Parking - Overtime
 - 27 Parking - Handicapped Zone
 - 2 Parking - Alley
 - 1 Parked in signed restricted employee parking
 - 1 Skateboarding in District
 - 9 Alcoholic Beverage (Open Container)

Case Type: All, Case Subtype: All

From 1/1/2010 to 12/31/2010

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total Statute

Total	Statute
1	Parking - No Parking
1	Unlawful Sale/Delivery/Give Away Alcoholic Beverage To Underage/Intoxicated Person
1	Boating Under Influence
11	Failing to Comply with Resort Tax
21	Criminal Possession Of Drug Paraphernalia
3	Assault - Misdemeanor
7	Assault
2	Assault, Purposely Or Knowingly Causing Bodily Injury To Another
17	Partner Or Family Member Assault -1st Offense
10	Partner Or Family Member Assault - 1st Offense
1	Partner Or Family Member Assault - 2nd Offense
5	Negligent Endangerment (Substantial Risk - Death/Serious Bodily Injury) - Misdemeanor
1	Negligent Endangerment (Substantial Risk - Death/Serious Bodily Injury)
2	Unlawful Restraint
6	Endangering Welfare Of A Child - 1st Violation
1	Unlawful Transactions With Children - 1st Violation
38	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 1st Offense
4	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 2nd Offense
1	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 3rd Offense
46	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 1st Offense
8	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 2nd Offense
4	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 3rd Offense
1	Possessing Intoxicating Substances While Under Age Of 21 (Over Age 18) - 3rd Or Subsequent Offense
5	Violation Of A Protective Order - 1st Offense
3	Tobacco Possession Or Consumption, Under 18 Years - 1st Offense
9	Criminal Mischief Pecuniary Loss Less Than \$1,500
13	Criminal Mischief - Misdemeanor
1	Destruction/Tampering Of Communication Device To Obstruct/Prevent/Interfere-Criminal Offense Repor
1	Criminal Trespass To Vehicles
17	Criminal Trespass To Property
9	Theft - Obtain Or Exerts Unauthorized Control Over Property - 1st Offense
5	Theft - 1st Offense
1	Theft - Obtain By Threat Or Deception Control Over Property - 1st Offense
1	Theft Of Lost/Mislaid Property
1	Theft Of Labor Or Services Or Use Of Property
1	Theft Of Labor Or Services Or Use Of Property
2	Forgery
1	False Swearing
1	False Reports To Law Enforcement Authorities (To Implicate Another, False Incident, Etc.)
3	Resisting Arrest
27	Obstructing A Peace Officer Or Other Public Servant
61	Disorderly Conduct

Case Type: All, Case Subtype: All

From 1/1/2010 to 12/31/2010

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total . Statute

1 Privacy In Communications - 1st Offense
 6 Carrying Concealed Weapon
 1 Firing Firearms
 11 Criminal Possession Of Dangerous Drugs
 6 Criminal Possession Of Dangerous Drugs - Marijuana (60 Grams Or Less) - 1st Offense
 4 Arrest On A Warrant By Peace Officer
 1 Out of Jurisdiction Arrest Warrant
 4 Disturbing the Peace
 15 Disturbing the Peace -Noise/ Urinating in Public/Fighting
 28 No Dog License
 32 Dog at Large/Dog at Large City Beach Area(50.00bond)
 1 Animal Nuisances - Barking Dogs
 12 Speeding
 1 Standing/Parking Restrictions - At any place where official signs prohibit parking
 11 Parking - Prohibited Zones
 4 Obstructing Traffic
 12 Parking Restrictions: Leaving Vehicle on Street (24hrs)
 1 Parking Restrictions - Temporary No Parking Areas
 12 Manner of Parking - (right hand side of the street)
 3 Manner of Parking - Compact/SubCompact
 14 Parking - No Parking (City Beach Area)
 24 Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
 1678 Parking - Overtime
 27 Parking - Handicapped Zone
 2 Parking - Alley
 1 Parked in signed restricted employee parking
 4 Habitual Offender Operating Motor Vehicle
 54 Seatbelt Violation
 2 Operating a Vehicle Upon Public Highways W/O License Plates
 78 Operate a Vehicle Which Has Not Been Properly Registered
 2 Displaying Fictitious, Altered, Etc., License Plates
 1 Operate Vehicle Without Making Application
 64 Operating With Expired Registration - Failure to Reregister
 1 Operate Vehicle (New Or Used) W/O Permit Displayed On Rear Of Vehicle
 1 Fail To Affix Validating Sticker To Rear License Plate
 8 Driving Without a Valid Drivers License - Expired Less Than 180 Days
 13 Driving Without a Valid Drivers License
 3 No Motorcycle Endorsement
 56 Driving a Motor Vehicle While Privilege To Do So Is Suspended Or Revoked
 2 Display Invalid D/L / ID (Cancel/Rev/Susp/ Fictitious Or Altered)
 1 Display Or Represent As One's Own The D/L / ID Of Another
 47 Owner Permitting Operation Of Vehicle Without Liability Insurance - 1st Offense

Total	Statute
1	Owner Permitting Operation Of Vehicle Without Liability Insurance - 2nd Offense
2	Owner Permitting Operation Of Vehicle Without Liability Insurance - 3rd & Subsequent Offense
76	Operating Without Liability Insurance In Effect - 1st Offense
2	Operating Without Liability Insurance In Effect - 2nd Offense
2	Operating Without Liability Insurance In Effect - 3rd or Subsequent Offense
198	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - 1st Offense
194	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 1st Offense
1	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - 2nd Offense
2	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 2nd Offense
3	Fail To Stop Immediately At Prop Damage Accident Scene (2 Vehicles - Both Attended)
6	Fail To Stop And ID Self After Striking Unattended Vehicle
4	Fail To Give Notice Of Accident By Quickest Means/Apparent Damage Over \$500
4	Fail To Obey Instructions Of Traffic Control Devices
24	Fail To Obey Red (Stop) Traffic Signal
25	Fail To Obey Red (Stop) Traffic Signal
4	Flashing Signal Violation (Red Or Yellow)
2	Reckless Driving
7	Reckless Driving - 1st Offense
10	Careless Driving
8	Careless Driving
2	Holding a Speed Contest Which Is Not Patrolled
314	Speed - Exceed Restricted Speed Limit Established Local Authority
2	Fleeing From Or Eluding Peace Officer
1	Fleeing From Or Eluding Peace Officer
7	Following Too Closely - Reasonable And Prudent
3	Making Left Turn From Improper Lane
4	Improper Turn - Not In Required Position
2	ROW Violation - Fail To Yield To Vehicle On Right
4	ROW Violation - Fail/Yield To Approaching Traffic (Immediate Hazard) When Making Left Turn
6	ROW Violation - Fail To Yield To Vehicle On Through Highway
1	ROW Violation - Fail To Yield To Vehicle Entering Or Crossing Hwy
153	Stop Sign Violation
1	ROW Violation - Fail To Yield To Authorized Emergency Vehicle/Police Vehicle
1	Parking In Prohibited Spaces
1	Interfering With Traffic While Backing
56	Driving Under The Influence Of Alcohol - First Offense
19	Driving Under The Influence Of Alcohol - 1st Offense
5	Driving Under The Influence Of Alcohol - Second Offense
1	Driving Under The Influence Of Alcohol - 2nd Offense
1	Driving Under The Influence Of Alcohol - Third Offense
2	Driving Under The Influence Of Alcohol - 3rd Offense
1	Driving Under The Influence Of Any Drug (Narcotic, Etc.) - First Offense

