



**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, JULY 15, 2013, 5:30 to 6:30 PM**

1. Call to Order
 2. 5:30 P.M. – CLOSED EXECUTIVE SESSION – Litigation update with City Attorney
 3. Adjournment
-

**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, JULY 15, 2013, 6:30 to 7:00 PM**

1. Call to Order
2. 6:30 – 7:00 p.m. - Review and discuss aspects of a new franchise agreement with Northwestern Energy
3. Public Comment
4. Adjournment

NorthWestern Energy Feb 2013 Comments to the City of Whitefish markups.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO NORTHWESTERN CORPORATION d/b/a/ NORTHWESTERN ENERGY A NON-EXCLUSIVE FRANCHISE AND FIXING THE TERMS THEREOF UNDER WHICH SAID COMPANY MAY CONSTRUCT, EQUIP, LAY, MAINTAIN AND OPERATE NATURAL GAS DELIVERY FACILITIES IN, UNDER, UPON, OVER AND ACROSS STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES, EASEMENTS AND OTHER PUBLIC PLACES IN THE CITY OF WHITEFISH, MONTANA, AND MAY DELIVER AND SELL NATURAL GAS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA:

Section 1. There is hereby granted to NorthWestern Corporation d/b/a NorthWestern Energy, its successors, and assigns ("Franchisee"), the right, privilege, and franchise (collectively the "Franchise") under the terms contained herein to construct, equip, lay, maintain and operate in, under, upon, over and across the streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, ("City"), as now or hereafter constituted, natural gas delivery facilities for the purposes of transporting, conveying, distributing, supplying and selling natural gas services for heat, power and other purposes. Such natural gas services shall be provided at rates fixed and allowed by the Montana Public Service Commission, and Franchisee agrees to make publicly available the schedules of rates thus fixed or allowed as required by the laws of Montana.

Section 2. Franchisee agrees to construct and maintain all natural gas delivery facilities according to current industry standards and in compliance with all applicable codes, rules, regulations, statutes, and orders of local, state, and federal agencies having jurisdiction in such matters.

Section 3. Franchisee shall extend its natural gas delivery facilities to such parts of the City as the provision of Franchisee's natural gas services ~~and Public Service Commission tariffs~~ shall justify. **This and any and all other requirements are already covered in Section 1 and 2, no need to single this one out.**

Section 4. Franchisee, at all times during the existence of this Franchise, shall use its best efforts to obtain, deliver and supply a continuous, sufficient and adequate quantity of natural gas for use by said City, its inhabitants, and Franchisee's customers, provided, however, that Franchisee shall not be liable to said City or to Franchisee's customers because of the interruption or discontinuance of the supply of natural gas by causes beyond the reasonable control of Franchisee.

Section 5. Franchisee shall not discontinue the delivery of natural gas through its natural gas delivery facilities, or any portion thereof, for an unreasonable length of time for the purpose of making repairs and extensions, but Franchisee shall not be liable to the City or any of Franchisee's customers for damages caused by such temporary discontinuance or

interruption of the delivery of natural gas, provided that such repairs and extensions are made with reasonable efforts.

Section 6. All work done in, under, upon, over, and across the present and future streets, avenues, alleys, highways, bridges, easements, and other public places in the City by Franchisee for the purposes of carrying out the provisions of this Franchise shall be done and performed in a professional manner. When any street, alley, or other public place in said City is excavated or damaged by Franchisee by reason of such work, Franchisee shall restore such street, alley, or public place to its former condition as early as practicable. **Franchisee shall restore such street, alley, or public place to its former condition as early as practicable. <---- this sentence covers this** ~~Franchisee agrees that it and/or its contractors shall not deposit mud and dirt on City streets and if deposited during construction, Franchisee and/or its contractors shall clean and sweep the street of such debris.~~

If at any time a change in the grade or plan of any street, alley, or public place shall be made by order of the proper City officials, Franchisee shall, without expense to the City, make such changes in the location of its natural gas delivery facilities as the change of the grade or plan of the street, alley, or public place makes necessary, which said changes shall be made as soon as possible after said Franchisee shall have received notice from the proper City official having the charge of the same.

~~Franchisee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Franchisee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Franchisee agrees that it is subject to the lawful exercise of the police power of the City. As discussed above in the Section 3 note, this edit is also covered in Section 2~~

~~Specifically, Franchisee agrees to submit applications for Excavation Permits to the City's Public Works Department and be billed for and pay the applicable Excavation Permit Fees and any street or sidewalk cutting fees. We are glad to work directly with the city to keep them up to speed on our evacuation needs in a timely fashion working directly with the City, but submitting applications is not very efficient. We will also have emergency situations where we may not be able wait to resolve the situation~~

Section 7. Franchisee shall hold the City harmless from all costs and damages which shall or may accrue to said City by reason of the neglect, default, or misconduct of the Franchisee in connection with the exercise of its rights hereunder.

Section 8 - Franchisee shall maintain throughout the term of this Franchise general liability insurance in the minimum amount required by Franchisee's Risk Management Department to adequately insure and/or protect the legal liability of Franchisee with respect to the installation, operation and maintenance of the natural gas delivery facilities together with all the necessary and desirable appurtenances authorized herein to occupy the public rights-of-way or public utility easements. Such insurance will provide protection for bodily injury and property damage including, without limitation, contractual liability and legal liability for damages arising from collapse and underground incidents.

Franchisee shall file with the City, within thirty (30) days following the effective date of this Franchise, a Certificate of Insurance evidencing proof of said insurance required pursuant to this Section and thereafter upon request of the City.

The following edits are extremely broad and burdensome, therefore we prefer the original language and a new section for insurance that we are comfortable with as shown above. To the fullest extent permitted by law, Franchisee shall fully indemnify, defend, and save City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Franchisee's delivery of service or performance of work under this franchise agreement. As an example -- This section is extreme (see yellow highlight above this insert). NorthWestern is should not be expected to indemnify the City for things that may be beyond NorthWestern's control.

Franchisee shall purchase and maintain insurance coverage on a primary noncontributory basis, as set forth below. Bresnan shall provide the City a Certificate of Insurance and a copy of the additional insured policy endorsement listing City as an additional insured showing coverage for commercial General Liability Policy on a per occurrence claims form.

Franchisee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Grantor. See NorthWestern Insurance Language inserted above

Franchise Fees

NorthWestern does not support or endorse the concept of Franchise Fees. Further, Montana Law and/or case law provide that there may only be limited circumstances where such fees may apply. NorthWestern does not believe Whitefish has met the burden necessary to establish a legal franchise fee. The following comments are offered assuming that the City believes it has the legal ability to impose such a fee on NorthWestern.

If the City were to impose such a fee on NorthWestern, NorthWestern's tariffs allow it to would turn around and recover these costs in the bills of its Whitefish customers only. These costs would only be unique to the Whitefish area and processed under an existing MPSC Rate Schedule to handle such costs to the extent they exist. These fees are another example of implementing a hidden tax in our customers' bills, where NorthWestern assumes the role of the tax collector for the City. If the City wishes to collect additional taxes for its citizens it

should do it directly, in an open and transparent process, and not bury it in this type of agreement or as a hidden tax on their utility bills.

At a recent MPSC Hearing on NorthWestern's Annual State Property Tax Rate True-up, the Commission expressed various levels of concern regarding NorthWestern's role as a hidden tax collector, including notifying our customers on a regular basis that their bills include a very high level of State Property tax recovery. NorthWestern is the largest tax-payer in Montana, with the highest tax rate in the State as well.

So if the City were to go down this path, we would continue to oppose such a fee and would also contact our Whitefish Natural Gas customers to inform them of the City's intent to impose such a fee, that we are opposed to its use assessment, and that we are simply passing it on on behalf of the City.

Section 8. Franchisee shall pay to the City an annual franchise fee equaling \$0.10 per lineal foot for each lineal foot of plastic gas main and steel gas main in the City's right-of-way plus \$10.00 for each above ground facility contained in the City's right-of-way. For calendar year, 2013, Franchisee and City agree that this amount equals \$.00. One-fourth of the franchise fee payment shall be due quarterly and payable within ninety (90) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Franchisee showing the basis for the computation.

Franchisee and the City agree that such a franchise fee is appropriate as a regulatory fee for the following reasons:

- Franchisee currently uses the City's right-of-way at no cost. The property taxes which the Franchisee pays are for provision of the general services of the City which the Franchisee receives as does every other business, not for the specific benefits and services which the Franchisee receives from its use of the right-of-way.
- Natural gas mains and service lines present specific and special challenges for the City's Public Works Department such as:
 - The useable space for various public and private utilities in the public right-of-way is limited and natural gas lines present the highest risk of all these utilities when in conflict with City facilities;
 - Any excavation near a natural gas line progresses much more slowly and is more expensive due to the risk involved;
 - When a natural gas main or service line crosses another underground utility, the construction crew and excavator's work becomes extremely delicate and at times must even come to a halt while the gas line is relocated;
 - Our extensive work in the right-of-way and experience with "U-Dig" locate services is such that it is not uncommon for City crews or private contractors to hit and damage natural gas lines which have not been

located accurately. This problem not only places workers, as well as citizens and property in the immediate vicinity, at great risk, but typically ties up emergency responders and their equipment to secure the area until the danger has passed;

The Public Works Department is constantly rebuilding roads and aging infrastructure throughout the community. Conflicts with natural gas mains often occur when road grades are lowered or when space is required for new water, sanitary sewer and storm sewer mains. These conflicts complicate the design process, delay the pace of construction and ultimately add time and expense to the project.

As a self government power municipality with a charter form of government, the City has authority beyond a statutory municipality in being able to request and/or require payment of a franchise fee.

The City currently receives a franchise fee from other utilities using the public right-of-way including cable television services, the water utility, and the wastewater utility.

Section 89. Franchisee is hereby given the right and authority to make assignments of this Franchise, and its rights hereunder, provided all assignees agree to be bound to the same extent as the original Franchisee.

Section 910. Except as provided in this paragraph, failure on the part of Franchisee to comply in any substantial respect with any provision of this Franchise shall be grounds for forfeiture thereof. No forfeiture shall take effect unless either (1) Franchisee agrees to the forfeiture, or (2) a court of competent jurisdiction (with a right of appeal in either party) has ruled that Franchisee failed to comply in a substantial respect with any provision of this Franchise and Franchisee has not cured the failure found by the court within six (6) months after the court's final order. The City Council, in its discretion, may grant additional time to Franchisee to cure the failure as it deems reasonable.

Section 4011. This ordinance shall take effect and be in force from and after thirty (30) days after the final passage and approval hereof, provided Franchisee shall file with the City Clerk a written acceptance of this ordinance within said thirty (30) day period, but if such acceptance is not so filed, this ordinance shall be void.

Section 412. This Franchise shall be hereby granted for an initial term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Franchisee. Thereafter, this Franchise will automatically renew every ten (10) years for an additional term of ten (10) years, unless cancelled by either party by written notice to the other party, no less than five (5) years prior to the end of the then current term.

Finally passed by the City Council of the City of Whitefish, Montana, and approved this _____ day of _____, _____.

John Muhlfeld, MAYOR

ATTEST:

Necile Lorang, CITY CLERK

I hereby certify that the within and foregoing is a full, true, correct and complete copy of Ordinance No. _____, passed at the regular meeting of the City Council of the City of Whitefish, Montana, on the _____ day of _____, _____.

CITY CLERK

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public for the State of _____

Residing at _____

My Commission expires _____

Legal Memorandum



July 9, 2013

To: Mayor Muhlfeld and City Councilors

From: Mary VanBuskirk, City Attorney

Re: Public Utility Franchise Agreements

During the April 15, 2013 City Council Work Session on the NorthWestern Energy's (NWE) proposed franchise ordinance and the City's response to NWE's proposed terms, the City Council requested a summary of Montana law as it pertains to public utility franchise agreements. This memorandum summarizes Montana law at this time as it pertains to governmental franchises.

Nature of a Governmental Franchise.

Under the 1889 Constitution and case law, a franchise was classed as property and subject to taxation as such. Since the 1880's the Montana Supreme Court has acknowledged the right of the State and local governments in Montana to grant franchises to private or public companies for the construction and maintenance of infrastructure within the public right-of-way to provide essential services to the public. Through case law, governmental franchises were approved to provide essential services that affected the welfare of the people for water, telephone, electricity and a street railroad.

The present 1972 Constitution has no comparable provision found under the 1889 Constitution in Article XII, Sections 16 and 17. Without further clarification, franchises are prohibited as a special grant by law (along with "any irrevocable grant of special privileges, franchises, or immunities") in the 1972 Constitution in Article II, Section 31.

By statute, Montana defines a franchise as a "special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right." MCA § 7-3-4201(3).

A franchise or right to use the streets, highways, bridges or public places in a city may only be granted by ordinance. MCA § 7-3-4223. As defined in the State tax code, the term "property" includes franchises. MCA § 15-1-101(1)(p). However, the State tax code further provides that in the Department of Revenue's "property" assessment, a public utility franchise may not be assessed. MCA § 15-23-303.

Court cases interpreting the meaning of franchises as it pertains to local governments have not helped much to clarify the law. In 1948 the Supreme Court characterized a franchise as a property that is incorporeal and intangible in its nature. *Glodt v. City of Missoula* (1948) 190 P.2d 545. In *Fair Play Missoula, Inc. v. City of*

Missoula, 52 P.3d 926 (2002) ("*Missoula*"), the Supreme Court gave some examples of public privileges granted as franchises to individuals and not enjoyed by the citizens generally based on 1917 and 1918 Court decisions: street railways laying tracks and operating cars on public roads; telegraph and telephone companies erecting poles and wires across public and private lands; and water companies tearing up streets and impeding travel to install and repair mains. Considering these early cases and undeveloped case law, the Court made the following observation in *Missoula*:

Unfortunately, Montana has failed to develop a comprehensive statutory scheme in this complex area, with the result that the law of governmental franchises will likely develop on a case by case basis in a manner that is reactive, not proactive, and is of marginal guidance to governmental officials struggling with these issues. Accordingly, this area of the law is one which the legislature may wish to examine in a future session.

Even though the 2002 Supreme Court encouraged legislative action to resolve these uncertainties, the Montana legislature has chosen not to clarify governmental franchises through legislation to date.

One year later in *Montana-Dakota Utilities Co. v. The City of Billings*, (2003) 80 P.3d 1247 (*Billings*), the Montana Supreme Court addressed whether franchise fees may be charged by a local government for a utility's use of public rights-of-way.

The underlying facts in *Billings* are confusing and complicate what could have been a straight forward decision about the ability of local governments to assess utility franchise fees. The Billings city council passed Ordinance No. 00-5133. The ordinance was entitled the "City of Billings Right-of-Way Management Ordinance"¹ (the ordinance). The ordinance was enacted with the purpose of protecting and regulating the city's right of way:

... [T]o protect the public rights-of-way within the City against damage and unauthorized encroachment; minimize public inconvenience during utility emplacement or maintenance; recover the costs of regulation and oversight; recover fair compensation for the occupation of the rights-of-way; and prevent premature exhaustion of the right-of-way capacity to accommodate telecommunications, utilities and other public services.

¹ The terms of the 2003 ordinance were similar to an earlier passed ordinance in 1992 that incorporated franchise fee provisions similar to those proposed in the 2003 ordinance, which were withdrawn by the city after a referendum drive placed the 1992 ordinance before the voters. As early as 1918 Billings' efforts to charge a fee to its gas supplier has been unsuccessful. *State ex rel. Billings v. Billings Gas Co.* (1918), 173 P. 799.

In order to accomplish its stated purpose, the ordinance provided a "comprehensive regulatory scheme" for the leasing of city-owned property, licensing of nongovernmental entities whose facilities pass through the right-of-way and executing franchise agreements with businesses that occupy the right-of-way to service customers within the city. Towards this end, the ordinance established utility franchise fees each utility would pay in accordance with (1) a lease of city right-of-way based on fair market rent, (2) a pass-through license based on a per-foot annual assessment; or (3) a franchise fee based on 4% of gross annual revenues received from the provision of telecommunications or utility services within the city. Whether the utility was a lessee, licensee, or franchisee, the ordinance regulated the utilities' use of the right-of-way to service customers and required the utilities to obtain a work permit, post a performance bond, secure insurance, and provide notice prior to work in a right-of-way.

Following its enactment, the Montana-Dakota Utility, the Montana Power Co., Yellowstone Valley Electric Coop, Inc., and Intervenor Touch America, Inc. challenged the franchise fee provisions as an illegal tax. Other public utilities and telecommunication companies filed for *amici* status for the plaintiffs. The Montana League of Cities and Towns appeared as an *amicus* for the city of Billings. The city and the plaintiffs filed cross motions for summary judgment.

The District Court ruled on the pending summary judgment motions and agreed with the plaintiffs (public utilities and telecommunication companies) that the ordinance's franchise fee (probably limited to the fee based on an assessment of 4% of a utility's gross annual revenues) was an unlawful tax and severed the franchise fees from the ordinance. The city appealed the District Court's decision to the Montana Supreme Court. The sole issue framed by the parties in the appeal was limited to the franchise fee based on 4% of the utility's annual gross revenue:

The issue on appeal is whether a franchise fee based on 4 percent of gross annual revenue generated by each utility that occupies the public rights-of-way within the city constitutes a tax on the sale of utility services?

Also complicating the issue on appeal, a successful initiative drive placed the ordinance on the November 2001 ballot and Billings voters rejected the ordinance by a margin of 58 to 42 percent.

Unfortunately, the *Billings* Court did not limit its decision to the sole issue and determined instead that the ordinance which imposed a franchise fee on public utilities for use of the right of way was an impermissible tax on goods or services.

Although the Montana Supreme Court claimed it normally does not address moot questions, the Supreme Court agreed to hear the case even though the Billings voters defeated the ordinance through the initiative process. The Supreme Court looked at the city's ordinance and reviewed whether the ordinance established franchise fees were an

illegal tax under MCA § 7-1-112(1), which prohibits cities² to authorize a tax on the sale of goods or services.

The Court began its analysis by looking at the State's franchise law, which the Court acknowledged was "relatively underdeveloped" in Montana. The Supreme Court analyzed the franchise fee charged to the utility under the city's ordinance to determine whether the city's franchise fee was in fact a prohibited tax or a permissible regulatory fee by applying its three-part rule: "if charges are primarily to raise money, they are taxes. If the charges are primarily tools of regulation, they are not taxes".

The Supreme Court reviewed other fees charged by cities found to be permissible and distinguished the fees charged to the utilities under the ordinance. The Court explained that permissible regulatory fees directly benefit those charged the fee. For example, impact fees are permissible fees because the fees are charged and collected into a special account, earmarked for sewer and water system improvements and thereby directly benefit those who generated the need for additional water and sewer capacity.

Although the city argued that its franchise fee was neither a tax nor a fee but a rent for a public utility's occupation of the right-of-way, the Court disagreed. Unlike a city's valid legal exercise of a regulatory fee, the fees paid by the utilities under the ordinance were not earmarked for right-of-way maintenance or regulation but would be used to reduce general property taxes and to fund other projects in the city. Since there was no direct benefit to the utilities, the Supreme Court found the fee charged to the utilities to be a tax.

