CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, OCTOBER 7, 2013, 5:00 to 7:00 PM

1. Call to Order

2. 5:00 - Work session with Glacier Twins regarding lease revenue from a cell tower at Memorial Field

3. Public Comment

4. 5:30 - Work session – Discussion and direction on Business Improvement District or other assessment district for parking structure operations and maintenance (O&M) costs

5. Public Comment

6. Adjournment

Chuck Stearns

From: Chuck Stearns [cstearns@cityofwhitefish.org]
Sent: Tuesday, September 03, 2013 3:22 PM
To: 'Bill Kahle'; 'Chris Hyatt'; 'Frank Sweeney'; 'John Anderson'; 'Muhlfeld, John'; 'Phil Mitchell'; 'Richard Hildner'
Cc: 'Mary VanBuskirk'; 'Paul Johannsen'; Askew, Turner; 'David Taylor'; 'Whitefish Parks and Recreation'
Subject: Cell tower at Memorial Fields
Attachments: Memorial Field light.pdf; Res 02-51.Glacier Twins Lease and stadium construction agreement.pdf

Mayor Muhlfeld and City Council Members:

Verizon's agent for a new cell tower continues to make progress towards an application to install a new cell tower on a replacement light tower at Memorial Field (see attached pdf with aerial view of the site and tower location). He is preparing the land use application, but he is concerned that there may be a difference of opinion between the City and the Glacier Twins over the disposition of the monthly cell tower lease revenue. The Glacier Twins are going to have the proposed new light tower with the cell tower on it installed inside the fence at the ball field because our lease with them gives them use control of the premises inside the fence. See attached Resolution #02-51 which contains our lease agreement with the Glacier Twins.

Turner Askew has helped the Glacier Twins with this issue and Paul Johannsen is also very involved in the discussions. When we first let the Mayor and City Council know of this possibility for a cell tower installation last April, one or two Council members said they assumed that we would get the monthly lease revenue. However, Turner said that the Glacier Twins feel they are entitled to that revenue. Paul Johannsen said that the light towers are property of the Glacier Twins and therefore the lease revenue should also be.

The gist of the issue comes down to the following clause in the Lease document with the Glacier Twins and whether a cell tower is necessary to conduct its programs. However, the clause does say "as it deems necessary", so that give them some additional authority.

10. USE: The TWINS shall have exclusive rights to use the STADIUM and STADIUM LAND as it deems necessary to conduct its programs. The TWINS may also use the facilities for special events and fundraisers with an approved City special events permit for any activities other than those directly related to the sport of baseball. Use of the facilities by other amateur or professional baseball clubs shall require the approval of the TWINS with provisions for use defined in a sub-lease agreement.

The Verizon agent would like the lease revenue issue decided before the public hearing on any land use application he submits and he asked if we could have a work session on that topic. So I was going to schedule a work session on October 7th for that discussion, but Paul Johannsen asked if we could settle it sooner by putting it on the Regular Meeting agenda for the September 16th meeting. I said I could, but that I thought it was more suited for a work session discussion rather than on the floor of the Council meeting. Paul requested that we do put it on the agenda for the September 16th meeting and he said he would like to call and talk to the Mayor and Council members about it.

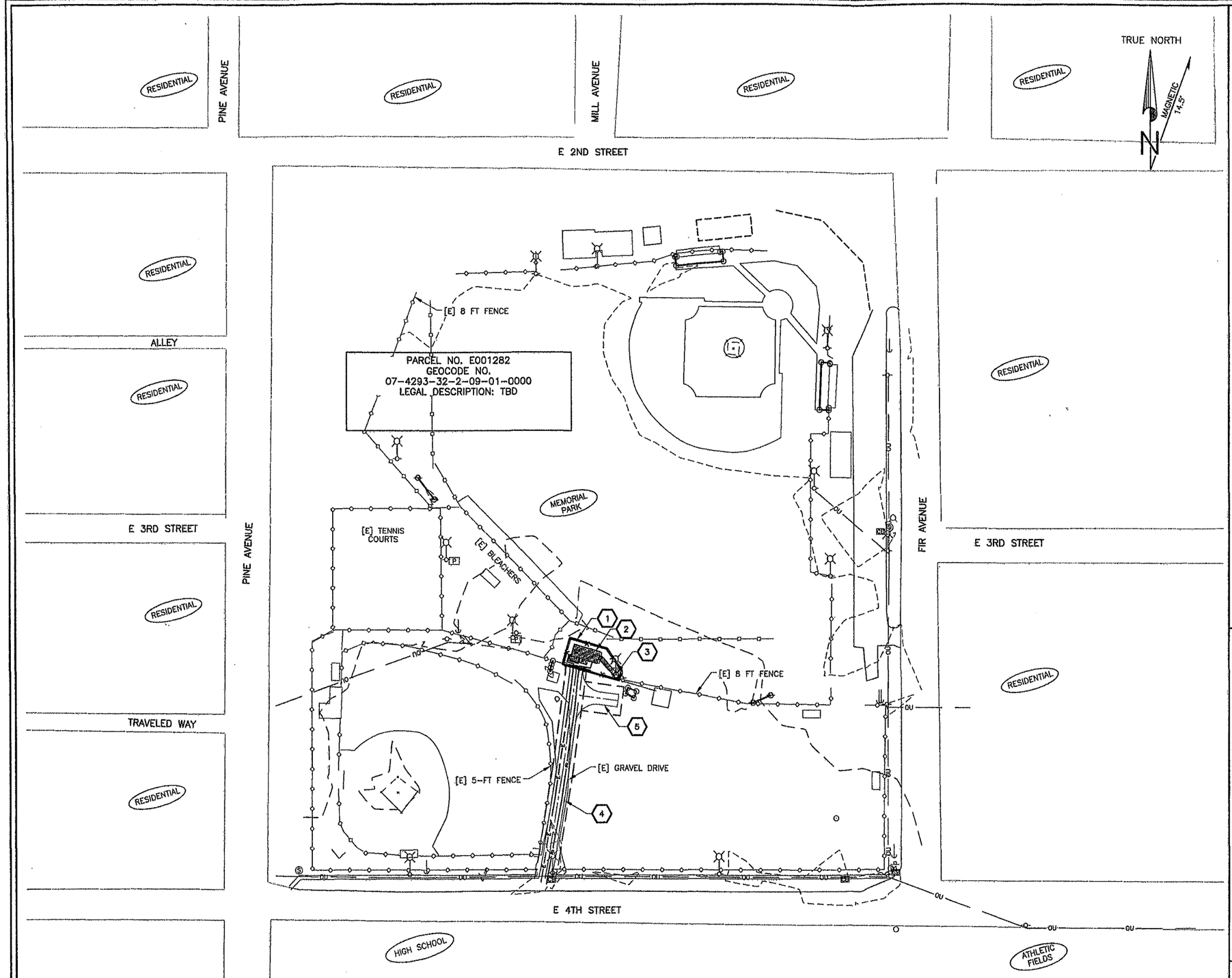
So there is the background of this issue. Paul and/or Turner may call you and at least you have some background on it when you talk with them. We will plan to have it as an agenda item on the September 16th agenda.

Chuck Stearns
City Manager

Google earth

feet 1000
meters 300

This light tower would be the preferred light tower if the City Council approves using a light tower at Memorial Field.



1 / C-2 OVERALL SITE PLAN
SCALE: 1"=100'

CALL BEFORE YOU DIG 800-551-8344

PROPOSED CONSTRUCTION KEYED NOTES

1. VERIZON WIRELESS PROJECT AREA, APPX 1376 SF
2. 11'-6" x 26' EQUIPMENT BUILDING WITH FOUNDATION, GENERATOR LEFT
3. REPLACE [E] 80' FIELD LIGHT WITH NEW 80' MONOPOLE / FIELD LIGHT
4. 12' ACCESS ROAD IN 20' ACCESS EASEMENT
5. 12' x 38' TURNAROUND AND PARKING AREA IN 28' X 38' ACCESS EASEMENT

SYMBOLS AND ABBREVIATIONS

—E—	POWER LINE
—T—	TELEPHONE LINE
—OU—	OVERHEAD UTILITY LINE
—GAS—	UNDERGROUND GAS LINE
—W—	UNDERGROUND WATER LINE
—X—X—X—	FENCE LINE
[E]	EXISTING
[P]	PROPOSED
SST	SELF SUPPORT TOWER
-o-	UTILITY POLE
←—	GUY ANCHOR
	LUMINAIRE
	ASPHALT
	CONCRETE
	BUILDING
X / X-X	DETAIL NUMBER / SHEET NUMBER

SITE NOTES

-

verizon wireless

ADAMS & CLARK INC.
1720 W. FOURTH AVE.
SPOKANE, WA 99201
PH. (509)747-4600 FAX: (509) 747-8913

A&C PROJECT # 2013-01-048

PRELIMINARY DRAWING

APPROVALS

FNE ENGINEER
RF ENGINEER
REAL ESTATE
AREA MANAGER
PROPERTY OWNER
ZONING
CONSTRUCTION DIRECTOR

REVISIONS

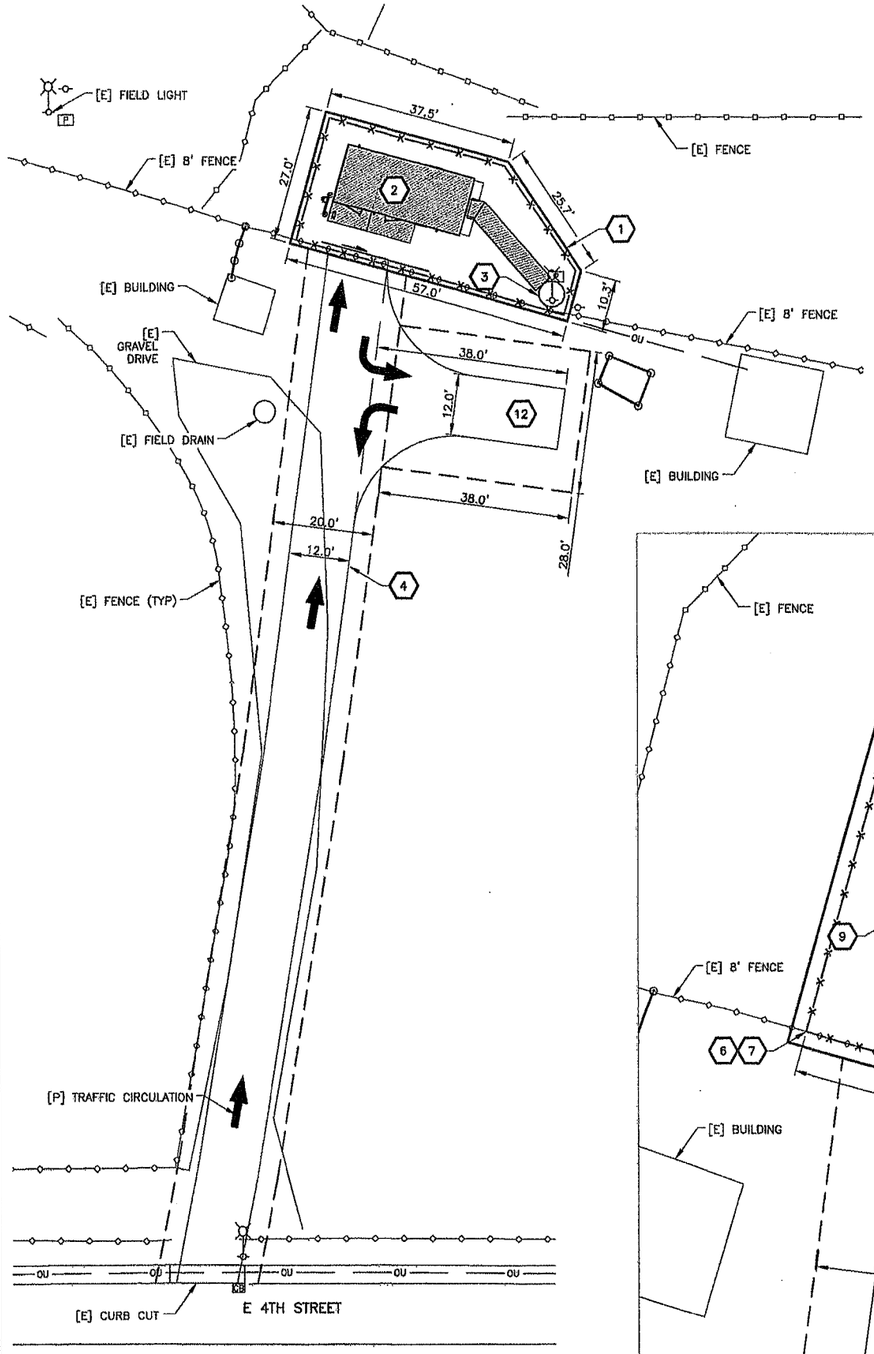
1	08/30/13	PRELIMINARY ZD

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS *PROPRIETARY AND CONFIDENTIAL* BY NATURE. USE OR DISCLOSURE BY PARTIES NOT DIRECTLY ASSOCIATED WITH Verizon Wireless IS STRICTLY PROHIBITED.

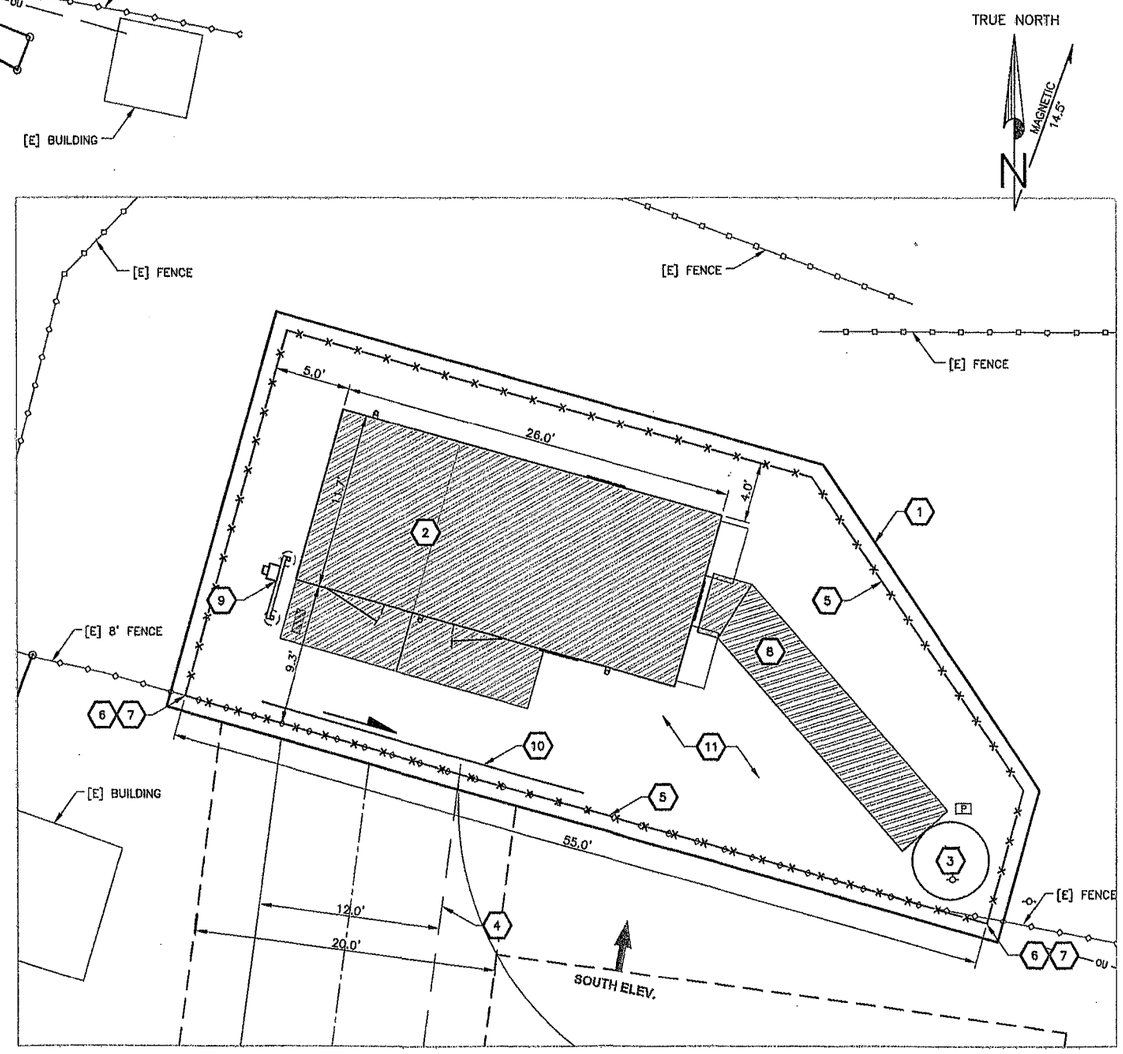
SITE
ALT #8
MT1 BLACKFISH
WHITEFISH, MT

SHEET TITLE
OVERALL SITE PLAN

C-2



1 C-2a SITE PLAN
SCALE: 1"=30'



2 C-2a ENLARGED SITE PLAN
SCALE: 1"=10'

CALL BEFORE YOU DIG 800-551-8344

PROPOSED CONSTRUCTION KEYED NOTES

1. VERIZON WIRELESS PROJECT AREA, APPX 1376 SF
2. 11'-6" x 26' EQUIPMENT BUILDING WITH FOUNDATION, GENERATOR LEFT
3. REPLACE [E] 80' FIELD LIGHT WITH 80' MONOPOLE/FIELD LIGHT WITH FOUNDATION
4. 12' ACCESS ROAD IN 20' ACCESS AND UTILITY EASEMENT
5. 8' CHAIN LINK FENCE WITH TAN-COLORED VINYL SLATS, 1' INSIDE PROJECT AREA BOUNDARY
6. REMOVE AND REPLACE 55' OF [E] 8' FENCE
7. CONNECT TO [E] 8' FENCE
8. ICE BRIDGE
9. POWER METER ON 4' H-FRAME
10. 14' CANTILEVER GATE WITH MAN GATE
11. GRAVEL SURFACE IN PROJECT AREA
12. 12' x 38' GRAVELED TURNAROUND AND PARKING AREA IN 28' X 38' ACCESS EASEMENT

SYMBOLS AND ABBREVIATIONS

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	UTILITY POLE
	GUY ANCHOR
	LUMINAIRE
	ASPHALT
	CONCRETE
	BUILDING
X / X-X	DETAIL NUMBER / SHEET NUMBER

SITE NOTES

–

verizon wireless

ADAMS & CLARK INC.
1720 W. FOURTH AVE.
SPOKANE, WA 99201
PH. (509)747-4800 FAX: (509) 747-8913

A&C PROJECT # 2013-01-048

PRELIMINARY DRAWING

APPROVALS

FNE ENGINEER_____
RF ENGINEER_____
REAL ESTATE_____
AREA MANAGER_____
PROPERTY OWNER_____
ZONING_____
CONSTRUCTION DIRECTOR_____

REVISIONS

1		
2		
3		
4	08/30/13	PRELIMINARY ZD

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SITE
ALT #8
MT1 BLACKFISH
WHITEFISH, MT

SHEET TITLE
SITE PLAN AND ENLARGED SITE PLAN

C-2a

RESOLUTION NO. 02-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, APPROVING AN AGREEMENT PERMITTING THE GLACIER TWINS TO CONSTRUCT A NEW STADIUM GRANDSTAND, AND APPROVING A LONG-TERM LEASE OF THE STADIUM LAND TO THE GLACIER TWINS.