Filings By Statute Report

Municipal

Case Type: All, Case Subtype: All

From 1/1/2010 to 12/31/2010

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total Statute

-
- 1 Driving Under The Influence Of Any Drug (Narcotic, Etc.) - 1st Offense
 - 1 Driving Under The Influence Of Alcohol And Drugs - First Offense
 - 1 Driving Under The Influence Of Alcohol And Drugs - 1st Offense
 - 20 Operating With Alcohol Concentration Of 0.08% BAC Or Greater - First Offense
 - 12 Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 1st Offense
 - 2 Operating With Alcohol Concentration Of 0.08% BAC Or Greater - Second Offense
 - 1 Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 2nd Offense
 - 1 Operating With Alcohol Concentration Of 0.02% BAC Under 21 Years Of Age - First Offense
 - 2 Unlawful Possession Of Open Alcoholic Beverage Container In Motor Vehicle On Highway
 - 5 Right-of-Way Violation - Fail To Yield To Pedestrian
 - 2 Fail To Have Vehicle Equipped With 1 or 2 Tail Lamps as Required
 - 1 Skateboarding in District
 - 9 Alcoholic Beverage (Open Container)

Municipal

Case Type: All, Case Subtype: All

From 1/1/2011 to 12/31/2011

All Revisions, All Statutes

Selected Report Type: ORDINANCE - Totals Only

Total Statute

-
- 2 Placement of Containers
 - 2 Disturbing the Peace
 - 2 Disturbing the Peace -Noise/ Urinating in Public/Fighting
 - 9 Dog at Large/Dog at Large City Beach Area(50.00bond)
 - 1 Animal Nuisances - Barking Dogs
 - 14 Speeding
 - 1 Standing/Parking Restrictions- In any intersection
 - 4 Standing/Parking Restrictions - On any sidewalk, parkway or curb area btwn any sidewalk and St. curb
 - 1 Standing/Parking Restrictions - blocking alley driveway
 - 3 Standing/Parking Restrictions - At any place where official signs prohibit parking
 - 14 Parking - Prohibited Zones
 - 4 Obstructing Traffic
 - 4 Parking Restrictions: Leaving Vehicle on Street (24hrs)
 - 1 Parking Restrictions - Snow Removal
 - 1 Parking Restrictions - Temporary No Parking Areas
 - 15 Manner of Parking - (right hand side of the street)
 - 1 Manner of Parking - Compact/SubCompact
 - 43 Parking - No Parking (City Beach Area)
 - 36 Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
 - 1210 Parking - Overtime
 - 17 Parking - Handicapped Zone
 - 1 Parking - Alley
 - 19 Electronic Communications Devices
 - 5 Skateboarding in District
 - 9 Alcoholic Beverage (Open Container)

Case Type: All, Case Subtype: All

From 1/1/2011 to 12/31/2011

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total	Statute
2	Placement of Containers
9	Criminal Possession Of Drug Paraphernalia
1	Accountability
7	Assault
3	Assault, Purposely Or Knowingly Causing Bodily Injury To Another
1	Assault, Purposely Or Knowingly Making Physical Contact Of An Insulting Or Provoking Nature
27	Partner Or Family Member Assault - 1st Offense
1	Negligent Endangerment (Substantial Risk - Death/Serious Bodily Injury)
2	Endangering Welfare Of A Child - 1st Violation
2	Unlawful Transactions With Children - 1st Violation
17	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 1st Offense
1	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 2nd Offense
22	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 1st Offense
5	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 2nd Offense
2	Possessing Intoxicating Substances While Under Age Of 21 (Over Age 18) - 3rd Or Subsequent Offense
2	Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 1st Offense
5	Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 1st Offense
3	Violation Of A Protective Order - 1st Offense
3	Tobacco Possession Or Consumption, Under 18 Years - 1st Offense
1	Tobacco Possession Or Consumption, Under 18 Years - 2nd Offense
12	Criminal Mischief Pecuniary Loss Less Than \$1,500
1	Destruction/Tampering Of Communication Device To Obstruct/Prevent/Interfere-Criminal Offense Report
4	Criminal Trespass To Vehicles
2	Criminal Trespass To Property
31	Theft - Obtain Or Exerts Unauthorized Control Over Property - 1st Offense
1	Theft Of Lost/Mislaid Property
1	Unauthorized Use Of A Motor Vehicle
1	Issuing A Bad Check
1	Forgery
1	False Reports To Law Enforcement Authorities (To Implicate Another, False Incident, Etc.)
2	Resisting Arrest
11	Obstructing A Peace Officer Or Other Public Servant
36	Disorderly Conduct
1	Privacy In Communications - 1st Offense
1	Carrying Concealed Weapon While Under The Influence (Having A Valid Permit Not A Defense)
11	Criminal Possession Of Dangerous Drugs - Marijuana (60 Grams Or Less) - 1st Offense
8	Arrest On A Warrant By Peace Officer
1	Parking In Handicap Zone Without Permit
2	Disturbing the Peace
2	Disturbing the Peace -Noise/ Urinating in Public/Fighting
9	Dog at Large/Dog at Large City Beach Area(50.00bond)
1	Animal Nuisances - Barking Dogs

Case Type: All, Case Subtype: All

From 1/1/2011 to 12/31/2011

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total	Statute
14	Speeding
1	Standing/Parking Restrictions- In any intersection
4	Standing/Parking Restrictions - On any sidewalk, parkway or curb area btwn any sidewalk and St. curb
1	Standing/Parking Restrictions - blocking alley driveway
3	Standing/Parking Restrictions - At any place where official signs prohibit parking
14	Parking - Prohibited Zones
4	Obstructing Traffic
4	Parking Restrictions: Leaving Vehicle on Street (24hrs)
1	Parking Restrictions - Snow Removal
1	Parking Restrictions - Temporary No Parking Areas
15	Manner of Parking - (right hand side of the street)
1	Manner of Parking - Compact/SubCompact
43	Parking - No Parking (City Beach Area)
36	Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
1210	Parking - Overtime
17	Parking - Handicapped Zone
1	Parking - Alley
19	Electronic Communications Devices
2	Habitual Offender Operating Motor Vehicle
93	Seatbelt Violation
74	Operate a Vehicle Which Has Not Been Properly Registered
6	Displaying Fictitious, Altered, Etc., License Plates
3	Displaying License Plates Assigned To Another Vehicle
1	Operate Vehicle Without Making Application
78	Operating With Expired Registration - Failure to Reregister
40	Driving Without a Valid Drivers License
8	No Motorcycle Endorsement
74	Driving a Motor Vehicle While Privilege To Do So Is Suspended Or Revoked
1	Display Invalid D/L / ID (Cancel/Rev/Susp/ Fictitious Or Altered)
165	Owner Permitting Operation Of Vehicle Without Liability Insurance - 1st Offense
15	Owner Permitting Operation Of Vehicle Without Liability Insurance - 2nd Offense
8	Owner Permitting Operation Of Vehicle Without Liability Insurance - 3rd & Subsequent Offense
485	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 1st Offense
5	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 2nd Offense
1	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 3rd Or Subsequent Offense
1	Fail To Stop Immediately At Accident Scene - Injured Person
8	Fail To Stop Immediately At Prop Damage Accident Scene (2 Vehicles - Both Attended)
3	Fail To Stop And ID Self After Striking Unattended Vehicle
2	Fail To Notify Owner After Accident Resulting In Damage To Prop/Fixtures Along Hwy
5	Fail To Give Notice Of Accident By Quickest Means/Apparent Damage Over \$500
43	Fail To Obey Instructions Of Traffic Control Devices
67	Fail To Obey Red (Stop) Traffic Signal