Furthermore, the Supreme Court disagreed with the city's argument that the utility fee was in the nature of a "rent" for the public utilities' occupation of the right-of-way for a specific benefit and therefore not a tax, by reviewing the city's relationship with public streets and alleys:

We note first of all, that the City's relationship with the public streets and alleys is not that of a traditional proprietor. Under Montana law, the state, not the City, "has ownership and control of all city streets," with local governments as the trustees. (citations omitted). Although the City has regulatory authority over its streets (citations omitted), it does not have the power to exclude public utilities. (citations omitted). Pursuant to this statutory authority, the Utilities herein have occupied the streets and alleys of the City for many years. As they point out, the fact that they

² The Supreme Court recognized that the city of Billings as a local government under a self-government charter may exercise any power not prohibited by the Montana Constitution or State law. Under the facts in *Billings*, the Supreme Court found such an express statutory prohibition of the franchise fee in MCA § 7-1-112(1), which prohibits utilities from enacting a tax on the sale of goods or services which prevented Billings from enacting its franchise fee.

remain subject to the City's policy and regulatory powers does not make them "tenants" in the same sense as a private business that, for example, rents space in the City's airport. Furthermore, given that the Utilities occupied the rights-of-way for years prior to enactment of the ordinance, it cannot be said, even under the City's so-called "*Malott* test," that the ordinance conferred any benefit on them that they did not already enjoy.

The court dismissed the city's rental argument because the State not the city has ownership and control of all city streets, with local governments as the trustees only. Therefore, the city lacked the proprietary interest to claim the right to charge rent for the use of the right-of-way located within the city.

In addition, the 4% gross revenue fee was found inconsistent with the city's rental argument:

The City's "rental" theory is also inconsistent with the fact that the gross revenue fee is not tied to a utility's use or occupancy of the public right-of-way. (citations omitted). (gross revenues-based charge is not a legitimate fee because not based on regulatory costs or extent of right-of-way use). The fee is imposed on all revenues derived from business conducted within the city limits, regardless of the fact that some utility facilities are located on public right-of-way and some on private easements.

Even though the city argued its ordinance called for the negotiation of the franchise agreement with the utility, and therefore not a tax, the Court disagreed:

We conclude that a unilaterally imposed, revenue-generating gross-revenue fee, unrelated to use or occupancy of the right-of-way, is a tax on goods or services in violation of § 7-1-112(1), MCA.

The Supreme Court upheld the District Court and determined that the franchise fee constituted an unlawful tax on goods or services in violation of MCA § 7-1-112(1), reasoning that because the ordinance imposed a fee on public utilities for the use of the public right-of-way, the franchise fee was therefore an "impermissible tax on goods or services". Although the city urged the Court to sever the invalid fee provision from the ordinance in order to leave its other two utility franchise fees and regulatory provisions in place, as the District Court had done, the Supreme Court refused, finding instead that the remaining issues were moot.

At the time of this writing, no other State court case has addressed the broader question whether local governments may impose other types of utility franchise fees for the use of the public right-of-way which meets the Court's concerns found in *Billings*.

If you have any questions, please contact me.

MVB/klh

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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on Monday, July 15, 2013, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 13-06. Resolution numbers start with 13-13.

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) PRESENTATIONS – Update on high school construction project and budget – Bayard Dominick
- 4) COMMUNICATIONS FROM THE PUBLIC – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)
- 5) COMMUNICATIONS FROM VOLUNTEER BOARDS
- 6) CONSENT AGENDA (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 July 1, 2013 Council special session (p. 25)
 - b) Minutes from the July 1, 2013 Council regular session (p. 26)
- 7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

(none)
- 8) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR
 - a) Consideration of Park Board recommendation to purchase Soroptimist Park playground capital equipment from Resort Tax fund prior to FY14 Budget adoption (p. 36)
- 9) COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR
 - a) Consideration of application from Bevill Limited Partnership for a minor, two lot subdivision preliminary plat for Orchard Lane 2 consisting of two lots at 463 and 465 Colorado Avenue (p. 39)

10) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 78)
- b) Other items arising between July 10th and July 15th

11) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item
- b) Email from Kimberly Sikorsky of Jersey Boys Pizza requesting changing one 2 hour parking space on 1st Street or Spokane Avenue to a 15 minute loading/unloading zone parking space (p. 93)
- c) Email from Fred Frost regarding fireworks (p. 96)

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



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

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

Adopted by Resolution 07-09
February 20, 2007

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July 10, 2013

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

Mayor Muhlfeld and City Councilors:

Monday, July 15, 2013 City Council Agenda Report

There will be an executive session beginning at 5:30 p.m. for a Litigation Update and a work session at 6:30 p.m. to discuss aspects of a franchise agreement with NorthWestern Energy. 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 July 1, 2013 Council special session (p. 25)
- b) Minutes from the July 1, 2013 Council regular session (p. 26)

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

These items are administrative matters.

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

(none)

COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

- a) Consideration of Park Board recommendation to purchase Soroptimist Park playground capital equipment from Resort Tax fund prior to FY14 Budget adoption (p. 36)

From Parks and Recreation Director Karl Cozad's staff report:

Soroptimist Park is a 1 acre park located in the north central part of Whitefish, it is bordered on the north side by Waverly Ave. the south side by Woodland Ave. and the east side by Minnesota Ave. It is in close proximity to City Beach and serves residents of primarily single family homes and some multi-family dwellings. Recent demographic information indicates a substantial number of families with children under the age of 12 reside in this area of Whitefish. The park has been in existence for several years and provides a multitude of uses, including an athletic field and court, a picnic shelter and play equipment. Over the past few years neighbors of the park have expressed a desire to have Soroptimist Park be a "chemical free" maintenance facility and we have honored that request. There exists a strong sense of ownership of the park by those individuals who reside closest to the park.

The current play equipment at Soroptimist Park was installed at least 30 years ago and has served the users of the park very well, however, the equipment is showing strong signs of failure from its age and use. During the time since the play equipment was installed in Soroptimist Park, the play equipment industry, along with governmental entities, have developed play equipment industry standards that have resulted in far fewer injuries and fatalities as a result of poorly designed play equipment. I am pointing this out to address that any possibility of simply repairing this equipment cannot occur because it does not meet any of the established play equipment standards that are currently accepted as the industry standard.

During the past few months staff has met with a number of residents of the Soroptimist Park area for the purpose of soliciting input as to the type of play equipment they would like to see installed in the park. After receiving a number of conceptual designs of some unique play equipment and reviewing with both residents and staff, we have developed an acceptable play equipment plan including acceptable fall material to be used for Soroptimist Park. During this process a renewed excitement of park support has become evident from all those involved in the process. It is certainly our hope that with this investment in replacing the play equipment that additional volunteer driven improvements will be made at Soroptimist Park.

The financial requirement for the purchase and installation of the new play equipment and fall material is \$57,600. This financial resource is included in the FY 14 preliminary budget and is funded through Resort Tax. This financial resource was included in the approved FY 13 budget, but not expended prior to June 30, 2013. We recognized the need for this improvement at Soroptimist Park and carried it over to the new FY 14 budget document.

RECOMMENDATION: It is the recommendation of the City of Whitefish Park Board and the Parks and Recreation Department staff to approve the FY14 budget expenditure of \$57,600 for the purchase and installation of new play equipment and fall material for Soroptimist Park.

This item is an administrative matter.

COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

- a) Consideration of application from Bevill Limited Partnership for a minor, two lot subdivision preliminary plat for Orchard Lane 2 consisting of two lots at 463 and 465 Colorado Avenue (p. 39)

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

A report to the Whitefish City Council regarding a request for preliminary plat by Bevill Limited Partnership for a two-lot Minor Subdivision. This request is scheduled before the Whitefish City Council for a public meeting Monday, July 15, 2013 in the Council Chambers at 7:10 p.m.

PROJECT SCOPE

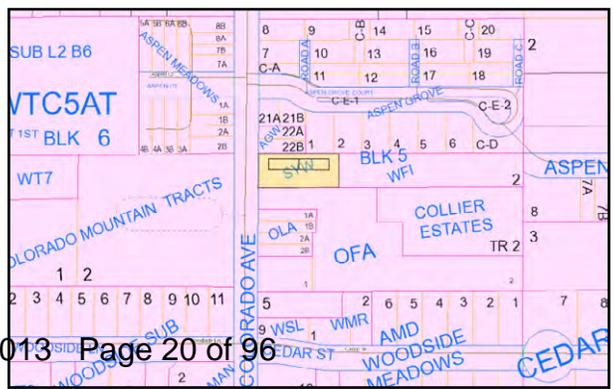
This is a request for preliminary plat approval of a two-lot subdivision with an existing townhouse building. The subject property is approximately 0.354-acres. The townhouse received Architectural Review approval in 2012 and the construction of the townhouse was completed on January 22, 2013. The owner has the units for sale and the prospective purchasers are interested in owning the units along with the land.



- A. Owner/Applicant:**
Bevill Limited Partnership
PO Box 4713
Whitefish, MT 59937

Technical Assistance:
F&H Land Surveying
Craig Wickham
PO Box 114
Whitefish, MT 59937

- B. Location:**
The property is located on the east side of Colorado Avenue between Aspen Grove Street and Cedar Street. The property is addressed as 463 & 465 Colorado Avenue.



The property can be legally described as Amended Plat of a Portion of Lot 6, Block 5 Whitefish Townsite Company's Five Acre Tracts in Section 25, Township 31N, Range 22W, P.M.M., Flathead County, Montana.

C. Size:

The subject property is 0.345-acres in size and the lots are 7,914 and 7,491 square feet.

D. Existing Land Use and Zoning:

WR-2, Two-Family Residential District, intended for residential purposes to provide for one and two-family homes in an urban setting connected to all municipal facilities and services.

E. Adjacent Land Uses and Zoning:

North:	residential	WR-2/PUD
West:	residential	WR-3
South:	residential	WR-2
East:	Vacant	WR-2

F. Utilities/Services:

The proposed subdivision lies within the immediate service area of the City of Whitefish. Services will be provided by the following:

Sewer service:	City of Whitefish
Water service:	City of Whitefish
Solid Waste:	North Valley Refuse
Gas:	Northwest Energy
Electric:	Flathead Electric Co-op (underground)
Phone:	CenturyLink (underground)
Police:	Whitefish Police Department
Fire:	Whitefish Fire Department
Schools:	Whitefish School District #44

A full staff report and other documents are included in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council approve the preliminary plat for a minor, two lot subdivision preliminary plat for Orchard Lane 2 consisting of two lots at 463 and 465 Colorado Avenue, subject to 9 conditions and with the findings of fact in the staff report.

This item is a quasi-judicial matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 78)
- b) Other items arising between July 10th and July 15th

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item
- b) Email from Kimberly Sikorsky of Jersey Boys Pizza requesting changing one 2 hour parking space on 1st Street or Spokane Avenue to a 15 minute loading/unloading zone parking space (p. 93)
- c) Email from Fred Frost regarding fireworks (p. 96)

Sincerely,



Chuck Stearns
City Manager

"Cheat Sheet" for Robert's Rules

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

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WHITEFISH CITY COUNCIL MINUTES
JULY 1, 2013
EXECUTIVE SESSION, 5:30 TO 6:30 PM

Mayor Muhlfeld called the meeting to order. Councilors present were Anderson, Hildner, Sweeney, Kahle and Phillips. City Staff present were City Manager Stearns, City Attorney VanBuskirk, Planning and Building Director Taylor and City Clerk Lorang. Councilor Hyatt was seated at 6:15 pm. The meeting was closed for the quarterly litigation update with the City Attorney. The meeting adjourned at 6:30 p.m.

SPECIAL SESSION, 6:30 TO 7:00 PM

1. Call to Order

Mayor Muhlfeld called the meeting to order. Councilors present were Anderson, Hildner, Sweeney, Hyatt, Mitchell and Kahle. City Staff present were City Manager Stearns, City Clerk Lorang, Planning and Building Director Taylor and City Attorney VanBuskirk.

2. Interviews

The Mayor and Council conducted an interview with Edward (Jay) Wolfe, applicant for the Member at Large on the Whitefish Highway 93W Corridor Plan Steering Committee. William Schnebel was also scheduled for an interview for this position but did not appear for the interview. His letter of interest was included in the Council's packet. Also included in the Council's packet were letters from Frank Barnes, Rob Pero and Nancy Woodruff; all who had been previously interviewed on June 3, 2013.

3. Public Comment - None

4. Appointments

4a. Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Nancy Woodruff as the Member at Large to the Whitefish Highway 93W Corridor Plan Steering Committee. The motion passed with four (4) aye votes and two (2) no votes. (Councilors Mitchell and Hyatt voted in the negative).

4b. Mayor Muhlfeld appointed John Middleton, with Council's consensus, to the Whitefish Housing Authority Board to fill the vacancy for the term expiring December 31, 2015. (John Middleton had been previously interviewed on June 17, 2013, as he could not attend an interview on this July 1, 2013 date).

4c. Councilor Kahle offered a motion, seconded by Councilor Hyatt, to confirm the Park Board recommendation for their representatives on two committees:

Laurel Grady for the Ice Rink Advisory Committee

Jim DeHerrera for the Weed Control Advisory Committee

The motion passed unanimously.

5. Adjournment - Mayor Muhlfeld adjourned the Special Session at 7:03 p.m.

Attest:

Mayor Muhlfeld

Necile Lorang, City Clerk

WHITEFISH CITY COUNCIL MINUTES

July 1, 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, and Police Chief Dial. Approximately 20 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Stella and Mitch Eddy to lead the audience in the Pledge of Allegiance.

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

None.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Weed Committee met and Parks and Recreation Director Cozad said they are working on public education and notification for noxious weed control. Councilor Hildner said the Bike/Ped Committee is still working on some easements for the Skye Bridge project, and the Dodger Lane project will begin next week. The committee was going to have a work-project to sand and repaint the bridge railings but a private volunteer will be doing that. Will McDonald with the Averill Group attended the meeting to give a presentation, but Councilor Hildner said he knew it would be coming before the Council for consideration so he left the meeting and had nothing to report on that project. He said Char Rygg has granted the easement across her property so that puts together a couple of key pieces in the trail system. He thanked Doug Adams and Greg Gunderson for their work on getting that easement. Manager Stearns said the trail on the Rygg property will be via a lease easement agreement.

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)

5a. Minutes from the June 17, 2013 Council special session (p. 30)

5b. Minutes from the June 17, 2013 Council regular session (p. 31)

5c. Consideration of approving application from Rob Pero for Whitefish Lake Lakeshore Permit (#WLP-13-W12) to install a 587 sq ft I-shaped EZ dock at a new development on Oregon Avenue next to City Beach subject to 12 conditions (p. 41)

5d. Consideration of approving application from Duane and Valerie Bauch for Whitefish Lake Lakeshore Permit (#WLP-13-W18) to stone steps at 2190 Houston Drive subject to 17 conditions (p. 57)

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

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

6a. Consideration of an application from William Montgomery and Karen Ellingson for a Conditional Use Permit for a Bed and Breakfast at 178 East Blanchard Lake Road (p. 71)

Planning Director Taylor reported on a request by William Montgomery and Karen Ellingson for a conditional use permit to operate a bed & breakfast at 178 E Blanchard Lake Road. The property is zoned SAG-5, Flathead County Suburban Agricultural. Planning Director Taylor reported that the applicant is requesting a conditional use permit (CUP) in order to operate a four room Bed & Breakfast at their house located at 178 E Blanchard Lake Road, with an on-site manager. The SAG-5 zoning district requires a Conditional Use Permit (CUP) for Bed & Breakfasts (2005 FCZR 3.08.030).

The property is just over an acre, which is still under the five acre required lot size for the SAG-5 zoning designation (most lots in that area are substandard in size). The applicant's site plan shows there are twelve available off street parking spaces, double what is required. Because this property is outside of city limits in a SAG-5 zone, no additional paving or landscaping is required. The property is located on the east side of Highway 93 South accessed via a private drive off of E Blanchard Lake Road. The Growth Policy designation for this area is Rural Residential which is intended for lots 2.5 to 10 acres in size of rural character. The SAG-5 zoning is consistent with this land use designation. Staff finds that the project meets the development requirements for Bed and Breakfast Establishments found in FCZR 4.02, the Conditional Use Permit requirements found in FCZR 2.06.080, and is consistent with the adopted 2007 Whitefish City-County Growth Policy.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on May 30, 2013. A notice was mailed to advisory agencies on June 3 2013. A notice of the public hearing was published in the *Whitefish Pilot* on June 5, 2013. One person called with concerns about dust, but the applicant has agreed to mitigate the dust.

Staff recommends approval subject to the following conditions:

1. The residential structure shall not be significantly modified to provide additional sleeping rooms or exhibit a nonresidential appearance.
2. The bed and breakfast shall be limited to four guest rooms and a live-in manager.
3. All on-site lighting shall be dark skies compliant.
4. The applicant shall secure necessary permits from the Flathead City-County Health Department for the operation of the Bed and Breakfast.
5. The owner or manager must be in permanent residence and maintain full use of the kitchen and at least one bedroom.
6. Sleeping quarters and breakfast facilities shall not be allowed in an accessory building.
7. Overnight lodgers shall not have direct access to cooking facilities, although the permanent residents of the dwelling may provide breakfast service to the guests.
8. Use of the residential structure shall be limited to the exclusive use of the resident dwellers and their overnight guests. With the exception of the occasional special event such as a wedding, no other use such as a restaurant, bar, or other use which attracts non-boarding customers is permitted. No alcoholic beverages shall be sold on the premises.
9. There shall be a minimum of six off-street parking spaces maintained and contained on the site.

July 1, 2013

10. Prior to commencing the bed and breakfast use, the applicant shall schedule a site inspection with the Fire Marshal and comply with any required changes.
11. The applicant shall secure a sign permit for any signage associated with the bed and breakfast and the signage shall comply with the residential standards of the Whitefish Zoning Jurisdiction Regulations and shall not flash, rotate, or blink.
12. The applicant shall comply with all conditions and the Zoning Administrator shall verify that the conditions have been met prior to occupancy of the bed and breakfast.
13. The conditional use permit is valid for 18 months and shall terminate unless commencement of the authorized activity has begun or proof is provided prior to expiration that the applicant is diligently working toward commencing the use.

The Whitefish City-County Planning Board met on June 20, 2013 to consider the request. Following the hearing, the Planning Board unanimously recommended approval of the conditional use permit with the thirteen (13) conditions from the staff report and adopted the staff report as findings of fact. (Konopatzke and Vail were absent).

Councilor Mitchell asked and Director Taylor said guests aren't allowed to use the kitchen, they are dependent upon the owner/manager to provide the food.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

Councilor Anderson offered a motion, seconded by Councilor Hyatt, to approve the application from William Montgomery and Karen Ellingson for a Conditional Use Permit for a Bed and Breakfast at 178 East Blanchard Lake Road with 13 conditions and the staff report as findings of fact (WCUP 13-07). The motion passed unanimously.

6b. Consideration of an application from Graham Hart of Bonsai Brewing for a Microbrewery and Tasting Room in the Mountain Mall at 6475 Hwy 93 South, space #45 (p. 98)

Planning Director Taylor reported on a request by Graham Hart for a conditional use permit to operate a Microbrewery and Tasting Room called Bonsai Brewing on property owned by the Carrington Company at the Mountain Mall Space #45, 6475 Highway 93 South. The property is zoned WB-2, Secondary Business District.

The subject application is to operate a micro-brewery in conjunction with a tasting room. The WB-2 zoning district requires a Conditional Use Permit (CUP) for a microbrewery (WCC 11-2L-3). The location is within the Mountain Mall facility which has a multitude of different uses, both commercial and retail. There have been full service bars in the mall in the past (i.e., Sherwoods). The location of the brewery will be adjacent to the food court area of the mall.

The brewery and tap room will operate under State Liquor Board requirements which limits hours of operation to 10 am to 8 pm daily, and they can only serve each customer a maximum of 48 ounces of beer per day. The focus will be on selling craft beer in the tap room.