WHEREAS, the City owns a ten-acre parcel of land known as Memorial Park, which the City acquired in 1935 in a deed which contains no restrictions concerning the City's use of such land; and

WHEREAS, since 1936 a community baseball stadium has existed on the northeast corner of Memorial Park; and

WHEREAS, the Glacier Twins American Legion Baseball, Inc., a Montana non-profit corporation, have for many years sponsored an American Legion baseball team which played its home games at the stadium; and

WHEREAS, during 40 years of continual use, the Glacier Twins have made numerous capital improvements to the stadium and surrounding land, including field lighting, irrigation systems, sodding of the playing field, dugouts, a picnic pavilion, restrooms, equipment and storage building, and food concession building; and

WHEREAS, during the summer of 2002 a civil engineer advised the City that the stadium grandstand was unsafe, and as a result the stadium grandstand was demolished; and

WHEREAS, the Glacier Twins now desire to construct a new stadium grandstand where the previous grandstand was located, and lease the stadium land from the City pursuant to a long-term lease; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to allow the construction of a new stadium grandstand, and to lease the stadium land to the Glacier Twins, as proposed,

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

Section 1: The City of Whitefish shall enter the Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, which permits the Glacier Twins to construct a new stadium grandstand.

Section 2: The City of Whitefish shall enter the long-term Lease Agreement, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, which shall lease the stadium land to the Glacier Twins.

Section 3: The City Mayor and City Manager are authorized to execute the attached documents and any and all other documents necessary to complete this transaction.

Section 4: This Resolution shall be in full force and effect immediately upon its adoption by the City Council of the City of Whitefish, Montana, and approval by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 7th DAY OF OCTOBER, 2002.

ANDY FEURY, MAYOR

ATTEST:

Necile Lorang, City Clerk

LEASE AGREEMENT
(Glacier Twins, American Legion Baseball, Inc.)

THIS AGREEMENT, made and entered into this 7TH day of OCTOBER, 2002, by and between THE CITY OF WHITEFISH, a municipal corporation, hereinafter called "CITY" and the GLACIER TWINS AMERICAN LEGION BASEBALL, INC., ROOSEVELT POST #108, a non-profit corporation, hereinafter called "TWINS".

WITNESSETH:

Whereas, the Twins, a Montana non-profit corporation, have constructed numerous improvements and intend to construct and own a new stadium grandstand, known as the Glacier Twins Stadium (hereafter called the "STADIUM"), located at Memorial Park, on real property owned by the CITY, which real property is described on Exhibit "A", attached hereto and incorporated herein by reference; and

Whereas, the TWINS have agreed to operate and maintain the "STADIUM", with the CITY entering into a long term lease with the TWINS, providing that the TWINS may use and operate the STADIUM, as set forth herein; and

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITION: The term STADIUM, as used herein, shall refer to and include those improvements constructed by the TWINS pursuant to an agreement executed concurrently by the parties, including restrooms, concession stand, equipment and storage building, grandstand bleachers and other facilities within the perimeter fence line as shown on Exhibit "A". The term STADIUM shall also include any fixtures or other items attached to the STADIUM, including lights, ventilation pipes, windows, signs and any other fixtures or items. The stadium grandstand has not yet been constructed. The term STADIUM LAND, as used herein, shall refer to and include the real property described on Exhibit "A", as well as all improvements currently located on such real property, such as dugouts, utility lines or pipes, fences, irrigation system, playing fields, restrooms, and similar existing facilities, all of which are owned by the City.

2. LEASE OF THE STADIUM LAND: The CITY does demise, lease and let to the TWINS, and the TWINS do agree to lease and rent from the CITY, the STADIUM LAND under the following terms and conditions.

3. BASE TERM: The Base Term of this Lease shall be for a term of twenty-five (25) years, beginning from the date of occupancy, which parties agree begins on January 1, 2003.

4. OPTION TERM: The CITY grants to the TWINS the option to renew this Lease for two (2) consecutive terms of fifteen (15) years each, commencing after expiration of the base Term. The TWINS shall exercise each option Term in writing to the CITY not less than one hundred eighty (180) days prior to the expiration date of each existing term. At termination of the final option term the parties may meet to discuss whether to further extend the term of the Lease.

5. CONSIDERATION: The TWINS shall pay to the CITY, as rent during the Base Term and Option Term the sum of One Dollar and No/100 ($1.00) per year in advance, with first rent payment due on January 1, 2003. Rent for each subsequent year of the Base and Option Term of this Lease is due and payable on the annual anniversary date hereof.

EXHIBIT "B"

6. INSURANCE: During the construction of the STADIUM, the TWINS shall maintain general liability insurance with respect to the STADIUM, and the City shall maintain general liability insurance with respect to the STADIUM LAND. After construction of the STADIUM, The CITY shall maintain general liability insurance with respect to the STADIUM and the STADIUM LAND. During and after the construction of the STADIUM, the TWINS shall maintain fire, property damage, and extended coverage insurance with respect to the STADIUM, and the City shall maintain similar insurance with respect to the STADIUM LAND. All of such insurance shall be in the full replacement value of the property covered.

7. UTILITIES: It shall be the sole responsibility of the TWINS to provide for water and sewer, electrical and gas supplied to the STADIUM and the STADIUM LAND, and all other utility services. The TWINS shall also provide and pay for refuse removal from the parking lot(s).

8. MAINTENANCE OF THE STADIUM AND STADIUM LAND: The TWINS shall maintain the STADIUM and STADIUM LAND in good condition during the term of this Lease. The TWINS obligation to maintain shall include the repair and replacement, as needed, of all improvements, including but not limited to all fixtures, walls, windows, roof, plumbing, electrical, heating and cooling located on the STADIUM LAND.

9. MAINTENANCE AND SAFETY INSPECTIONS. Throughout the term of this Lease the TWINS shall maintain the STADIUM and STADIUM LAND in a good and safe condition, and shall not allow any unsafe condition to exist thereon. The STADIUM and STADIUM LAND will be inspected by City staff for maintenance and safety considerations on a regular basis. If the STADUIM or STADIUM LAND is found to fall below acceptable standards, the TWINS will receive written and verbal notification from the CITY within 24 hours of the inspection. The TWINS are obligated to address the unacceptable conditions within thirty (30) working days (five calendar days if safety is involved) of receiving notification. If the TWINS fail to respond, the TWINS will be invoiced $25.00 for every hour city crews are needed to restore accepted maintenance standards. All supplemental maintenance will be documented and be available upon request.

10. USE: The TWINS shall have exclusive rights to use the STADIUM and STADIUM LAND as it deems necessary to conduct its programs. The TWINS may also use the facilities for special events and fundraisers with an approved City special events permit for any activities other than those directly related to the sport of baseball. Use of the facilities by other amateur or professional baseball clubs shall require the approval of the TWINS with provisions for use defined in a sub-lease agreement.

11. ADVERTISEMENTS: All advertisement rights and privileges displayed within the STADUIM and STADIUM LAND are to be determined and controlled by the TWINS, subject to the CITY'S sign ordinance.

12. ASSIGNABILITY: This Lease is not assignable without prior written approval of the PARK BOARD and CITY COUNCIL.

13. SUBLEASE TO BABE RUTH BASEBALL ("BABE RUTH"): The TWINS shall make the facilities available, by sublease, to BABE RUTH on a limited basis. The TWINS shall be

responsible for preparing the baseball field for BABE RUTH games and make available to BABE RUTH; bases, lighting, clean dugouts and related facilities. The TWINS shall be entitled to determine whether or not the field is in a condition to be used, and if not shall notify BABE RUTH as soon as possible. The TWINS shall retain any proceeds from the concession stands. BABE RUTH shall retain all gate fees.

14. SUBLEASE TO WHITEFISH SCHOOL DISTRICT NO.44 ("SCHOOL"): The TWINS shall make the facilities available, by sublease, to the SCHOOL, for Fall football use only. The TWINS shall be responsible for making available to the SCHOOL; lighting, football bleachers, concession and restroom facilities and the immediate surrounding area used during the football season beginning on August 20 of each year and ending with the completion of the football season of each year. The SCHOOL shall retain any proceeds from the concession stands. The SCHOOL shall retain all gate fees. If prior to June 15 the SCHOOL notifies the TWINS in writing that it will not use the facilities for the coming season, the SCHOOL shall not be required to pay any compensation to the TWINS for that season.

15. ALTERATIONS OR IMPROVEMENTS: Prior to making alterations or improvements to the STADIUM or STADIUM LAND, the TWINS shall first notify the CITY, in writing, of the proposed changes, and shall provide sufficient detail in order to permit the CITY to evaluate the proposed changes. The CITY may request additional information concerning the proposed changes. The CITY shall within thirty (30) days of receipt of all necessary information, indicate its approval or disapproval of the proposed changes. The CITY shall not unreasonably withhold its approval.

16. TERMINATION: This Lease may be terminated by either party giving to the other party one hundred eighty (180) days written notice, however in the case of the CITY such notice of termination shall only be for (1) delinquency in the payment of rent, (2) violations of State law or CITY ordinances or any covenant herein contained, (3) abandonment of the STADIUM by the TWINS, or (4) if the TWINS ceases to exist as an organization; which condition continues for forty-five (45) days unabated. Upon termination of this Lease or expiration of the Lease term, ownership of the STADIUM shall automatically revert to the CITY.

17. NON-PROFIT QUALIFICATION: Throughout the entire term of this Lease, the TWINS shall remain a non-profit corporation, qualified as such under Section 501(c)(3) of the Internal Revenue Code. The failure to maintain qualifications as a non-profit corporation under Section 501 (c)(3) of the Internal Revenue Code shall be considered a material breach of this Lease.

18. TWINS BOARD OF DIRECTORS: The TWIINS agrees that during the term of this Lease, the CITY shall be entitled if it desires, to have a representative from the CITY attend the TWINS Board of Directors meetings as a non-voting CITY representative. The representative appointed by the CITY, if any, shall be either a Council member or a member of the City staff.

19. NO NUISANCE: At all times during the term of this Lease, the TWINS shall operate the STADIUM and STADIUM LAND in a manner so as not to create or maintain a public nuisance.

20. COMPLIANCE WITH LAWS: The TWINS shall at all times comply with all applicable ordinances, laws and regulations with respect to the operation and management of the

STADIUM and STADIUM LAND, including laws prohibiting discrimination, and shall apply for and obtain all required governmental permits in a timely manner.

21. INDEMNIFICATION: Except from claims arising out of acts or omissions of the CITY, the TWINS shall indemnify, defend and hold the CITY harmless from any and all claims, lawsuits or causes of action for which the CITY has no insurance coverage, or which exceed the amount of the CITY'S insurance coverage under the CITY'S general liability and/or property damage insurance acting against the CITY, whether for damages or otherwise, and shall include the obligation to pay attorney's fees and other legal cost on behalf of the CITY.

22. ATTORNEY'S FEES: In the event of any litigation to enforce or interpret the provisions of this LEASE, or to remedy a breach thereof, the prevailing party shall be entitled to reasonable attorneys' fees as fixed by the court.

23. ENTIRE AGREEMENT: Except with respect to other agreements referenced herein, This Lease contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, arrangements, or understating, oral or written, between the parties hereto relating to the subject matter contained in this Lease which are not fully expressed herein. The provisions of this Lease may be waived altered, amended or repealed in whole or in part only upon the written consent of all parties to this Lease.

24. PARTIAL INVALIDITY: Each term, covenant, condition or provision of this Lease shall be viewed as separate and distinct, and in the event that any such term covenant, condition or provisions shall be held by a court of component jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

25. GOVERNING LAW: The construction of this Lease, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

26. SUCCESSORS IN INTEREST: Subject to the restrictions against assignment as herein contained, this Lease shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estate, heirs, and legatees of each of the parties hereto.

27. NECESSARY ACTS: Each party to this Lease agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Lease.

28. NO OBLIGATION OF CITY: During the term of this Lease, the CITY shall have no obligation to maintain, repair or replace any part of the STADIUM or the STADIUM LAND; nor shall the CITY be obligated to provide any free utility or other service.

29. EXECUTION OF LEASE: Concurrent with the execution of this Lease, the parties have executed an agreement providing for construction of the STADIUM by the TWINS.

WHITEFISH PARK BOARD

By: _____
Ron Brunk, Chair

ATTEST:

_____ 11-4-02
Dan Keyes, Parks Director

CITY OF WHITEFISH

By: _____
Andy Feury, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

GLACIER TWINS AMERICAN LEGION BASEBALL, INC., ROOSEVELT POST #108

By: _____ 10-9-02
Doug Golden President

ATTEST:

_____
Rita Hanson, Secretary

MEMORANDUM

#2013-037

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Business Improvement District (BID) or other assessment district for Parking Structure O&M costs – update and request for direction/concurrence

Date: August 28, 2013

On May 20, 2013, the City Council, on a 4-3 vote with the Mayor breaking a 3-3 tie, approved the following motion:

> *Mayor Muhlfeld said there is a motion on the floor to approve structured parking with a city hall, and in parallel staff will research and bring back whether the feasibility for a BID by the September 3, Council Meeting. Staff has indicated it wouldn't be a completed BID at that time but they would bring back a proposal with parameters for the creation of a BID.*

A BID/Assessment District working group was formed to research and work on concepts for such a district. The working group consists of the following members:

Dave Boye –	Chamber of Commerce representative
Marcus Duffey -	Chamber of Commerce representative
Dale Reisch -	Heart of Whitefish representative
Chris Schustrom -	Heart of Whitefish representative
Necile Lorang -	City staff – Administrative Services Director/City Clerk
Rich Knapp -	City staff – Assistant City Manager/Finance Director
Chuck Stearns -	City Staff – City Manager

The working group met three times (July 22, August 2, August 14) , to discuss and analyze the various options for assessment districts and the parameters for such a district. They also reviewed and commented on this memo. The primary issues are discussed below.

Types of Assessment Districts

There appear to be three types of assessment districts that would work for parking structure O&M costs. Four different options were reviewed, but only three appear to be viable. The four types of assessment districts and their attributes are described in an attached chart.

The working group decided to focus on the Special Improvement District (SID) (7-12-4101 et. seq. MCA) for the following reasons:

- Many downtown Whitefish businesses are familiar with an SID because there is currently a parking SID (SID#155) in effect.
- One or two people felt that, because the City Council initiated the construction of the parking structure, the City Council, not the business owners, should initiate the assessment district.
- Rather than requiring a petition from 60% or 100% of the business owners to initiate the district, a SID does not require a petition to initiate it. The City Council can initiate the district.
- Affected property owner can prevent the district if property owners bearing more than 50% of the cost protest the creation of the district.
- The SID laws allow the off-street parking method of assessment such as was done with SID #155 (see attachment for assessment variables allowed by 7-12-4165 MCA)

The working group would like direction or concurrence from the City Council on the method of assessment to pursue.

Annual cost of O&M for parking structure

The working group began discussion of the annual cost estimates for the O&M of the new parking structure. I presented information from Kimley – Horn and Associates that annual O&M costs might be in the $100,000 to $125,000 range (see attachment in packet - $492 per space per year cost). Chris Schustrom disagreed with that estimated level of cost because other parking structures in Montana do not spend nearly that level for annual O&M costs. He cited information gathered from Missoula, Bozeman, Billings, and the National Parking Maintenance Manual:

Missoula downtown structure - $24,000 - $36,000 annual O&M costs for 265 space structure

Bozeman - $146 per space per year for O&M –multiplied by the number of spaces in our proposed structures (216 -244) would equal $31,536 - $25,624.

Billings – they aggregate costs for 3 structures – probably $30,000 - $50,000 for a similar structure

National Parking Association – 2001 study of one structure - $147/space per year therefore $31,752 - $35,868 for a structure of 216-244 spaces.

Crandall Arambula – they felt $250/space/year for maintenance would be upper limit, therefore $54,000 - $61,000.

After discussion, the working group felt comfortable in the range of $50,000 to $75,000 which would include a reserve for replacement of $10,000 to $15,000 per year (i.e. for an elevator or

other high-cost item). However, the annual O&M costs could change once we are in design for a parking structure and once it opens and is operating.

Leasing of some spaces and lease revenue

The working group also discussed revenues that could be generated from leased spaces. Leased spaces make up a large part of the occupancy of parking structures researched in Missoula, Bozeman, and Billings. We are all in agreement that any lease revenue from the parking structure should be used to pay for annual O&M costs of the parking structure and thereby reduce the assessment on property owners. Depending on the extent and fee for the leased parking spaces, the lease revenue could pay for a significant portion of the annual O&M and reserve cost.

It is quite possible that the number of spaces to be leased will fluctuate in the future. A goal of any new parking structure is obtain a high amount of use as soon as possible so people are accustomed to using the parking structure. Leased spaces can help achieve high use, especially early on. Then later, as there is more demand for retail parking, the number of leases might be reduced.

Our lease experience in the 3rd and Central lot and in the old lot at 2nd and Spokane was as follows:

3rd and Central – four 24 hour spaces and thirteen 12 hour spaces. Our rate initially was $20 per month for the 12 hour spaces and $25 per month for the 24 hour spaces.

2nd and Spokane – four 24 hour spaces and twenty-six 12 hour spaces. Lease rates were the same.