Total	Statute
1	Flashing Signal Violation (Red Or Yellow)
12	Reckless Driving - 1st Offense
22	Careless Driving
2	Basic Rule - Reasonable And Prudent - 1st Offense
280	Speed - Exceed Restricted Speed Limit Established Local Authority
3	Violating Speed Limit Near School Or Senior Citizen Center
2	Fleeing From Or Eluding Peace Officer
1	Improper Passing - In No-Passing Zone
14	Following Too Closely - Reasonable And Prudent
2	Improper Turn - Not In Required Position
4	ROW Violation - Fail To Yield To Vehicle On Right
1	ROW Violation - Fail/Yield To Approaching Traffic (Immediate Hazard) When Making Left Turn
11	ROW Violation - Fail To Yield To Vehicle On Through Highway
1	ROW Violation - Fail To Obey Requirements Of Yield Sign
148	Stop Sign Violation
17	Stop Sign Violation
2	Parking In Prohibited Spaces
1	Interfering With Traffic While Backing
2	Throw Or Deposit Upon A Highway Refuse Or Injurious Substance
1	Throw Match/Cigarette/Flame On Roadway/RR
98	Driving Under The Influence Of Alcohol - 1st Offense
7	Driving Under The Influence Of Alcohol - 2nd Offense
4	Driving Under The Influence Of Alcohol - 3rd Offense
1	Driving Under The Influence Of Any Drug (Narcotic, Etc.) - 1st Offense
1	Driving Under The Influence Of Alcohol And Drugs - 1st Offense
55	Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 1st Offense
1	Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 2nd Offense
2	Operating With Alcohol Concentration Of 0.02% BAC Under 21 Years Of Age - 1st Offense
2	Circumvent The Operation Of An Interlock Device
1	Unlawful Possession Of Open Alcoholic Beverage Container In Motor Vehicle On Highway
10	Aggravated Driving Under The Influence
2	Right-of-Way Violation - Fail To Yield To Pedestrian
1	Fails To Use Due Care When Ped/Bicyclist/ Child/Impaired Person Observed Upon Roadway
1	Fail To Have Vehicle Equipped With 1 or 2 Tail Lamps as Required
1	Operate Motor Vehicle With Obstructed Windshield / Side Windows, Etc.
1	Operate Vehicle W/Tires Having Illegal Studs, Etc.
5	Skateboarding In District
9	Alcoholic Beverage (Open Container)
5	Aggravated Driving Under The Influence

Filings By Statute Report

Municipal

Case Type: All, Case Subtype: All

From 1/1/2012 to 12/31/2012

All Revisions, All Statutes

Selected Report Type: ORDINANCE - Totals Only

Total Statute

- 2 Disturbing the Peace
- 4 Disturbing the Peace -Noise/ Urinating in Public/Fighting
- 1 Vaccinations Required
- 7 Dog at Large/Dog at Large City Beach Area(50.00bond)
- 4 Animals at Large: Animals and Fowl
- 4 Animal Nuisances - Barking Dogs
- 1 Animal Nuisances: Dog Feces
- 2 Speeding
- 2 Standing/Parking Restrictions - On any sidewalk, parkway or curb area btwn any sidewalk and St. curb
- 1 Standing/Parking Restrictions - At any place where official signs prohibit parking
- 10 Parking - Prohibited Zones
 - 1 Obstructing Traffic
 - 4 Parking Restrictions: Leaving Vehicle on Street (24hrs)
 - 14 Manner of Parking - (right hand side of the street)
 - 3 Parking - No Parking (City Beach Area)
 - 42 Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
- 1335 Parking - Overtime
 - 10 Parking - Handicapped Zone
 - 1 Parking - Alley
- 114 Electronic Communications Devices
 - 2 Skateboarding in District
 - 4 Alcoholic Beverage (Open Container)

Municipal

Case Type: All, Case Subtype: All

From 1/1/2012 to 12/31/2012

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total Statute

- 1 Failure To Pay The Registration Fee - Craft Less Than 16'
- 1 Operate Reckless/Negligent Manner To Endanger Life/Limb/Property
- 12 Criminal Possession Of Drug Paraphernalia
- 11 Assault
 - 2 Assault, Purposely Or Knowingly Causing Bodily Injury To Another
- 20 Partner Or Family Member Assault - 1st Offense
 - 1 Negligent Endangerment (Substantial Risk - Death/Serious Bodily Injury)
 - 1 Surreptitious Visual Observation Or Recordation (Resident) - 1st Violation
- 6 Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 1st Offense
- 1 Possessing Intoxicating Substances While Under The Age Of 21 (Under Age 18) - 2nd Offense
- 8 Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 1st Offense
- 2 Possessing Intoxicating Substances While Under The Age Of 21 (Over Age 18) - 2nd Offense
- 1 Violation Of A Protective Order - 1st Offense
- 3 Tobacco Possession Or Consumption, Under 18 Years - 1st Offense
- 1 Tobacco Possession Or Consumption, Under 18 Years - 3rd Offense
- 27 Criminal Mischief Pecuniary Loss Less Than \$1,500
- 14 Criminal Trespass To Property
 - 2 Possession Of Burglary Tools
- 27 Theft - Obtain Or Exerts Unauthorized Control Over Property - 1st Offense
 - 2 Theft - Obtain Or Exerts Unauthorized Control Over Property - 3rd Or Subsequent Offense
 - 1 Theft Of Labor Or Services Or Use Of Property
 - 1 Unauthorized Use Of A Motor Vehicle
 - 1 Issuing A Bad Check
 - 2 Deceptive Practices
 - 1 Forgery
 - 1 Identity Theft - No Economic Benefit Gained Or Attempted/Economic Benefit Of Less Than \$1,500
- 12 Resisting Arrest
- 11 Obstructing A Peace Officer Or Other Public Servant
- 61 Disorderly Conduct
 - 4 Cruelty To Animals - 1st Offense
 - 1 Criminal Defamation
 - 4 Privacy In Communications - 1st Offense
 - 1 Firing Firearms
- 14 Criminal Possession Of Dangerous Drugs - Marijuana (60 Grams Or Less) - 1st Offense
 - 2 Criminal Possession Of Toxic Substances
- 10 Arrest On A Warrant By Peace Officer
 - 2 Disturbing the Peace
 - 4 Disturbing the Peace -Noise/ Urinating in Public/Fighting
 - 1 Vaccinations Required
- 7 Dog at Large/Dog at Large City Beach Area(50.00bond)
- 4 Animals at Large: Animals and Fowl
- 4 Animal Nuisances - Barking Dogs

Case Type: All, Case Subtype: All

From 1/1/2012 to 12/31/2012

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total Statute

Total	Statute
1	Animal Nuisances: Dog Feces
2	Speeding
2	Standing/Parking Restrictions - On any sidewalk, parkway or curb area btwn any sidewalk and St. curb
1	Standing/Parking Restrictions - At any place where official signs prohibit parking
10	Parking - Prohibited Zones
1	Obstructing Traffic
4	Parking Restrictions: Leaving Vehicle on Street (24hrs)
14	Manner of Parking - (right hand side of the street)
3	Parking - No Parking (City Beach Area)
42	Parking - No Parking/2:30am-6:30am/Yellow Curb Zone
1335	Parking - Overtime
10	Parking - Handicapped Zone
1	Parking - Alley
114	Electronic Communications Devices
2	Habitual Offender Operating Motor Vehicle
84	Seatbelt Violation
4	Operating a Vehicle Upon Public Highways W/O License Plates
19	Operate a Vehicle Which Has Not Been Properly Registered
1	Operating Vehicle With License Plates Obstructed To View
4	Displaying Fictitious, Altered, Etc., License Plates
283	Operating With Expired Registration - Failure to Reregister
2	Fail To Carry/Display Registration Receipt As Required
34	Driving Without a Valid Drivers License
8	No Motorcycle Endorsement
86	Driving a Motor Vehicle While Privilege To Do So Is Suspended Or Revoked
91	Owner Permitting Operation Of Vehicle Without Liability Insurance - 1st Offense
8	Owner Permitting Operation Of Vehicle Without Liability Insurance - 2nd Offense
3	Owner Permitting Operation Of Vehicle Without Liability Insurance - 3rd & Subsequent Offense
2	Operating Without Liability Insurance In Effect - 1st Offense
1	Operating Without Liability Insurance In Effect - 2nd Offense
1	Operating Without Liability Insurance In Effect - 3rd or Subsequent Offense
505	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 1st Offense
9	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 2nd Offense
5	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - Owner Or Operator - 3rd Or Subsequent Offense
2	Fail To ID Self And Vehicle When Involved In Accident (2 Vehicles - Both Attended)
2	Fail To Stop And ID Self After Striking Unattended Vehicle
3	Fail To Notify Owner After Accident Resulting In Damage To Prop/Fixtures Along Hwy
1	Fail To Give Notice Of Accident By Quickest Means/Apparent Damage Over \$500
17	Fail To Obey Instructions Of Traffic Control Devices
27	Fail To Obey Red (Stop) Traffic Signal
13	Reckless Driving - 1st Offense
15	Careless Driving