Breweries do have some impacts beyond what a typical restaurant or bar might have. There is a strong roasting grain smell produced by the manufacturing process that is generally non-objectionable. Grain dust generated from milling on-site can ignite and explode if exposed to open flames used for heating kettles, so fire marshal review is important. Harsh cleaning chemicals are often used on the

July 1, 2013

vats/kettles, and yeast waste can be hard on public wastewater systems. The public works director is comfortable with how the effluent gets diluted before it gets to the sewer plant. However, a condition will be placed on the approval that all wastewater discharges must be in compliance with the rules and regulations of the wastewater utility. This request complies with zoning regulations and the WB-2 zoning. It is compliance with Code and there is plenty of parking.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on May 31, 2013. A notice was published in the *Whitefish Pilot* on June 5, 2013. One letter from Mall Manager Tom Krause was received in support of the request.

Staff recommended that the Whitefish City-County Planning Board adopt staff report #WCUP-13-06 findings-of-fact and recommend to the Whitefish City Council the conditional use permit for Graham Hart and Bonsai Brewing be approved subject to the following conditions:

1. Except as amended by these conditions, the use of the conditional use permit shall be in substantial conformance with the uses described in the application for a microbrewery.
2. Necessary Business Licenses and Sign Permits must be obtained.
3. The Fire Department requires the applicant to comply with all city fire codes for this classification of occupancy.
4. All wastewater discharges must be in compliance with all the rules and regulations of the wastewater utility per the Public Works Department.
5. The conditional use permit is perpetual, but shall terminate in 18 months unless commencement of the authorized activity has begun or the applicant contacts staff prior to the expiration and provides proof that they are diligently working toward commencing the activity without lapse and obtains an extension.

The Whitefish City-County Planning Board met on June 20, 2013 to consider the request and unanimously recommended approval of the conditional use permit with the five conditions from the staff report and adopted the staff report as findings of fact. (Konopatzke and Vail were absent). The applicant spoke at the public hearing in support of his project.

Councilor Kahle asked and Director Wilson said there are State limitations on a microbrewery. They can only serve 48 ounces to one person. Councilor Sweeney asked why the permit was perpetual and Director Taylor said CUPs are granted for the land or rental space, not for the business, so a future microbrewery could replace this business in the future. Councilor Hildner said the State Code makes no difference between micro versus nano breweries. He asked if the applicant wanted to expand to a micro brewery would it change the CUP and Director Taylor said if they added distribution of their product it might take further review.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

Councilor Hyatt offered a motion, seconded by Councilor Sweeney, to approve the application from Graham Hart of Bonsai Brewing for a Microbrewery and Tasting Room in the Mountain Mall at 6475 Hwy 93 South, space #45 with 5 conditions and the staff report as findings of fact (WCUP 13-06). The motion passed unanimously.

7. COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

July 1, 2013

7a. Resolution No. 13-11; A Resolution approving a five-year lease agreement with the Flathead Valley Ski Education Foundation, for the Saddle Club at Mountain Trail Park located at 705 Wisconsin Avenue (p. 122)

Parks and Recreation Director Cozad said the Flathead Valley Ski Education Foundation (FVSEF) approached the City of Whitefish Park Board in May of 2013 with the desire to discuss the opportunity to lease the Saddle Club, which is located in Mountain Trails Park, for the purpose of creating a home for a local skiing hall of fame and museum to be operated by the FVSEF. The opportunity to partner with a non-profit organization in providing the resources necessary to improve the functionality of the Saddle Club and to provide another cultural attraction within our community will serve as a benefit to both the Flathead Valley Ski Education Foundation and our community. He introduced Tim Hinderman from the FVSEF.

Tim Hinderman said the Flathead Valley Ski Education Foundation is an organization that supports Flathead Valley youth skiing. He said they have several Olympians and National champions from their program; notably Tommy Moe. The Foundation would like to work to make sure those successes continue in the future. They want to bring major national championships to Whitefish Mountain Resort. They want to develop a museum heritage center with a hall of fame. They need a permanent home for this museum. They would like to work with the Park Board and the City of Whitefish for a long term lease for the Saddle Club on Wisconsin Avenue.

Dick Solberg said he started skiing on Big Mountain 63 years ago. The Saturday Evening Post magazine from 63 years ago contains the entire story of the history of the Big Mountain Resort. He quoted a famous quote that says, "Those who forget history are bound to repeat it." He said that those who forget Big Mountain ain't squat.

Mike Jenson said this is a union that will be a win for everyone. It will not only preserve a historic building but will provide a home for a great cause. These folks are willing and able to go to work for this cause, so they are willing to update the building and create a museum. He said the Ski Foundation does great things for kids.

Councilor Mitchell asked and Mike Jenson said the Ski Foundation will update the building and see that it is maintained. Councilor Hyatt said the Park Board was losing \$2500/year for the cost of the maintenance of the building versus the rental income from the use of the building. He said members of the FVSEF are working with Jason Loveless, who is the Parks Superintendent who oversees facilities, and he will show them how to do the scheduled work on this building. Mayor Muhlfeld asked and Director Cozad said the Armory will be available for those who exclusively want to rent a smaller place that matches the current rent from the Saddle Club.

Councilor Kahle modeled a sweater made for Russ Street that had "Big Mountain" on the back. He said he is the President of the Ski Foundation and is excited about this project. He said the story of Big Mountain needs to be told and needs to be remembered. He thinks this is a win-win project which will preserve the Saddle Club and create a museum for the ski history. Tim Hinderman said they met twice with Stumptown Historical Society and have started making plans to collect some of the ski stuff they have in their facility. He said they have talked about collaboration with the Historical Society. Councilor Hildner wondered if a 5-year lease was long enough or if it was open for renewal every 5 years. Director Cozad asked and Attorney VanBuskirk said the term is for 5 years, allowing renewal in additional 5 year increments. She didn't see any limitation that would prevent renewal in future years. Councilor Kahle disclosed that he is an officer of the Foundation, but he isn't gaining anything from this

July 1, 2013

personally, so he would like to vote on it. Attorney VanBuskirk said neither State law nor the City's Ethic's Policy would preclude his participation.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Resolution 13-11, a five-year lease agreement with the Flathead Valley Ski Education Foundation, for the Saddle Club at Mountain Trail Park located at 705 Wisconsin Avenue. The motion passed unanimously.

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

8a. Resolution No. 13-12; A Resolution approving an Application for a \$15,000.00 TSEP Infrastructure Planning Grant and Committing Matching Funds (p. 127)

Public Works Director Wilson said the Public Works Department has prepared an application to the State Department of Commerce for a \$15,000 TSEP Infrastructure Planning Grant. Staff needs the City Council to adopt the attached resolution, authorizing the City Manager to submit the application and committing to provide matching funds. The goal is to prepare a more in-depth structured grant for \$500,000. He said for an investment of \$40,000, they are optimistic that they can get \$500,000.

Councilor Mitchell asked and Director Wilson said this is work they will do anyway, but the grant applications allow them to do it with less expense. The project is the rehabilitation and replacement of sewer mains and manholes to reduce the inflow and infiltration of clear water to the sewage collection and treatment system.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to approve an application for a \$15,000.00 TSEP Infrastructure Planning Grant and committing matching funds.

Mayor Muhlfeld thanked Director Wilson and the Public Works Department for researching grant opportunities.

The motion passed unanimously.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 137) None.

9b. Other items arising between June 26th and July 1st

Manager Stearns said today is Mayor Muhlfeld's 40th Birthday. He said July 1st is also the new fiscal year for the City. He said Fire Chief Kennelly, Rich Knapp and Manager Stearns met with the mediator with the Firefighters Union. He said the Firefighters Union was pondering the latest proposal and he hasn't heard anymore today. If mediation doesn't work they will move to binding arbitration.

Manager Stearns said he and John Wilson received an email from Orlan Sorenson that he isn't able to get financing so he has terminated the buy/sell on the Block 46 property and is also terminating his hotel project.

July 1, 2013

Councilor Mitchell said the cemetery site didn't pass ground water tests and Manager Stearns said the committee is continuing to look for a 10-acre property; under consideration is seeking a lease for a cemetery on DNRC property near the Lion Lake trail. He said the proposed site south of the City wastewater building had a dry test hole the whole time, so they might be able to build a smaller cemetery on that property. Councilor Mitchell asked and Manager Stearns said the columbarium is in the budget next year for the existing cemetery site.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Standing budget item - None.

10b. Letter from Michael Morton of 101 Lakeside Avenue regarding limiting parking to one side of the street on Waverly Place just east of Washington Avenue (p. 151)

Mayor Muhlfeld asked and Director Wilson talked about this area. Manager Stearns said page 152 and 153 show photos of the road. Staff, especially the Fire Department, recommends no parking on the south side of Waverly Place.

Michael Morton, 101 Lakeside Blvd. said his front door faces onto Waverly Place. People park on both sides of Waverly Place and the road is narrow and it is difficult to pull through. Councilor Hyatt asked if this was for summer or all year around. Manager Stearns said the sign can list May-October or they can leave it up for the whole year. He thinks it would be best to have no parking anytime on one side of the street to limit confusion of a seasonal restriction.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to create no-parking on the south side of Waverly Place year around.

Councilor Kahle asked about limiting parking on both sides and Manager Stearns said the request was for one side. There is a parking problem around City Beach, and this request is for one side only. Mayor Muhlfeld said he lives near there and the boat trailers overflow into residential neighborhoods. He said he has seen vehicles park all the way up Idaho Avenue, too, and it is a concern as well. He asked if staff would look into it.

The motion passed unanimously.

10c. Email from Zane Perryman regarding places for a local band to play (p. 155)

Councilor Hyatt said he sent a note to Ryan Zinke about the Veteran's Peace Park as a location.

10d. Select an elected official to participate in the selection process for an engineering firm to design the 3rd Street sewer and road project associated with the Block 46 development project (p. 157)

Manager Stearns said now that the Block 46 hotel project has been withdrawn they don't know if a future development will also need the sewer re-located. The current property is parceled into different lots. They don't know if they will be sold separately in the future. He said it is likely that in the future they might need to have the sewer relocated. It may not be necessary to move forward on this at this point. Councilor Hyatt asked and Director Wilson said the church sits over the sewer and it would be a positive thing to get it out from under the church, but it could wait awhile. Councilor Mitchell asked and Director Wilson said they don't know if the investment will ever serve any advantage, so he would

July 1, 2013

see a benefit in waiting because this property is on the market. Manager Stearns asked if there would be an advantage to have the plans drawn up and not do the construction right away. Having the documents drawn up and ready to bid would make it shovel ready down the road. Director Wilson said they would be over-designing if the new purchasers didn't need the sewer line moved. Councilor Kahle said he doesn't hear that there's anything urgent here and there are too many unknowns, so he suggested that they wait. The rest of the Councilors agreed.

10e. Schedule date for next budget work session (p. 159)

Mayor Muhlfeld said there are 17 items to address and need a work session for the budget. Manager Stearns suggested July 22 or 29. The meeting was scheduled for July 29th at 5:00 p.m.

10f. Appointments to Committees and Boards that were not made at tonight's Special Session before the meeting. None.

Councilor Comments:

Councilor Hildner said he and Councilor Sweeney attended the budget oversight meeting for the High School and the good news is that the Iron Horse foundation donated \$1million for the locker rooms and fitness area. The managers also said that there could be design enhancement savings if they utilize a portion of the old school; the old gym foyer and the former space for the school office and lunch room. It would gain 6,500 square feet of space at minimal expense for an entryway to the new construction. As it would change the façade, it would mean the project would have to go before the ARC again. He is concerned that there is not currently any contingency money. He said bid package #3 was substantially over-budget so they are still working on it. They will meet again on July 9th.

Councilor Sweeney said the idea of keeping the 6,500 feet of existing school could save significant money, up to 6 figures. This proposal makes sense. Councilor Anderson asked and Councilor Hildner said normally there is a 20-25% contingency for changes, but there isn't any cushion for contingencies in this project. Councilor Anderson asked and Councilor Hildner said bid package #3 is \$11 million of a \$19 million dollar project and it was a few hundred thousand dollars over budget. Councilor Hyatt said he asked Bayard Dominick to give regular reports to the Council so they can keep up-to-date on this project. He asked Manager Stearns to contact them about this.

Councilor Mitchell asked and Councilor Sweeney said the new idea is to retain the current entry and office space. By retaining that 6,500 square feet they retain space they already own and they can save hundreds of thousands of dollars. He said it would help them meet their budget. Councilor Mitchell asked if the 6,500 was usable space or just a foyer. Councilor Sweeney said yes it is space that they need to retain. He said space is important for traffic flow from the athletic and arts areas. Councilor Mitchell said his frustration is that initially they kept telling the public they couldn't use any part of the old building. He is disappointed with the management skills of the consultants and the lack of contingency fee is unacceptable. He is unhappy with how this is done. Councilor Hildner said they are making a good faith effort and the changes are good recommendations. They assured the oversight committee that if it isn't revenue neutral they won't do it.

Councilor Hildner said a couple of people have approached him about lake noise from boats with large boom boxes, especially at night. He hoped they could address it. Councilor Hildner said fireworks are allowed on July 2, 3 and 4 by ordinance. He wondered if the police boat could circulate around the lake and let people know they can't set off fireworks beyond those dates. Chief Dial said they have a

July 1, 2013

lack of resources to keep up with this. They have been policing it and giving out citations when they catch people.

Councilor Hildner said the boulevards and property on the Baker Commons area need to be mowed. Councilor Hyatt thanked staff and wished them a happy Fourth of July. Councilor Kahle said they did a good thing with the Ski Foundation and he thanked the Council for their support. Councilor Sweeney said, with respect to the school project, that they share other's frustration with the programming and budgeting of this project. He said the Councilors have some thoughts and they are trying to push the project in the right direction. He said there have been discussions with others who want to make contributions to the school, so that is a positive. He said they are cognizant that the project will require a contingency as part of their budget plan, but it remains to be seen where they will find it. Councilor Mitchell thanked Councilors Sweeney and Hildner for serving on the High School oversight committee.

Councilor Mitchell asked, and Chief Dial said, they plan the use of the police boat when they know the lake is the busiest. He said community input helps. If people will get a boat registration and report on the boat, the police will investigate it. Councilor Mitchell said the Highway 93 West construction is going well and the traffic is moving very well. Councilor Mitchell wondered if they should look at Block 46 for a parking area and City Hall site. Mayor Muhlfeld said it would require any of the Councilors who voted for the prevailing decision, Councilor Hildner, Anderson or Sweeney, to bring this up for reconsideration and none of them indicated they were willing to bring it up.

Mayor Muhlfeld said on July 13th the Whitefish Lake Institute will have the grand opening for the interpretive trail through the wetlands. He said it is a unique trail system and he encouraged them to attend.

11. 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 8:47 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk

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July 9, 2013

Mayor and City Council
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and members of the City Council,

Recommendation from the City of Whitefish Park Board and Park and Recreation Department staff for city council to approve the purchase and installation of new playground equipment at Soroptimist Park

Introduction/History

Soroptimist Park is a 1 acre park located in the north central part of Whitefish, it is bordered on the north side by Waverly Ave. the south side by Woodland Ave. and the east side by Minnesota Ave. It is in close proximity to City Beach and serves residents of primarily single family homes and some multi-family dwellings. Recent demographic information indicates a substantial number of families with children under the age of 12 reside in this area of Whitefish. The park has been in existence for several years and provides a multitude of uses, including an athletic field and court, a picnic shelter and play equipment. Over the past few years neighbors of the park have expressed a desire to have Soroptimist Park be a “chemical free” maintenance facility and we have honored that request. There exists a strong sense of ownership of the park by those individuals who reside closest to the park.

Current Report

The current play equipment at Soroptimist Park was installed at least 30 years ago and has served the users of the park very well, however, the equipment is showing strong signs of failure from its age and use. During the time since the play equipment was installed in Soroptimist Park, the play equipment industry, along with governmental entities, have developed play equipment industry standards that have resulted in far fewer injuries and fatalities as a result of poorly designed play equipment. I am pointing this out to address that any possibility of simply repairing this equipment cannot occur because it does not meet any of the established play equipment standards that are currently accepted as the industry standard.

During the past few months staff has met with a number of residents of the Soroptimist Park area for the purpose of soliciting input as to the type of play equipment they would like to see installed in the park. After receiving a number of conceptual designs of some unique play equipment and reviewing with both residents and staff, we have developed an acceptable play equipment plan including acceptable fall material to be used for Soroptimist Park. During this process a renewed excitement of park support has become evident from all those involved in the process. It is certainly our hope that with this investment in replacing the play equipment that additional volunteer driven improvements will be made at Soroptimist Park.

Financial Requirement

The financial requirement for the purchase and installation of the new play equipment and fall material is \$57,600. This financial resource is included in the FY 14 preliminary budget and is funded through Resort Tax. This financial resource was included in the approved FY 13 budget but not expended prior to June 30, 2013. We recognized the need for this improvement at Soroptimist Park and carried it over to the new FY 14 budget document.

Recommendation

It is the recommendation of the City of Whitefish Park Board and the Parks and Recreation Department staff to approve the expenditure of \$57,600 for the purchase and installation of new play equipment and fall material for Soroptimist Park.

Sincerely,



Karl Cozad
Director
Parks, Recreation, and Community Services

*Given that I will be on vacation on Monday, July 15, Ron Brunk, Park Board Vice-President will be making the presentation.

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**ORCHARD LANE 2
STAFF REPORT WPP 13-03
JULY 9, 2013**

A report to the Whitefish City Council regarding a request for preliminary plat by Bevill Limited Partnership for a two-lot Minor Subdivision. This request is scheduled before the Whitefish City Council for a public meeting Monday, July 15, 2013 in the Council Chambers at 7:10 p.m.

PROJECT SCOPE

This is a request for preliminary plat approval of a two-lot subdivision with an existing townhouse building. The subject property is approximately 0.354-acres. The townhouse received Architectural Review approval in 2012 and the construction of the townhouse was completed on January 22, 2013. The owner has the units for sale and the prospective purchasers are interested in owning the units along with the land.



A. Owner/Applicant:
Bevill Limited Partnership
PO Box 4713
Whitefish, MT 59937

Technical Assistance:
F&H Land Surveying
Craig Wickham
PO Box 114
Whitefish, MT 59937

B. Location:
The property is located on the east side of Colorado Avenue between Aspen Grove Street and Cedar Street. The property is addressed as 463 & 465 Colorado Avenue. The property can be legally described as Amended Plat of a Portion of Lot 6, Block 5 Whitefish Townsite Company's Five Acre Tracts in Section 25, Township 31N, Range 22W, P.M.M., Flathead County, Montana.

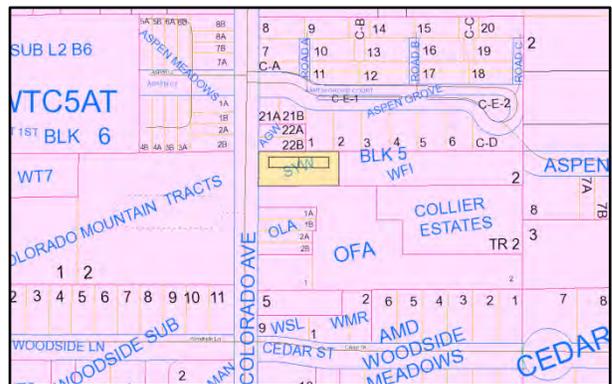


Exhibit 1

C. Size:

The subject property is 0.345-acres in size and the lots are 7,914 and 7,491 square feet.

D. Existing Land Use and Zoning:

WR-2, Two-Family Residential District, intended for residential purposes to provide for one and two-family homes in an urban setting connected to all municipal facilities and services.