When we rebuilt the 2nd and Spokane lot, the City Council declined to do any leases in the rebuilt lot, leaving it just for retail parking. The 3rd and Central lot was turned into retail only parking while Central Avenue was re-built to offset the loss of some on street parking on Central. When the Central Avenue project was completed, the City Council has declined, so far, to restore any lease spots in the 3rd and Central lot.

During the reconstruction of Central Avenue, initially we moved the leased spaces to the temporary parking lot at Block 46 (Third and Spokane). However, the City Council at the same time, decided to increase the lease rate from $20 to $40 per month for a 12 hour space and from $25 to $50 per month for a 24 hour space. After one quarter, everyone stopped leasing the spaces in that lot because it was further away from their business, the rate increase, and the fact that there was plenty of free parking in the same parking lot.

Prior to the change, all of the spaces in the 3rd and Central lot were leased and there was a waiting list. Typically all of the spaces at the 2nd and Spokane lot were leased, but there was more turnover and no waiting list.

It is always good to lease the top level of any parking structure to ensure that this level gets used. If we started out leasing the top two levels of the parking structure and left the bottom level for retail, in one design that would mean leasing 135 spaces. The other design (City Hall on Baker) has 190 spaces on levels 2 and 3 with only 43 on level 1, so we likely want more retail spaces than 43.

For example, if we leased 135 spaces initially for $40 per month, that would equal $64,800 of annual revenue, which could pay all of the O&M. If we only leased 70 spaces initially, that would equal $33,600 of annual revenue, leaving $36,400 for the assessments. Of course in any leasing scheme, we might have a higher cost for the covered spaces and a lower cost for the roof top spaces. Also, it is likely that City Hall employee parking might be on the top level and that will be 40-50 spaces of lease revenue.

At least one member of the committee is concerned that there may not be enough demand for leased spaces, so we may not attain the revenues discussed above.

Boundaries of Assessment District

The working group looked at assessment boundaries primarily using circles with a radius from the center of the parking structure as that was the method used for the SID #155 Downtown Parking SID. However, that parking SID had three lots with 5 levels of assessment for each of the three lots, so its formulation was very complex. The working group also looked at going block by block, but we felt that using circles resulted in an assessment that was less likely to be challenged as being unfair or arbitrary. Whether a lot was included in the SID 155 tiers depended on whether more than 50% of the lot was inside a respective circle, which seems fair.

The working group evaluated circles with a radius from the center of the parking structure of 300 feet, 600 feet, 660 feet (1/8th mile corresponding to Crandall and Arambula retail planning circle), 900 feet, 1200 feet, and 1320 feet (1/4 mile corresponding to Crandall and Arambula retail planning circle). After considering many factors, the working group's consensus was to begin by using two circles of 660 foot radius and 1,320 foot radius. See the attached map.

These two circles were felt to represent the very direct beneficiaries of a parking structure (660 foot radius) and the less direct beneficiaries (1,320 feet). Within those circles, we would exclude assessing any single family and duplex residential units. Whether to assess multi-unit complexes as a commercial use is still under consideration and requires some more research. We would likely use the Department of Revenue classification differences as guidance for those types of property. Any BNSF properties outside of City limits would not be assessed.

When to begin assessments

The working group also discussed when to begin assessments. Obviously a district could be formed before the parking structure is built, but we would not want to or be able to assess

property for O&M until the structure is open and operating. That will depend on a construction schedule which is not yet available.

Based on preliminary discussions with a handful of downtown property owners who were involved with the creation of SID #155, the Heart of Whitefish feels that, because the Downtown Parking SID #155 assessments end after the fall 2015 assessments, it could be acceptable to downtown businesses to begin any new assessment on or after the fall 2016 assessments. With the end of assessments for the construction of the SID #155 parking lots, those businesses could then more easily afford to continue some level of assessment, even if it were increased. It seems that this timing would also work as I doubt a parking structure would be built and opened before January of 2016. The current assessments on properties for SID #155 are typically between $200 and $300 annually. The working group also agreed that it will be important to keep downtown business/property owners informed of this process so as to avoid any misunderstanding of what is being proposed.

Summary and request for concurrence and direction

Before we formulate a concept with specific assessment levels or a range of levels to go to businesses with, we need some guidance and direction on many of the above issues.

1. Assessment District – ok with proceeding with a SID instead of BID and pursue assessment method similar to SID #155 with using variables in 7-12-4165 MCA?
2. Estimates of O&M annual costs to focus on - okay with range of $50,000 to $75,000 including a reserve of $10,000 to $15,000?
3. Clarification of what percentage of O& M costs would be assessed? –
4. Lease revenue – what assumptions should we use for lease revenue?
5. Boundaries – is the Council okay with two tiers of boundaries at 660 feet and 1,320 feet for two tiers of assessments? How different are the assessment levels between the two tiers?
6. When to begin assessments?
7. Can the City Hall committee continue on process to select an architect and bring a architectural and engineer design contract forward for consideration?
8. Does the City Council want to do any polling of businesses?

Parking O&M Assessment Options
8/26/2013

Type of District	Statutory Authorization	Assessment Options	Who Initiates	Duration	Other Aspects
Business Improvement District	7-12-1101 et. seq. MCA	Area, per lot, taxable valuation, square footage and flat fee	Initiated by a petition of owners of more than 60% of the area of the property proposed for inclusion in district	Not more than 10 (ten) years at a time	Creates a separate board to run district Protest above 50% prevents it
Special District	7-11-1001 et. seq. MCA	Area, per lot, taxable valuation lineal front footage, vehicle trips mill levy or any combination	Initiated by petition of 40% of registered voters or 40% of owners of real property	Determined in petition	Definition excludes parking districts, BID's, SID's, so did not pursue
Off Street Parking Improvement District	7-14-4701 et. seq. MCA	Area, taxable value, equal amount, lineal front footage, utility service connections, off-street parking options (7-12-4165)	Petition from 100% of real property owners in district	Determined in petition	Can issue bonds
Special Improvement District	7-12-4101 et. seq. MCA	Area, taxable value, equal amount, lineal front footage, utility service connections, off-street parking options (7-12-4165)	City Council initiates by Resolution of Intention	cannot exceed 20 years	Protest from property owners bearing more than 50% of the cost of proposed work prevents it

Montana Code Annotated 2011

7-12-4102. Authorization for creation of special improvement districts -- petition for creation. (1) The city or town council may:

(a) create special improvement districts, designating them by number;

(b) extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

(c) make the assessments payable in installments; and

(d) pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) land, structures, and appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314;

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(4) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city when the special improvement district abuts and benefits that property. Properties within the proposed district boundaries outside the city may not be included in the special improvement district if, under the assessment methodology provided in the resolution of intention, the owners of lots, tracts, or parcels outside the city representing not less than 40% of the total projected assessments against properties outside the city protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the

special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.

History: (1)En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.79, R.C.M. 1947; amd. Sec. 11, Ch. 234, L. 1971; Sec. 11-982, R.C.M. 1947; (2)En. Sec. 2, Ch. 89, L. 1913; amd Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; Sec. 11-2202, R.C.M. 1947; R.C.M. 1947, 11-982, 11-2202(part); (3)En. Sec. 2, Ch. 342, L. 1981; amd. Sec. 27, Ch. 665, L. 1985; amd. Sec. 1, Ch. 116, L. 1987; amd. Sec. 5, Ch. 449, L. 1989; amd. Sec. 1, Ch. 54, L. 1991; amd. Sec. 2, Ch. 250, L. 1993; amd. Sec. 4, Ch. 591, L. 2001; amd. Sec. 2, Ch. 93, L. 2007; amd. Sec. 1, Ch. 163, L. 2007.

Provided by Montana Legislative Services

Montana Code Annotated 2011

7-12-4165. Assessment of costs -- offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each benefited tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing onsite parking space on any parcel of land within the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 40, Ch. 665, L. 1985.

Provided by Montana Legislative Services

Montana Code Annotated 2013

7-12-1133. Assessment of costs -- area, lot, taxable valuation, square footage, and flat-fee options -- provisions for property classifications. (1) At the same time that the board submits the annual budget and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district that will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method that best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within the district may be assessed for that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) if the governing body determines that benefits derived by each lot or parcel are proportional, the governing body may use standard criteria, such as individual occupancy or daily use, and make the assessment on a flat-fee basis based on the criteria;

(d) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the whole cost of the district that its taxable valuation bears to the total taxable valuation of the property of the district;

(e) each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district;

(f) if the governing body determines that benefits derived by each lot or parcel are disproportional, the governing body may use classification criteria, such as location within the district, economic impact, or any other measurable criteria, in conjunction with methods of assessing fees outlined in this subsection (2). Each classification must have its own rate. There may not be more than six classifications upon which a charge is imposed.

(g) by using any combination of the assessment options provided in subsections (2)(a) through (2)(f).

(3) If a district is expanded, the land within the expanded area or property with a similar purpose in the district must be assessed as provided for in subsection (2) for the duration of the district.

History: En. Sec. 15, Ch. 656, L. 1985; amd. Sec. 1, Ch. 450, L. 1989; amd. Sec. 5, Ch. 79, L. 1991; amd. Sec. 5, Ch. 253, L. 2007.

Provided by Montana Legislative Services

The amount recommended for maintenance reserve set-asides vary by the age of the facilities. The table below provides some general guidelines:

Age of Deck	*Cost*	100
0-10 years	$75-$200/space/year	
10-20 years	$300-$400/space/year	
20+ years	$500/space/year	

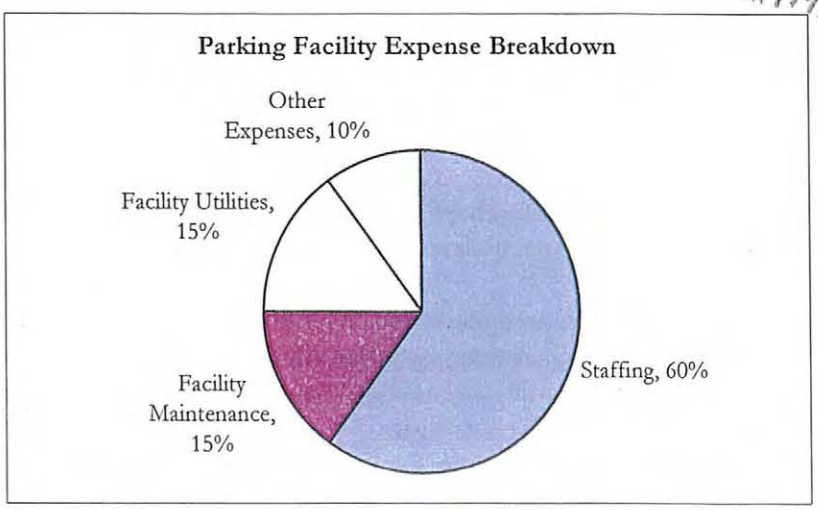
Expenses by Major Category

The table below breaks down typical parking garage operating expenses by major categories:

Expense Item	Expense Range (per space)	
Labor	$230 - $350	100
Maintenance	$30 - $100	100
Utilities	$50 - $100	100
Other Expenses	$40 - $60	60
Management Fee/Overhead	$25 - $50	
Insurance	$7 - $25	25
Marketing	$5 - $7	7
Total Range	**$387 - $692**	492

Note: Assumes traditional exit cashier facility. Does not include security. $492 X 233 spaces = $114,636

Maintenance costs are identified in the $30 - $100 annual cost per space range or approximately 15% of annual operating expense costs.

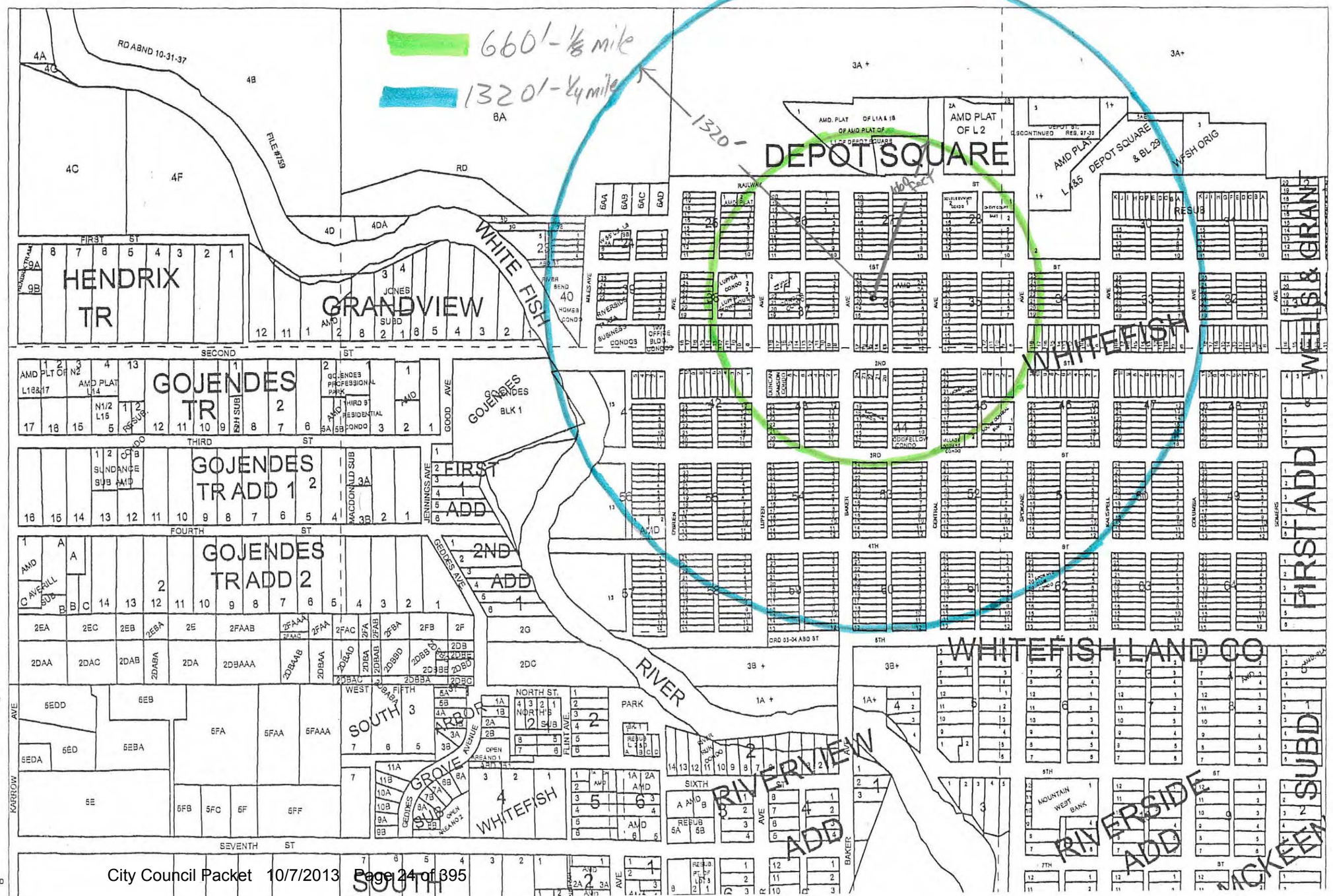


36 31 22

SCALE 1" = 400'

THIS MAP IS PREPARED ONLY FOR THE ADMINISTRATIVE USE OF FLATHEAD COUNTY AND IS NOT NECESSARILY AN ACCURATE REPRESENTATION OF THE LOCATION OR EXISTENCE OF TRACTS OF RECORD, THEIR BOUNDARIES OR EASEMENTS AND ROADWAYS.

92 L.7 B.2 GOJENDES TR ADD 1
RET. L.14, 13 W8' B.2 RIVERVIEW ADD
RETRACE L.19-23 B.33 WFSH
RETRACE L.12,13 B.2 RIVERVIEW ADD
RETRACE L.16,17 B.54 WFSH
RET. N150' L.8 B.2 GOJENDES TR
5BE,5BEA,5BEAA,5BEAB,5J,5HA BDY ADJ
RETRACE L.8,9,10,11 E9' B.38 WFSH
RETRACE L.5, 6, N2 7 B.40 WFSH
PT L.11,12 RIVERSIDE IMP CO AC
5FAA, 5FAAA
RETRACE L.1,2,3,9,10,11,12 B.11
/ERSIDE ADD
L.8,7,8 B45 WFSH & RETRACE L.9
O PLAT L.9,10 B.45 WFSH
L.9 B.2 WFSH LAND CO ADD 1
RIVERVIEW ADD W62.3' L.8 B.8
RIVERSIDE IMP CO AC POR. L.9
RET.BLK.1 GOJENDES EX W 275'
RET. L.12,13 B.2 RIVERSIDE ADD
L.1,5,8 B.1 NORTHS SUB S. WFSH
RETRACE L.8,9,10 B.53 WFSH
RETRACE L.4 B.7 RIVERSIDE ADD
RETRACE L.23, 24 B.59 WFSH
RETRACE L.23 B.37 WFSH
RETRACE L.19-22 B.59 WFSH
RETRACE L.19 B.37 WFSH
RET. POR L.7,9 B.1 RIVERSIDE ADD
RET.N LINE L.7 B.3 RIVERSIDE ADD
RETRACE L.1-4 B.5 S WFSH
RETRACE L.3 B.25 WFSH
RET.L.2 B.7 WFSH LAND CO ADD 1
RET. L.1,2,3 BLK.2 RIVERVIEW
RETRACE L.3 B.1 RIVERVIEW ADD
RETRACE L.1,2 B.3 RIVERVIEW ADD
RETRACE L.1 B.2 SOUTH WFSH
RETRACE L.11,12 B.53 WFSH
RETRACE L.14 B.2 RIVERSIDE ADD,
AMD L.15 B.2 RIVERSIDE ADD
RET. L.8 B.3 SOUTH WFSH ADD 1
RET. L1,2,3,4 B.4 RIVERSIDE ADD
RETRACE L.1 B.1 RIVERVIEW ADD
RET. E50' & W L.1,2,3 & L.9,10,11,
& VAC ALLEY B.11 RIVERSIDE ADD
3AE
RETRACE L.2 B.1 RIVERVIEW ADD
RETRACE 5BA
RETRACE LINE 8A, 8AD,
:, 8AB, 8AA, 3D
RETRACE 1CE
RETRACE L.1 E90', L.2&3,
E2 B.1 SOUTH WFSH ADD 1
RETRACE PTN L.23, 24, 25
,38 WFSH
RETRACE 6A, 8AA, 7C, 7AA
RETRACE 1ABCA
RETRACE L.14&15 B.50 WHITEFISH
RETRACE L.8 B.3 RIVERSIDE ADD
5B BDY ADJ
RETRACE L.10, 11 B.49 WHITEFISH
RETRACE L.12, B.6 RIVERSIDE ADD &
B.2 WTCSACT 1ST ADD
L. 13 PTN RIVERSIDE IMP. CO. AC. ESMT
RETRACE L.15-18 B. 38 WHITEFISH
RETRACE PT B.35-38&42-44 WHITEFISH
RETRACE PT B.53 WHITEFISH
RETRACE L.4&2, 5-8 B.58 WHITEFISH
RETRACE L15,16 B51 WHITEFISH
RETRACE L.8 S22.5' & L.7 B.39 WFSH
RETRACE L.1,2,3 B. 47 WFSH
RETRACE L.11&12 B.14 RIVERSIDE ADD
RETRACE L.1,2 & ABD ST B.58 WFSH
RETRACE L.8 BLK.25 WFSH
RETRACE L.3 BLK.8 WFSH ADD 1
RETRACE L.4 B.5 WFSH LAND CO ADD 1
RETRACE LINE
RETRACE W2 L.7 B.5 RIVERVIEW ADD TO WF
RETRACE L2-4 W18', L2-4 E22' OF W40' WF
RETRACE L.1&2 B.6 RIVERVIEW ADD TO WF
RETRACE 2G, 2DC
RETRACE L.1 B.38 WFSH
RETRACE L.18, 19, 20 B.49 WFSH
RETRACE 2, 5G
RETRACE & EASEMENT L.2, 3, 4N50'
B.4 RIVERSIDE ADD
RETRACE L.11 B.3 WELLS GRANT ADD
RETRACE 8AA
BOB, 5BGA, 5BDBA, 5BGAA FT
RETRACE L.5 & 8 B.12 RIVERSIDE ADD
RETRACE W80'L.9B.4 MCKEENS SUB
RETRACE L.8 WFSH LAND 1ST ADD
RETRACE L.2, B.12 RIVERSIDE ADD
RETRACE LINE OF E100' OF S175
L.13 B.57 WFSH
RETRACE L.12-18 B.3
TR.B, B.2 RIVERSIDE ADD WF
RETRACE L.1 RESUB L7,8, B5 RIVERSIDE ADD
RETRACE L.20-24 B.51 WFSH