Case Type: All, Case Subtype: All

From 1/1/2012 to 12/31/2012

All Revisions, All Statutes

All Report Types Selected - Totals Only

Total Statute

1	Speeding - 25 MPH Urban District
248	Basic Rule - Reasonable And Prudent - 1st Offense
19	Speeding - Exceed Restricted Speed Limit Established By Department Under 61-8-309
82	Speed - Exceed Restricted Speed Limit Established Local Authority
4	Violating Speed Limit Near School Or Senior Citizen Center
2	Fleeing From Or Eluding Peace Officer
1	Improper Passing - In No-Passing Zone
7	Following Too Closely - Reasonable And Prudent
1	Improper Turn - Interfering With Other Traffic
6	Improper Turn - Not In Required Position
2	ROW Violation - Fail To Yield To Vehicle On Right
1	ROW Violation - Fail To Yield To Vehicle On Through Highway
68	Stop Sign Violation
1	ROW Violation - Fail To Yield To Authorized Emergency Vehicle/Police Vehicle
2	Parking In Prohibited Spaces
4	Throw Or Deposit Upon A Highway Refuse Or Injurious Substance
78	Driving Under The Influence Of Alcohol - 1st Offense
4	Driving Under The Influence Of Alcohol - 2nd Offense
33	Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 1st Offense
1	Operating With Alcohol Concentration Of 0.08% BAC Or Greater - 2nd Offense
1	Operating With Alcohol Concentration Of 0.02% BAC Under 21 Years Of Age - 1st Offense
1	Unlawful Possession Of Open Alcoholic Beverage Container In Motor Vehicle On Highway
33	Aggravated Driving Under The Influence
3	Right-of-Way Violation - Fail To Yield To Pedestrian
2	Fail To Have 2 Headlamps Properly Operating On Motor Vehicle
3	Fail To Have Vehicle Equipped With 1 or 2 Tail Lamps as Required
2	Operating With Defective Solid Rubber Tires
2	Operate Vehicle After 5/31 And Before 10/1 W/Stud Tires (Exception School Bus)
2	Skateboarding in District
4	Alcoholic Beverage (Open Container)

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MEMORANDUM

#2013-005



To: Mayor John Muhlfeld
City Council Members

From: Chuck Stearns, City Manager

A handwritten signature in blue ink that reads "Chuck Stearns".

Re: Negotiations with Averill Hospitality regarding a boutique hotel

Date: February 7, 2013

After the City Council discussion on February 4th of the letter from Brian Averill of Averill Hospitality regarding establishing a committee to negotiate with Averill Hospitality on a boutique hotel, Mary VanBuskirk began to prepare a Resolution to establish such a committee. Also, based on a comment from someone as to “why negotiate with just the Averills, why not put it out for proposals”, I went back to research the Tax Increment statutes again.

First, regarding the Resolution to form a committee, City Attorney Mary VanBuskirk came to see me on February 6th with concerns about the resolution. Specifically, it was her opinion that forming a formal committee of the City would subject the meetings to the open meetings laws of Montana as all other boards are subject to the open meetings laws. She asked if that was our intent given the proprietary nature of such discussions. I said no, it was intended that the meetings be private and we thought that as long a quorum of the City Council was not present, the meetings could be held in private. Therefore, Mary felt that we should not establish a formal committee by Resolution to negotiate with the Averill Hospitality, rather we could just treat the process as an informal group that meets, similar to the Real Estate Committee. The Real Estate Committee was not established by Resolution, rather just by inviting the Council to appoint a couple of elected officials to work with me on private real estate matters. Thus, it is our recommendation that the City Council just ask one additional member to work with the Real Estate Committee on the negotiations with Averill Hospitality rather than form a committee by Resolution. The Real Estate Committee is comprised of Mayor Muhlfeld, Frank Sweeney, Rich Knapp, and myself.

Second, regarding the question of why just negotiate with Averill Hospitality, I am attaching copies of the relevant Montana Statutes on land transactions for municipal property in urban renewal areas. I have highlighted and underlined some important sections of the two statutes that I included in the packet. I also asked Mary to research if there were any Montana Attorney General opinions or case law on Section 7-15-4263 MCA. She said there was none.

Thus, I think for the City to enter into negotiations with only Averill Hospitality, we would need to follow Section 7-15-4263 MCA and establish “reasonable procedures as it (City Council) shall prescribe”. Mary also felt that we should establish those procedures prior to negotiating with

the Averill Hospitality. The alternative would be to follow the procedures in the rest of Section 7-15-4263 MCA regarding public notice to invite proposals from private redevelopers or other parties.

Mary and I will be available to answer questions about this information prior or at the February 19th meeting.

Montana Code Annotated 2011

[Previous Section](#)[MCA Contents](#)[Part Contents](#)[Search](#)[Help](#)[Next Section](#)

7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest in real property acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect to the real property; or

(b) retain the property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to any covenants, conditions, and restrictions, including covenants running with the land, that it considers necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) The sale, lease, other transfer, or retention and any agreement relating the real property may be made only after the approval of the urban renewal plan by the local governing body.

(3) Except as provided in subsection (5), the real property or interest must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the:

(a) uses provided in the plan;

(b) restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and

(c) objectives of the plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred must be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

(5) A transfer under this section may include a donation of the land or a sale of the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part); amd. Sec. 8, Ch. 170, L. 2009.

Provided by Montana Legislative Services

Montana Code Annotated 2011

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7-15-4263. Procedure to dispose of property to private persons. (1) A municipality may dispose of real property in an urban renewal area to private persons only under reasonable procedures as it shall prescribe as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part of an urban renewal area.

(b) The notice must be published as provided in [7-1-4127](#) prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance under the provisions of [7-15-4262](#) through [7-15-4266](#).

(c) The notice must identify the area or portion of the area and must state that any further information that is available may be obtained at the office designated in the notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making the proposals to carry them out. The municipality may accept those proposals as it considers to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of [7-15-4262](#) and [7-15-4264](#), and deliver contracts, deeds, leases, and other instruments of transfer.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b); amd. Sec. 55, Ch. 354, L. 2001.

Provided by Montana Legislative Services



January 24, 2013

Mr. Chuck Stearns
City Manager
P.O. Box 158
Whitefish, MT 59937

Dear Mr. Muhlfeld and Council Members:

We would like to formally express our interest in developing a Timeless Boutique Hotel in downtown Whitefish. The site we would like to develop is at the corner of 3rd and Central, which is currently being used as a surface parking lot.

As Montana's only 4 diamond resort, we believe that we are uniquely positioned to produce a quality boutique hotel. We have established a reputation as a premier lodging establishment and we are well known for our great customer service. The infrastructure of the Lodge at Whitefish Lake allows for synergies and economies of scale that will benefit the new property.

We would ask that the City Council adopt a resolution forming a subcommittee which we would work with to draft a preliminary development agreement for City Council approval. That agreement would give us exclusive rights to develop plans and bring a project to the Council for approval of a detailed development agreement within a specified period of time.

We are pleased to know that the City is interested in adding a downtown hotel as part of the overall city development plan, and we want to ensure that the end result is a quality property that will bring economic growth to the community.

Sincerely,

Brian Averill
Averill Hospitality

Chuck Stearns

From: David Taylor [dtaylor@cityofwhitefish.org]
Sent: Tuesday, February 05, 2013 1:57 PM
To: 'Chuck Stearns'
Subject: FW: proposed hotel at Third Street and Central Avenue

Comment I received today.
Dave

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

From: gussulli@aim.com [<mailto:gussulli@aim.com>]
Sent: Tuesday, February 05, 2013 12:18 PM
To: dtaylor@cityofwhitefish.org
Subject: proposed hotel at Third Street and Central Avenue

Whitefish City Planning. I would like to comment on the proposed hotel across from the Presbyterian Church by Mr. Averill. I think that is a very bad idea. That is one of the few parking lots close to downtown where you can park and walk to Nelsons, Hair Hut, Crystal Winters, etc.

Just some of the stores that make downtown so great. After the refiguirng of the streets, where much parking was taken away, as you know close parking to downtown is very scarce.. The parking garage solution is not great.