E. Adjacent Land Uses and Zoning:

North:	residential	WR-2/PUD
West:	residential	WR-3
South:	residential	WR-2
East:	vacant	WR-2

F. Utilities/Services:

The proposed subdivision lies within the immediate service area of the City of Whitefish. Services will be provided by the following:

Sewer service:	City of Whitefish
Water service:	City of Whitefish
Solid Waste:	North Valley Refuse
Gas:	Northwest Energy
Electric:	Flathead Electric Co-op (underground)
Phone:	CenturyLink (underground)
Police:	Whitefish Police Department
Fire:	Whitefish Fire Department
Schools:	Whitefish School District #44

REVIEW AND FINDINGS OF FACT

This application is reviewed as a minor subdivision in accordance with the Whitefish Subdivision Regulations.

A. Effects on Health and Safety:

Fire: The Whitefish Fire Marshal reviewed the proposed project and had no comments at this time.

Flooding: Pursuant to the FEMA flood insurance rate map, community panel 30029 1090 G, the property is outside the 100-year floodplain and is located within Zone X – areas determined to be outside the 0.2% annual chance floodplain

Access: Each lot will have access via a new internal private street ending in a suitable emergency turn around. This driveway and private street are currently not paved due to the utility installation, but it needs to be paved and meet emergency access prior to final plat per the zoning regulations.



Finding 1: The proposed subdivision will not have a negative effect on public health and safety. The fire department has reviewed the proposal for conformance with fire code; the property is not located within a mapped floodplain; access is proposed to be off a new private road onto an existing city street; each lot will have access onto the new private street; and the amount of traffic generated will not have an effect on the local streets.

B. Effects on Wildlife and Wildlife Habitat:

The site is located entirely within the urban confines of the City of Whitefish. The area is not mapped by the Montana Department of Fish, Wildlife and Parks as important winter range for big game; however, deer and other animals use the site.

Finding 2: The proposed subdivision is within the urban area and is not mapped as a winter range for big game therefore the subdivision should not have a negative effect on wildlife or wildlife habitat.

C. Effects on the Natural Environment:

Surface and groundwater: Municipal water and sewer facilities will serve the proposed lots.

Drainage: An engineered storm drainage plan is required, as the resulting impervious surface will result in more than 5,000 square feet. The plan should include a long-term maintenance plan for Homeowners' Association implementation.

Slopes: The property is flat.

Finding 3: The subdivision is not located within any environmentally sensitive areas. No effects on surface or groundwater are anticipated and there are no slopes on the property. An engineered storm water plan shall be reviewed by the city, as 5,000 square feet or more impervious area will be created.

D. Effects on Local Services:

Water and Sewer: City water and sewer have been extended to serve the lots within the development. The existing service line to Lot 2 will need to be abandoned and connected to the sewer main prior to final plat.

Roads: The project is served by an internal private street ending in a suitable emergency turn-around.

Schools: The property is within the Whitefish School District and this subdivision will not have a significant impact on the school district.

Parks and Open Space: Subdivisions creating one additional lot are exempt from parkland dedication requirements and no parkland is being proposed. Impacts to the parks in the area as a result of this subdivision will not be significant.

Police: This property is currently inside the city limits of Whitefish and would therefore be served by the City of Whitefish Police. The proposed development is not anticipated to impact the current level of service.

Fire Protection: This property is currently served by the Whitefish Fire Department. The proposed development is not anticipated to impact the current level of service.

Solid Waste: Solid waste will be handled by the North Valley Refuse and taken to the Flathead County Landfill. There is sufficient capacity within the landfill to accommodate the additional solid waste generated from this subdivision.

Medical Services: Ambulance service is available from the fire department and ALERT helicopter service. North Valley Hospital is approximately 3 miles from the subdivision site.

Finding 4: The proposed subdivision does not pose any negative effects on local services and facilities. A sewer service line needs to be abandoned and connected to the main. Additional services such as police and schools are not anticipated to be effected as the property is located in an urban area.

E. Effects on Agriculture and Agricultural Water User Facilities:

The property is within the City limits and is not agricultural land.

Finding 5: No effects are anticipated upon agriculture and agricultural water user facilities since the subdivision is located within city limits and will utilize the city water system.

F. Compliance with Growth Policy:

The Whitefish City Growth Policy designates this area as Urban.

Urban: This is generally a residential designation that defines the traditional neighborhoods near downtown Whitefish, but it has also been applied to a second tier of neighborhoods both east of the river and in the State Park Road area. Residential unit types are mostly one and two-family, but town homes and lower density apartments and condominiums are also acceptable in appropriate locations using the PUD. Densities generally range from 2 to 12 units per acre. Zoning includes WLR, WR-1, and WR-2.

Finding 6: The density and zoning of the subject property falls within the guidelines for the Urban designation according to the Whitefish Growth Policy.

G. Compliance with Zoning

Finding 7: The proposed subdivision meets the requirements of the zoning regulations contained within Section 11 of the Whitefish City Code.

H. Compliance with the Whitefish Subdivision Regulations:

Finding 8: The proposed subdivision complies with the requirements of the subdivision regulations contained within Section 12 of Whitefish City Code.

I. Compliance with the Montana Subdivision and Platting Act:

Finding 9: The proposed subdivision complies with the Montana Subdivision and Platting Act, MCA 76-3.

RECOMMENDATION

It is recommended that the Whitefish City Council adopt the findings of fact within staff report #WPP 13-03 and **approve** the preliminary plat for Orchard Lane 2, as submitted by the applicant, subject to the following conditions:

1. The development of the subdivision shall be in substantial conformance with the approved preliminary plat.
2. The existing service line to Lot 2 will need to be abandoned and connected to the sewer main prior to final plat. (Engineering Standards, Chapter 4; Staff Report, Finding 4)
3. The private road and driveway shall be paved prior to final plat. (Whitefish Zoning Regulations, §11-6-3-1D; Staff Report, Findings 1 and 4)
4. The applicant shall submit a site specific drainage plan that shows how runoff water from the impervious surfaces will be retained on site. (Engineering Standards, Chapter 5; Staff Report, Finding 3)
5. 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. (Whitefish Subdivision Regulations, §12-4-30)
6. That a common off-street mail facility shall be provided by the developer and approved by the local post office. (Whitefish Subdivision Regulations, §12-4-24)
7. The following notes shall be placed on the final plat:
 - a. The internal road shown on the final plat are intended to be privately owned and maintained and open to the public. It is understood and agreed that these

internal roadways do not conform to City requirements for public roadways. Because of the road configuration, they are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadways by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadways will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus, the area encompassed by said private roadways will not be separately taxed or assessed by any government agency or public authority.

- b. That house numbers shall be posted on the house in a clearly visible location.
 - c. Garbage shall be stored in a secure location under the day of pick up or in a bear proof container pursuant to §4-5-4A.
 - d. All noxious weeds, as described by the Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner.
(Subdivision Regulations, Appendix D)
8. A Homeowners' Association shall be responsible for snow plowing the private road and maintaining the stormwater facility. The CC&Rs shall contain a maintenance plan for the facilities they are responsible. (Staff Report, Findings 1 and 3)
9. The preliminary plat is valid for a period of three years from the date of approval. (Whitefish Subdivision Regulations, §12-3-8)

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



June 20, 2013

Bevill Limited Partnership
Richard Bevill
PO Box 4713
Whitefish, MT 59937

RE: Sufficiency Review for Orchard Lane 2; (WPP 13-03)

Dear Mr. Bevill:

Pursuant to MCA 76-3-604(2)(a) and Whitefish Subdivision Regulations Section 12-3-4(B) we have determined your application:

- ✓ Contains sufficient detail to commence review of the application. Your application will be scheduled for City Council on July 15, 2013.

Is lacking required detail in the following Elements:

Until the above-mentioned items are submitted, no further review will occur on your project.

If you have any questions, please feel free to contact our office at 406-863-2410.

Sincerely,

A handwritten signature in black ink that reads "Wendy Compton-Ring".

Wendy Compton-Ring, AICP
Senior Planner

Exhibit 2



Element Review Preliminary Plat Application

RE: Element Review for: Orchard Lane 2

Pursuant to MCA 76-3604(1)(a) and Whitefish Subdivision Regulations Section 12-3-4(A) we have determined your application:

- ✓ Contains all the required Elements to begin a Sufficiency Review

Is missing the following Elements: _____

Until the above-mentioned items are submitted, no further review will occur on your project.

/s/ Wendy Compton-Ring, AICP, Senior Planner
Staff Signature

6-20-13
Date

Exhibit 3



Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Bevill Limited Partnership llc is proposing to subdivide one lot into two lots. The property is developed with a duplex, built to townhouse standards, and is zoned WR-2 (Two-Family Residential District). The property is located at 463 & 465 Colorado Avenue and can be legally described as Amended Plat of a Portion of Lot 6, Block 5, Whitefish Townsite Company's Five Acre Tracts in S25 T31N R22W.

You are welcome to provide comments on the project. Comments can be in written or email format. The City Council will hold a public meeting for the proposed project request on:

Monday, July 15, 2013
7:10 p.m.
Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearing. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, July 8, 2013, will be included in the packet to the Councilors. Comments received after the deadline will be summarized to the Councilors at the public hearing.

Exhibit 4

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS



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

File #: _____
 Date: _____
 Intake Staff: _____
 Date Complete: _____

MINOR PRELIMINARY PLAT APPLICATION

Schedule a Time to Submit the Application: _____
 (Date/Time)

FEE ATTACHED \$ 1,390
 (See most current fee schedule)

Project /Subdivision Name: Orchard Lane 2

- Initial Preliminary Plat
- Amendment to an Approved Preliminary Plat
- Change a Condition of Approval to an Approved Preliminary Plat (attach a narrative explaining which condition you are requesting to be changed and why the condition is no longer valid or warranted)
- Re-file of an Expired Preliminary Plat; date preliminary plat expired: _____

A. OWNER(S) OF RECORD:

Name: Bevill Limited Partnership Phone: (406)862-7071

Mailing Address: P.O. Box 4713

City, State, Zip: Whitefish, Mt 59937

Email:

christya@izettconsulting.com

APPLICANT (if different than above):

Name: Same Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

TECHNICAL/PROFESSIONAL:

Name: F&H Landsurveying, Inc. Phone: (406)862-2386

Mailing Address: P.O. Box 114

City, State, Zip: Whitefish, MT 59937

Email:

craigw@fandhsurveying.com

B. LEGAL DESCRIPTION OF PROPERTY: Street Address 463 & 465 Colorado Ave. Whitefish, MT

Assessor's Tract No.(s) 0014364 & 0014365 Lot No(s) 1 Block # N/A

Subdivision Name Amended Plat of a Portion of Lot 6, Block 5 Whitefish Townsite Company's Five Acre

Tracts 1/4 Sec NW1/4 SE1/4 Section 25 Township 31 Range 22

EXHIBIT

06-13-13 A09:57 IN

5₁

C. GENERAL DESCRIPTION OF SUBDIVISION:

ZONING DESIGNATION: WR-2

If proposing to change the underlying zoning, proposed zoning: N/A

CRITICAL AREAS ON-SITE OR NEARBY: N/A

- Lake
- Wetlands
- Streams
- Stormwater Conveyance
- High Groundwater
- Slopes 10-30%
- Slopes 30%+
- Floodplain

PARKLAND/OPEN SPACE PROPOSAL: The following information is required to show how the project meets the parkland dedication requirements of the subdivision regulations (Section 12-4-10). A recommendation from the Park Board is required to be submitted along with the application, unless exempted under the subdivision regulations 12-4-10(C). N/A

- Date of Parks Board Meeting (prior to submitting an application): _____
- Market Value before Improvements: _____
- Total Acreage in Parks, Open Spaces and/or Common Areas: _____

LOTS AND ACREAGE:

Total Acreage in Subdivision: 0.354 Acres Number of Lots or Rental Spaces: 2

Maximum Size of Lots or Spaces: 0.182 Acres Minimum Size of Lots or Spaces: 0.172 Acres

Total Acreage in Lots: 0.354 Acres Total Acreage in Streets or Roads: N/A

PROPOSED USE(S) AND NUMBER OF ASSOCIATED LOTS/SPACES:

Single Family: _____ Townhouse: X Mobile Home Park: _____ Duplex: _____ Apartment: _____

Recreational Vehicle Park: _____ Commercial: _____ Industrial: _____

Planned Unit Development: _____ Condominium: _____ Multi-Family: _____ Other: _____

IMPROVEMENTS TO BE PROVIDED:

Roads: Gravel Paved Curb Gutter Sidewalks Alleys Other (explain): _____

Water System: Individual Multiple User Neighborhood Public Other (explain): _____

Sewer System: Individual Multiple User Neighborhood Public Other (explain): _____

Other Utilities: Cable TV Telephone Electric Gas Other (explain): _____

Solid Waste: Home Pick Up Central Storage Contract Hauler Owner Haul

Mail Delivery: Central Individual

Fire Protection: Hydrants Tanker Recharge

Drainage System: _____

D. Application Contents:

All applicable items required by Appendix B: Preliminary Plat Submittal Requirements¹ of the Whitefish Subdivision Regulations must be submitted to the Whitefish Planning & Building Department with the application for preliminary plat, including the following:

Attached

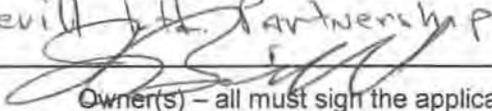
- N/A Preliminary Plat Waiver Application
- ¹⁰ 20 copies of the preliminary plat
- One reduced copy of the preliminary plat not to exceed 11" x 17"
- Electronic version of plat such as .pdf
- One reproducible set of supplemental information.
- Certified adjacent owners list for properties within 150-feet of subject site
- N/A Any additional information requested during the pre-application process
- Documentation from public records demonstrating the subdivision is a minor
- N/A Fair Market Appraised Value
- N/A Recommendation from the Parks Board – unless exempt 12-4-10(C)
- \$100.00 deposit for sign to be posted on-site during the duration of the public process (submit a separate check, which will be returned to you after you return the sign to the Planning Office)

When all application materials are submitted to the Planning & Building Department, and the staff finds the application is complete, the staff will schedule the subdivision for a public meeting before the City Council. The Council must act within 60 working days or 80 working days if the subdivision has 50 or more lots once an application is determined to be complete pursuant to Section 12-3-5 of the Subdivision Regulations.

E. VARIANCES:

ARE ANY VARIANCES TO THE SUBDIVISION REGULATIONS BEING REQUESTED? Yes/No
If yes, please complete the Variance Section (attached) and submit the applicable fee.

I hereby certify under penalty of perjury and the laws of the State of Montana the information submitted herein, on all other submitted forms, documents, plans or any other information submitted as a part of this application, to be true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with this application be untrue, I understand that any approval based thereon may be rescinded, and other appropriate action taken. The signing of this application signifies approval for the Whitefish Planning & Building staff to be present on the property for routine monitoring and inspection during the approval and development process.

Bevill Partnership

Owner(s) – all must sign the application

6/12/13
(Date)

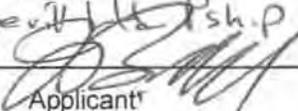
Owner(s) – all must sign the application

(Date)

Applicant – if different than above

(Date)

I understand I am responsible for maintaining the public notice sign on the subject property during the entire public process. I understand I will forfeit my \$100.00 deposit, if I do not return the public notice sign to the Planning & Building Department in good condition after the public review.

Bevill Partnership

Applicant

6/12/13
(Date)

¹ An environmental assessment is not required for a the first minor from a tract of record

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This declaration made this ____ day of _____, 2013 by J. Richard Bevill, of P.O. Box 4713, Whitefish, Montana 59937, hereinafter referred to as "DECLARANT", whether one or more,

WHEREAS, Declarant is the owner of certain real property located in Flathead County, Montana, as hereinafter described below in ARTICLE I below, and

WHEREAS, Declarant is desirous of subjecting said real property to the covenants, conditions and restrictions hereinafter set forth, each of which is and are for the benefits of said property and for each owner thereof, and shall inure to the benefit of and pass with the said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof;

NOW, THEREFORE, the Declarant hereby declares that the real property hereinafter described is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth;

**ARTICLE I
PROPERTY**

The real property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth, is located at 463 & 465 Colorado Avenue, Whitefish in Flathead County, Montana, and such additional Property as may be added later by the Declarant or President of the Association, as more particularly described as:

Tract 1 of the Amended Plat of a portion of Lot 6 in Block 5 of Whitefish Townsite Company's Five Acre Tracts, Flathead County, Montana.

**ARTICLE II
DEFINITIONS**

1. "Owner" shall mean the record owner of a fee simple title to any lot which is a part of the property and shall include contract buyers. Each lot, for voting purposes, shall be deemed to have one vote per lot, notwithstanding the number of owners listed as owners of fee simple title.

2. "Property" shall mean the real property described in ARTICLE I above.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

3. “Association” shall mean the association of all the lot owners on the property described hereinabove and its/their successors and assigns in its/their capacity to oversee, administer and enforce these Covenants, Conditions and Restrictions. The Association may also be referred to herein as the “Orchard Lane Association, Inc.”, which shall be formed by the Declarant as a Montana Non-Profit, Mutual Benefit Corporation.

4. “Member” shall mean an Owner of a Lot which is subject to assessment hereunder, in the context of a Lot Owner’s membership of the “Association.”

5. Unit” shall mean the area inside the exterior building and separated by a separation wall, and intended for the use and occupancy. Units shall not be deemed “common properties” or “common areas.”

ARTICLE III PURPOSE

The Property is subject to the covenants, conditions and restrictions hereby declared to insure the best use and the most appropriate development and improvement of same, to protect the owners of lots involved as will appreciate the value of their property; and to adequately provide for a high quality of improvements on said property and thereby enhance the value of improvements made by purchasers.

ARTICLE IV GENERAL RESTRICTIONS

1. Land Use and Building Type: The property must be used for one (1) single family residence. The property may also be use for a home office or other home occupation limited to the current City of Whitefish and Flathead County zoning restrictions.

2. Architectural Requirements: All dwelling houses, garages, and any other structures shall be so located and designed to comply with current building exterior architectural scheme. No exterior addition to or change or alteration inside the building may be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to, and approved in writing by the Super Square Feet Owners Association.

3. Landscaping: Landscaping to be located outside on the Property must obtain explicit written consent and authority of Super Square Feet Owners Association.

4. Storage on Property: No vehicles, equipment, supplies, agricultural supplies or products, or items of any kind, may be stored outside the parameter of the building without written consent and authority of Super Square Feet Owners Association.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS.
BY OWNER

5. Nuisance: No noxious or offensive activity shall be carried on or permitted upon the Property, nor shall anything be done thereon which is or may become an annoyance or nuisance to Super Square Feet Owners Association. By way of illustration and not of limitation, the discharge of fire arms and driving of motorcycles or snowmobiles off road and off a person's property may be a nuisance within the meaning of this paragraph.

6. Animals. No livestock or poultry of any kind shall be raised, bred, or kept on or within any Lot, or surrounding areas. Lot owners or tenants may keep pets, provided however that no animal may be kept on the Property which results in any annoyance to other Lot owners or tenants in the vicinity.

7. Trash. All rubbish, trash and garbage shall be regularly removed from each Lot.

8. Parking. No parking shall be allowed except in designated parking areas, driveways or garages, and parking is subject to the terms and conditions set forth in the Declaration of Lot Ownership.

9. Storm Drainage. Each Lot Owner has a duty to manage and maintain the storm drainage system from and around the particular Lot.

ARTICLE V **PARTY WALLS**

1. General Rules to Law to Apply. Each wall which is built as a part of the original construction of a Building upon the Property and placed on the dividing line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of Lots which are separated by said party wall. Declarant reserves and each lot owner grants a reciprocal easement for access to the premises of the other for the purpose of performing repair or maintenance work to the party wall, sewer lift pump, mechanical equipment and any utility services contained therein.