Crandall Arambula suggestion to have assessment district circles from center of retail district so as any future parking lots are added, the circles would not have to be adjusted

Chuck Stearns

From: Dennis.Burns@kimley-horn.com
Sent: Wednesday, September 25, 2013 10:48 PM
To: cstearns@cityofwhitefish.org
Subject: RE: Parking O&M

Hi Chuck,

I was hoping to get some feedback from some private parking management firm contacts that I have, but I have gotten any responses back as of now. However, after reviewing the information provided I have the following comments:

1. The low end of our O&M estimates was $387/space/year which when multiplied by 233 spaces would equate to an annual O&M cost of $90,171.00.
2. The O&M cost of $387/space/year included the category for labor (i.e. cashiering, book keeping, supervision, etc.). The labor category of the low end estimate was a large percentage of the O&M cost - approximately 60% or $230/space/year.
3. My current understanding of the way you intend to operate this garage is to assign employee or contract parkers on the upper levels and reserve the lower level(s) for transient parkers. You are not planning to charge for the transient parking, eliminating the need for most of the $230/space/month. There will still be a need for some level of administrative/management costs. I would recommend budgeting some amount to go towards this category of expenses. I would recommend something in the $50 - $60/space/year.
4. Assuming this to be the case, reducing the "labor" category of expenses from $230/space/year down to $50/space/year would bring the estimated O&M costs down from $387/space/year to approximately $207/space/year.
5. You could potentially eliminate the "labor" category all together, if you assume that these duties/expenses may be able to be absorbed by existing staff. If you make this assumption, the annual O&M costs would be approximately $157/space/year ($387 - $230 = $157). This is more in line with the numbers Chris Schustrom and Crandall Arambula estimated.
6. It is important to make sure that the some funds be set aside for a long-term maintenance reserve. It appears that you have identified a number of $100/space/year. I would be comfortable with $75/space/year for the first ten years. You could extend this beyond ten years if during the design you are willing to invest more into redundant concrete durability features such as epoxy coated rebar, micro-silica concrete, concrete additives, concrete sealants, etc. This is a wise investment for long-term garage owners and is sometimes referred to in the industry as a "belt and suspenders approach".

These are my initial comments. When we talk tomorrow afternoon, I want to make sure my understanding of the assumptions regarding proposed operational practices are consistent with yours.

Talk to you soon.

Dennis

From: Chuck Stearns [mailto:cstearns@cityofwhitefish.org]
Sent: Friday, September 06, 2013 10:47 AM
To: Burns, Dennis
Subject: Parking O&M

Dennis:

As we discussed today, please look at the attached packet of information that we discussed with the City Council last week, especially the highlighted section. The City Council would like your estimate of annual O&M costs for an unattended parking structure such as were our conceptual plans for the two parking structures we narrowed down to.

Look this information over and give me a call to discuss. There is no hurry – I would need this information by October 1st. Thanks.

Chuck Stearns
City Manager
City of Whitefish
P.O. Box 158
418 East 2nd Street
Whitefish, MT 59937-0158
Telephone - 406-863-2406
Fax - 406-863-2419
Cell -
cstearns@cityofwhitefish.org

Chuck Stearns

From: Chris Schustrom / Garden Wall Inn [chris@gardenwallinn.com]
Sent: Monday, September 30, 2013 7:58 AM
To: 'Chuck Stearns'
Cc: 'John W. Anderson'; 'Frank Sweeney'; 'Richard Hildner'; 'John Muhlfeld'; 'Ian Collins'; 'Rhonda Fitzgerald'
Subject: For City Council; Parking O&M Bozeman/Missoula + Bozemn notes & tips
Attachments: MISSOULA PARKING STRUCTURE MAINTENANCE COST OVERVIEW.docx; BOZEMAN PARKING STRUCTURE MAINTENANCE COST OVERVIEW.docx; BOZEMAN PARKING STRUCTURE notes and tips.docx

Hi Chuck,

Attached are consolidate parking O&M costs as researched with Missoula and Bozeman as requested for the workshop October 7. For Billings, I believe you have all of the correspondence with Bruce McCandless that include his allocated cost sheets as well as his responses to our questions.

I've contacted Dave Hewitt, Parking Director in Helena, a few weeks ago and am just waiting to received the same information from him for Helena's most comparable structure to the structure we are planning to build. He said he has been swamped and will get it to me as soon as he can. I'll follow up today.

Also attached are notes from Scott Lee from Bozeman, which I think may be helpful in our process.

If you have any questions just let me know.

Chris

Chris Schustrom

The Garden Wall Inn | 504 Spokane Avenue | Whitefish, MT 59937
p: 406-862-3440 | www.gardenwallinn.com

MISSOULA PARKING STRUCTURE MAINTENANCE COST OVERVIEW:

Mary Hanson Missoula Parking Commission - 406-552-6241

Central Park Structure
Size of Structure/Number of Spaces: 265

Mode of Operation (auto or attended):
Attendant - 8-6 M-F

Maintenance Costs by Category:
±$25,000 annually

Water for fire line	**$1000**
Garbage	**$1500**
Security	**$3278 (a company that drives thru 4 times on Saturday and Sunday night to reduce vandalism and graffiti.)**
Phone for elevator	**$360**
Custodial Labor	**$6000**
Lights	**$12000 (lights in "Central Park" last year were replaced with more efficient lighting, so hopefully this will reduce cost for current year.)**

TOTALS: $24,138 (highest number) / 265 spaces = $92 per space

Applied to largest Whitefish structure size: $92 x 233 = $21,436 + $15,000 reserve = $36,436 estimated annual maintenance.

Leased spaces: Half of spaces in structure are leased. $50-$75/mo. depending on level designated for specific leases spaces. All ramps are leased as well as roof and below grade ramp. Flat levels are kept for public parking.

Note on lighting - Their new garage, Park Place has Limelight lighting (LED) which is occupancy sensitive and has a greatly reduced operating cost. They also installed solar panels on the top level to counter the majority of the electric bill there.

BOZEMAN PARKING STRUCTURE MAINTENANCE COST OVERVIEW:

Scott Lee, City of Bozeman Parking Manager 406-582-2903

Size of Structure/Number of Spaces:
435 spaces - four levels counting underground and top deck (just over 100 basement, just over 100 per deck x 3) - Built in 2009
Stairwells and elevators (3 shafts, 2 elevators).

Mode of Operation:

Autopay System - decided on because of cost, 24/7. Biggest expense was software, hardware, barrier entries) important to get a good system. Figure out what your needs are (ex. additional locations that can tie in to one software system when you build first structure). (SkiData - system they use from Austria so shipping of parts is expensive.) tip: put payment machine inside

Maintenance Costs by Category:
2012

1. Janitorial: $13,000/year
2. *Utilities: $28,000/year ($22,000 electricity, +water, +sewer)
3. Supplies: $5000/year tickets for entry w/ autopay, depends on usage. increases with usage.
4. *Snow removal: $21,000 ($120-160/removal) - they don't remove heavy snow from roof. Very important to design so that snow can be removed from roof.
5. Insurance ($11,000- liability)
6. *Crack Sealing - $3-5000 per year (prefer epoxy over polyurethane, but very expensive)
7. Restriping, $5,000 per year
8. Elevators: Three shafts and two elevators: Monthly maintenance contract. Not much problem. $2000/year includes repairs. Recommend maintenance contract. **Cleaning of elevators is important.**
9. Reserve fund: TIF set aside $10,000/year for first three years to build reserve fund. Going forward, garage intended to generate enough to set aside funds to keep reserve. (Scott sees $10,000/year as a good minimum specifically for elevator and crack sealing issues that might arise). **Build as much reserve right away since maintenance expenses are less at outset.**

TOTALS: $90,000 (total of first eight items) / 435 spaces = $207 per space

Applied to our largest structure size:
$207 per space x 233 = $47,231 + $15,000 reserve = $62,231

Does structure cover operating & maintenance costs through permit and public parking revenue revenue?: Yes

Two hours free parking then $1/hour after that.
May- $4000 revenue
Busy months - $4000-5000 per month
Slower months - $3000-4000 in slower months.
$49,000 annually

Permit parking is a big part of equation; 200 leases in garage now + 100 spaces for a hotel being built + 60 proposed for another hotel requesting.
Charge $40/month for upper levels. one hotel leased 102 spaces on basement (360 total) Mostly first come first serve. Businesses and specific employees lease spaces.

City Rolling Parking rule - Business employees can park on same block face for no more than 3 hours, then have to move. Done to encourage employees to park in structure. Parking office offers bulk discount (10% if annual permit bought by Jan 1 of each year, 5, 15, 25, 60, breaks also get different bulk discounts - have to pay annually).

2012 permits (leased parking) - $81000 revenue, $49,000 general hourly public parking and parking validation(sold in advance) - businesses buying to give to customers (only $900/year)

Built in 2009- occupancy up 50 entries/day/month for a total of 350.
Got federal funding for intermodal portion(bus stop with turn lane) through FTA grant Master Agreement www.fta.dot.gov/documents/19-master.pdf through Senator Baucus. Have to be very careful when you lease spaces after receiving this money. Paint number on lease spaces

Bozeman Parking Structure Notes (from Scott Lee, Bozeman Parking Manager):
Garage wasn't built big enough. Now Bozeman is looking to build another garage, but their TIF district sunsets in 2023, so not likely. recommended to Build/commit to building what you need at the outset, don't wait.

Intermodal with bus stop on end of structure with turnlane, retail space sold to individuals(agreement is very important) Received federal funds and have to meet requirements that go along with that funding. (structure cost $12 mil. to build, $1.5 mil federal funds)

Bozeman Cash in Lieu: $5000 per space. Way too low and doesn't cover costs. Needs to be changed to reflect realistic costs (will be happy with high $15-20,000/space)

Tips and Recommendations from Scott: Design stairways and entries and walkways with drains and to be very cleanable. Rough surfaces so that the are not slippery.

Light fixtures (188 in garage 3-4yr mark (replace 20-30/qtr, going to LEDS, RECOMMEND LEDS, but should be observed in garage setting to see how much light they throw to ensure security. $400 /fixture 100,000hrs two year warranty) worth spending on LEDS upfront, and save on utility costs.

City Charges - City built structure with TIF (overhead allocation from Parking department to police, fire)

Parking Manager is through Enterprise Fund
Staff - 4 parking enforcement officers

City allocation for overhead (internal through enterprise fund)
Downtown Bozeman Partnership - TIF, BID, Downtown Bus. Ass. - Take care of trash on Mainstreet and exterior of structure, flowers on light poles, watering, Christmas decorations, banners on light poles seasonally.

3 members + Exec Dir. form board that oversees all three. Meets state requirements for boards of TIF and BID

Don't try to save money when it is built. Basement level, secured parking with passcode entry- (leased to Hotel). Ground level, didn't put in enough expansion points to compensate for movement due to seismic movement. $10, 000 per year because $50,000 wasn't spend during construction.

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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, October 7, 2013, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 13-07. Resolution numbers start with 13-27.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATIONS – Presentation on 2014 East 2nd Street Road and Trail Construction Project (p. 323)

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 September 16, 2013 Council regular session (p. 49)
   b) Ordinance No. 13-06; An Ordinance amending Whitefish City Code Title 11 Zoning Regulations and Title 12 Subdivision Regulations within the bounds of State law (Second Reading) (p. 61)
   c) Consideration of approving application from Sherwood Capital LTD for Whitefish Lake Lakeshore Variance (#WLV-13-W29) at 2982 East Lakeshore Drive to replace and extend a retaining wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas and subject to 29 conditions (p. 73)
   d) Resolution No. 13-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 416 Ramsey Avenue, for which the owners have petitioned for and consented to annexation (p. 150)
   e) Resolution No. 13-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City certain tracts of land known as 2524, 2522 and 2520 East Lakeshore Drive, for which the owners have petitioned for and consented to annexation (p. 154)

f) Confirmation of appointment of representative, Kelly Davidson, to the Ice Rink Advisory Committee as the Adult Ice Hockey group representative (p. 162)
g) Consideration of approving amended Protective Covenants, Conditions, and Restrictions (CCR's) for the Lakes Cottages subdivision (p. 163)

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

a) Resolution No. 13-___; A Resolution specifying rate increases for water, wastewater and garbage collection services beginning October 1, 2013 (p. 190)
b) Consideration of application from Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, for a two year extension of the Lookout Ridge Preliminary Plat (p. 212)
c) Resolution No. 13-___; A Resolution of the City Council of the City of Whitefish, Montana, indicating its intention to adopt amendments to the Whitefish Downtown Business District Master Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (p. 248)

8) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR
a) Resolution No. 13-___; A Resolution authorizing the process to develop an amended Mountain Trail Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee (p. 316)

9) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
a) Authorization to proceed to bidding for East 2nd Street road reconstruction and trail construction project (p. 323)

10) COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 329)
b) Other items arising between October 2nd and October 7th
c) Resolution No. 13-___; A Resolution approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank (p. 337)

11) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
a) Standing budget item
b) Letter from Kate Orozco, Superintendent of Whitefish School District 44 requesting reimbursement of impact fees assessed on the high school project in the amount of $66,714.69 (p. 368)
c) Consideration of request from Mayor Muhlfeld to replace him as appointee to 911 Board with Chief Bill Dial (p. 380)
d) Letter from Chris Bernat regarding new City Hall (p. 392)
e) Letter from Montana Department of Administration regarding acceptance of our FY12 audit responses (p. 394)
f) Letter from Kevin McCready regarding parking ticket and barking dogs enforcement (p. 395)

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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October 2, 2013

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

Mayor Muhlfeld and City Councilors:

Monday, October 7, 2013 City Council Agenda Report

There will be a work session at 5:00 p.m. with the Glacier Twins regarding lease revenue from proposed cell tower at Memorial Field. There will be a work session at 5:30 p.m. for discussion and direction on an assessment district for the Parking Structure annual operations and maintenance costs.

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)

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d) Resolution No. 13-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 416 Ramsey Avenue, for which the owners have petitioned for and consented to annexation (p. 150)
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f) Confirmation of appointment of representative, Kelly Davidson, to the Ice Rink Advisory Committee as the Adult Ice Hockey group representative (p. 162)
g) Consideration of approving amended Protective Covenants, Conditions, and Restrictions (CCR's) for the Lakes Cottages subdivision (p. 163)

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

Items a and f are administrative items. Items c and g are quasi-judicial items. Items b, d, and e are legislative items.

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

a) Resolution No. 13-___; A Resolution specifying rate increases for water, wastewater and garbage collection services beginning October 1, 2013 (p. 190)

From Public Works Director John Wilson's staff report:

The Public Works Department presented information to the City Council on September 16th regarding current policy for annual rate increases for water, wastewater and garbage collection services, in accordance with City Resolutions 6-51, 7-12 and 11-52. The outcome of Council discussion was to direct staff to prepare a resolution for a Public Hearing and Council consideration at the October 7th City Council meeting.

This memo is to present that resolution, along with exhibits to illustrate the result of water and wastewater rate increases of 5.7% and a garbage collection rate increase of 3%. Values associated with lesser water and wastewater rate increases of 3% are attached for your information. A copy of the staff memo from the September 16th City Council meeting packet is attached in the packet, as well.

If enacted, a 5.7% water and wastewater rate increase would result in an additional charge of approximately $4.25 per month for a typical family. Likewise, a 3% rate increase for garbage collection services would result in an additional charge of approximately $0.25 per month for a typical family. More information is available in the attached staff memo.

Also attached is a draft resolution to enact these rate increases, along with the necessary exhibits.

These rate adjustments would increase revenues to the Water, Wastewater and Solid Waste funds, but would not require any new expenditures.

Estimated annual revenue increases for the Water and Wastewater funds, based on the US Bureau of Labor Statistics' Consumer Price Index of 5.7% for Water, Sewer and Trash Collection for All Urban Customers for the twelve month period ending December 31, 2012 would be $168,532 and $213,248, respectively. The estimated annual revenue increase for the Solid Waste Fund, based on a 3% rate increase for garbage collection services, would be $22,445.