They are ugly and I feel could be dangerous, especially for woman, because an attacker can hide more easily. So please don't take any more local parking away from locals and tourists.

Many people cannot walk even short distances from parking to stores.
This hotel does not need to be built downtown, which would require its own parking; in fact we need more small parking lots. thank you. Gail Sullivan

Steeplechase Development Advisors, LLC
P.O. Box 4154
Whitefish, MT 59937

February 11, 2013

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

Dear Chuck,

As we discussed, due to the impact of parking on the high school parking lot during construction, the Whitefish School District respectfully requests that the City Council consider temporarily changing the parking signage on the East side of Pine Street Pine Street between 4th and 7th Streets from 2 hour limit to Faculty Parking only from 8 a.m. to 5 p.m. Monday through Friday.

Attached for your information is the proposed Traffic Plan curing construction for the Whitefish High School project, you will see that the majority of the parking lot South of the high school will be consumed by construction temporarily impacting the available parking for students and teachers.

Thank you in advance for your consideration.

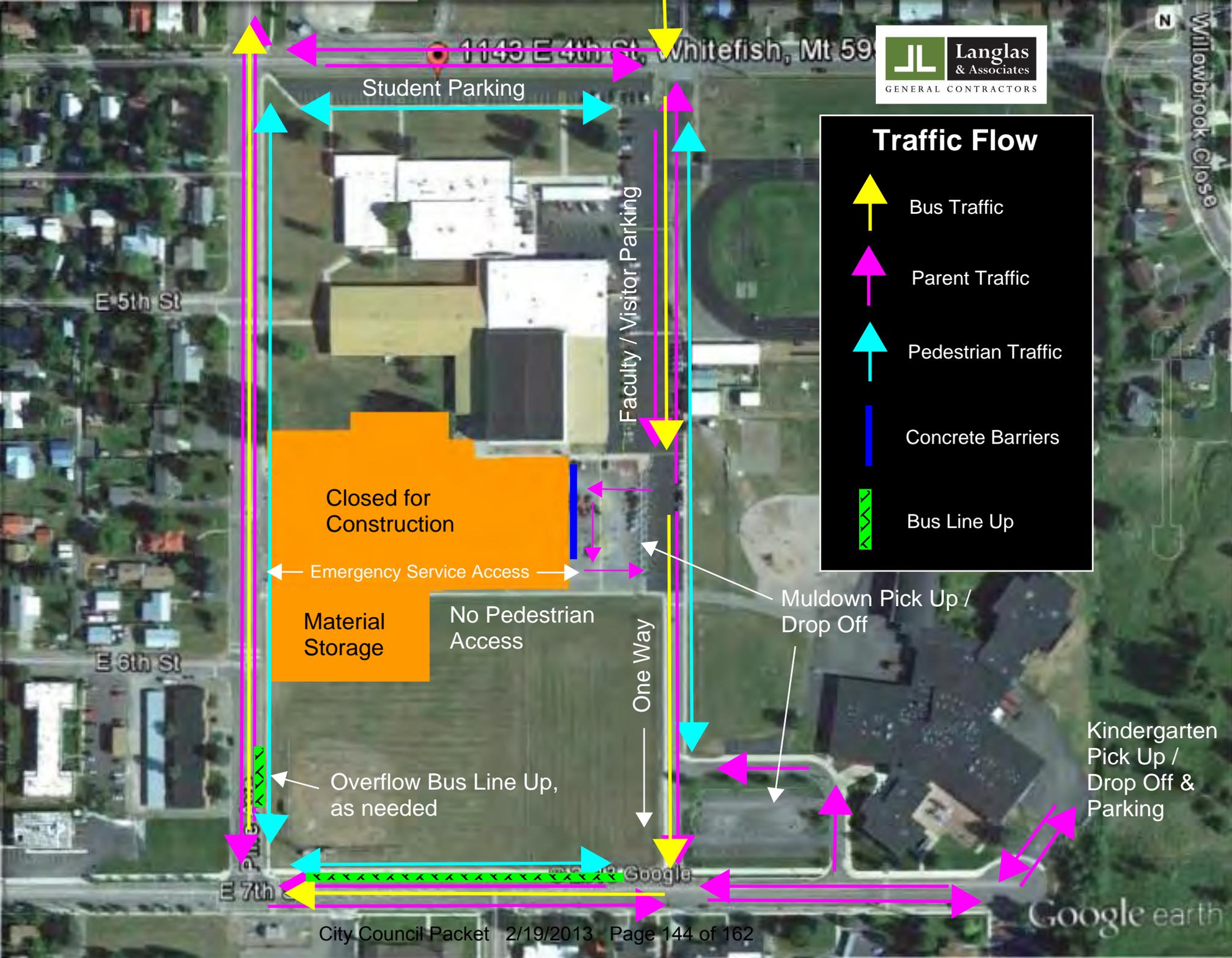
Sincerely,



Bayard Dominick
Owner's Representative

Traffic Flow

-  Bus Traffic
-  Parent Traffic
-  Pedestrian Traffic
-  Concrete Barriers
-  Bus Line Up



Chuck Stearns

From: Chuck Stearns [cstearns@cityofwhitefish.org]
Sent: Monday, February 11, 2013 1:32 PM
To: 'Karin Hilding'; '**VanBuskirk, Mary'; 'Bill Dial'
Cc: 'Drown, Kerry'; 'John Wilson'; 'J. Barranger'; 'Orozco, Kate'
Subject: RE: parking on Pine during High School construction

Karin et al:

It is fine with me, but under our City Code, the City Council will likely have to approve it. I can approve temporary use of city streets for special events under WCC 7-4-1 (B)(1), but the High School construction project seems beyond the normal special event. Limited parking areas are normally controlled by the City Council under:

6-2-4: PROHIBITED AND RESTRICTED PARKING:

A. No Parking Zones: The following zones or areas are designated by the city council to be no parking zones wherein the parking of vehicles is prohibited except at the times and under the circumstances therein set forth. The city council may from time to time, on motion, create other and further no parking zones within the city. The no parking zones designated by the city council are as follows:

1. No automobile or vehicle shall be parked on the north side of Second Street, between Spokane Avenue and Kalispell Avenue; no automobile or vehicle except school buses when actually engaged in loading or unloading pupils shall be parked within a distance of one hundred feet (100') south of that part of the east side of Spokane Avenue extending from directly in front of the west entrance of the public school building, the distance of one hundred feet (100') shall be measured from the north side of the west entrance of the building and the area created shall be designated a no parking zone, and reserved exclusively for the use of school buses, loading and unloading pupils transported by such buses to and from the Whitefish public school; this no parking area shall not apply during the summer months when school is not in session.

2. All no parking zones must be either posted with a suitable sign or marked with a yellow curb. (Ord. A-85, 12-5-1955; amd. Ord. A-237, 6-4-1973; Ord. 86-15, 7-7-1986; Ord. 09-15, 9-21-2009)

B. Limited Parking Areas: The city council declares the following to be limited parking areas in which certain restrictions on parking are established, and it shall constitute a violation of this title for the owner or operator of any vehicle to violate the provisions hereof. **The city council may, from time to time by motion, when it determines it advisable to do so, establish other and different limited parking areas within the city.** The limited parking areas established which are in effect are as follows:

1. The area on the south side of Second Street extending from the northeast corner of the intersection of Second Street and Lupfer Avenue for a distance of fifty feet (50') from the fire hydrant located on the corner of the intersection is created a limited parking area and the parking of automobiles and other vehicles within said parking area hereby created for a period of more than twelve (12) minutes is forbidden and prohibited; provided, however, that parking within twelve feet (12') of said fire hydrant is expressly prohibited and forbidden.

2. The parking of trucks and commercial vehicles in excess of twenty feet (20') overall length is prohibited anywhere on Second Street between Spokane Avenue and Lupfer Avenue and also on Central Avenue between Railway Street and Fifth Street.