3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Lot Owner who has use of the wall may restore it, and if the other Lot Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the

right of any such Lot Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Protection from Weather. Notwithstanding any other provision of this Article, any Lot Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Right to Contribution Runs with Land. The right of any Lot Owner to contribution from any other Lot Owner under this Article shall be appurtenant to the land and shall pass to such Lot Owner's successors in title.

ARTICLE VI UTILITIES

1. Rights and Duties of Owners. The rights and duties of the Lot Owners regarding sanitary sewer, water, electricity, gas, telephone lines and facilities shall be governed as follows:

a. Easement. Wherever sanitary sewer or water connections or electricity, gas, telephone or other similar lines or pipes are installed upon the Property, which connections, lines, or pipes, or any portion thereof lie in, over or under Lots owned by other than an Owner of the Lot served by said connections, lines or pipes, the Owners of the Lot served shall have the right, and are hereby granted an easement to the extent necessary therefor, at reasonable hours, to enter upon the Lot within the property in or upon which said connections, lines or pipes, or any portion thereof, lie, in order to repair, replace and generally maintain said connections, lines and pipes, at the sole expense of the Owner of the lot served.

2. Resolution of Dispute. In the event of a dispute between Lot Owners with respect to the repair or rebuilding of said connections, lines or pipes, or with respect to the sharing of the cost therein, then, upon written request of one of such lot Owners, addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive.

3. Declarant's Easement. Easements over the Property for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines, pipes and facilities, and for drainage facilities, as shown on the recorded plat of the Property and as the Declarant, in its sole discretion may hereafter determine may be required or needed to service the Property, or any Lots, are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE VII ASSOCIATION MEMBERSHIP

Membership. The Association shall have as Members the Owners of each of the Lots. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Members shall participate in a manner prescribed by this Declaration and the Articles of Incorporation and Bylaws of the Association, and subsequent resolutions of the Association's Board of Directors. The Association's purpose is to provide services and to the Lot Owners as it may determine are necessary, from time to time.

ARTICLE VIII
ASSOCIATION VOTING RIGHTS

Allocation of Voting Rights. Each Lot Owner shall be entitled to one Voting Unit per dwelling lot, notwithstanding the number of owners listed as owners of fee simple title. When more than one person holds an interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as those members may determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IX
COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each subsequent Owner of any Lot, as evidenced by recordation of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association dues or assessments as determined by the Board of Directors.

2. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment or charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) per annum. The association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien against the property. No Lot Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the common area or abandonment of his Lot. Sale or transfer of any Lot shall not affect the lien for assessments or charges.

ARTICLE X
LEGAL EFFECT

1. Term: The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

2. Amendment: The Declaration may only be amended, supplemented or altered with the written consent of all Owners of the Property and subject to these covenants and recordation of said amendments in the office of the Clerk and Recorder of Flathead County, Montana.

3. Enforcement: Declarant and owners of properties subject to these covenants shall have standing to enforce by proceedings at law and equity the covenants, conditions and restrictions imposed by the provisions of this declaration. In recognition of the nature of the covenants and rights to be protected, all owners aggrieved may utilize injunctive relief in addition to other remedies available at law.

Failure of any authorized parties to enforce the covenants and restrictions shall in no event be deemed a waiver of the right to do so thereafter. In any such action brought, the prevailing party shall be entitled to reasonable attorneys fees.

4. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.

5. Essence/Construction: These covenants shall be construed pursuant to the laws of Montana. Same are binding upon the heirs, successors and interests of the parties hereto and time is of the essence hereof.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

J. RICHARD BEVILL

STATE OF MONTANA)
 :SS
County of Flathead)

On this ____ day of _____, 2013, before me, the undersigned Notary Public for the State of Montana, personally appeared J. RICHARD BEVILL, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

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

(SEAL)

Notary Public for the State of Montana
Residing at:
My Commission Expires:

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER



201300000713
Page: 8 of 26
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Recording Requested by and Return to:
Measure, Sampsel, Sullivan & O'Brien, P.C.
P.O. Box 918
Kalispell, MT 59903-0918

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This declaration made this 3rd day of January, 2013 by J. Richard Bevill, of P.O. Box 4713, Whitefish, Montana 59937, hereinafter referred to as "DECLARANT", whether one or more,

WHEREAS, Declarant is the owner of certain real property located in Flathead County, Montana, as hereinafter described below in ARTICLE I below, and

WHEREAS, Declarant is desirous of subjecting said real property to the covenants, conditions and restrictions hereinafter set forth, each of which is and are for the benefits of said property and for each owner thereof, and shall inure to the benefit of and pass with the said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof;

NOW, THEREFORE, the Declarant hereby declares that the real property hereinafter described is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth;

**ARTICLE I
PROPERTY**

The real property which is and shall be held, transferred, sold and conveyed subject to the covenants, conditions and restrictions hereinafter set forth, is located at 463 & 465 Colorado Avenue, Whitefish in Flathead County, Montana, and such additional Units as may be added later by the Declarant or President of the Association, as more particularly described as:

Tract 1 of the Amended Plat of a portion of Lot 6 in Block 5 of Whitefish Townsite Company's Five Acre Tracts, Flathead County, Montana.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

Page 1

20130000713
Page: 10 of 26
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ARTICLE II **DEFINITIONS**

1. "Owner" shall mean the record owner of a fee simple title to any unit which is a part of the property and shall include contract buyers. Each unit, for voting purposes, shall be deemed to have one vote per unit, notwithstanding the number of owners listed as owners of fee simple title.
2. "Property" shall mean the real property described in ARTICLE I above.
3. "Association" shall mean the association of all the unit owners on the property described hereinabove and its/their successors and assigns in its/their capacity to oversee, administer and enforce these Covenants, Conditions and Restrictions. The Association may also be referred to herein as the "Super Square Feet Owners Association, Inc.", which shall be formed by the Declarant as a Montana Non-Profit, Mutual Benefit Corporation.
4. "General Common Element" shall mean the land on which the building is located, the foundation, columns, girders, beams, supports, main walls, installations of central services such as power, light, gas, hot and cold water and heating, air conditioning, and general apparatus and installations existing for common use, and all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use, as set forth as general common elements in §70-23-102(7)(b)-(g), M.C.A.
5. "Member" shall mean an Owner of a Unit which is subject to assessment hereunder, in the context of a Unit Owner's membership of the "Association."
6. "Unit" shall mean the area inside the exterior building and separated by a separation wall, and intended for the use and occupancy. Units shall not be deemed "common properties" or "common areas."

ARTICLE III **PURPOSE**

The Property is subject to the covenants, conditions and restrictions hereby declared to insure the best use and the most appropriate development and improvement of same, to protect the owners of units involved as will appreciate the value of their property, and to adequately provide for a high quality of improvements on said property and thereby enhance the value of improvements made by purchasers.

ARTICLE IV **GENERAL RESTRICTIONS**

1. Land Use and Building Type: The property must be used for one (1) single family residence. The property may also be use for a home office or other home occupation limited to

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

Page 2



the current City of Whitefish and Flathead County zoning restrictions.

2. Architectural Requirements: All dwelling houses, garages, and any other structures shall be so located and designed to comply with current building exterior architectural scheme. No exterior addition to or change or alteration inside the building may be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to, and approved in writing by the Super Square Feet Owners Association.

3. Landscaping: Landscaping to be located outside on the Property must obtain explicit written consent and authority of Super Square Feet Owners Association.

4. Storage on Property: No vehicles, equipment, supplies, agricultural supplies or products, or items of any kind, may be stored outside the parameter of the building without written consent and authority of Super Square Feet Owners Association.

5. Nuisance: No noxious or offensive activity shall be carried on or permitted upon the Property, nor shall anything be done thereon which is or may become an annoyance or nuisance to Super Square Feet Owners Association. By way of illustration and not of limitation, the discharge of fire arms and driving of motorcycles or snowmobiles off road and off a person's property may be a nuisance within the meaning of this paragraph.

6. Animals: No livestock or poultry of any kind shall be raised, bred, or kept on or within any Unit, or surrounding areas. Unit owners or tenants may keep pets, provided however that no animal may be kept on the Property which results in any annoyance to other Unit owners or tenants in the vicinity.

7. Trash: All rubbish, trash and garbage shall be regularly removed from each Unit.

8. Parking: No parking shall be allowed except in designated parking areas, driveways or garages, and parking is subject to the terms and conditions set forth in the Declaration of Unit Ownership.

9. Storm Drainage: Each Unit Owner has a duty to manage and maintain the storm drainage system from and around the particular Unit.

ARTICLE V PARTY WALLS

1. General Rules to Law to Apply: Each wall which is built as a part of the original construction of a Unit upon the Property and placed on the dividing line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

Page 3

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Page: 13 of 38
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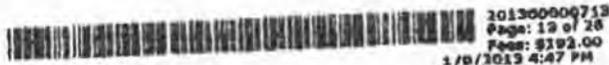
2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners of Units which are separated by said party wall. Declarant reserves and each unit owner grants a reciprocal easement for access to the premises of the other for the purpose of performing repair or maintenance work to the party wall, sewer lift pump, mechanical equipment and any utility services contained therein.
3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has use of the wall may restore it, and if the other Unit Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. Protection from Weather. Notwithstanding any other provision of this Article, any Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
5. Right to Contribution Runs with Land. The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

ARTICLE VI UTILITIES

1. Rights and Duties of Owners. The rights and duties of the Unit Owners regarding sanitary sewer, water, electricity, gas, telephone lines and facilities shall be governed as follows:
 - a. Easement. Wherever sanitary sewer or water connections or electricity, gas, telephone or other similar lines or pipes are installed upon the Property, which connections, lines, or pipes, or any portion thereof lie in, over or under Units owned by other than an Owner of the Unit served by said connections, lines or pipes, the Owners of the Unit served shall have the right, and are hereby granted an easement to the extent necessary therefor, at reasonable hours, to enter upon the Unit within the property in or upon which said connections, lines or pipes, or any portion thereof, lie, in order to repair, replace and generally maintain said connections, lines and pipes, at the sole expense of the Owner of the unit served.
 - b. Common Connections Lines or Pipes. Wherever sanitary sewer or water connections, or electricity, gas, telephone lines or pipes, are installed within the Property, which connections serve more than one Unit, the Owner of each Unit served by said connections, lines, pipes, shall be entitled to the full use and enjoyment of such portions of said connections, lines and pipes, as serve a Unit. Owners served by common lines or pipes shall equally share the cost of maintenance and repair of those common lines or pipes.

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
BY OWNER

Page 4



2. Resolution of Dispute. In the event of a dispute between Unit Owners with respect to the repair or rebuilding of said connections, lines or pipes, or with respect to the sharing of the cost therein, then, upon written request of one of such unit Owners, addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive.

3. Declarant's Easement. Easements over the Property for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines, pipes and facilities, and for drainage facilities, as shown on the recorded plat of the Property and as the Declarant, in its sole discretion may hereafter determine may be required or needed to service the Property, or any Units, are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE VII ASSOCIATION MEMBERSHIP

Membership. The Association shall have as Members the Owners of each of the Units. Membership shall be appurtenant to and shall not be separated from ownership of any Unit. Members shall participate in a manner prescribed by this Declaration and the Articles of Incorporation and Bylaws of the Association, and subsequent resolutions of the Association's Board of Directors. The Association's purpose is to control, maintain and improve the common area and exteriors of the Units, and to provide services and facilities for those purposes to the Unit Owners as it may determine are necessary, from time to time.

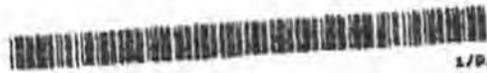
ARTICLE VIII ASSOCIATION VOTING RIGHTS

Allocation of Voting Rights. Each Unit Owner shall be entitled to one Voting Unit per dwelling unit, notwithstanding the number of owners listed as owners of fee simple title. When more than one person holds an interest in any unit, all such persons shall be members and the vote for such unit shall be exercised as those members may determine, but in no event shall more than the allocated Voting Units be cast with respect to any Unit.

ARTICLE IX COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Unit owned within the Property, hereby covenants, and each subsequent Unit Owner of any Unit, as evidenced by recordation of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association the following:

- a. Annual assessments of charges, which includes, but is not limited to, a reserve for certain capital improvements as well as the Association's pro rata share of



20130000713
Page: 14 of 38
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Common Area Expenses. The Declarant and the Board of Directors have the right to charge annual assessments in twelve (12) equal monthly installments, as well as charges incurred as set forth herein.

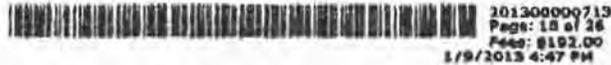
- b. Amounts sufficient to indemnify and hold the Association harmless from all obligations undertaken or incurred by the Association at or on account of an individual Unit Owner's special request and to repay the Association for all expenditures on account thereof;
- c. Amounts sufficient to reimburse the Association for the cost of performing any obligation of a Unit Owner which he or she has failed to timely pay or perform. The aforesaid obligation, together with interest, court costs, reasonable attorney's fees and all other collection expenses, shall be a charge and a continuing lien upon the Unit against which each such obligation is paid, or with reference to which each such charge is incurred. Each assessment or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the personal who was the Owner of such Unit at the time when the assessment fell due or charge was incurred; and,
- d. Assessments made by the Association for taxes and for the maintenance and improvement of the common areas shall be a lien against the Units, and may be enforced by judicial process, including the right to recover all costs of collection and reasonable attorneys fees.

2. Purpose of Assessments. The assessments levied by the Association shall be used for the improvements and maintenance of the common area.

3. Annual Assessments. The annual assessments shall be determined at the sole discretion of the Board of Directors of the Association, provided, however, the annual assessments to any individual Unit Owner shall never be less than the amount of common area expense incurred by the Association plus the amount of any charges due as the result of the providing of utility services as set forth herein.

4. Apportionment of Assessments. All utility charges shall be apportioned on the basis of actual submetered use of electricity by each Unit. All other assessments shall be apportioned based on the square footage of each Unit as it relates to the total square footage of the Property. Such assessments shall include an adequate reserve fund for taxes, maintenance, repairs and replacement of those elements of the common property that must be replaced on a periodic basis, in order that such costs may be collected in regular installments rather than by special assessment.

5. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate based on square footage of each Unit or by usage if separately metered, such as for separately metered utilities. This provision shall not preclude the Association from making a



separate or additional charge to a Unit Owner on account of special services or benefits rendered, conferred or obtained.

6. Date of Commencement of Annual Assessments: Dues. The annual assessments provided for herein shall commence as to all Units on the first day of the month following sale of the final Unit. The annual assessments shall be divided into twelve (12) equal monthly payments. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment and of any special charges shall be sent to every Unit Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth when the assessments and charges on a specified Unit have been paid.

7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment or charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) per annum. The association may bring an action at law against the Unit Owner personally obligated to pay the same, or foreclose the lien against the property. No Unit Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the common area or abandonment of his Unit. Sale or transfer of any Unit shall not affect the lien for assessments or charges.

ARTICLE X LEGAL EFFECT

1. Term: The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

2. Amendment: The Declaration may only be amended, supplemented or altered with the written consent of all Owners of the Property and subject to these covenants and recordation of said amendments in the office of the Clerk and Recorder of Flathead County, Montana.

3. Enforcement: Declarant and owners of properties subject to these covenants shall have standing to enforce by proceedings at law and equity the covenants, conditions and restrictions imposed by the provisions of this declaration. In recognition of the nature of the covenants and rights to be protected, all owners aggrieved may utilize injunctive relief in addition to other remedies available at law.

Failure of any authorized parties to enforce the covenants and restrictions shall in no event be deemed a waiver of the right to do so thereafter. In any such action brought, the prevailing party shall be entitled to reasonable attorneys fees.

201300000713
Page: 10 of 26
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4. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the remaining provisions, which shall remain in full force and effect.

5. Essence/Construction: These covenants shall be construed pursuant to the laws of Montana. Same are binding upon the heirs, successors and interests of the parties hereto and time is of the essence hereof.

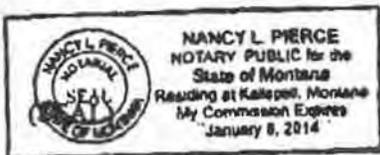
IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

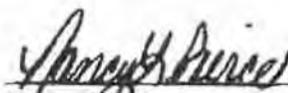

J. RICHARD BEVILL

STATE OF MONTANA)
 :SS
County of Flathead)

On this 3rd day of January, 2013, before me, the undersigned Notary Public for the State of Montana, personally appeared J. RICHARD BEVILL, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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




Nancy Pierce
Notary Public for the State of Montana
Residing at: Kalispell, Montana
My Commission Expires: 1/8/2014



First American Title

Title Insurance Commitment

BY

First American Title Insurance Company

Schedule A

FIRST COMMITMENT

File No.: 461747-WT

- 1. Commitment Date : **April 19, 2013 at 7:30 A.M.**
- 2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
--	----------------------	-----------------------

- X ALTA Standard Owner's Policy of Title Insurance (6-17-06)
ALTA Homeowner's Policy of Title Insurance (rev. 1-1-08)

(Premium amount reflects \$426.31 credit)	\$ 217,000.00	\$ 427.00
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Proposed Insured:
Matthew D. Darnick and Elizabeth A. Darnick

- ALTA Loan Policy of Title Insurance (6-17-06)
ALTA Expanded Coverage Residential Loan Policy (rev. 1-1-08)

(Premium amount reflects \$no available credit)	\$ 0.00	\$
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Proposed Insured:

Endorsements:

Total Title Fees:	\$
Underwriting Fees:	\$
Agent Title Fees:	\$

- 3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date, by:

Bevill Limited Partnership

4. The land referred to in Commitment is described as follows:

UNIT 465 OF SUPER SQUARE FEET TOWNHOMES, LOCATED ON TRACT 1 OF THE AMENDED PLAT OF A PORTION OF LOT 6 IN BLOCK 5 OF WHITEFISH TOWNSITE COMPANY'S FIVE ACRE TRACTS, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

Commonly known as: 465 Colorado Avenue, Whitefish, MT 59937



By:

Authorized Countersignature

(This Schedule A valid only when Schedule B is attached.)



First American Title

Title Insurance Commitment

BY

First American Title Insurance Company

Schedule BI

REQUIREMENTS

File No.: 461747-WT

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) **As required by Buyers.**
- (f) If any document in the completion of this transaction is to be executed by an attorney-in-fact, the Power of Attorney must be submitted for review prior to closing.
- (g) You must give us the following information:
 - 1. Any off record leases, surveys, etc.
 - 2. Statement(s) of identity, all parties.
 - 3. Other.
- (h) We require the attached Seller/Borrower Affidavit be completed prior to recording.
- (i) Terms, conditions, and provisions of the general partnership agreement and any amendments thereto, of Bevill Limited Partnership. We require proof of the power and authority of the party or parties who plan to execute the forthcoming conveyance or mortgage on behalf of said partnership.



First American Title

Title Insurance Commitment

BY

First American Title Insurance Company

Schedule BII

EXCEPTIONS

File No.: 461747-WT

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any right, title or interest in any minerals, mineral rights or related matters, including but not limited to oil, gas, coal and other hydrocarbons, sand, gravel or other common variety materials, whether or not shown by the public records.
8. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Flathead County.

9. 2013 taxes and special assessments are a lien; amounts not yet determined or payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	1st Half	2nd Half	Parcel Number	Affects
2012	\$535.66 PAID	\$535.62 PAID	74-0375500	Premises and other property

NOTE: The Assessor Number for the Tax Year 2013 will change to 74-0014365.