RECOMMENDATION: Staff respectfully recommends the City Council consider the information provided with this memo, as well as information and comments presented at the Public Hearing, and direct staff as to how to proceed with proposed rate increases for water, wastewater and garbage collection services.

This item is a legislative matter.

b) Consideration of application from Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, for a two year extension of the Lookout Ridge Preliminary Plat (p. 212)

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

Taylor Horst of Whitefish Credit Union on behalf of Lookout Ridge Investors llc has requested a 2-year extension to the Lookout Ridge preliminary plat pursuant to §12-3-8.

Lookout Ridge is a 139 units on 267.7 acres located north of Iron Horse and Ptarmigan off the Big Mountain Road. Attached to this report are the conditions of approval and a preliminary plat map. The preliminary plat was approved by the Whitefish City Council on June 18, 2007. On May 5, 2008, the Council approved an amended preliminary plat to add nearly 40 acres to the subdivision. On June 21, 2010, the Council granted a second amendment to the preliminary plat in order to place 16 cabins on individual lots, as they had previously been located on a common lot.

Whitefish Subdivision Regulations:
Pursuant to §12-3-8, Time Limits for Preliminary Plat Approval, the Council may grant a two-year extension prior to the end of the preliminary plat expiration "provided the subdivider can show continued good faith in working toward final plat."

Montana Subdivision and Platting Act:

Pursuant to §76-3-610(2), M.C.A., "After the application and preliminary plat are approved, the governing body … may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period."

The Council reviewed the request for a two-year extension on June 17, 2013 (minutes are attached in the packet). At the meeting the Council only granted a six month extension, but asked the Credit Union and/or developer to return to address the landslide area that occurred in early June 2011. It appears from the minutes that there was also an expectation that the property ownership issue between the Credit Union and the developer would be resolved in order for remediation of the landslide area to occur.

Attached please find a report from Roger Noble of Applied Water Consulting llc addressing the cause of the landslide. Mr. Noble attributes the landslide to saturated soils associated with a wetland complex that was triggered due to an intense rainfall event that accelerated snowmelt runoff volumes and not due to the installation of infrastructure. Please carefully review its findings.

In addition, please find a letter of support for the extension from Bruce Boody of Bruce Boody Landscape Architects, as the project lead for Lookout Ridge. Mr. Boody points out that the location of the landslide (lots 59 and 60) was also an area with a condition of approval that required additional critical area review. This review was underway when the recession hit, but was not completed. Mr. Boody also points out some of the community benefits for the project – public trails, public parking to access the trails and a $50,000/year over 10-years to the Whitefish Housing Authority.

Finally, since an earlier report on the landslide was completed by Tom Cowan of Carver Engineering, on behalf of Iron Horse, staff has also included the report. Mr. Cowan also points to the highly saturated soils, heavy rain, melting snow and possibly subsurface water flowing along a sewer line.

The ownership issue between the Credit Union and the developer are still unresolved. The Credit Union is acting on behalf of the developer only for the extension request, but the Credit Union still is not the owner of the property.

Financial institutions do not typically assume the role of developer, but are more likely to sell an entitled development to someone that will fulfill the conditions of the project. Staff is concerned that if this plat isn't extended the Credit Union will have a difficult time selling the land without an entitlement and the landslide area will not be remediated in the near-term.

The plat now expires on December 21, 2013. A full report and other documents are in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering comments made during the public hearing and the staff report, approve the 18-month extension request for the Lookout Ridge Preliminary Plat until June 21, 2015.

This item is a quasi-judicial matter.

c) Resolution No. 13-___; A Resolution of the City Council of the City of Whitefish, Montana, indicating its intention to adopt amendments to the Whitefish Downtown Business District Master Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (p. 248)

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

Summary of Requested Action: This application is a request by the city of Whitefish to amend and update the 2006 Downtown Whitefish Business District Master Plan as an amendment to the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on September 19, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced Growth Policy Amendment with one amendment and adopted the supporting findings of fact in the staff report (Vail and Konopatzke were absent). The amendment (Gunderson/Smith) was to keep the pedestrian tunnel under the Baker/Wisconsin viaduct project in the revised master plan.

City Staff Recommendation: Staff recommended approval of the attached Downtown Business District Master Plan update as an amendment to the 2007 Whitefish City-County Growth Policy.

The Downtown Master Plan Update and the draft minutes of the Planning Board hearing including the full public comments are attached in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering comments made at the public hearings, the staff report, and the Planning Board recommendation, approve the Downtown Master Plan Update.

This item is a legislative matter.

COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

a) Resolution No. 13-___; A Resolution authorizing the process to develop an amended Mountain Trail Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee (p. 316)

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

The City of Whitefish acquired the Mountain Trails Park property in 1984. The property at that time included the building that is commonly referred to as the Saddle Club, and the remainder of the property had served as area for equestrian activities for our community. Over the course of time since the acquisition of the property an outdoor ice rink facility was developed with a supporting facility known as the Warming Hut, and in 2003 the outdoor rink was converted to the current indoor facility known as the Stumptown Ice Den. It was at this time that the existing Mountain Trails Park Master Plan was revised in such a manner as to accommodate the necessary space for support amenities for the indoor rink that included driveways and parking areas.

In addition to amenities related to the ice rink, the park also has one outdoor volleyball and one outdoor barbeque grill. General activities that would occur at Mountain Trails Park, besides those involving the ice rink, would include the rental of the Saddle Club for a number of small group activities that would include the utilization of the remaining open space at Mountain Trails Park. Typically over the past 10 years the operation of the ice rink would be 6-7 months of year depending upon demand and financial support.

The need to review and revise the Mountain Trails Park Master Plan is a direct result of a number varied interests in the future development of this park site.

First, the operation of the Stumptown Ice Den as an indoor ice rink has resulted in an expanded number of program activities for both youth and adults, including youth and adult hockey, figure skating, and curling, thus creating a potential need for expanding current facilities.

Second, the desire of the Flathead Valley Ski Education Foundation to utilize the existing Saddle Club, along with planned expansions into Mountain Trails Park, as the home for the Flathead Valley Ski Museum and Hall of Fame. Each of these elements carries merit to the enhancement of recreation opportunities for the Mountain Trails Park and our community. The challenge facing the Parks and Recreation Department is the ability to facilitate such goals within the current boundaries of the Mountain Trails Park site. In an effort to objectively assess the opportunity to develop any and all expansion of services at Mountain Trails Park and give voice to all parties of concern, we would request that the City Council establish an Ad Hoc Steering Committee to revise the current Mountain Trails Park Master Plan as per described within the proposed resolution presented to you this evening.

The financial requirement necessary to facilitate this request should not exceed $750.00 with those expenses covering the development of site maps.

RECOMMENDATION: Staff respectfully recommends that the City Council adopt a Resolution authorizing the process to develop an amended Mountain Trails Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee.

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

a) Authorization to proceed to bidding for East 2nd Street road reconstruction and trail construction project (p. 323)

From Public Works Director John Wilson's staff report:

The Public Works Department and our engineering design consultant, Robert Peccia and Associates (RPA), are wrapping up the design phase and requesting authorization to move forward with construction bidding for the East 2nd Street Reconstruction Project. Drawings showing the project overview and traffic control plan are attached in the packet.

Karin Hilding and representatives from RPA will conduct an Open House in the City Council Chambers on October 7th from 5:30 to 7:00 p.m. to present the project drawings and visit with the public. RPA will present this information to the Council at the start of the regular meeting and members of the public who wish to comment may do so, as well.

Consideration of this request to move forward with bidding will occur under the agenda section for Communications from Public Works. RPA will provide complete information and be ready to answer any additional questions at that time. The construction period is scheduled to run from March 2nd to the end of September. The limited road network in this neighborhood will present unique challenges for maintaining access for residents and emergency vehicles during construction. One of the attached drawings shows a comprehensive traffic control plan, which RPA will review in detail.

The engineer's pre-bid construction cost estimate of $2,433,000 includes the clearing of brush and trees; road work with new curb and gutter; water, sewer and storm drainage facilities; a new bicycle/pedestrian path along the south edge of the right of way and new street lighting. Fees for private utility relocation work are included, as well.

Up to $450,000 worth of construction is expected to occur in FY 14 (ending June 30, 2014) and the remainder will take place in FY 15. Most of the cost associated with the new bicycle and pedestrian path will be paid using CTEP funds from the State. All other costs will be paid out of the Resort Tax Fund, as anticipated in the FY 14 budget.

RECOMMENDATION: Staff respectfully recommends the City Council approve moving forward with construction bidding for all phases of the East 2nd Street Reconstruction Project.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 329)
b) Other items arising between October 2nd and October 7th
c) Resolution No. 13-___; A Resolution approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank (p. 337)

On October 20, 2003, the Whitefish City Council approved using the WAVE property as collateral for the first WAVE loan which allowed the construction of the WAVE. That loan was subsequently paid down to a current balance of $797,674. On August 19, 2013, the City Council approved a Landlord's Release and Consent for assignment of lease for the current WAVE expansion financing.

In tonight's packet are the remaining documents for the WAVE financing. The current financing is for $3,424,266.46 because it includes refinancing of the $797,674 plus new financing of $2,600,000 for the current expansion underway. Because the City owns the land, Glacier Bank is requiring that we sign the deed of trust and other documents, just as we did in 2003 at the inception of the WAVE.

Mary VanBuskirk and I have both reviewed all of the documents and Glacier Bank has agreed to revisions in the documents that we have requested. The City bears no liability for making payments on the loan; if the loan went into default, we might want to cure the default because we might not want to lose an $8,000,000 to $10,000,000 asset for a loan under $3,000,000. However, that would be a choice of a future City Council at that point in time and that City Council could choose to let the property go into foreclosure. However, given the historic success of the WAVE, no one sees foreclosure as being remotely possible.

The City has no requirements for any funding and no financial risk. If the property went into default, a future City Council could choose to step in and cure the default or they could let the property go into foreclosure, in which case the WAVE and the City would lose a valuable asset.

RECOMMENDATION: Staff respectfully recommends the City Council approve a Resolution approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) Standing budget item
b) Letter from Kate Orozco, Superintendent of Whitefish School District 44 requesting reimbursement of impact fees assessed on the high school project in the amount of $66,714.69 (p. 368)
c) Consideration of request from Mayor Muhlfeld to replace him as appointee to 911 Board with Chief Bill Dial (p. 380)
d) Letter from Chris Bernat regarding new City Hall (p. 392)
e) Letter from Montana Department of Administration regarding acceptance of our FY12 audit responses (p. 394)
f) Letter from Kevin McCready regarding parking ticket and barking dogs enforcement (p. 395)

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
September 16, 2013
7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Mitchell, Sweeney, Hildner, Kahle and Hyatt. Councilor Anderson was absent. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Planning and Building Director Taylor, Senior Planner Compton-Ring, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Assistant Fire Chief Page. Approximately 12 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Toby Scott 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)

Toby Scott, 1478 Barkley Lane, represented the North Valley Music School as the Board of Directors Chairman. They want to have a reader board in front of the school to keep people informed of events that are happening at the music school. He said the music school falls in a limbo and according to zoning regulations they can't have a reader board. Private and public schools K-12 can have reader boards, but that does not include a non-profit music school. He said they could request a variance, but the school operates on a thin budget. It costs $1,980 to apply for a variance and the sign probably wouldn't cost half of that. He asked if the Council could create a ruling so non-profits could apply for variances at a lower price. They want a reader board similar to the one in front of the ice rink.

Dan Cutforth, 1255 Larch Lane, spoke on the Whitefish River proposed regulations for non-motorized traffic. He owns property on the river adjacent to 800 Spokane Avenue. He said this regulation is addressing a non-existent problem. He said he doesn't recall seeing many speeding boats on the river because there are submerged obstacles and logs. The proposed regulations would make a hardship for the elderly who don't want to go in a kayak or canoe. He said it shouldn't become a private waterway for certain groups. He said the high water spring runoff probably does more erosion damage than any boats. He said he thinks the no-wake zone is adequate, but they could set a 5-mph speed limit. He also wondered about enforcement.

Denise Hanson, 827 Kalispell Avenue, supported the idea of annual, incremental water and sewer rate increases. It is better than asking people to take a larger increase when they need funds for infrastructure projects. Large increases are hard on the public.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Bike/Pedestrian Path Committee met and they agreed that they need to remind event organizers to use non-permanent course markings. Director Cozad said he would get the word out and apparently he did because the Two Bear Marathon markings washing off quite nicely with the morning rain. He said that the easement has been approved for Skye Park and they are looking

for a 2014 construction date. The RFQ for the lift station on the west approach has been issued. The last 200 meters of the Dodger Lane path is scheduled for a 2014 completion. He said that the Bike/Ped Committee has volunteered to stain and sand the Rocksund Bridge rails this fall, weather permitting. Public Works has applied for a grant to include a bike path with the West 7th Street rebuild and one for the Geddes to West 6th Street tie. The committee requested that the Park Board send a letter to the three bike shops to ask their racers to slow down when using the bike path, particularly the Wisconsin segment.

Councilor Hyatt said the Park Board met and the recreations program had a great year. The summer day camp program brought in $77,000. He asked and Director Cozad said 2,088 kids went through the camp. The programs have grown about 33% each year. Councilor Hyatt said they do a great job and he thanked them. Mayor Muhlfeld also thanked Director Cozad for doing a good job.

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 September 3, 2012 Council regular session (p. 45)
5b. Confirmation of appointment of representative, Bailey Minnich, to the Ice Rink Advisory Committee from the Curling group (p. 55)

Councilor Kahle offered a motion, seconded by Councilor Hildner, 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. Resolution No. 13-26; A Resolution maintaining the Cash-In-Lieu Payment in connection with affordable housing at the current $8,000.00 per unit (p. 57)

Planning Director Taylor said the Whitefish Housing Authority completed their annual evaluation and they recommend keeping the cash-in-lieu fee at $8,000/unit. With a PUD any developer can ask for a 50% density bonus if they want to provide affordable housing units or they can provide cash-in-lieu. No cash-in-lieu fees have been received to date. Councilor Sweeney asked at what point a contractor has to make payments to fulfill that obligation. Director Taylor said they haven't had it come up, but he would assume that once the PUD is approved there would need to be a contract. He would look into what has been set up. Councilor Sweeney said they have never received any cash, regardless of the number of projects. He wondered if all the units have to be built out for any cash-in-lieu. He wondered if it should be paid when the project is approved. Director Taylor said when all the requirements are met for final plat some fees are collected then; however some fees come in later during development. PUDs are different because there is no final plat, so agreements would have to be made. Councilor Mitchell said no one has chosen to do this. He asked how it works and Director Taylor said the developer gives 10% of the total lots or they give $8,000/unit to the housing authority.

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

Councilor Kahle asked and Director Taylor said he thinks $8,000 is a good middle ground between where they started at $6,000 and then the high amount they reached of $11,000; it was reduced back to $8,000 in 2012.

Councilor Kahle offered a motion, seconded by Councilor Hyatt, to approve Resolution No. 13-26; A Resolution maintaining the Cash-In-Lieu Payment in connection with affordable housing at the current $8,000.00 per unit, adopting the staff report as findings of fact.

Councilor Mitchell said he doesn't have a problem voting for this, but they have been doing this for 7 years and no one has taken advantage of it. Mayor Muhlfeld said the City Code requires them to set this amount every year. Councilor Mitchell said he would like to see it used once in awhile. He talked to Turner Askew about this, too. He thinks it is fine to pass it, but he has a hard time understanding why it is never used. Director Taylor said so much of this delay has happened because the market crashed. It is a voluntary program and the developers have to pencil it out to make sure it works. Councilor Sweeney said in his time on the Planning Board and the Council there has been some projects that were approved for development that offered cash-in-lieu for a density bonus. He said that because of the economy they never went forward to the point where they created the development. That's why he asked at what stage they are required to make their payment. He said the Council set this as a voluntary program.

The motion passed unanimously.

Mayor Muhlfeld noted that item 9b. was removed by the High School late this afternoon, prior to tonight's meeting.

6b. Consideration of a request from Rob Pero to extend the Preliminary Plat approval of Great Northern Heights Phase 3A for an additional 24 months (p. 63)

Senior Planner Compton-Ring reported that Sands Surveying, on behalf of Rob Pero, are requesting a 24-month extension for the Great Northern Heights, Phase 3A preliminary plat. The Great Northern Heights, phase 3A is a 15-lot (7 townhouses and 1 single family home) subdivision on 2.93 acres on Great Northern Drive.

The preliminary plat was approved by the Whitefish City Council on November 17, 2008. In 2011, the Council granted a 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires November 17, 2013.

This subdivision is located within the city limits and is zoned WR-1/PUD (One-Family Residential District) with a Planned Unit Development overlay. At the time of the public hearings, neighbors were concerned with weed abatement. According to the Planning Board and Council minutes, the applicant indicated he had entered into a weed abatement agreement with the city.

Planner Compton-Ring explained there is one change in the current standards (zoning or subdivision) that would change this subdivision:

1. Section§12-4-12I of the Subdivision Regulations direct developers to consider the design of townhouses to avoid the garage-forward design. The use of garage-forward designed two-unit homes are not permitted. The narrowness of these townhouse lots nearly requires the use of garage forward design. The Architectural Review standards do provide options to mitigate the

design of the garage-forward two-family home, which the existing townhouse buildings in this neighborhood have used and will continue to use.

A notice was mailed to adjacent landowners within 300-feet of the preliminary plat on August 23, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on August 28, 2013. Five letters have been received by neighbors. Planner Compton-Ring explained there are two requests for this neighborhood – this preliminary plat extension and a new preliminary plat that is coming to the Council in October. Many of the letters received address both requests. These letters will also be included in the preliminary plat request scheduled before the Council in October.

Concerns raised on the preliminary plat extension request include:

- Poor design of existing townhouse lots causing traffic problems and concern with more of these lots; and
- Residents would like to see detached single family lots, as they believe that type of development fits into the neighborhood better.

Staff recommends the Council approve the request to extend the Great Northern Heights, phase 3A preliminary plat for 24 months, expiring on November 17, 2015 based on three findings of fact in the staff report.

Councilor Mitchell asked if the original request was for townhouses and Planner Compton-Ring said it was. There are no changes. Councilor Hildner said on Council Packet Page 63 the one thing that would change in the subdivision confused him. He asked and Planner Compton-Ring said the narrowness of the lots nearly requires a garage forward design. She said the lots are 28 feet wide. Councilor Kahle talked about the letter from Steward Cardon who purchased a lot in Phase 1 and he thought it was going to all be single family homes in Phases 3 and 4 and Planner Compton-Ring said he could ask the applicant to address that question.