So, I would have the School District write up such a request and we or they should provide a map to show the limited parking area. I can get this on the agenda for the February 19th meeting if I have the letter by Tuesday, 2/12 by 4:00 p.m. or I can get it on the agenda for the March 4 meeting if I have the letter and map by Tuesday, February 26th. I would also have the signs say "School staff parking only M-F 8-5"

Chuck Stearns
City Manager
City of Whitefish
P.O. Box 158
418 East 2nd Street
Whitefish, MT 59937-0158

Telephone - 406-863-2406

Fax - 406-863-2419

Cell -

cstearns@cityofwhitefish.org



From: Karin Hilding [mailto:khilding@cityofwhitefish.org]

Sent: Monday, February 11, 2013 12:33 PM

To: Chuck Stearns; **VanBuskirk, Mary; Bill Dial

Cc: Drown, Kerry; John Wilson; J. Barranger; Orozco, Kate

Subject: parking on Pine during High School construction

Chuck, Mary and Bill,

Principal Kerry Drown at WHS has asked the Public Works Department if we can change the parking restrictions on the east side of Pine Avenue during construction of the new high school. Construction at the high school will begin in about a month. He would like the City to remove the 2 hours parking signs along the east side of Pine Avenue (from 4th to 7th Street) and replace them with "staff parking only" signs. The signs could specify Monday-Friday and 8am to 5pm. We have looked at the road usage in relation to vehicles and bikes and think this parking signage proposal should work fine during construction. Currently very few people use the 2 hour parallel parking spaces on Pine. Please let John or I know if you are okay with this proposed change in signage.

Thanks,

Karin

--

Karin Hilding

Senior Project Engineer

City of Whitefish

(406) 863-2450

khilding@cityofwhitefish.org



November 19, 2012

John Wilson, PE and Karin Hilding, PE
 City of Whitefish
 P.O. Box 158
 Whitefish, MT 59937

Dear John & Karin:

As requested, RPA has coordinated with Flathead Electric Coop (FEC) to determine a cost estimate to place the existing overhead utilities along E. 2nd Street underground. In meeting with FEC, it was determined to develop two cost estimates: 1) Underground utilities maintaining overhead services and 2) Underground utilities and converting overhead services to underground.

For option 1, which maintains the overhead services, there will still be power poles to feed the overhead services. This option does not require construction permits and coordination with the nine (9) customers that have existing overhead services. Option 2, which converts everything to underground, would require that we coordinate with the customers, trench across their properties and replace the service on their houses. This requires substantially more work and coordination.

Below are the costs estimates for relocating the utilities underground. PLEASE NOTE THAT WE HAVE ESTIMATED THE COSTS FOR PHONE AND CABLE AT THIS TIME, BASED ON OTHER PROJECTS.

Option 1: \$269,682.00 (Underground utilities maintaining overhead services)

Option 2: \$330,804.00 (Underground utilities and converting overhead services to underground)

Please let us know if you wish to pursue this, and if so which option you would prefer.

If the decision is made to proceed with relocating the utilities underground, RPA will have to revisit the alignment and profile that has been established for this project. The preferred alignment and profile that has been chosen, was done so trying to avoid the existing power poles. If they are to be removed, there might be a better alignment/typical section for this corridor.

Additionally, if Option 2 is chosen, there will be a substantial amount of work to coordinate with each customer and secure a temporary construction permit for providing underground services to their homes.

Plus \$10,000 - \$12,000 additional cost for engineer design

HELENA, MT
 P.O. Box 5653
 825 Custer Avenue
 Helena, MT 59604
 Tele 406.447.5000
 Fax 406.447.5036

KALISPELL, MT
 P.O. Box 5100
 102 Cooperative Way, Suite 300
 Kalispell, MT 59903
 Tele 406.752.5025
 Fax 406.752.5024

FORT COLLINS, CO
 400 Remington Street,
 Suite B
 Fort Collins, CO 80524
 Tele 970.484.3206
 Fax 970.484.3209

John Wilson

To: Bill Kahle
Subject: RE: Field Meeting on the East 2nd Street Project

From: Bill Kahle [<mailto:bkahle@bresnan.net>]
Sent: Wednesday, December 12, 2012 3:37 PM
To: 'John Wilson'; 'Doug and Nikki Reed'; 'Chris Schustrom / Garden Wall Inn'; 'Trek Stephens'; 'Julia Olivares'; 'Joe Vail'; 'Brian Averill'
Cc: 'Rich Knapp'; 'Ryan Mitchell'
Subject: RE: Field Meeting on the East 2nd Street Project

Good afternoon everyone,

I'm sorry that I wasn't there this morning, but I appreciate the opportunity to weigh in on the project.

I have spoken with Doug and John Wilson about this morning's meeting, and it seems like the most pressing issue was "undergrounding" the power lines along 2nd street, and that there was consensus on the committee to not require the City to underground the lines. I have a different opinion. We have a policy in the City that requires power lines to be put underground. I know this from my experience as a real estate developer. The laundry list of reasons given to me by the City went far beyond aesthetics for this requirement, and was not limited to the property owned by my partnership, but extended for several blocks of the City's right of way along O'Brien Avenue and included several existing homes. The cost was significant, but we did the work.

My concern is certainly not personal, but we have a City policy that private citizens need to abide by, so for consistency's sake the City should abide by the guidelines of the policy as well whenever possible. I understand that this is a much broader issue than our consideration of the 2nd Street project, and better suited for a Council discussion, so I am comfortable forwarding a recommendation to proceed with the 2nd St. project without the requirement that the power lines be placed underground. My vote, however, would be no, and I will make my argument at the council meeting about the policy in general, not specifically for this project.

Thanks again for your consideration,

Bill

John Wilson

To: Doug and Nikki Reed
Subject: RE: Field Meeting on the East 2nd Street Project

From: Doug and Nikki Reed [<mailto:nreed@bresnan.net>]

Sent: Wednesday, December 12, 2012 5:12 PM

To: 'Bill Kahle'; 'John Wilson'; 'Chris Schustrom / Garden Wall Inn'; 'Trek Stephens'; 'Julia Olivares'; 'Joe Vail'; 'Brian Averill'

Cc: 'Rich Knapp'; 'Ryan Mitchell'

Subject: RE: Field Meeting on the East 2nd Street Project

Good evening Bill, Chris, Julia and John,

Thank you Bill for weighing in on the decision and I we appreciate your thoughts and opinion on the matter. What you are speaking of is definitely a larger matter than our committee is asked to deal with but definitely brings up a good subject and debate for City and Council.

Just so that Council has direction on this project, I think it is safe to say after this morning's meeting and with Bill's vote that our committee recommends to Council **NOT** to proceed with placing utilities underground on the East 2nd Street project with the vote being 4 in favor and 1 against.

Committee members please respond to me with a yeah or nay on the statement above. If you have changed your mind since this morning on your vote, please let me know. Otherwise, I will proceed forwarding our recommendation after I hear from you.

Thank you,
Doug

John Wilson

To: Chris Schustrom / Garden Wall Inn
Subject: RE: Field Meeting on the East 2nd Street Project

From: Chris Schustrom / Garden Wall Inn [<mailto:chris@gardenwallinn.com>]
Sent: Wednesday, December 12, 2012 9:04 PM
To: 'Doug and Nikki Reed'; 'Bill Kahle'; 'John Wilson'; 'Trek Stephens'; 'Julia Olivares'; 'Joe Vail'; 'Brian Averill'
Cc: 'Rich Knapp'; 'Ryan Mitchell'
Subject: RE: Field Meeting on the East 2nd Street Project

Doug, et al,

I vote "yay" to recommend to the City Council that utilities not be placed underground for the E. Second Street project.

I am open to projects in the future having strong consideration given to underground placement of utilities.

Bill, perhaps a good starting point for a discussion of this at the council level would be to request a policy by Public Work moving forward that on each street project, a cost project-specific comparison of underground vs. overhead utilities be undertaken at the beginning of each project and prior to design work being done.

Thanks,

Chris

John Wilson

From: Doug and Nikki Reed [nreed@bresnan.net]
Sent: Thursday, December 13, 2012 9:14 AM
To: 'John Wilson'
Cc: 'Chuck Stearns'
Subject: 2nd Street East

John,

Looks like our committee recommends to Council 4-1 to **not** burying the utilities on the East 2nd Street project.