10. Easement for dam and ditch to divert waters of Second Creek granted to Whitefish Water Supply, recorded August 10, 1918 in Book 129, Page 111.
11. Easement for water, sewer line and septic tank granted to Nettie Larter, recorded November 1, 1970 in Book 521, Page 168.
12. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed by Certificate of Survey(s) No. 5053, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restriction violate 42 USC 3604 (c).
13. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed on the recorded plat of said subdivision, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
14. Notice of Right to Claim a Lien
Executed by: Sliters Ace Limber and Building Supply
Recorded: December 3, 2012 as Instrument No. 2012-00028730.
15. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by Declaration of Unit Ownership of Super Square Feet Owners Association Recorded: January 9, 2013, Instrument No. 2013-00000713, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin, unless and only to the extent that the covenant, condition or restriction (a) is exempt under title 42 United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.
16. Unrecorded leaseholds; rights of parties in possession, rights of secured parties, vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.

INFORMATIONAL NOTES

- A. **In addition to standard County recording fees, an electronic filing fee of \$5.00 per document may be charged.**

ARTICLE G. WR-2 TWO-FAMILY RESIDENTIAL DISTRICT

11-2G-1: INTENT AND PURPOSE:

The WR-2 district is intended for residential purposes to provide for one-family and two-family homes in an urban setting connected to all municipal utilities and services. (Ord. 02-30, 6-16-2003)

11-2G-2: PERMITTED USES:

- * Home occupations (see special provisions in section [11-3-13](#) of this title).
- * Homeowners' parks.
- * Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- * Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- * Residential:
 - * Class A manufactured homes.
 - * Daycare (registered home, 5 to 12 individuals).
 - * Guest and servant quarters.
 - * Manufactured home subdivisions (5 acre minimum size).
 - * Single-family or two-family (duplex) dwellings.
 - * Sublots (see special provisions in subsection [11-3-14C](#) of this title). (Ord. 02-30, 6-16-2003; amd. Ord. 05-25, 11-21-2005; Ord. 09-09, 8-3-2009)

11-2G-3: CONDITIONAL USES:

- * Accessory apartments.
- * Bed and breakfast establishments (see special provisions in section [11-3-4](#) of this title).
- * Churches or similar places of worship, including parish houses and parsonages.
- * Daycare centers (more than 12 individuals).
- * Dwelling groups or clusters.
- * Guesthouses, only on lots over ten thousand (10,000) square feet.
- * Livestock, subject to an administrative conditional use permit.
- * Private recreational facilities and structures.

* Professional artist studio/gallery. (Limited to Baker Avenue between Sixth Street and Tenth Street. See special provisions in section [11-3-15](#) of this title.)

* Professional offices. (Limited to Baker Avenue between Sixth Street and Tenth Street. See special provisions in section [11-3-16](#) of this title.)

* Schools (K - 12).

*Type I and type II community residential facilities. (Ord. 02-30, 6-16-2003; amd. Ord. 05-25, 11-21-2005; Ord. 08-22, 10-20-2008; Ord. 09-09, 8-3-2009)

11-2G-4: PROPERTY DEVELOPMENT STANDARDS:

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

Minimum lot area:	
Single-family dwelling	6,000 square feet
Two-family dwelling	7,200 square feet
Attached one-family dwelling on a subplot	3,600 square feet
Minimum lot width	50 feet
Minimum subplot width	25 feet
Minimum yard spaces:	
Front	25 feet
Side	10 feet each
Rear	20 feet

Maximum height	35 feet
Permitted lot coverage	40 percent maximum
Off street parking	See chapter 6 of this title
Accessory buildings	Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front $\frac{1}{2}$ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure
Landscaping	See chapter 4 of this title (single-family uses exempted)

(Ord. 02-30, 6-16-2003; amd. Ord. 05-25, 11-21-2005)

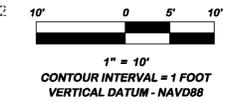
Owner: Bevill Limited Partnership
 Date: 5/30/13
 Job# 13-047 Bevill
 For: Dick Bevill

F & H LAND SURVEYING, INC.
 144 Second Street East
 P.O. Box 114
 Whitefish, MT. 59937
 406-862-2386

PRELIMINARY PLAT OF ORCHARD LANE 2 A SUBDIVISION IN NW1/4 SE1/4 SECTION 25, T.31N., R.22W., P.M.,M. FLATHEAD COUNTY, MONTANA



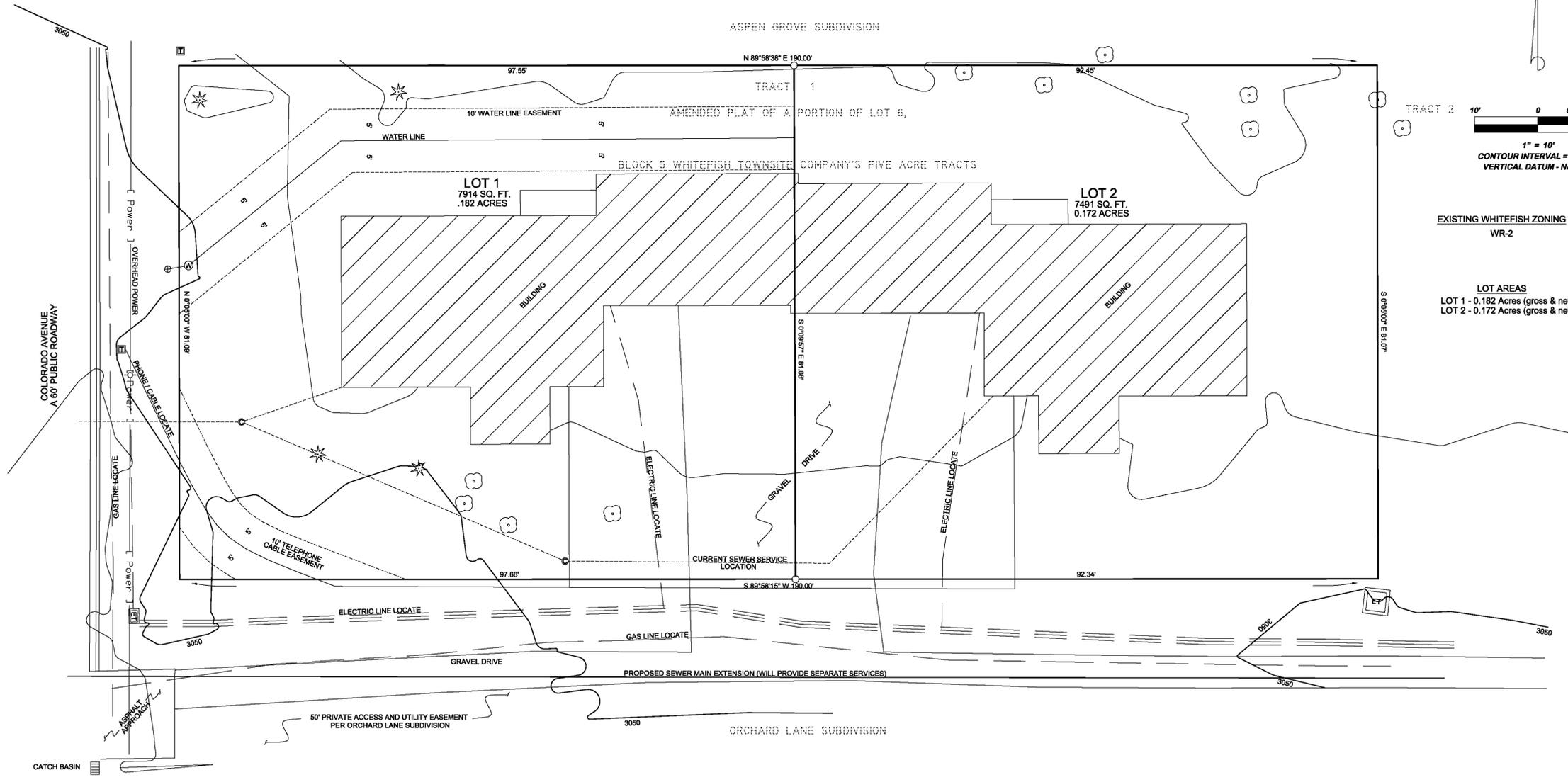
- LEGEND**
- TELEPHONE PED
 - POWER POLE
 - ELECTRIC PED
 - WATER VALVES (3)
 - WATER METER
 - SEWER CLEAN OUT
 - CONIFER TREE
 - DECIDUOUS TREE



EXISTING WHITEFISH ZONING
 WR-2

LOT AREAS
 LOT 1 - 0.182 Acres (gross & net)
 LOT 2 - 0.172 Acres (gross & net)

DESCRIPTION
 That portion of the North-west one-quarter (NW1/4) South-east one-quarter (SE1/4) of Section twenty five (25), Township Thirty-one North (T.31N.), Range Twenty-two West (R.22W.), Principal Meridian, Montana, Flathead County, Montana, described as follows:
 TRACT 1 OF AMENDED PLAT OF A PORTION OF LOT 6, BLOCK 5 WHITEFISH TOWNSITE COMPANY'S FIVE ACRE TRACTS, a map or plat of which is on file with the Clerk and Recorder's Office, Flathead County, Montana, containing 0.354 Acres of land more or less.



VICINITY MAP
 NO SCALE



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MANAGER REPORT

July 10, 2013



APPLICATION FOR GRANT FUNDING FOR TREE THINNING AROUND WATER TREATMENT PLANT

In last year's budget (FY13), we had an appropriation of \$18,000.00 in the Water Fund to use as matching funds for a FireWise grant for a tree thinning project around the Water Treatment Plant on Reservoir Road. However, by the time the budget was approved last year and we checked into the program, we were too late for last year's grants. We have the same \$18,000.00 appropriation in the FY14 budget and we applied for the tree thinning grant on July 3rd.

RESORT TAX COLLECTIONS

Resort Tax collections were up 2.86% or \$4,208.00 in May of 2013 compared to May of 2012. The May 2013 collections equaled \$151,402 compared to \$147,194 last year. For the year-to-date through May, our collections are at \$1,787,065 which is \$153,622 or 9.4% higher than last year at this time. A chart and graph of recent collections is included in the packet with this report.

QUARTERLY REVIEW OF MAYOR AND COUNCIL GOALS

I do a quarterly review of the status of the goals of the Mayor and City Council with both Department Directors, at a staff meeting, and in my Manager Report for the Mayor and City Council. Below is that review.

Hwy 93 South Corridor Plan – This plan is budgeted in the FY14 budget. It will be done mostly with in-house staff, so it cannot proceed until after the new staff person is hired and begins working. Dave thinks this project will likely have to follow behind the Hwy 93 West Corridor project because of workload.

Downtown Parking – I am trying to begin the process of evaluating and formulating a proposal for either a BID (Business Improvement District) or some other assessment district for the operating and maintenance (O&M) costs of a parking structure to be financed by assessments on downtown businesses. I envisioned a working group of three staff (myself, Necile, and Rich) along with representatives from the Chamber of Commerce and Heart of Whitefish. However this meeting is delayed by appointment of representatives from Heart of Whitefish. John Anderson and I are meeting with the Heart of Whitefish and downtown business members on Wednesday, July 10th to discuss the BID and O&M costs.

City Hall Planning – The Requests for Qualifications (RFQ) for architect selection is out and proposals are due by 4:30 p.m. on Wednesday, August 7th. The Future City Hall Location Committee will then evaluate the proposals and narrow down the finalists to 3-5 firms for interviews and a design competition. However, the process will not proceed past the narrowing down process until the City Council approves continuation.

Depot Park Phase II – The restroom addition to the O’Shaughnessy Center is currently being designed and will likely be bid out in the fall.

Possible Amendments to the Sign Code – Dave Taylor said that the Planning Board began work on a list of issues/amendments for the sign code, but then their agenda became very busy with the East 2nd Street development project and the boutique hotel project. Dave said the Planning Board hopes to resume work on the sign code later this summer.

New Cemetery Development – The groundwater testing on the Lamb property on Karrow Avenue showed groundwater constantly above the required 9 foot depth level and as close to 3 feet below the surface of the ground. Therefore, this site was ruled out and the Committee continues to look for a site for a new Cemetery.

Address Aquatic Invasive Species (AIS) problem – We executed contracts with Whitefish Lake Institute (WLI) and the Flathead Basin Commission after the City Council approved the management plans proposed by WLI last spring. The Flathead Basin Commission organized and is staffing an AIS check station in Hungry Horse that began in June and part of our funding was to enable that new check station. Our funding also provided staffing from 8:00 a.m. to noon on weekends at City Beach to increase our hours of licensing and quick inspection coverage at City Beach.

Code Enforcement Improvements – There are no increases in enforcement, but it is weed season so that is keeping our Code Enforcement officer busy. The log sheets of our Code Enforcement Officer’s activities since returning to work on July 9, 2012 are included in the packet with this report.

Maintenance Plans for parks, facilities, Riverside Park, Whitefish River erosion – We have received engineering proposals from firms for the stormwater engineering evaluation and design project and Riverside Park is included in that scope of work. Approval of contracts is scheduled for the August 6th City Council meeting. The Parks Master Plan will address maintenance of Parks and Park facilities. The Parks Master Plan is going to the Park Board for consideration at its July 9th meeting. Consideration by the Planning Board and City Council will follow.

Whitefish River Waterway Development and Improvement – Richard Hildner is planning for a work session and City Council consideration of his proposal for a non-motorized waterway at the September 3rd City Council meeting.

Economic Development – Public/Private Partnerships and Targeted Business Assistance – The last quarter was busy with the City Council approving Tax Increment Funding assistance for a

boutique hotel on Block 46 and for Hurraw! Balm's new manufacturing facility in Baker Commons. Unfortunately, the boutique hotel project did not obtain sufficient financing to go forward. Discussions on a boutique hotel with the Averill family will likely resume.

BNSF – CECRA site cleanup, Whitefish River, overall relationship – There has been no recent information on the CECRA diesel plume site cleanup after the update in the last report from the State where BNSF might start a small cleanup project around the roundhouse this fall. The Whitefish River cleanup project was completed prior to July 4th with just re-vegetation work still to be done.

Whitefish Trail & work with Whitefish Legacy Partners – Council member John Anderson and City Attorney Mary VanBuskirk gave the City Council members a recent update on the Spencer Trail Land Use License. Right now, it may be scheduled for Council consideration in August pending on-going negotiations.

Water Quality Improvements (water rights, City Beach, stormwater projects) – Our application for additional water rights in Whitefish Lake was turned in to DNRC in the last month. The 2013 Legislature did not approve the water compact between the Confederated Salish-Kootenai Tribes, the U.S. Government, and the State of Montana. The Governor has asked the Compact Commission to solicit and address questions from the public and interested parties regarding the compact. Two Flathead County legislators are proposing a different compact that they have prepared. The stormwater engineering design contracts were discussed above.

Affordable Housing – SueAnn Grogan left the Whitefish Housing Authority during the last quarter and Lori Collins is currently the interim executive director. The Housing Authority is still considering its options regarding the two smaller houses in the Railway District which BNSF donated to them.

MDT – Hwy 93 West Project - It was quite nice to see the temporary bridge finished and opened in the last 10 days. The work stoppage from noon on 7/3 through 7/7 was also nice and traffic was very free-flowing. Karin Hilding said it is still on LHC's schedule to complete the project in 2013 and have the road fully paved, open, and finished before winter. It is logical and likely that final landscaping might roll over to 2014.

Parks Master Plan – As stated above, the Parks Master Plan is going to the Park Board for consideration on July 9th. Planning Board and City Council review and consideration will follow.

Explore extent of annexation waivers for utility contracts – This item and priorities for annexation will be discussed at a work session in August.

Long term financial planning and sustainability - We will do a revised Tax Increment Fund long term forecast after we get this year's taxable value information from the County Assessor in early August. The mill value for the General Fund and other taxing funds will also help project longer term financial needs.

Green Initiatives – There is a hydro update attached to this report in the packet. Public Works Director John Wilson reports: “Although the hydro output for September and October 2012 were slightly below estimates, production has been higher than estimated for each month since November. Overall production since start-up has been 16% higher than expected. Disregarding the first 2 months of operation, production over the past 8 months has been 27% higher than estimates. Our contract with FEC calls for September 2020 as the deadline to fully reimburse their advance payment of \$400,000. Based on average monthly production since September 2012, reimbursement could be completed as early as December 2018.”

John also reported that the recent repairs and renovations to the Water Treatment Plant HVAC (heating, ventilation, and air conditioning) units should significantly improve energy conservation at the plant.

Records Management/Imaging Phase II – There is no budget in FY14 to continue imaging in the City Clerk’s Office. Public Works has some budget to do some imaging in FY14. Rich and Necile are still organizing the imaging which was done in FY13.

Redesign City website - Rich, Sherri, and Wendy have made a lot of progress on this project and the beta version of the new website will be available soon. We will run two sites for a transition period of a month or two.

MEETINGS

Cemetery Irrigation System – Necile and I met with the contractor, other city staff, and Cemetery workers at the Cemetery last week to plan for the new irrigation system. Supplies will be ordered soon, but the work probably can’t occur until September.

UPCOMING SPECIAL EVENTS

REMINDERS

July 29th – Budget work session at 5:00 p.m.