Mayor Muhlfeld opened the public hearing.

Susan Robison, 320 Minnesota Avenue, expressed concerns about the extension. She said there are two townhomes and there is already a traffic problem and safety issue in her opinion. She said with the additional phases there could be a total of 32 units in this area and there is a safety issue with even four. She thinks it is a poor design for the neighborhood.

Councilor Hyatt asked and Susan Robison showed him a photo that illustrates her concerns. Planner Compton-Ring said that the photo relates to the next phase that will be before them in October. Susan Robison said there is not enough room for parking and people are parked on the street. She sees it as a safety issue, especially in a family oriented neighborhood.

Rob Pero, applicant, 1290 Birch Point Drive, said he has been working on this project since 2004. He said Phase 1 and Phase 3A were approved at the same time. He said he received a copy of that photo and those are contractor trucks because that house is being built. He said he has been on the Board of Directors of the Homeowners Association (HOA) of this development and they have never had a parking issue. No one is allowed to park their cars or boats in the street. He felt that it was a one-time occurrence. He said he can bond for this phase and build in November, but they have another project going and he would like two years. Councilor Kahle asked how many on street parking spaces are provided and Mr. Pero said there are none. Director Taylor said there are two on-site parking spaces

provided for each unit. Councilor Hildner discussed the photo in the packet and said garages tend to be for storage, not for cars. He looked at a photo and said the boat is parked out front and the vehicle is blocking the sidewalk. Councilor Hildner asked and Mr. Pero said they just turned the HOA over to the homeowners. He said the HOA would have to send that person a notice telling him he can't park the boat out there. He said these homes sit back far enough so that they can park one vehicle in the garage and two in the driveway. Councilor Mitchell asked and Mr. Pero said he doesn't remember any parking restrictions for on-street parking in Phase 1.

John Gerbozy, 150 Granite Drive, said he lives is in the subdivision and owns a lot in Phase 2. He is not opposed to continuation of the plat. He said there is a lot of traffic and there are a lot of vehicles parking on the street and it makes one lane traffic. He agreed with Sue Robison that there is a concern for safety out there. He said the addition of Phase 3A is tied to the project coming up before the Planning Board next Thursday. He said it seems like a messy subdivision. He said a new HOA took over recently and there is some concern about the enforcement. He said he has concerns about Phase 3. He said it is interesting that they are approving 3A before Phase 3. Mayor Muhlfeld encouraged him to attend the Planning Board meeting, too, when the next phase is heard.

Mayor Muhlfeld closed the public hearing.

Councilor Hildner said this is one more request for an extension and here they have an opportunity to correct a situation. If they deny the plat extension it gives the developer an opportunity to put this thing together as a whole and to make a better development. Councilor Hyatt disagreed. He said the applicant isn't trying to fleece anyone, because everyone knew what was proposed. Councilor Hyatt said he lives near Columbia Avenue and that is the same parking situation they have there—people often park over the sidewalk and there are lots of students traveling in this neighborhood. Councilor Kahle said he thinks Mr. Pero made a campus-wide plan that was already approved. He said the only change would be the garage-forward design restrictions. He said if they were reviewing it today he feels it would be approved. If they pulled this plat out it would be extraordinarily expensive for the applicant. He didn't think it warranted the additional cost.

Councilor Sweeney offered a motion, seconded by Councilor Kahle, to approve extending the Preliminary Plat of Great Northern Heights Phase 3A for an additional 24 months, adopting the staff report as findings of fact (WPP-08-56). The motion passed unanimously

6c. Ordinance 13-06; An Ordinance amending Whitefish City Code Title 11 Zoning Regulations and Title 12 Subdivision Regulations within the bounds of State law (First Reading) (p. 84)

Planner Compton-Ring reported on a request by the City of Whitefish to amend the subdivision regulations to implement the various bills related to the Subdivision Regulations from the 2013 Legislative Session. Similar to the 2009 Legislative Changes, the City updated the Subdivision Regulations in 2010 and 2011.

- *Senate Bill 40* does not allow jurisdictions to have a subdivision application submittal deadline. Also, an application is considered 'received' the date the application is submitted with any required fees. (§12-3-4A) She said the City likes to give recommended deadlines so people know what to expect for their application review process. The City is currently operating in this manner so it doesn't change the process.

- *Senate Bill 293* added language to identify if a subdivision is proposing a public water or sewer system and whether or not they are subject to the jurisdiction of the Public Service Commission. (§12-4-18, §12-4-19) She said Iron Horse is a local example.

- *Senate Bill 316* added language that if someone is proposing a subdivision with wells that the 100-foot isolation zone is located wholly within the boundaries of the subdivision unless the adjacent landowner authorizes the encroachment. (§12-4-18). Planner Compton-Ring said neither SB 293 nor SB 316 really applies to projects within the City.

- *Senate Bill 324* is the 'fix' for the attorney general opinion issued in 2012 concerning subdivisions for rent or for lease. The bill exempts jurisdictions such as Whitefish that have zoning from the provisions of Subdivisions for Lease or Rent unlike portions of the east side of the state who don't have zoning. As such, the design standards for Manufactured Home Parks, Recreation Vehicle Parks and Campgrounds need to be moved into the zoning regulations. Staff is not proposing to make any changes, simply move them from the Subdivision Regulations to the Zoning Regulations.

The Whitefish City-County Planning Board held a public hearing on August 15, 2013. Following this hearing, the Planning Board unanimously recommended approval of the text amendments and adopted the supporting findings of fact in the staff report.

Staff has recommended approval of the proposed changes as attached to an Ordinance starting on Page 84 in the Council Packet.

Councilor Mitchell asked and Planner Compton-Ring said Senate Bill 40 requires them to establish a 'received' date, but they still do the standard review to determine if the applicant has all the elements for the application and whether it is sufficient for review and then they have 90 working days to come up with a decision. Councilor Mitchell asked if any of the proposed changes were other than items related to the Senate Bills and she said no, all changes relate to the Senate Bills.

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

Councilor Hildner offered a motion, seconded by Councilor Kahle, to approve Ordinance 13-06; An Ordinance amending Whitefish City Code Title 11 Zoning Regulations and Title 12 Subdivision Regulations within the bounds of State law (First Reading), adopting the staff report as findings of fact (WSUB 13-01). The motion passed unanimously

7. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

7a. Consideration of amending the Sewer Plant Improvements contract with Anderson-Montgomery Engineers to provide for Nutrient Trading grant services and Watershed study for the DNRC grant (p. 187)

Public Works Director Wilson said the City entered into a consultant contract with Anderson-Montgomery Consulting, Inc. in October 2012 for the Wastewater System Improvements Project. They have a long term agreement and they are in the planning stages. The City has been awarded two planning grants from the Montana Department of Natural Resources and Conservation for these closely related projects and

is currently finalizing those grant agreements. The grant amounts are $100,000 for the Nutrient Reduction Plan and $50,000 for the Whitefish Lake Watershed Assessment with a City contribution of $10,000 in local wastewater funds.

Mayor Muhlfeld asked about the timeline for the nutrient trading plan and Director Wilson said he thought it will be done early next summer. Councilor Hildner asked if the study will encompass the time of maximum erosion and Director Wilson said it is a broader study to identify issues with some flexibility. The watershed assessment will set the stage for other grants.

The proposed amendment will increase the amount of the consultant contract for the Wastewater System Improvements Project by $160,000, for a total contract amount of $365,711. Funds for this amendment are included in the adopted FY14 Wastewater Budget.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to approve an amendment to the Wastewater System Improvements Project consultant contract with Anderson-Montgomery Consulting in the amount of $160,000, contingent upon the execution of associated grant agreements with the Montana Department of Natural Resources and Conservation funded as indicated in the staff report. The motion passed unanimously.

7b. Discussion and direction for implementing annual inflationary increases of 5.7% for water and sewer rates and 3% for garbage/solid waste rates (Two motions) (p. 190)

Director Wilson said they saw this same request last year. In 2006 and 2007, the City Council adopted Resolutions 6-51 and 7-12, which generally provide for water and sewer rates to be adjusted on October 1st of each year "based on the increase, if any, in the U.S. Department of Labor's Water, Sewer and Trash Collection Services Consumer Price Index for All Urban Consumers for the twelve-month period ending the preceding December 31." He said they are looking for direction at this point. Manager Stearns said they couldn't get the resolution done for the packet because some of the staff was out of town, so they want direction on this item tonight and then they will have a resolution for the public hearing at the next meeting.

Councilor Hyatt asked and Director Wilson said they always use the CPI for this rate. Councilor Hyatt said if there is a 5.7% increase for 5 years it would be 25%. He said 5.7% is a large chunk during financial difficult times. He said it would be a cumulative $330 over 5 years.

Mayor Muhlfeld asked the Council to split this and consider the trash collection increase first.

From the Staff Report: Resolution 11-52 was adopted in October 2011, approving a new five year contract for solid waste hauling services and providing a 3% annual increase for contract fees, as well as a 3% annual increase for user rates. In the course of adopting Resolution 11-52 for solid waste services, the City Council indicated a preference to forego the annual 3% user rate increase in those years when cash reserves are sufficient to cover the increased charges for contract hauling. Reports show the Solid Waste Fund currently has approximately $78,000 in cash reserves, with projections for that amount to increase slightly under the current rate schedule in FY14. If enacted, a 3% rate increase would result in an additional charge of approximately $0.25 per month for a typical single family home.

Councilor Mitchell said they agreed in the past to raise rates only if they need to do it and since they have a reserve he doesn't think they need to do it this year. Councilor Sweeney said it makes sense to increase it annually so they stay ahead of any significant bumps they might encounter. Councilor Kahle asked and Director Wilson said their contract with North Valley Refuse increases by 3% annually. Director Wilson said things come up and right now they need to deal with bear issues and they may need to increase the number of

bear resistant containers. Councilor Kahle said he is okay with the increase since they are passing on an increase they have to meet from the contractor. Councilor Hyatt asked and Director Wilson said with the 3% the total revenue would be about $748,170; a change of about $22,445. Manager Stearns said they need to remember that those balances are affected by the major projects in process and a pass-through amount to pay for the contracted services. Councilor Hildner said he agreed with Director Wilson that this allows them an opportunity to get ahead of the bear resistant container need City-wide. He said it would also give them money to work toward improving their recycling program. Manager Stearns said on packet page 203 he shows the summary budget of each of the funds. He said solid waste began with a $75,000 cash balance and this would add to the cash reserves by about $9,000. Based on Council's indication, they will prepare the resolution for a 3% increase for solid waste for the public hearing at the next meeting, he said.

Councilor Hildner said they have some major expenses coming up in the near future for the wastewater plant so he thinks they need to make this incremental raise this year. He said they don't have to recommend a 5.7% wastewater increase each year. Councilor Hyatt agreed that they need to do something, but he was only willing to go up 3%. Councilor Kahle said he needs to justify it with the cost to the City and he is not willing to commit to a specific amount before the public hearing. Director Wilson said their budget is mixed with capital projects but he thinks the CPI is a reasonable process. He said there was resistance to raising this last year, but there was discussion that they have a big wastewater project coming and they will either have to borrow millions of dollars in the future to deal with it and raise the rates dramatically, or they can raise them incrementally. Councilor Sweeney said he thinks that for fiscal soundness they need to consider the increase and he thinks the CPI gives them a pretty accurate basis for setting the fees. He would be in support of an increase. Councilor Mitchell said he would agree to a minimal increase; he thinks they have one of the highest water rates in the State of Montana. Director Wilson said they had a $6 million debt for the water treatment plant and that is why the rates are so high. He said he would like to see incremental raises to prepare for the costs. Director Wilson said at issue is the imposition of the EPA standards and the increased cost to cities in Montana. Councilor Hyatt said the economy hasn't come back as well in Whitefish as it has in other places in the state, like Billings. He said they gave the employees a 3.7% raise so he thought this was a little out of the realm. Councilor Hildner said he doesn't have any figures to compare their economy to Billings. Mayor Muhlfeld said that in summarizing their comments he would say that they are indicating support, after they hear from the public, for an increase of from 3-5.7%. He said the Council had dedicated money for City Hall and wondered if this $10-$15 million project should have funding set aside annually in anticipation of these capital expenses. Director Wilson said he intends to ask the engineering team to prepare a timeline for improvements and estimated costs. He said there are needs that they have annually in addition to the big projects. He said it will be part of the feasibility study.

Manager Stearns said there are other needs in water and sewer for capital expenditures. He said Councilor Anderson started to bring up the discussions on smaller capital improvement projects. They need to look at the big projects and the annual improvements. Sooner or later there will be a rate increase. Manager Stearns said he heard from their discussions that there were two Councilors who want 5.7% increase, one who is reserving judgment until after the public hearing and two who are recommending a lower rate. He said the resolution leaves it at 5.7% unless they change it. He said staff could show an exhibit to the Council on the effect on rates at the various percentage rate increases from 3-5.7%. The FY14 adopted budget does not include any rate increases.

8. COMMUNICATIONS FROM CITY MANAGER

8a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 205) - None.

8b. Other items arising between September 11th and September 16th

Manager Stearns said he attended a 911 Board Meeting and one item on the agenda was to provide them with an update on future funding. Two years ago a committee recommended a county wide property tax levy and the city's would get out of an annual contribution. One option is a flat fee similar to the landfill fee. He said the county attorney would look into that because a tax levy might raise a lot of opposition and this might be fairer. They followed up on a letter from Mayor Tammi Fisher from Kalispell about the board structure. She recommended that it be made up by the county sheriff, three city managers and the county administrator. The County had concerns because they would be outvoted by the cities. In the end the Board voted not to make any recommendation to change the Board structure. They feel the funding should be revised and if the funding goes to a county level then it could be handled by a county office. Mayor Muhlfeld said he will step down from the 911 Board and is recommending that they fill his position with Chief Dial leaving Turner Askew to continue as the alternate. That will be on a future agenda.

Councilor Mitchell asked and Manager Stearns said the committee has an elected official or designee from each of the cities, the county sheriff, a county commissioner and a county attorney. There has been some concern that a 6 member committee doesn't allow for breaking of ties. Councilor Mitchell said he liked that they could send an elected individual from each city. Chief Dial said he was in Billings last week and they talked about funding. Gallatin County just passed a county wide levy and he said people are pro-emergency services right now. He said Yellowstone County has meth possession cases they are going to have to dismiss because they don't have enough staff to handle it.

Manager Stearns said the City had a problem with the outgoing email system since Friday. He said Greg Acton is working on this problem and he hopes they will get it resolved by tomorrow. He apologized that people may have been waiting on information from the City.

9. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

9a. Standing budget item - None.

9b. Letter from Kate Orozco, Superintendent of Whitefish School District 44 requesting reimbursement of impact fees assessed on the high school project in the amount of $66,714.69 (p. 210) - Withdrawn

9c. Letter from Mary (Muldown) Ronfeldt, Michael Jennings Muldown, Anne (Jennings) Jackson, Charles Timothy Jennings, and Margaret (Muldown) Koonce regarding proposed annexation of Jennings Lakeside Road properties (p. 211)

Councilor Mitchell said he wished they had a way to get more people to join the sewer system to help the lake. Every time they annex they get negative feedback because it costs folks a lot. He wishes there was a reward for those who hook up early. Manager Stearns said this goes back to the concerted effort in 1997-1998 the City made for those property owners on city services. The City was sued and in 2004 the City won the lawsuit and those properties were brought into the City. There are a number of properties that were spared the annexation since 1997 so they've had 17 years of being on city services without being in the City; but, he said, that will never satisfy people. He asked them to think about the Whitefish Wastewater Committee work. They might propose that if people are not on the sewer system we might make a contribution if they connect within a year. It could be between $100 and $500. When he worked with Missoula they rebated $1200 at $100/year to defray their SID for connecting onto the sewer system. He said people won't connect to City sewer because the cost is too high for connecting and also being annexed. He said everyone's taxes will go up approximately 19% - 20% and those are

expensive properties, so they will feel the sting. He said people like living un-annexed because they don't want to pay property tax, but they like to use City services. Councilor Mitchell asked and Manager Stearns said those who aren't annexed pay higher rates for sewer services, determined by the number of lift stations and/or the complexity of their system. Councilor Mitchell said on Houston Drive there are 3 properties that are not in the City so he wondered how they could be annexed. Manager Stearns said Houston Drive would be annexed because the area is wholly surrounded. Councilor Mitchell asked and Attorney VanBuskirk said it is appropriate according to Montana Law. Councilor Kahle agreed that these folks haven't been annexed for 17 years, but they paid to connect to the sewer and protect the lake, and they paid higher sewer fees, so they've provided a benefit to the City by being connected to the sewer and not to aging septic tanks. He sits on the ad hoc Whitefish Community Wastewater Committee where they have discussed a number of different methods and strategies. Mayor Muhlfeld said when they extended the East Lakeshore sewer main in the 1990's was paid for primarily by grants and it was a big project that cost the City a lot. He thinks people in Rest Haven connected because they knew their fields were failing.

9d. Letter from Thomas Q. Johnson regarding proposed annexation of residence on Jennings Lakeside Road (p. 212) - None.

9e. Select two elected officials for engineering selection committee for two projects

Director Wilson said there are two consultant processes: one is the water main improvement and infrastructure improvements—design, water line replacement on Somers Avenue and Columbia Avenue Bridge. He said their plan is to improve drainage. The second is the Birch Point lift station project and Miller Lift station at the end of City Beach. Mayor Muhlfeld asked and Director Wilson said it is important to move forward with surveying work before winter.

Councilor Hildner volunteered for the sewer improvement projects. Councilor Mitchell asked and Director Wilson said they have the BNSF easements for the lift station. Director Wilson said they didn't need a new easement with BN; they just amended an easement they already have on Birch Point Drive. Councilor Sweeney volunteered for the water improvement projects; meeting on the 23rd.

9f. Consideration of requesting that Montana Department of Transportation perform a speed study on Wisconsin Avenue (p. 213)

Director Wilson said a member of the Council has requested, but he needs the Council's direction, before he asks MDOT to conduct a speed study on Wisconsin Avenue. Mayor Muhlfeld said the flashing pedestrian light at Whitefish Lake Lodge doesn't work. Councilor Hildner said the solar collector is on the wrong side of the sky bridge. Director Wilson said the speed limit could go up if 85% of the drivers are going faster. Manager Stearns agreed. He said the current speed limit is 45 mph, but it could go up and they are stuck with what they find. Councilor Kahle said he thought that once they get past the Lodge it should increase. Mayor Muhlfeld said the biggest problem is from Hidden Moose Lodge because of the Reservoir Road traffic pulling out. The Councilors agreed to approve for Director Wilson to ask for a speed limit study on Wisconsin Avenue.