Thank you,
Doug

John Wilson

From: John Wilson [jwilson@cityofwhitefish.org]
Sent: Thursday, December 13, 2012 4:33 PM
To: Kahle Bill (bkahle@cityofwhitefish.org); 'Doug and Nikki Reed'
Cc: 'Chuck Stearns'
Subject: Policy regarding overhead utilities on City street projects
Attachments: RE: Field Meeting on the East 2nd Street Project

Good Afternoon Bill

We have a bit of a dilemma on this question of policy for overhead utilities on City street projects. While the RTMC “voted” on the specific question of overhead utilities on East 2nd Street, it was the committee that raised the question about the 2nd Street project and it doesn’t warrant a Council agenda item to discuss what amounts to an internal committee discussion and non-action. Unfortunately, the committee did not deliberate or vote on the overall policy question that is understandably important to you. Chris made a constructive suggestion in his email last night (see attachment), but the committee didn’t vote on that.

So based on my understanding of the procedure to place an item on the City Council agenda, along with the lack of a pertinent recommendation from the RTMC – I’m not sure where we go next with your question about the overhead utility policy and I’m concerned this continues to leave the design on hold.

I understand you, or any City Councilor, can ask the City Manager to put an issue on the Council agenda if three Council members so desire. If the overhead utility policy should find its way onto the next agenda, I suspect the Council will want to know the RTMC’s position, but they haven’t had any substantive deliberation on the overall policy.

So ... I’ve copied Doug and Chuck on this email. I also left a couple of voice mails for Doug, but we haven’t had a chance to talk. I very much want to move forward with design. I see us all in a unique situation where we don’t want to disrespect your concerns, but the timing of the question and the convoluted recommendation/decision process has left us treading water for a month and counting. RPA started this project in good faith and established various job schedules and work assignments with due consideration of our East 2nd Street design contract. This is substantial part of their winter work load and we have left them idling for weeks now. The question of whether to leave utilities overhead or move them underground is fundamental to the overall project design and must be resolved before they can get back to work.

I want to respectfully ask you to consider Chris’ suggestion in the attached email. That would be for the East 2nd Street project to proceed with the current policy of leaving those utilities overhead, then initiate a policy discussion with the RTMC and City Council to give staff direction for future projects.

I wonder if I’m over-thinking this and then I think I’m not. But please let me know your thoughts in this regard and feel free to give me a call at 863.2455.

John Wilson
Whitefish Public Works Director
P.O. Box 158
418 East Second Street
Whitefish, MT 59937

John Wilson

From: John Wilson [jwilson@cityofwhitefish.org]
Sent: Tuesday, December 18, 2012 11:19 AM
To: Kahle Bill (bkahle@cityofwhitefish.org); 'Bill Kahle'
Cc: 'Chuck Stearns'; 'khilding@cityofwhitefish.org'; 'Doug and Nikki Reed'
Subject: RE: Policy regarding overhead utilities on City street projects

Bill

I apologize for my confusion – as demonstrated once again in my email a few minutes ago - but Karin just showed me where your December 12th email indicates you're comfortable proceeding with the East 2nd St project, leaving the utilities overhead, and that you will pursue the larger policy question at the City Council level. I could have saved everyone the trouble of reading my December 13th email if I'd read your message more carefully.

So, we are moving forward with the East 2nd Street Project on that basis. As explained in my December 13th email, this was a question asked and answered at the committee level and so it will not be on the January 7th Council agenda. We welcome a discussion about the overall policy for overhead utilities whenever the Council chooses to take it up.

Sorry about the confusion.

John Wilson
Whitefish Public Works Director
P.O. Box 158
418 East Second Street
Whitefish, MT 59937
Phone 406.863.2455

<http://www.whitefish.govoffice.com>

the confusion.

John Wilson

From: Rich Knapp [rknapp@cityofwhitefish.org]
Sent: Friday, January 25, 2013 4:52 PM
To: jwilson@cityofwhitefish.org; 'Chuck Stearns'
Subject: Rich's Argument for Not Necessarily Sinking Power Lines

A new developer is required to underground power lines. This makes the subdivision more marketable, plus the people that directly benefit from it pay for it, because the developer passes on the cost to the property buyers.

In an old development with overhead power lines. To sink their lines is a cost born by the city as a whole and not the area directly (unless an SID is used). This ups the value of the property in their specific area with the general dollars of the city. Also, the overhead power is what everyone bought into when the houses were originally built and sold down to anyone that buys them now—it's valued in the market price.

I think this argument should be considered in such discussions.

Rich

From: John Wilson [<mailto:jwilson@cityofwhitefish.org>]
Sent: Friday, January 25, 2013 10:19 AM
To: Ashley Keltner
Subject: Question about O'Brien Bluffs subdivision

Good Morning Ashley

I'm trying to recall some history about electrical infrastructure in Whitefish, particularly the underground power installed along O'Brien Avenue in conjunction with the O'Brien Bluffs subdivision during the summer of 2008.

We're having a discussion about whether the City should move the overhead utilities underground on in-house street reconstruction projects, as our Standards require for new development projects. I take the position that it's easier and less expensive to install underground utilities on an undeveloped subdivision site than to bury existing utilities in a developed neighborhood. It's been pointed out that the developers of the O'Brien Bluffs subdivision were required to bury the overhead utilities along O'Brien Avenue, beyond their project boundary up to 10th St.

I don't remember that decision process, but it would be unusual for the City to require that sort of work beyond the subdivision. Perhaps it was a case of new electrical infrastructure needed to serve the subdivision? I'm wondering if you recall anything about that electrical installation along O'Brien Avenue, between the O'Brien Bluffs subdivision and 10th St.

Thanks

John Wilson
Whitefish Public Works Director
P.O. Box 158
418 East Second Street
Whitefish, MT 59937
Phone 406.863.2455

<http://www.whitefish.govoffice.com>

John Wilson

To: A.Keltner@flathead.coop
Subject: RE: Question about O'Brien Bluffs subdivision

From: A.Keltner@flathead.coop [<mailto:A.Keltner@flathead.coop>]
Sent: Friday, January 25, 2013 11:09 AM
To: jwilson@cityofwhitefish.org
Subject: RE: Question about O'Brien Bluffs subdivision

Good morning John,

There is not a specific Flathead Electric Cooperative policy that requires relocation projects to be put underground. In certain instances they are encouraged but usually at the developer's expense. In the case of O'Brien Bluffs subdivision it was a matter of the road being widened without much right of way. This caused conflicts with the existing pole locations. In order to move the poles to the back of the right of way, the overhead conductors would become too close to trees on private property. This is much the same issue that we once looked at on the WF West MDOT project. We could move our poles to the back of the R/W, but still need 10 feet of clearance from trees on private property to our overhead conductors. The decision was made on the O'Brien Bluffs project to bury the line instead of getting permission to cut down private trees. As you could see there are many areas where houses are close to the road and taking the trees out was not a popular idea with the residents.

I would certainly agree with your position that burying existing overhead utilities is more difficult than putting in new underground. One thing to consider is that even if you bury everything in the right of way, there is still the issue of the customer owned service entrance equipment on the houses. If this is not addressed, there are still going to be poles set for the utilities to come back overhead to get to most houses (again the same issue we have on WF West).

I hope this sheds some light Flathead Electric's reasoning. If you have any other questions please let me know.

Thanks,

Ashley Keltner

Systems Engineer
Flathead Electric Cooperative
2510 US Hwy 2 East

Kalispell, MT 59901
Direct Line: (406)751-4478
Cell: (406)261-0459
a.keltner@flathead.coop

possible. It must contain sufficient information to demonstrate to the city engineer that potential problems associated with erosion, sediment, and pollution has been adequately addressed for the proposed project. The drawings and notes should be clear and concise and describe when and where each best management practice is to be implemented.

- B. The ESCP shall be designed in accordance to the Whitefish engineering standards.
- C. During the construction of improvements in the subdivision, the subdivider shall be responsible for installing temporary erosion and sedimentation control facilities to control surface runoff. The temporary erosion and sedimentation control facilities shall be part of the ESCP and shall be reviewed and approved by the city engineer prior to any site disturbance or construction.
- D. The ESCP shall include a plan for the revegetation and stabilization of disturbed areas that includes a plan for on-going control and management of noxious weeds.