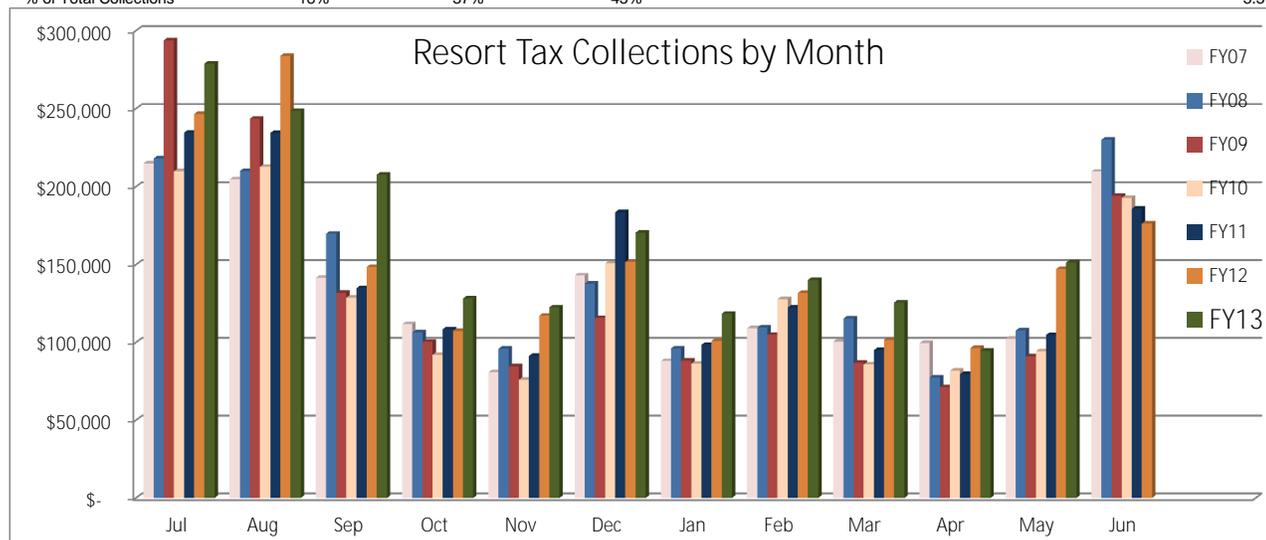
Respectfully submitted,



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						
May-08	14,806	43,451	49,461	107,718			\$ 83,822,258	3,239	110,958
May-09	13,780	32,715	44,439	90,934	-16%			6,918	97,852
Apr-10	8,034	34,568	39,245	81,847	15%			2,729	84,576
May-10	11,509	39,248	43,587	94,344	4%			14,872	109,216
Jun-10	33,916	64,480	94,426	192,822	-1%	3.5%		982	193,804
Total FY10	\$ 245,171	\$ 563,798	\$ 730,393	\$ 1,539,362			Compared to Prv Yr	\$ 53,679	\$ 1,593,041
FY09 vs FY10	-9.0%	-4.1%	-2.6%	-4.2%			or	\$ (67,489)	TaxableSalesFY10 \$ 81,019,064
Apr-11	7,571	35,595	36,466	79,633	-3%			1,407	81,040
May-11	12,083	47,608	45,096	104,788	11%			1,386	106,174
Jun-11	27,106	60,935	97,797	185,838	-4%	0.3%		1,377	187,215
Total FY11	\$ 274,688	\$ 651,321	\$ 747,615	\$ 1,673,624			Compared to Prv Yr	\$ 38,004	\$ 1,711,629
FY10 vs FY11	12.0%	15.5%	2.4%	8.7%			or	\$ 134,262	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
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
Total 11 Months	279,146	610,659	743,638	1,633,444					
Jun-12	35,584	68,403	72,472	176,460	-5%	454.6%		625	177,085
Total FY12	\$ 314,731	\$ 679,063	\$ 816,110	\$ 1,809,903			Compared to Prv Yr	\$ 20,785	\$ 1,830,688
FY11 vs FY12	15%	4%	9%	8%			or	\$ 136,279	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%			393	122,941
Dec-12	15,490	66,046	88,956	170,492	12%	11.9%		363	170,855
Jan-13	13,152	51,930	53,396	118,478	17%			413	118,891
Feb-13	18,023	55,180	66,995	140,198	6%			405	140,603
Mar-13	16,171	56,231	53,318	125,720	24%	14.9%		465	126,185
Apr-13	10,105	42,230	42,325	94,660	-2%				
May-13	19,009	52,303	80,090	151,402	3%				
Total FY13	\$ 304,348	\$ 683,185	\$ 799,532	\$ 1,787,065			YTD Compared to Last Year	\$ 4,093	\$ 1,545,096
YTD vs Last Year	9.0%	11.9%	7.5%				or	\$ 153,622	TaxableSalesFY13 \$ 94,056,064
FY13 % of Collections	17%	38%	45%						\$ 747,061 \$ 19,510,104
Grand Total	\$ 3,929,357	\$ 8,326,006	\$ 10,128,976	\$ 22,384,339					3.3% Average i since '96
% of Total Collections	18%	37%	45%						



Total Taxable Sales Since 1996	\$ 1,178,123,103
Total Collected	\$ 23,562,462
5% Admin	\$ 1,178,123
Public Portion	\$ 22,384,339

Theatre Company BANNERS
Permitted thru Summer

300 TOWN
228 Park Knapweed

2012 VIOLATIONS

SV = sign violation ZV = zoning violation	Date	Location of Concern	Name of Owner/Business	Name of Complainer	Telephone No/Contact Info for Complainer	Date Concern First Observed	Type of Concern:											Date of Site Visit	Date of Follow-Up	Status	How was Complaint					WCR	Notes
							Decay	Snow	Weeds	Trees	Dirt	Landscaping	Signs	Lighting	Junk Vehicle	Lakeshore	Zoning				Other	Telephone	Letter	Message	Other		
SV 11-06	01/14/11	1000 Wisconsin Ave	Big Mountain car wash	staff observation	staff	01/09/11							X						01/14/11	02/01/11	active	X				WCR	one banner was removed 1-23-11;
SV 11-14	12/01/10	1875 Baker Avenue	Cowgirl Coffee	staff observation	staff	12/01/10							X						01/01/11		active	X				WCR	put up an extra wall sign without a permit
SV 11-17	01/14/11	902 Wisconsin Ave	Cowgirl Coffee	staff observation	staff	01/14/11							X						01/14/11		active	X				WCR	no sign permits for this building
ZV 11-19	04/28/11	2107 US Hwy 93 W														X					active	X				DT	Garbage strewn on property
ZV 11-20	04/04/11	530 Edgewoods																	04/12/11	04/14/11	active		X			DT	Decrepit trailer houses
SV 11-30	07/05/11	131 Central Ave	McGough and Co.	staff observation	staff	07/05/11							X						07/13/11	08/01/11	active	X				WCR	banner installed without permit; letter sent 7-15-11
SV 11-33	04/01/11	669 Spokane Ave	The Shak	staff observation	staff	04/01/11							X						06/29/11	08/01/11	active	X				WCR	pigs installed onto the smoker now making it a sign; no permit; letter sent 7-22-11
ZV 11-36	08/01/11	345 O'Brien Ave	Doris Loser	Sandra Berge	541-480-9113	08/01/11	X	X	X												active	X					
SV 11-37	08/15/11	704 W 13th Street	Wireless Connection	staff observation	staff	08/15/11							X						08/15/11		active	X				WCR	unlawful flags
ZV 11-41	09/09/11	500 Depot Street	Amtrak/BNSF	staff observation	staff	08/22/11							X						09/09/11		active	X				WCR	outdoor lighting in violation of zoning; see notes in violation file
SV 11-43	10/01/11	231 E 1st Street	WF Study Center	staff observation	staff	10/01/11							X						10/01/11		active	X				WCR	installed wall signs without permit
ZV 11-44	10/05/11	Lion Mountain Beach R	Erlam	Valerie Bauch	862-2044	06/01/10								X					05/07/12		active		X	X		WCR	noncompliant outdoor lighting
ZV 11-45	10/11/11	1240 Birch Point Drive	Hinman, Ronald & Clarice	Joe Mock	862-0665	years								X					05/07/12		active		X			WCR	noncompliant outdoor lighting
SV 11-53	11/01/11	115 Central Ave	Coopers	staff observation	staff	11/01/11							X								active	X				WCR	two 'a' frames, too large
SV 11-55	10/01/11	6550 Highway 93 S	hair salon	staff observation	staff	10/01/11							X								active	X				WCR	signs installed without a permit
2012																											
ZV 12-01	01/10/12	322 Columbia Ave	Margaret Armstrong	Jillian Lawrance	508-450-2679	06/01/09								X					05/07/12		active	X				WCR	noncompliant outdoor lighting
SV 12-02	01/13/12	250 E 2nd Street	Quickees	staff observation	staff	01/13/12							X						01/13/12	01/17/12	resolved	X				WCR	banner without permit
SV 12-03	01/13/12	6570 Highway 93 S	Pin n Cue Brew	staff observation	staff	01/13/12							X								active	X				WCR	a' frame in highway district + wall sign without permit
SV 12-04	01/13/12	6550 Highway 93 S	food grocery	staff observation	staff	01/21/12							X								active	X				WCR	signs installed without permit
SV 12-05	01/24/12	1335 Highway 93 W	Border Patrol	staff observation	staff	01/24/12							X						01/24/12	02/22/12	resolved	X				WCR	signs installed without permit
SV 12-06	1/1/2012	110 W 13th Street	Safeway gas	staff observation	staff	1/1/2012							X								active	X				WCR	a' frame in highway district + real estate-type sign
SV 12-07	1/1/2012	307 Spokane Ave	Rocky Mtn Real Estate	staff observation	staff	1/1/2012							X								active	X				WCR	too many 'a' frames
ZV 12-08	1/1/2012	1005 Baker Avenue	WF Credit Union	staff observation	staff	1/1/2012									X						active	X				WCR	unpaved parking lot
SV 12-09	1/1/2012	250 E 2nd Street	Quickees	John Lepo	250-4713	1/1/2012							X								active	X				WCR	does new sign meet the sign standards?
SV 12-10	1/1/2012	206 Lupfer Ave	High Country Builders + architect	staff observation	staff	1/1/2012							X								active	X				WCR	new freestanding sign - no permit
SV 12-11	2/23/2012	100 E 2nd Street	L'n Company	Frank Sweeney	2/23/2012								X								active	X				WCR	balloons on 'a' frame
SV 12-12	3/1/2012	6580 Highway 93 S	Safeway grocery	staff observation	staff	3/1/2012							X								active	X				WCR	a' frame in highway district
SV 12-13	3/1/2012	115 Central Ave	Coopers	staff observation	staff	3/1/2012							X								resolved	X				WCR	banner without permit; banner removed 6-4-12
SV 12-14	3/1/2012	340 W 2nd Street	Zinke campaign sign	Joe Sehnebel	863-9112	3/1/2012							X							04/20/12	resolved	X				WCR	campaign sign doesn't meet standards; Dave determined the sign is OK
SV 12-15	3/26/2012	6340 Highway 93 S	Wendys	staff observation	staff	3/26/2012							X							05/20/12	resolved	X				WCR	banner without permit
SV 12-16	3/26/2012	6516 Highway 93 S	Laser Dentist	staff observation	staff	3/26/2012							X							05/23/12	resolved	X				WCR	expired banner
ZV 12-17	3/28/2012	800-900 block Edgewood	neighbor	none	none	3/28/2012									X						resolved	X				WCR	decay; neighbor called again (no name) 4-5-12; no anonymous complaints - no name-no follow-up
ZV 12-18	3/29/2012	303 Texas Avenue	Mason Jacobson	Dawn Meltrin	261-9527	3/29/2012							X							05/07/12	resolved	X				WCR	outdoor lighting; couldn't observe anything from Texas Avenue
SV 12-19	4/3/2012	242 Central Ave	Susan Schnee	staff observation	staff	4/3/2012							X								active	X				WCR	signs installed without permit
SV 12-20	4/3/2012	205 Central Ave	Stuart Milter	staff observation	staff	4/3/2012							X								active	X				WCR	signs installed without permit
SV 12-21	4/3/2012	216 Central Avenue	Sprout's	staff observation	staff	4/3/2012							X								active	X				WCR	signs installed without permit
SV 12-22	4/3/2012	100 E 2nd Street	L'n Company	staff observation	staff	4/9/2012							X								active	X				WCR	signs installed without permit
SV 12-23	4/24/2012	503 Railway Street	Harlow	staff observation	staff	4/24/2012							X								active	X				WCR	signs installed without permit
SV 12-24	4/24/2012	328 Central Ave	Great Northern Cyclery	staff observation	staff	4/24/2012							X								active	X				WCR	signs installed without permit
ZV 12-25	4/23/2012	6475 Highway 93 S	Café Max Soup Co	staff observation	staff	4/23/2012									X						active	X				WCR	painted facade without ARC approval; provided application 7/10/12 for August meeting
ZV 12-26	5/1/2012	989 Colorado Ave	Whitefish Lake Lodge	Clifford	862-0567	5/1/2012								X					05/07/12		active		X			WCR	outdoor lighting
SV 12-27	5/1/2012	300 Baker Ave	Whitefish CU	staff observation	staff	5/1/2012							X								resolved	X				WCR	banner without permit
SV 12-28	5/2/2012	435 Iowa Ave	Eyrie Properties llc	no name	no number	5/2/2012									X						active	X				WCR	junk vehicles
ZV 12-29	5/7/2012	238 Central Avenue	Diek Idol Gallery	staff observation	862-5554	5/7/2012									X					5/7/2012	active	X				WCR	painted without ARC approval
SV 12-30	5/15/2012	803 Spokane Ave	Budget rent a car	staff observation	staff	5/15/2012							X								active	X				WCR	installed 'budget' signs on parking posts that face Spokane Ave - was told couldn't do it and did it anyway
SV 12-31	5/21/2012	131 Central Ave	Bear County	staff observation	staff	5/21/2012							X								active	X				WCR	installed signs without permit
SV 12-32	5/29/2012	600 E 2nd Street	WF Middle School	Jan Metzmaker	5/29/2012								X						06/01/12	06/01/12	resolved	X				WCR	Don K off-premise advertising at WMS; didn't see anything (6-1-12); they're baaaack (6-25-12)
SV 12-33	5/29/2012	503 Railway Street	Meriwether Outfit	staff observation	staff	5/29/2012							X								active	X				WCR	signs installed without permit
SV 12-34	5/1/2012	115 Central Ave	Coopers	staff observation	staff	5/1/2012							X								active	X				WCR	signs installed without internally illuminated
SV 12-35	5/1/2012	615 Riverside Ave	Classic Car Wash	staff observation	staff	5/1/2012							X								active	X				WCR	banner without permit
SV 12-36	5/1/2012	10 Baker Ave	Naked Noodle	staff observation	staff	5/1/2012							X								resolved	X				WCR	banner without permit
SV 12-37	5/1/2012	307 Spokane Ave	White Cloud Design	staff observation	staff	5/1/2012							X								active	X				WCR	signs installed without permit
SV 12-38	6/5/2012	525 Railway Street	Lindsay Jane	staff observation	staff	6/5/2012							X								active	X				WCR	signs installed without permit
SV 12-39	6/14/2012	6475 Highway 93 S	Cafe Max Soup Co	Scott Haplin	253-8012	6/14/2012							X								resolved	X				WCR	banner on vehicle - no permit; signs on vehicle not permitted
SV 12-40	6/12/2012	105A Wisconsin Ave	Aspen Design Group	staff observation	staff	6/12/2012							X								active	X				WCR	signs installed without permit
ZV 12-41	06/18/12	345 O'Brien Ave	Doris Loser	Sandra Berge	541-480-9113	06/18/12	X	X	X																		

SV 12-43	6/18/2012	100 E 2nd Street	Century 21 Real Estate office	staff observation	staff	6/18/2012	X		active	X	open house banner exceeds open house sign size
ZV 12-44	6/5/2012	115 Central Ave	Coopers	ARC	ARC	6/5/2012		X	active	X	hasn't completed ARC items <i>Wendy</i>
SV 12-45	6/18/2012	123 Vista Drive	Jesse Lee	staff observation	staff	6/18/2012	X		active	X	oversized home occupation sign in r.o.w.
SV 12-46	6/29/2012	115 Central Ave	Coopers	staff observation	staff	6/29/2012	X		active	X	signs installed without permit; looks internally illuminated
SV 12-47	6/29/2012	Dakota Ave	Jan Metzmaker	Paul Biolo	862-9201	6/29/2012	X		resolved	X	campaign signs after election day; didn't see anything
ZV 12-48	7/6/2012	Highway 93 S	Midway Rental	staff observation	staff	7/6/2012		X	active	X	WCR painted facade without ARC approval; provided application for August meeting. <i>Wendy</i>
ZV 12-49	7/2/2012	Highway 93 S	DePratu Ford	Jan Metzmaker	260-6443	7/2/2012		X	active	X	outdoor lighting is not dark sky compliant
SV 12-50	7/2/2012	Highway 93 S	DePratu Ford	Jan Metzmaker	260-6443	7/2/2012	X		active	X	internally illuminating Ford sign
SV 12-51	7/19/2012	Highway 93 S	Cenex	staff observation	staff	7/19/2012	X		active	X	internally illuminating sign
SV 12-52	7/24/2012	Wisconsin Ave	Piggy Back	staff observation	staff	7/24/2012	X		active	X	use of 'a' frame
SV 12-53	7/24/2012	Big Mountain Road	Hellroaring	staff observation	staff	7/24/2012	X		active	X	use of off-site 'a' frame
SV 12-54	7/24/2012	Big Mountain Road	Aunt Bs	staff observation	staff	7/24/2012	X		active	X	use of off-site sign - near entrance to Elk Highlands

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16 Signs Installed no permits starting 1-13-12

CODE VIOLATION LOG <i>2012</i>						
Date	Violation #	Address	Name	Violation Type	Date of Contact	Date of Compliance
08/10/12	SV12-55	Spokane Avenue	Rocky Mountain Painting	Off Premise Sign	08/10/12	08/10/12
08/13/12	SV12-56	101 Central Avenue	Casey's	Too much signage	08/13/12	08/27/12
08/13/12	WV12-57	628 Columbia Avenue	John & Elsie Galles	Weeds Canada Thistle	08/13/12	08/20/12
08/15/12	SV12-58	6219 HWY 93 S	Don K Chevrolet	Banners/no permit/too many Off-Premise & non permitted signs	08/15/12	08/20/12
08/17/12	SV12-59	505 Railway	Harlow		08/17/12	09/05/12
08/20/12	SV12-60	239 Baker Avenue	WF Liquor Store	Non-permitted sign	08/21/12	08/22/12
08/20/12	SV12-61	Base Big Mtn Rd	Hellroaring Saloon & Eatery	Off Premise Sign	08/20/12	08/22/12
08/23/12	WV12-62	235 O'Brien Ave	Charlene Thew	Weeds Canada Thistle	08/23/12	09/14/12
08/23/12	WV12-63	231 O'Brien, 221 O'Brien Blk42 lot23	G2J2 Obrien llc	Weeds Canada Thistle	08/23/12	09/13/12
08/23/12	SV12-64	Riverside Plaza	Ln Company	sign sidewalk	08/23/12	08/24/12
08/27/12	SV12-65	Spokane Avenue	Paddle Sports	Banners/no permit/too many	08/27/12	08/27/12
08/27/12	WV12-66	433 Iowa	Eyrie Properties LLC	Weeds Knapweed	08/28/12	09/21/12
08/30/12	CLV12-67	236 W 8 th Street	Mark VanEmeron	Clear Vision	08/30/12	09/26/12
08/31/12	WV12-68	903 E 2 nd Street	Kari L. Marsenich	Weeds Knapweed	08/31/12	09/07/12
09/04/12	SV12-69	6382 HWY 93 S	Army-Navy	Banner/ No Permit	09/04/12	09/05/12
09/05/12	WV12-70	109 W 8 th Street	Duke Brothers Construction LLC	Weeds Canada Thistle	09/05/12	09/07/12
09/05/12	SV12-71	Hwy 93 S	Locks & Lobes	Banner/ No Permit	09/05/12	09/05/12
09/05/12	SV12-72	6464A Hwy 93 S	Advanced Auto Repair	Sign unpermitted	09/05/12	09/05/12
09/06/12	SV12-73	505 Wisconsin Ave	Tamarack Ski & Patio	Banner/ No Permit	09/06/12	09/07/12
09/17/12	SV12-74	6219 HWY 93 S	Don K Chevrolet	Banner Expired	09/17/12	09/21/12

10/01/12	ZV12-75	6382 HWY 93 S	Army-Navy	Storage container	10/01/12	10/15/12
10/02/12	ZV12-76	1311 E 2 nd Street	Arlene Howke	Occupied RV	10/02/12	10/15/12
10/04/12	SV12-77	6382 HWY 93 S	Army-Navy	Banner / no permit	10/04/12	10/04/12
10/09/12	ZV12-78	5934 Hwy 93 S	Cross Fit (E.H. Bode Properties)	Need C.U.P.	10/09/12	11/05/12
10/16/12	SV12-79	6475 Hwy 93 S	Next Level Fitness	Banner / no permit	10/16/12	10/16/12
10/22/12	SV12-80	Wisconsin	Campaign signs	R.O.W.	10/22/12	10/22/12
10/24/12	SV12-81	Wisconsin	Campaign signs	R.O.W.	10/24/12	10/24/12
10/26/12	SV12-82	6360 Hwy 93 S	Pizza Hut	Sign unpermitted	10/26/12	10/29/12
11/08/12	SV12-83	9 Spokane Ave	WF Library	Banner/ Permit Expired	11/08/12	11/13/12
11/20/12	SV12-84	Wisconsin	Democratic Headquarters	Campaign Signs	11/20/12	11/20/12
11/21/12	SV12-85	Spokane Avenue	HR Block	Signs/no permit	11/21/12	11/21/12
11/28/12	SV12-86	6475 Hwy 93 S	Wireless Connection	Banner / no permit	11/28/12	11/29/12
11/29/12	DV12-87	714 Waverly Place	Unknown	Decay/Trash	11/29/12	11/29/12
12/12/12	SV12-88	Hwy93S & Hwy 40	CF Knife Store	Signs/ Off Premise	12/12/12	12/12/12
12/18/12	SV12-89	700 W 13 th ST	Walgreens	Banner / no permit	12/18/12	12/18/12
12/18/12	SV12-90	505 Wisconsin Ave	The Skillet	Banner / no permit	12/18/12	12/18/12