9g. Letter and update on activities from Montana West Economic Development Corp. (p. 216) None.

9h. Consideration of continuing the annual tradition of cancelling the December 16, 2013 City Council meeting

Mayor Muhlfeld asked and there was consensus to cancel the December 16, 2013 meeting.

Council Comments:

Councilor Hyatt said, as a Park Board member, they would like to request that Staff prepare a resolution creating a committee to develop a master plan for Mountain Trails Park. Director Cozad said it was similar to the committee they had for Depot Park. The Councilors indicated their consent.

Councilor Hyatt said he has a child who is a student at the North Valley Music School and wondered if they could bring it up at a future date. Manager Stearns asked what their request would be. Councilor Hildner said it is a major change in the Sign Ordinance with possible widespread effect and he thinks it will require more than just a simple meeting. He thinks they need to go through the Sign Ordinance process. Councilor Hyatt said that the other schools are allowed to have these signs and wondered if they could have a sign. Director Taylor said they can get a banner permit for special events, but no reader board. Councilor Kahle asked and Director Taylor said churches and schools and public facilities can have reader boards. Any other reader boards they see around town were grandfathered in. Councilor Kahle said the school is a non-profit. He sees the difference between a public facility and a karate or music school, but he sees it as a slippery slope. Councilor Sweeney agreed with Councilors Kahle and Hildner. He said there are piano and dance schools who might want one, too. Councilor Mitchell asked and Director Taylor said he thinks the regulation specifies public and private schools for grades K-12. Director Taylor said performing arts centers are in there own section in the Code. Councilor Mitchell said they are treating public facilities different than private facilities. He wondered if they could change it to $500 for the variance fees. Mayor Muhlfeld said the Planning Department has 90 requests in the hopper; he doesn't think it is time to burden staff with the request to investigate changes to the sign code.

Councilor Mitchell said he appreciated Don Cutforth's comments on the river restrictions. They don't want a river just for kayakers. He agreed that they could set restrictions based on minimal horsepower. Councilor Mitchell asked and Director Cozad said they opened the Ice Rink on September 1st at the request of a specific group who paid the fee up front for the time.

Councilor Mitchell said there was a work session coming up on the parking garage. He said they made a motion to have a BID instead of an SID. He was disappointed because former Mayor Jenson said that they were trying to see if there was a buy-in from Heart of Whitefish. If that wasn't going to happen they were going to look at whether they were doing a parking garage. He said if they pass an SID it can be challenged by the people in the SID district and Attorney VanBuskirk agreed. Then, he said, the people of Whitefish would end up paying for the parking garage. He said there was talk about leasing 100 spaces for $40/month would generate $65,000. If they don't fill all those spaces, they won't get that much money. He thought they should ask for a BID from the sub-committee, not an SID. He said if the City builds the structure then he thinks the BID should pay for the maintenance. Mayor Muhlfeld said the working group is comprised of Chuck Stearns, two representatives from the Chamber, two from Heart of Whitefish, City Clerk Lorang and Finance Director Knapp was on it. He said the Council has indicated they don't want to spend any more money until they figure out the financing for the maintenance. He said it would be valuable for every business to free up parking for customers. Councilor Hyatt said he thought they wanted a BID because it was beneficial to the downtown and it had different boundaries.

Manager Stearns said the boundaries that are the same for an SID or a BID. Councilor Kahle asked and Attorney VanBuskirk said by statute there are particular expenses or activities that can be under an SID or a BID. She said a BID needs an application from 60% of the businesses, but the SID is created by the Council with a protest level that has to be greater than 50%. Councilor Kahle said the funding of the operation and maintenance of the parking structure was reasonable from the people who are going to be benefiting from the parking structure. Mayor Muhlfeld said he thought a BID was more appropriate for operations and maintenance (O and M) for funding, but now we are considering that a SID might be better. He also wants the buy-in of the downtown businesses; either way, we need the funding. Councilor Mitchell said the motion talked about a BID for funding for O and M and it passed. He expected the committee to come back with a BID. Manager Stearns said that motion was made before the Council really understood what a BID was. The committee got more information, and thought they came back with a better idea with an SID. He said at the next work session they can discuss it again. Councilor Hildner said he seconded that motion. They moved to consider it; it was not a decision. He thought they needed to consider the new information to come up with the best decision. Councilor Hyatt said he mentioned an SID or a BID in the minutes. Mayor Muhlfeld said that as Manager Stearns indicated the Council didn't have all the information on the night the initial motion was made, but it is coming back.

Mayor Muhlfeld said he attended a meeting on the Crown of the Continent up in East Glacier. They are working for large landscape conservation. He was able to discuss the Whitefish Trail project, the Neighborhood Plan and the Haskill Basin project with the DNRC. He said he left feeling proud of the work Whitefish has done to protect open spaces and water quality; there aren't many communities doing what they have accomplished. He said he also attended the Woods Lake Trail opening. He gave kudos to the Whitefish Legacy Partners, Karl Cozad, Mary VanBuskirk and Councilor John Anderson for all their hard work.

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

Mayor Muhlfeld adjourned the meeting at 9:35 p.m.

_____
Mayor Muhlfeld

_____
Jane Latus Emmert, Recording Secretary

Attest:

_____
Necile Lorang, City Clerk

ORDINANCE NO. 13-06

An Ordinance of the City Council of the City of Whitefish, Montana, amending Whitefish City Code Title 11 Zoning Regulations and Title 12 Subdivision Regulations within the bounds of State law.

WHEREAS, the City of Whitefish initiated an effort to amend the Zoning Regulations to implement new legislation from the 63rd Montana Legislature; and

WHEREAS, in response to the staff recommendations to amend the Whitefish City Code Title 12 Subdivision Regulations, and to move the design standards for Manufactured Home Parks, Recreational Vehicle Parks and Campgrounds to Title 11, Zoning Regulations, Special Provisions, Chapter 11-3-XX, the Whitefish Planning and Building Department prepared Staff Report WSUB 13-01 and Staff Report WZTA 13-01, dated August 8, 2013; and

WHEREAS, at a lawfully noticed public hearing on August 15, 2013, the Whitefish City-County Planning Board received an oral report from Planning staff, reviewed Staff Report WSUB 13-01 and Staff Report WZTA 13-01, invited public comment, and thereafter unanimously recommended amendments be made by the Whitefish Planning and Building Department and adopted the supporting findings of fact; and

WHEREAS, at a public meeting on September 16, 2013, the Whitefish City Council received oral and written reports from Planning staff and thereafter directed staff to prepare the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on October 7, 2013, the Whitefish City Council received oral and written reports from Planning staff, invited public input, and thereafter voted to recommend approval of the proposed text amendments, attached as Exhibit "A"; and

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

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

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

Section 2: Staff Report WSUB 13-01 and Staff Report WZTA 13-01 are hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Title 11, Zoning Regulations, and Title 12, Subdivision Regulations, as provided in the attached Exhibit "A," with insertions shown underlined and deletions shown with strikethrough, are hereby adopted.

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

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

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Exhibit "A"

New Sections in Title 11 - ZONING REGULATIONS
Section 3, Special Provisions
(moved from Title 12, Chapter 5)

11-3-XX: MANUFACTURED HOME PARK STANDARDS

A. Lot Requirements:

1. All lots for manufactured home spaces in a manufactured home park shall meet the following requirements:

   a. Manufactured home lots shall be arranged to permit the safe and practical placement and removal of manufactured homes.

   b. The minimum lot width shall not be less than fifty (50) feet.

B. Minimum Standards:

1. All manufactured homes shall be located at least twenty five (25) feet from any property boundary line abutting upon a public street or highway right of way and at least fifteen (15) feet from the other outer boundaries of the park.

2. All buildings, structures and manufactured homes shall be located at least ten (10) feet from the street providing access to it.

3. Distance between Manufactured Homes: Neither manufactured home nor its attached structures, such as awnings or carports, shall be located within twenty (20) feet of any other manufactured home or its attached structures.

4. Detached Accessory Structures: No detached structure, such as a storage shed, shall be located within five (5) feet of any manufactured home or its attached structures.

5. Lot Coverage: A manufactured home shall not occupy more than one-third ($^1/_3$) of the lot area. The total area occupied by a manufactured home and its roofed accessory buildings and structures shall not exceed two-thirds ($^2/_3$) of the area of the lot.

6. Parking Spaces Required: A minimum of two (2) parking spaces shall be provided for each manufactured home lot. In addition, guest parking at the ratio of one space for each five (5) lots and vehicle storage parking at the ratio of one space per each ten (10) lots shall be provided. Parking dimensions shall meet the zoning standards for parking.

C. Marking Of Manufactured Home Lots: The limits of each manufactured home lot shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground shall be the same as shown on the approved plans.

D. Manufactured Homes to Be Skirted: Each manufactured home shall be skirted within sixty (60) days after it is moved upon a lot within the manufactured home park. Said skirting shall be of a fire resistant material complementary to that of which the manufactured home exterior is constructed and shall be attached to the manufactured home.

E. Electrical Systems: All electrical lines serving the subdivision shall be buried underground and shall be designed and constructed in accordance to the most recent edition of the national electrical code.

F. Oil or Propane Gas Heating: Where oil or propane gas heating of a manufactured home is necessary, a fuel storage facility shall be provided on the manufactured home site not to exceed a three hundred (300) gallon capacity. Said storage facility shall extend no higher than six (6) feet above ground level and shall be located and screened so it will blend with its surroundings.

G. Gas Systems: All gas systems serving the subdivision shall be designed and constructed in accordance to the most recent edition of the national fuel gas code, the standard for the storage and handling of liquefied petroleum gases and the uniform fire code.

1. A readily accessible and identifiable shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection of the liquefied petroleum gas container.

2. Each manufactured home lot shall have an accessible, listed gas shutoff installed. Said valve shall not be located under a manufactured home. Whenever a manufactured home lot outlet is not in use, the shutoff valve shall be plugged to prevent accidental discharge.

11-3-XX: RECREATIONAL VEHICLE PARK AND CAMPGROUND STANDARDS

The provisions of this chapter shall apply to recreational vehicle parks and campgrounds, except as follows:

A. Roadway Width: The following standards shall govern the roadway widths:

1. A minimum ten (10) feet roadway width shall be provided for one-way streets or roads within the park/campground, provided such street:

a. Does not exceed five hundred feet (500') in length;

b. Has no on-street parking;

c. Serves twenty five (25) or less spaces.

2. Otherwise the following shall apply:

a. Twenty (20) feet if no on street parking is proposed;

b. Twenty eight (28) feet if parking is proposed on one side of the street;

c. Thirty six (36) feet if parking is proposed on both sides of the street.

d. Minimum centerline curvature radius of forty five (45) feet.

B. Recreational Vehicle Space: The lots or recreation vehicle spaces shall meet the following standards:

1. Minimum lot (space) width = Twenty five (25) feet.

2. Minimum lot (space) area = One thousand five hundred (1,500) square feet.

C. Distance between Recreational Vehicles: The distance between the recreational vehicles shall not be less than fifteen (15) feet. This includes any foldout or pop out portion or awnings attached to the vehicle.

Amendments to Title 12 - SUBDIVISION REGULATIONS

12-2-1: APPLICATION DEADLINES AND FEES

A. ~~Application submittal deadlines will be scheduled by the planning department on an annual basis.~~ Complete application submittals will be accepted by the planning department for review and processing.

B. In order to cover costs of reviewing plans, advertising, holding public hearings and other expenses incidental to the review of a subdivision, the subdivider shall pay a non-refundable fee at the time of application. The fee schedule will be established by the city council. All application fees for preliminary and final plat applications will be due at the time of the subdivision application. If an application is terminated prior to the planning board public hearing, the planning department may refund a portion of the application fee as determined by the planning director.

12-3-4: REVIEW OF THE PRELIMINARY PLAT APPLICATION

For both major and minor preliminary plat applications, an application is considered to be received the date the complete application is submitted along with the applicable fee. The review process is as follows:

A. Element Review: Within five (5) working days of receipt of a subdivision application, supporting documentation and fee; the planning staff shall determine whether the application contains all of the required materials required by these Regulations, outlined in the pre-application meeting and required in Appendix B - Preliminary Plat: Submittal Requirements.

12-4-18: WATER SUPPLY SYSTEMS

A. Water systems shall meet all the requirements of the Whitefish Engineering Standards. Preliminary water utility layout shall be submitted with the preliminary plat application. If a public water system is proposed, the applicant shall indicate if it is subject to the jurisdiction of the Public Service Commission.

B. If the subdivision is proposing a well or wells, the subdivider shall ensure the well isolation zones are located wholly within the boundaries of the subdivision, unless the adjacent landowner authorizes the encroachment.

12-4-19: SANITARY SEWER SYSTEMS AND SEWAGE TREATMENT SYSTEMS

A. All sewage treatment systems shall comply with the Whitefish Engineering Standards, the Flathead City-County Health Department, and the Montana Department of Environmental Quality. Preliminary sewer utility layout shall be submitted with the preliminary plat application. If a public sewer system is proposed, the applicant shall indicate if it is subject to the jurisdiction of the Public Service Commission.

B. Where the subdivision is within the service area of the City sanitary sewer system, sanitary sewer systems shall be designed, constructed, and tested in accordance with the current editions of the Montana Department of Environmental Quality Circulars, the Montana Public Works Standard Specifications and the City of Whitefish Engineering Standards.

~~CHAPTER 5~~
~~SUBDIVISIONS CREATED FOR LEASE OR RENT~~

~~12-5-1: PROCEDURES AND STANDARDS FOR RENT OR LEASE SUBDIVISIONS~~

~~A. A subdivision created by rent or lease, such as manufactured home parks, recreation vehicle parks or campgrounds, is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single ownership. Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.~~

~~B. Exemption from Survey and Filing Requirements: Manufactured home parks, recreation vehicle parks and campgrounds are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the city council before portions thereof may be rented or leased. Approval shall be based upon the criteria and standards included in these Regulations.~~

~~C. Procedures:~~

~~1. Manufactured home parks, recreational vehicle parks and campgrounds comprised of six (6) or more spaces, units or lots, shall comply with and shall be processed in accordance to the procedures for major subdivision outlined in these Regulations.~~

~~2. Manufactured home parks, recreational vehicle parks and campgrounds comprised of five (5) or less spaces, units or lots, shall be processed in accordance to the procedures for minor subdivision outlined in these Regulations.~~

~~3. In lieu of filing a final plat, the subdivider shall submit to the planning department one full-sized plan conforming to the requirements for preliminary plats contained in these Regulations along with supplemental information. The plan shall show the space layout and the typical location of the manufactured home, recreational vehicle, camping space or other units on the lot. The final plan shall also show all existing and proposed buildings and structures, streets, parking and recreational area(s). The plan shall be reviewed to assure it conforms to the approved plan and conditions of~~

~~approval for the plan. The approved plan shall be maintained in the planning department and in the office of the city clerk.~~

~~4. Before any portion of a rental or lease subdivision may be rented or leased, the applicant shall have installed all required improvements. In case of a phased development, unit spaces in each phase shall be rented or leased only after all improvements pertaining to that phase are completed. Preliminary plans, profiles, tentative grades and specifications for proposed improvements shall be submitted to the city for review and approval prior to the construction of improvements. The city may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications.~~

~~5. Manufactured home parks, recreational vehicle parks and campgrounds are required to be licensed by the Montana Department of Public Health and Human Service under Title 50, Chapter 52, MCA.~~

~~D. General Standards:~~

~~1. Subdivisions created by rent or lease shall comply with the provisions of these Regulations.~~

~~2. The city council may require:~~

~~a. Storage facilities on the lot or in compounds located within a reasonable distance.~~

~~b. A central area designated for storage and parking of boats, trailers or other recreational vehicles.~~

~~c. Landscaping to serve as a buffer between the development and adjacent properties.~~

~~d. An off-street area for mail delivery.~~

~~e. Sidewalks.~~

~~f. Curbs and gutters.~~

~~g. Street lighting.~~

~~h. Management regulations and/or covenants.~~

~~E. Parkland Dedication: The city council may waive parkland dedication and cash donation requirements if the subdivider agrees to develop park or playground as provided in these Regulations.~~

~~F. Additional Fire Protection: The development shall be equipped at all times with fire control equipment in good working order of such type, size and number and so located within the development as prescribed by the fire department.~~

~~G. Streets:~~

~~1. No on-street parking shall be permitted on the entrance street for a distance of one 100 feet from the point of entrance.~~

~~2. Streets within the subdivision shall be private unless otherwise required by the city council and shall comply with the street design standards in these Regulations and the city of Whitefish Engineering Standards.~~

~~3. Rights of way in excess of the roadway width shall not be required for private streets.~~

~~4. Streets shall be adapted to the topography and site conditions and shall have suitable alignment and gradient for traffic safety and drainage.~~

~~12-5-2: MANUFACTURED HOME PARK STANDARDS~~

~~A. Lot Requirements:~~

~~1. All lots for manufactured home spaces in a manufactured home park shall meet the following requirements:~~

~~a. Manufactured home lots shall be arranged to permit the safe and practical placement and removal of manufactured homes.~~

~~b. The minimum lot width shall not be less than fifty (50) feet.~~

~~B. Minimum Standards:~~

~~1. All manufactured homes shall be located at least twenty five (25) feet from any property boundary line abutting upon a public street or highway right of way and at least fifteen (15) feet from the other outer boundaries of the park.~~

~~2. All buildings, structures and manufactured homes shall be located at least ten (10) feet from the street providing access to it.~~

~~3. Distance between Manufactured Homes: Neither manufactured home nor its attached structures, such as awnings or carports, shall be located within twenty (20) feet of any other manufactured home or its attached structures.~~

~~4. Detached Accessory Structures: No detached structure, such as a storage shed, shall be located within five (5) feet of any manufactured home or its attached structures.~~

5. ~~Lot Coverage: A manufactured home shall not occupy more than one-third ($^1/_3$) of the lot area. The total area occupied by a manufactured home and its roofed accessory buildings and structures shall not exceed two-thirds ($^2/_3$) of the area of the lot.~~