[REDACTED]

- A. Easements shall be provided for all utilities and indicated on the final plat. [REDACTED]

- B. Easements for public utilities which cross private property shall be delineated and dedicated on the final plat. Water, sewer and storm sewer easements shall be twenty (20) feet wide for a single pipeline with the pipe centerline no less than five (5) feet from one easement edge. With two (2) pipelines, the minimum width shall be twenty-five (25) feet with each pipe centerline no less than five (5) feet from the easement edge. Easements for all other utilities, not adjacent to right-of-ways, shall be twenty (20) feet wide unless specified otherwise by the utility company.
- C. Only water, sanitary sewer, storm sewers and street lighting elements may be placed within the street right-of-way. No underground utilities, except service sweeps from the utility trench to utility boxes, pedestals, vaults or transformers shall be place in the planting strip between the back of curb and sidewalk or within a sidewalk itself. No utility boxes, pedestals, vaults or transformers shall be placed within the planting strip, the radial extension of an easement, proposed roadway, access way to any city facility, or within ten (10) feet of fire hydrants or curb boxes unless approved by the public works department.
- D. There shall be reserved along the front lot line and side street lot line of each residential lot a ten (10) foot wide utility easement along, contiguous and adjacent to the lot line to provide an area between the sidewalk and easement line for the placement of privately owner underground utilities, including power, phone, gas, cable, etc. No private utilities shall be located in water or sewer trenches. Utilities must maintain a minimum of five (5) feet of undisturbed soil between water or sewer utility trenches. If approval is obtained in advance from both the appropriate utility

companies and the public works department or city engineer, electric, phone and cable facilities may be placed under the sidewalk. In this case, a five (5) foot wide utility easement would be required along the front lot line for the installation of natural gas lines.

- E. Utility lines shall be designed by a professional engineer or by the utility firms in cooperation with the subdivider. All applicable laws, rules and regulations of appropriate regulatory authority having jurisdiction over such facilities shall be observed. Location of all proposed utilities must be shown on the construction plans for review and approval by the public works department.
- F. If television, telephone or natural gas is not installed at the time of development, provisions shall be made for installation at a later date without the cutting of paved roadways or sidewalks.
- G. In addition to showing the location of the utility easements on the plat an easement statement shall appear on the final plat with the developers signature. See Appendix G for the required statement.

12-4-30: NOXIOUS WEEDS

Noxious weeds shall be controlled as directed by the Whitefish Municipal Code, Title 4, Chapter 3 in accordance with the Montana County Noxious Weed Control Act (§7-22-21, MCA). The developer shall have any noxious weeds identified and their location mapped by a person with experience in weed management and knowledgeable in weed identification. A noxious weed management and revegetation plan approved by the planning director or designee for control of noxious weeds shall be submitted with the preliminary plat application. This plan shall ensure the control of noxious weeds upon preliminary plat approval and the revegetation of any land disturbed during the construction of subdivision improvements.

12-4-31: AFFORDABLE HOUSING

- A. Developments shall be allowed density bonuses when a minimum ten (10) percent of the total number of units within the development is set aside for affordable housing meeting the needs for "moderate income" families as defined in this chapter. The residential density bonus for subdivisions with affordable housing shall be consistent with Section 11-2S-3, of the Whitefish Zoning Jurisdiction Regulations.
- B. Cash in Lieu Dedication: For subdivisions incorporating the affordable housing standards of this article, the developer shall have the option of providing lots or housing units on site or providing a cash in lieu of affordable housing dedication. The cash in lieu figure shall be reassessed annually, and may be adjusted from time to time by resolution of the Whitefish City Council.

Chuck Stearns

From: Necile Lorang [nlorang@cityofwhitefish.org]
Sent: Thursday, February 07, 2013 1:47 PM
To: cstearns@cityofwhitefish.org
Subject: Fw: Notice
Attachments: NOTICE to City of WF 2-7-2013.doc

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

From: [Rita K. Hanson](#)
To: nlorang@cityofwhitefish.org
Sent: Thursday, February 07, 2013 1:26 PM
Subject: Notice

Necile -

Please give this to the Council and Mayor.

Thank you,
Garrick Hansen

NOTICE

We have three Whitefish River front lots on 6th Street, corner of Baker and 6th. We have owned these lots since 1974. We have them for sale. We had an interested party, only to find out that you have imposed a “Critical Area Ordinance”, AKA “Water Quality Protection”, a subjective determination that virtually condemns our three lots, making them all but unsaleable.

Our lots are 50 x 150 each. Your set-back basic rule is 200 ft. from high bank. The Realtor had a person from the City come out to mark out the set-backs. Apparently, there are exemptions that consist of a 70-ft. set-back from high bank, then a 20 ft. buffer, then 25 ft. from front property line, then 10 ft. each side property line. Each lot consists of 7500 sq. ft. You have taken 6,450 sq. ft. of our lots, leaving us with 1,050 sq. ft. of usable building space. These lots are zoned WR2, another taking, which includes a duplex; will that fit on 1,050 sq. ft.?

So we would like you to pay us for the property you have taken under color of law, or give up your claim under this ordinance.

We are guaranteed a Republican form of government. The Fifth Amendment of the US Constitution states, “We shall not be deprived of life, liberty or property without due process nor shall private property be taken for public use without just compensation.” We are waiting for our just compensation.

We have been mowing the lawns and taking care of your 6,450 sq. ft. of each lot since your confiscation. We want compensation for services rendered.

Also, you compel us to keep the sidewalks shoveled in the winter, which consists of 300 ft., 150 ft. of it being the new sidewalk that was shoved down our throats on 6th Street. Nobody on our block wanted it.

We also want you to pay your “fair share” of the outrageous taxes you impose on waterfront owners.

So, I need a certified copy of your Montana 2-16-211 MCA oath of office, your 2-16-212 MCA filings, 2-6-207 certified public record. Law states I’m entitled to these records, 2-6-102 MCA.

Since you take US Federal benefits, I also need a certified copy of your Title 5-331 oath, also a certified copy of your Bond.

I need you to provide the “Registered Agent”, the name and current address of Agent for the City of Whitefish.

The “Registered Agent” is public record. I need a certified copy of that document.

I need verified signatures on all oaths and documents, 2-16-620 MCA.

You agreed to all these obligations and duties when you sought your office.

Refusal to answer or answer negatively violates Good Faith, UCC 1203, US Title 18-241 and 242.

Now, do your duty, otherwise it will be presumed you have no valid certified or verified oaths, that you are not bonded and are acting in your personal capacity and impersonating a public officer.

Definition of oath is “an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. Bovier Law Dictionary 1970 Volume II Edition.

Garrick LeRoy; House of Hansen
Claimant

Please send your response to:

c/o Assembly of St. Paul
P.O. Box 4566
Whitefish Montana (59937)

Saundra D. Alessi

received

2-8-13

City Clerk's Office

February 7, 2013

Whitefish Cemetery Committee
Whitefish City Council

RE: Suggestion for Current Cemetery

Dear Ladies/Gentlemen:

When people die they wish to be remembered. However, many folks or their families are opting for cremation. The City of Whitefish may want to consider purchasing some large granite stones for placement in the cemetery in a "memorial" area. Then folks could purchase space on the granite for their name, dates, and whatever other information the city wishes to approve and have the stone engraved with all of the information with the exception of the date of death. Since it would all be paid for in advance, once the death occurs, the date is filled in at no cost to the family. The City could charge enough for the granite space to pay for the granite with some extra to maintain the memorial area.

The types of information and how much space on the granite could be purchased would all be up to the Cemetery Committee and City Council. This may be an alternate way to stretch the current cemetery space resources into the new millennium and satisfy the need to be remembered while honoring all cremation wishes.

Please contact me if you wish to discuss this matter further.

Sincerely,



Saundra D. Alessi

812 Greenwood Dr.
Whitefish, MT 59937

Telephone: (406) 730-2425
Email: sda@montanastarr.com