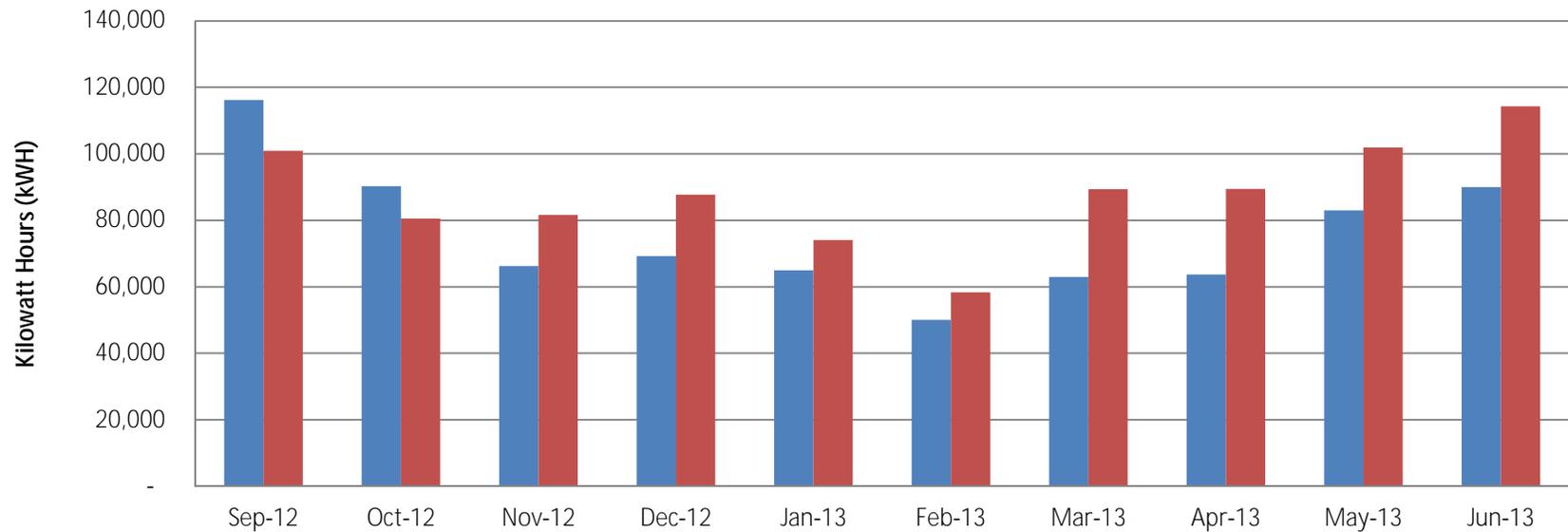
CODE VIOLATION LOG

Date	Violation #	Address	Name	Violation Type	Date of Contact	Date of Compliance
01/04/13	SRV13-1	38 Central Ave	Frontier	Snow/sidewalk	01/04/13	01/07/13
01/04/13	SV13-2	109 Central Ave	Coopers	Signs not permitted Aframes 2	01/04/13	01/07/13
01/09/13	SRV13-3	33 Central Avenue	O'Shaughnessy	Snow/sidewalk	01/09/13	01/24/13
01/23/13	SRV13-4	100 Central Ave	Piney Creek	Snow/sidewalk	01/23/13	01/25/13
01/23/13	SRV13-5	920 Spokane Ave	Pine Lodge	Snow/sidewalk	01/23/13	01/24/13
01/24/13	SRV13-6	33 Central Avenue	O'Shaughnessy	Snow/sidewalk	01/24/13	01/26/13
01/24/13	SV13-7	206 Central Avenue	Zonda Kay	Abandoned Sign	01/24/13	01/24/13
02/05/13	SV13-8	6331 Hwy 93 S	Depratu Ford	Balloons/No Permit	02/05/13	02/05/13
02/06/13	SV13-9	22 Spokane Ave	Insignia	Sign/ No Permit	02/06/13	02/08/13
02/07/13	SV13-10	148 Central Avenue	D. J. MacKenzie	Abandoned Sign	02/07/13	02/25/13
02/15/13	SV13-11	103 Central Ave	Red Caboose	Sign-A-Frame to large	02/15/13	04/25/13
02/19/13	SV13-12	6219 Hwy 93 S	Don K	Sign/ No Permit	02/19/13	02/19/13
02/21/13	SV13-13	115 Central Ave	Coopers	A-Frames to many to large	02/21/13	COURT
02/22/13	SV13-14	549 Wisconsin	Ford Const	Sign no permit	02/22/13	02/27/13
03/04/13	SV13-15	700 W 13 th St	Walgreens	Banner/expired	03/04/13	03/04/13
03/08/13	ZV13-16	504 Spokane Avenue	Garden Wall Inn	Holiday Lights	03/08/13	03/18/13
03/13/13	ZV13-17	1805 Baker Avenue	Ken's Automotive	Clear Vision	03/13/13	03/18/13
03/14/13	SV13-18	6588 Hwy 93 S	Dos Amigo's	Sign/Portable reader board	03/14/13	03/15/13
03/20/13	SV13-19	2 nd Street & Central	Flathead rapids	Off Premise Signage	03/20/13	03/20/13
03/20/13	CRV13-20	104 O'Brien Ave	Margaret Harrison	Clear Vision	03/20/13	Fence Permit
03/20/13	SV13-21	420 Baker Ave	Calvary Chapel	Banner/no permit	03/20/13	03/25/13 Banner Permit

03/26/13	SV13-22	38 Central Ave	Casey's	A-Frames to wide & large	03/26/13	04/24/13
03/26/13	SV13-23	125 Central Ave	Mama Q Kitchen	A-Frames to wide & large	03/26/13	04/26/13
03/26/13	SV13-24	206 Central Avenue	SM Bradford Company	A-Frames to wide & large	03/26/13	04/24/13
03/26/13	SV13-25	492 E 2 nd Street	Trails West Real Estate	A-Frames to wide & large	03/26/13	04/24/13
03/26/13	SV13-26	130 Central Avenue	La Hacienda Mexican Grill	A-Frames to wide & large	03/26/13	04/24/13
03/26/13	SV13-27	110 Central Avenue	Montana Coffee Traders	A-Frames to large	03/26/13	04/24/13
03/26/13	SV13-28	10 Central Avenue	Craggy Range	A-Frames to wide & large	03/26/13	04/24/13
03/26/13	SV13-29	711 Spokane Ave	Hart Jewelers	Sign on unlicensed car	03/26/13	03/26/13
03/28/13	DCV13-30	12 Montana Ave	Kenneth Doty	Decay Violation	03/28/13	04/22/13
04/09/13	SV13-31	800 Spokane Ave	Stumptown Inn	Sign no permit	04/09/13	04/12/13
04/11/13	SV13-32	6130 Hwy 93 S	WBC	Banner/expired	04/11/13	04/11/13
04/11/13	SV13-33	713 Spokane Ave	WF Lube & Oil	Abandoned Sign	04/12/13	
04/17/13	SV13-34	9 Central Ave	McKenzie River Pizza	A-Frames to large	04/17/13	04/26/13
04/19/13	ZV13-35	435 Park Ave	Eric & Linda Young	Renting Primary & Secondary	04/19/13	
04/22/13	SV13-36	235 Baker Ave	Great Northern Pasta	A-Frames to wide & large	04/22/13	05/07/13
04/24/13	SV13-37	401 Baker Ave	Compass Const.	Sign no permit	04/24/13	04/30/13
05/22/13	SV13-38	230 Baker Ave	Catholic Church	Sign/ Internally Lit	05/22/13	05/30/13
05/29/13	SV13-39	9 Central Ave	McKenzie River Pizza	A-Frame & Balloons	05/28/13	05/30/13
05/30/13	SV13-40	6588 Hwy 93 S	Dos Amigo's	Abandoned Sign	05/30/13	06/28/13
05/30/13	SV13-41	235 Baker Ave	Great Northern Pasta	Sign no permit	05/30/13	05/31/13
06/01/13	WV13-42	6151 Hwy 93 S	Evan Shaw	Weed/ Houndstounge	06/01/13	
06/04/13	WV13-43	345 O'Brien Ave	Brenda Loser	Weed/Knapweed	06/04/13	ABATE 06/21/13
06/05/13	WV13-44	6545 Hwy 93 S	Greenwood I Corp	Weed/Knapweed	06/05/13	06/13/13

06/07/13	WV13-45	706 Sagebrush Ct	Deer Creek Montana LLC	Weed/Thistle	06/07/13	06/24/13
06/11/13	WV13-46	4 Fir Ave	Douglas Rigler	Weed/ox-eye Daisy Knapweed	06/11/13	06/18/13
06/11/13	ZV13-47	505 Wisconsin Ave	Tamarack Ski & Patio	Banner/Merchandise/Vehicle	06/11/13	06/12/13
06/11/13	SV13-48	Off-Premise Signage	Auction(550 Antler Ridge	Off Premise Signage	06/11/13	P/U 06/11/13
06/12/13	SV13-49	109 Central Ave	Cooper's	A-Frame/to wide & large	06/12/13	06/13/13
06/13/13	ZV13-50	2145 Hwy 93 W	Bruce & Leslie Meyer	Non-permitted use	06/13/13	VOID
06/07/13	ZV13-51	2195 & 2205 Hwy 93 W	Hoagy & Sharon Carmichael	Non-permitted use	06/17/13	
06/18/13	WV13-52	Larch Lane	Osca & Trudi Medrano	Weed/ Canada Thistle	06/18/13	
06/18/13	WV13-53	O'Brien Bluffs	Patriot Properties LLC	Weed/Orange Hawkweed Thistle	06/18/13	
06/18/13	WV13-54	205 W 15 th St.	Patriot Properties LLC	Weed/Knapweed Ox-Eye	06/18/13	
06/18/13	WV13-55	262 Flathead Dr	Patriot Properties LLC	Weed/Knapweed Ox-Eye	06/18/13	
06/20/13	SV13-56	701 Spokane Ave	GOGO Juice Bar	Sign/ A-Frame too Wide	06/20/13	06/24/13
06/20/13	SV13-57	492 E 2nd Street	WF Woody Weekend	Banner/no permit	06/20/13	P/U06/20/13
06/21/13	WV13-58	55 Woodland Place	Albert Schoenhuth	Weed/Orange Hawkweed Ox-eye	06/21/13	
06/24/13	WV13-59	221&231 O' Brien Ave	G2J2 Obrien LLC	Weed/ Canada Thistle	06/24/13	
06/24/13	WV13-60	235 O'Brien Ave	Charlene Thew	Weed/ Canada Thistle	06/24/13	
06/25/13	WV13-61	1840 Baker Ave	1840 Baker LLC	Weed/Knapweed Thistle	06/25/13	
06/25/13	WV13-62	5070 Flatwater Dr	Derrick Courtright	Weed/ Canada Thistle	06/25/13	

Whitefish Hydroelectric Power Production - Projected vs. Actual



	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
■ Projected kWH	116,221	90,280	66,267	69,242	64,929	50,033	62,961	63,713	83,015	90,004
■ Actual kWH	100,885	80,561	81,623	87,710	74,093	58,310	89,321	89,426	101,918	114,332

Your Co-op
Flathead Electric
Community...Integrity...Reliability

Whitefish Hydro Power Purchase & Exchange Agreement

Month End: June 30, 2013

Total Prepaid Power (\$)	\$ 400,000	Total Prepaid Power (kWh)	6,650,000
Current Prepaid Power Balance (\$)	\$ 347,177	Current Prepaid Power Balance (kWh)	5,771,821
Average Monthly Prepaid Credit (\$)	\$ 5,282	Average Monthly Generation Credit (kWh)	87,818
Estimated Contract Completion Date Based on Current Average		December 2018	

Period	kWh Generated	Rate per kWh	Power Purchase Credit	Prepaid Power Balance	kWh Balance
Jun-13	114,332	\$ 0.06015	\$ 6,877	\$ 347,177	5,771,821
May-13	101,918	\$ 0.06015	\$ 6,130	\$ 354,054	5,886,153
Apr-13	89,426	\$ 0.06015	\$ 5,379	\$ 360,184	5,988,071
Mar-13	89,321	\$ 0.06015	\$ 5,373	\$ 365,563	6,077,497
Feb-13	58,310	\$ 0.06015	\$ 3,507	\$ 370,936	6,166,818
Jan-13	74,093	\$ 0.06015	\$ 4,457	\$ 374,443	6,225,128
Dec-12	87,710	\$ 0.06015	\$ 5,276	\$ 378,900	6,299,221
Nov-12	81,623	\$ 0.06015	\$ 4,910	\$ 384,176	6,386,931
Oct-12	80,561	\$ 0.06015	\$ 4,846	\$ 389,086	6,468,554
Sep-12	100,885	\$ 0.06015	\$ 6,068	\$ 393,932	6,549,115
Total	878,179		\$ 52,823		

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Chuck Stearns

From: Kimberly Sikorsky [kimsikorsky@gmail.com]
Sent: Thursday, June 27, 2013 2:47 PM
To: cstearns@cityofwhitefish.org
Subject: 15 minute parking space

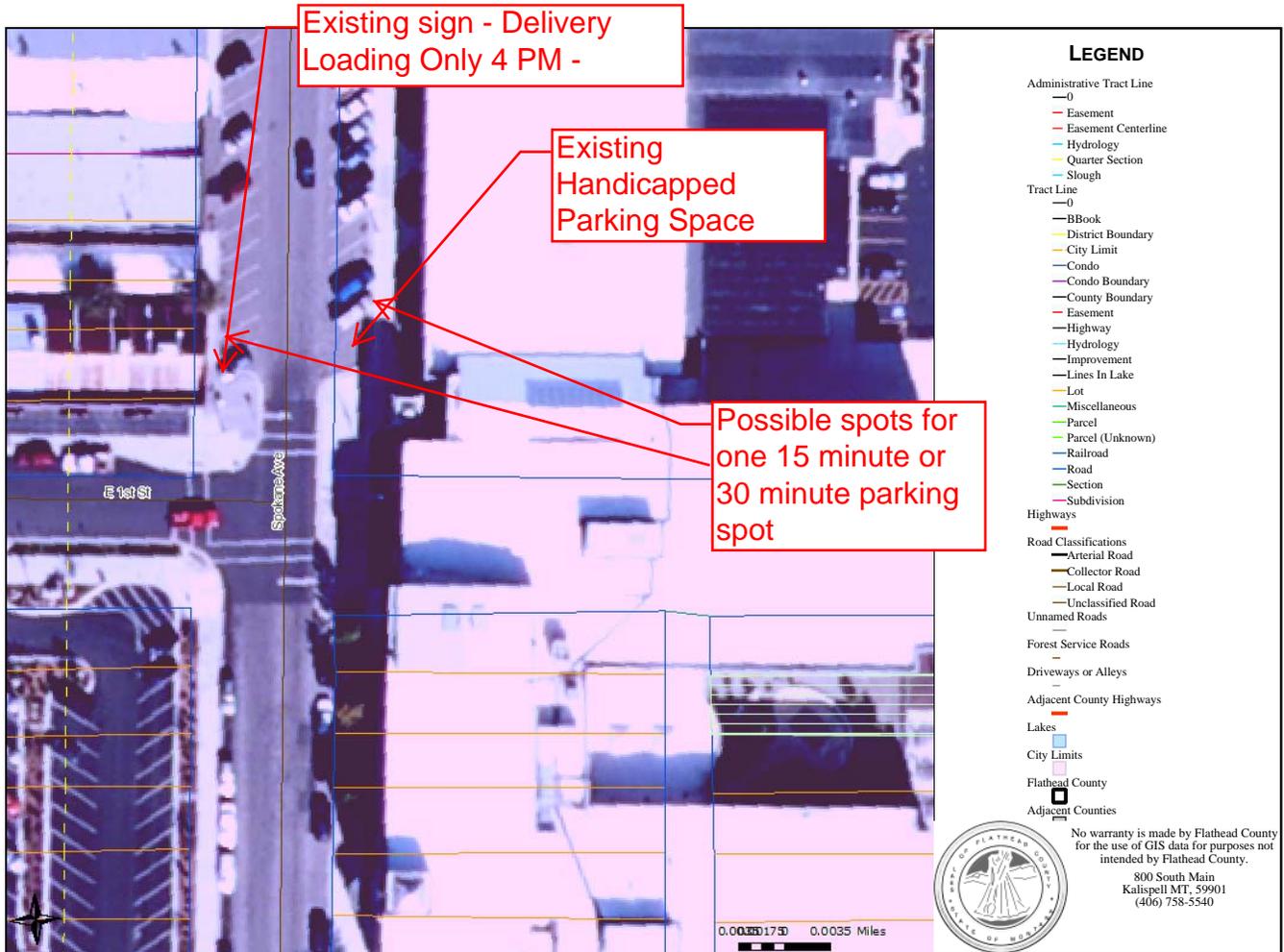
Dear Mr. Stearns, I am writing to request the consideration of a 15 minute (loading/unloading) space. I am the owner of Jersey Boys Pizzeria located on the corner of 1st Street & Spokane. We are very busy & with the current town parking situation our customers have a very difficult time finding a quick place to park to pick up their food. On weekends, busy nights & all summer our customers are driving in circles for extended periods of time looking for a place to park for just a few minutes. A 15 minute space would be very beneficial to not only us but also the middle school (for parents picking up & dropping off students). A space on 1st or Spokane Ave would be helpful. Thank you for your time & consideration.

Sincerely,

Kimberly Sikorsky

871-1123 cell

[Kimsikorsky@gmail.com](mailto:kimsikorsky@gmail.com)



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.
- C. Two-Hour Parking: It is unlawful for any person to park any "vehicle", as defined in section [6-1-2](#) of this title, for more than or in excess of two (2) continuous or consecutive hours at any one time during the hours from eight o'clock (8:00) A.M. to six o'clock (6:00) P.M. in any one parking space on the following described streets within the city:

Chuck Stearns

From: Necile Lorang [nlorang@cityofwhitefish.org]
Sent: Friday, July 05, 2013 9:07 AM
To: cstearns@cityofwhitefish.org
Subject: Fw: Fireworks

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

From: [Wm. Fred Frost](#)
To: nlorang@cityofwhitefish.org
Sent: Friday, July 05, 2013 9:01 AM
Subject: Fireworks

To: Mayor and Council,

About the first of July I heard a public service announcement on the radio from Police Chief Bill Dial that gave the Whitefish Fireworks Rules and then he said that this year there would be zero tolerance for violations.

On the night of July 4-5 the last fireworks that I heard went off at 5 AM MDT. I did not record the times, but it seemed that most nights the main noise occurred after 10 pm, not before.

I would like to know how many, if any, citations were issued over the week of July 1st.

I think one of three things should be done:

Enforce the ordinance--which would probably require all officers to be on duty from 10pm until 12--not really feasible.

Eliminate the ordinance--like the county and have a total free fire zone.

Eliminate fireworks in the City of Whitefish.

It makes no sense to have an ordinance that is not enforced.

Fred Frost
1009 Columbia Ave
Whitefish, MT