6. ~~Parking Spaces Required: A minimum of two (2) parking spaces shall be provided for each manufactured home lot. In addition, guest parking at the ratio of one space for each five (5) lots and vehicle storage parking at the ratio of one space per each ten (10) lots shall be provided. Parking dimensions shall meet the zoning standards for parking.~~

C. ~~Marking Of Manufactured Home Lots: The limits of each manufactured home lot shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground shall be the same as shown on the approved plans.~~

D. ~~Manufactured Homes to Be Skirted: Each manufactured home shall be skirted within sixty (60) days after it is moved upon a lot within the manufactured home park. Said skirting shall be of a fire resistant material complementary to that of which the manufactured home exterior is constructed and shall be attached to the manufactured home.~~

E. ~~Electrical Systems: All electrical lines serving the subdivision shall be buried underground and shall be designed and constructed in accordance to the most recent edition of the national electrical code.~~

F. ~~Oil or Propane Gas Heating: Where oil or propane gas heating of a manufactured home is necessary, a fuel storage facility shall be provided on the manufactured home site not to exceed a three hundred (300) gallon capacity. Said storage facility shall extend no higher than six (6) feet above ground level and shall be located and screened so it will blend with its surroundings.~~

G. ~~Gas Systems: All gas systems serving the subdivision shall be designed and constructed in accordance to the most recent edition of the national fuel gas code, the standard for the storage and handling of liquefied petroleum gases and the uniform fire code.~~

1. ~~A readily accessible and identifiable shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection of the liquefied petroleum gas container.~~

2. ~~Each manufactured home lot shall have an accessible, listed gas shutoff installed. Said valve shall not be located under a manufactured home. Whenever a manufactured home lot outlet is not in use, the shutoff valve shall be plugged to prevent accidental discharge.~~

~~**12-5-3: RECREATIONAL VEHICLE PARK AND CAMPGROUND STANDARDS**~~

~~The provisions of this chapter shall apply to recreational vehicle parks and campgrounds, except as follows:~~

~~A. Roadway Width: The following standards shall govern the roadway widths:~~

~~1. A minimum ten (10) feet roadway width shall be provided for one-way streets or roads within the park/campground, provided such street:~~

~~a. Does not exceed five hundred feet (500') in length;~~

~~b. Has no on-street parking;~~

~~c. Serves twenty five (25) or less spaces.~~

~~2. Otherwise the following shall apply:~~

~~a. Twenty (20) feet if no on street parking is proposed;~~

~~b. Twenty eight (28) feet if parking is proposed on one side of the street;~~

~~c. Thirty six (36) feet if parking is proposed on both sides of the street.~~

~~d. Minimum centerline curvature radius of forty five (45) feet.~~

~~B. Recreational Vehicle Space: The lots or recreation vehicle spaces shall meet the following standards:~~

~~1. Minimum lot (space) width = Twenty five (25) feet.~~

~~2. Minimum lot (space) area = One thousand five hundred (1,500) square feet.~~

~~C. Distance between Recreational Vehicles: The distance between the recreational vehicles shall not be less than fifteen (15) feet. This includes any foldout or pop out portion or awnings attached to the vehicle.~~

~~**CHAPTER 6**~~
~~**CONDOMINIUMS**~~

~~**12-6-1: CONDOMINIUM DEVELOPMENTS**~~

~~Condominiums constructed on land subdivided in compliance with the parts 5 and 6 of the MSPA or on lots within incorporated cities and towns are exempt from the provisions of this chapter if either:~~

~~A. The approval of the original division of land expressly contemplated the~~

~~construction of the condominiums and any applicable park dedication requirements in 76-3-621, M.C.A. is complied with; or~~

~~B. The condominium proposal is in conformance with applicable zoning regulations.~~

~~12-6-2: DESIGN STANDARDS~~

~~A. Condominium developments shall comply with those standards contained in Chapter 4, Design Standards, which the city council deems applicable and the applicable zoning regulations for the district in which the property is located.~~

~~B. Condominium developments shall meet the minimum standards of the Montana Department of Environmental Quality and Flathead City-County Health Department.~~

~~C. Condominium developments shall comply with all the provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, M.C.A., as amended.~~

SHERWOOD CAPITAL LLC
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-13-W29
OCTOBER 7, 2013

Owner:	Sherwood Capital LTD
Mailing Address:	PO Box 4052 Whitefish, MT 59937
Applicant/Contractor:	Bill Hart Hart Builders, Inc.
Mailing Address:	PO Box 2097 Whitefish, MT 59937
Telephone Number:	406.253.5204
Property Legal Description:	Government Lots 5 & 6 in Section 3, Township 31 North, Range 22 West
Property Address:	2982 East Lakeshore Drive
Lake:	Whitefish Lake
Lake Frontage:	2,828' per previous applications and survey
Project Description:	Variance to replace and extend a retaining wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas.

Discussion and Background Information:

This application was originally before the Lakeshore Protection Committee on August 14, 2013. The application was tabled until the next meeting in order to members of the Lakeshore Protection Committee to visit the site. The application came before the Lakeshore Protection Committee again on September 11, 2013 where it failed to receive a majority vote in regards to the retaining wall. The committee unanimously approved the variance for the restoration of the man-made harbor and noted that if the application was revised to replace the wall in the same location and then extend the wall to the eroding slope and not remove the trees that the application could be reconsidered. On September 24h, the applicant provided the planning department with a revised site plan and letter asking to revise the application to replace the concrete wall in the same location; extend the wall into the area to the east and not remove any trees. The chair of the lakeshore committee called for a special meeting in order to review the application quickly so as not to delay the project any longer and to keep the review before city council on October 7, 2013.

Based on committee member feedback, the applicant is now proposing to remove the portion of the existing concrete wall that is situated to the west of the where the stairs are currently situated. This part of the wall is very low to the ground and doesn't hold back a slope. It resembles a concrete curb and is covered with riprap

for the majority of this section. The area would then be restored and the riprap replaced in the same location. At the point of where the stairs currently exist, a new portion of the wall would angle to the northwest to tie into the retaining that is located outside of the lakeshore protection near the gazebo structure. This reduces the area proposed to be excavated by more than 75% of the original request. Staff notes that new steps would be located in the portion of the wall and would feed into the existing trail on the slope which currently leads to where the steps are located now. This area can be shown on the applicant's photo of the property looking from the towards the retaining wall. The portion of the wall to be removed is located in the far left of the photo and is covered with rock.

The remainder of the concrete wall would be removed and replaced with a stacked stone wall in the same location. A new wall would tie into the structure at the east end and would then follow the contours of the lakeshore zone along the portion of the slope that is eroding. The application no longer calls for the removal of three (3) mature trees on the slope. The proposed stone wall will be terraced with stone blocks that stair step up the slope rather than create a vertical profile.

City Zoning requires that retaining walls be terraced with specific standards. The applicant has requested an exemption from the planning director as a wall meeting the city's requirement would require removal of vast amounts of slope and disturb more area of the lakeshore protection zone than is necessary. The proposed wall is stepped back into the slope but is not in 3' increments per the city ordinance.

The property also has a man-made harbor that has silted in over time. The lake covers this area during high water. When the lake recedes it leaves a stagnant water body. A rusty metal retaining wall divides the harbor area from the rest of the lakeshore zone. The proposal requests to remove the metal wall. The entire area will be restored back to natural contours consistent with the surrounding topography. The fill material is not soil. The fill is clean rock and gravel and some sand to hold it in place. It is more consistent with the swim beach application of rock/gravel than filling an area of the lake. Since the project does not create additional land area and is not using soil, a minor variance has been requested as opposed to a major variance for fill which would create more shoreline. A permit for the rock/gravel fill was issued by the US Army Corps. It also allowed for the removal of the rusty metal wall as it is located below mean high water.

The project will require the use of heavy equipment and restoration of those areas disturbed during construction and/or removal of the wall(s) will is proposed. The use of gravel consistent with existing rock will be used to supplement and restore the area where the wall is removed; where disturbance happens during construction and restoration of the man-made harbor.

At the site visit on September 4, 2013, the property owner and the applicant walked the property with members of the lakeshore protection committee (Konapatzke and Ringer were absent), Planner Bond and Mike Koppel of the Whitefish Lake Institute.

The erosion of the slope on the eastern 70' of the proposed wall site was evident and is shown in photos from the applicant and staff.

At high water, the lake exceeds the height of the existing concrete wall and removes soils behind it which causes soils from the slope above to fill in behind it. At the eastern edge of the wall, wave action caused by the abrupt termination of the wall, has begun to cause slope degradation which is evident in the pictures of the slope and the before and after pictures showing the root balls of two trees located at the base of the slope.

Frontage and allowable constructed area: The property has 2,828 feet of lake frontage according to the survey and previous applications. The allowable constructed area based on 8 square feet per lineal foot of frontage is 22,624 square feet.

Existing Constructed Area: The application as submitted would bring the total constructed area to 1,349 square feet (dock of 1,204 square feet, retaining wall 120 square feet).

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing wall"* (this pertains to the angled 20' section with the stairs); and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block),* (this pertains to the proposed new wall). In reviewing a minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require placing the replacement wall in the same location as the existing concrete wall which would need to be at the same height or lower than the existing wall. A lower wall or keeping the wall at the same height would not protect the property from further erosion. The wall would eventually fail which would cause an undue hardship on the property owner to mitigate the effects of siltation and water degradation caused by an abrupt failure due to erosion.

Strict enforcement of the existing requirements and standards would require placing the entire the wall in the same location. The portion to be removed is extremely low-lying and is not currently visible beneath the riprap stacked upon it. The 60' linear feet to be removed will be restored and covered with riprap that is currently being

used in this location. The topography in this area is rather flat and does not need a wall to support a slope. The new angled part of the wall will allow new steps to be placed to tie into the existing path that currently leads the stairs. The angle of the wall in this portion will hold the toe of the slope. A strict enforcement would require a wall to be reinstalled where it is not needed and does not prevent further erosion. The use of natural stone as opposed to concrete will not require pouring concrete into the lakeshore zone. The wall material and design is consistent with an existing wall on the property. Strict enforcement including the zoning standards (which are separate from this application but apply to portions of the project) would create a terraced wall which disturbs more land area than necessary to stabilize the slope and prevent further erosion.

2. No reasonable alternatives exist which do meet the standards herein.

Reasonable alternatives that meet the standards do not exist. Replacing the wall at a slightly higher elevation of the existing wall height will minimize disruption of the lakeshore zone and is in-line with the requirements of the lakeshore regulations. The current regulations do not allow replacement of a portion of a wall be moved to contain the toe of a slope as is proposed. The parallel placement of the wall to the lake causes wave action to be dispersed around the edges of the wall which has led to additional erosion to the area adjacent to the east of the wall.

The placement of the fill for the manmade harbor reclamation is not allowed within the lakeshore regulations however it restores the disturbed area to a natural state. The project has received approval from the U.S. Army Corps of Engineers as it is located below the high water mark.

3. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.

The Policy Criteria for all permits include:

A. Materially diminish water quality;
B. Materially diminish habitat for fish or wildlife;
C. Interfere with navigation or other lawful recreation;
D. Create a public nuisance or public safety hazard;
E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
F. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope. The proposed variance would not create a visual impact discordant with

natural scenic values as the proposed wall materials would tie into the predominate landscape elements already on site with the use of stone on areas outside the lakeshore zone and visible from the lake.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Lakeshore Protection Committee recommended approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Recommended Conditions of Approval:

1. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.

2. Temporary storage of vehicles, trailers, debris, other equipment or construction materials in the lakeshore protection zone is prohibited.

3. The work authorized under this permit shall be completed in substantial compliance with the methods and materials described within the application.

4. At no time shall the wheels of any vehicle come in contact with the lake.

5. All work shall be done when the construction site is dry.

6. If lake siltation occurs, work will be immediately halted and the City of Whitefish Planning Department shall be contacted.

7. All available methods will be made to preserve and protect all of the existing trees in the lakeshore protection zone.

8. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.

9. Natural vegetation in the Lakeshore Protection Zone shall be preserved wherever possible.

10. Silt fencing, straw waddles or other erosion and sedimentation measures shall be utilized during construction. An approved plan for erosion and sedimentation during construction shall be required. Approval of the methods proposed shall be issued by the City of Whitefish in compliance with the Critical Areas Ordinance or other development standards.

11. The proposed projects shall not exceed the dimensions or deviate from the proposed location as specified in the application, except as amended by the Whitefish Lake and Lakeshore Protection Regulations. Changes or modification to increase any dimension (or change configuration) must be approved through permit amendment. The owner must request an amendment before the permit expires.

12. All work shall be done when the lake is at low pool, before April 20th or after August 15th, and when the construction site is dry. Construction dates can be modified with approval by the Planning Department to account for fluctuations with high water and low water cycles dependent on late thawing or early lowering of lake levels.

13. The construction of the wall shall be as described by the applicant with the permit application and shall follow best management practices during construction.

14. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

15. Riprap complying with the dimensions mentioned above shall be placed on the waterward side of the retaining wall such that the toe of the riprap shall not extend waterward of high water and the top of the rock shall extend to within at least six inches (6”) of the top of the wall where practical.

16. The riprap rock shall be angular and sized property for the specific task. Nominal rock size to be 6-12" (18" maximum) in diameter. Changes or modifications to increase any of these dimensions must be approved through permit amendment.

17. Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays, or fines.

18. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner as to prohibit re-entry of the material into the lake.

19. The wall shall be built as presented, at or landward of the mean high water elevation, and shall conform to the contours of the existing shoreline. No attempt shall be made to extend the land area into the lake any further.

20. All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the lakeshore protection zone.

21. Backfill shall be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side.

22. Landscaping shall be hand irrigated to ensure long-term survivability of the vegetation and trees.

23. The trees and vegetation shall be maintained for a ten (10) year period. If the trees and vegetation die within the ten year maintenance period, they shall be replaced to the standards which they were approved.

24. The areas disturbed shall be restored to the condition prior to construction. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

25. All fill shall be clean, washed gravel of three-fourths inch (¾") to one and one-half (1 ½") diameter, free of silts, sands and fine materials. Gravel type and color shall approximate that existing on the adjacent lakeshore.

26. Maximum fill depth for beach gravel is four inches (4") to six inches (6").

27. Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it washed away, silted in or revegetated over time is prohibited.

28. <u>The application of beach gravel is only for those areas disturbed by construction of the retaining wall. The gravel is not to be placed across the entire lakeshore area and is specific only to those areas shown on the site plan for placement of the retaining wall removal and installation. The gravel is not to go any wider than where the retaining wall was removed to cover the soil that becomes exposed. Prior to the placement of the gravel, the applicant shall request a site visit from staff to verify where the gravel will be allowed.</u>

29. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Nikki Bond

WHITEFISH LAKESHORE PROTECTION COMMITTEE
MINUTES OF SEPTEMBER 26, 2013

The meeting was called to order at 6:00pm by Chairman Herb Peschel.

MEMBERS PRESENT:

- Dennis Konapatzke (via telephone), Jeff Jensen, Ron Hauf, Herb Peschel and Greg Gunderson (joined at 6:05pm). Nikki Bond of the Whitefish Planning Office was also present.

MEMBERS ABSENT: Scott Ringer, Sharon Morrison and Joe Maletta – all excused.

ADDITIONS/CORRECTIONS to TONIGHT'S AGENDA:

- None.

OLD BUSINESS

WLV-13-W29 – Sherwood Capital – Variance for retaining wall; restore harbor to lakebed; restoration of disturbed areas and gravel supplement – Continued from 8-14-13
[Present: Bill Hart, Applicant]
Discussion:
Nikki Bond provided an update of the staff report noting that the new amendment to the site plan would not be using fascia on the existing wall and the staff report would be fixed accordingly to reflect that the entire wall was being removed and the portion east of the stairs would be replaced in the same location. That portion of the wall west of the stairs, which is low-lying and covered in riprap, would be removed in entirety and the riprap would be replaced in the same location. A small portion of the wall would head at an angle to the northwest from the western location of the existing steps and follow the contour of the toe of the slope to terminate near the existing wall located outside the lakeshore protection zone. There would be some excavation in this area but the portion of lakeshore to be disturbed has been drastically reduced from the original application and new stairs would be in the area of the angled wall and would tie into the existing path on-site. The remainder of the wall would be in the same location of the concrete wall and would wrap into the slope on the eastern edge of the current wall and follow the length of the slope that is eroding. No trees are being proposed for removal with this revised application.

Ron Hauf asked the applicant for clarification regarding the location of the wall. The wall would go in the same location of the current wall and turn into the eroded area on the slope. The applicant stated they would try to save the trees on the slope but was worried that the trees could decline in health later on due to disturbance of their root systems during removal and replacement of the retaining wall. The applicant said the revised plan is a better alternative than using fascia on the concrete wall. Ron Hauf noted that there does not tend to be a high degree of trees that survive when replaced in the lakeshore zone so keeping the existing trees is worth a shot. Jeff Jensen agreed with Ron regarding the trees and said from experience he has noted the same thing. Greg Gunderson said that he appreciated the wall going into the same area and the design of the wall would help disperse wave energy on the site.

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Bill Hart noted that the new wall would be built to around 3004' to account for high water and to avoid the overlapping of waves that currently occurs onsite.

Greg Gunderson questioned the removal of trees (as he joined the meeting a few minutes late). Ron Hauf reiterated that the applicant was going to save the trees but there was some worry that the root disturbance may cause issues down the road. Bill Hart stated there are cottonwoods on site in the lakeshore zone that will fill in again after construction of the wall has ceased. They will be adding birch trees outside of the lakeshore zone.

Motion:

- Ron Hauf moved to approve the amended application as submitted with variances for the restoration of the harbor, replacement of the wall in the current position and extending the wall to the east. Jeff Jensen seconded. No further discussion. All in favor and motion carried. Staff was asked to revise the staff report to address all the variances and conditions of approval.

OTHER:

The applicant thanked the committee for calling a special meeting to consider the changes to the lakeshore permit so it could still go to city council for review on October 7, 2013. Herb Peschel thanked committee members and staff for the last minute work that was performed in order to provide this special meeting.

ADJOURNMENT

Meeting was adjourned at 6:17pm.

NEXT MEETING

October 9, 2013 * 6:00pm
Whitefish Planning & Building Office
510 Railway Street – Whitefish, MT

DRAFT

WHITEFISH LAKESHORE PROTECTION COMMITTEE
MINUTES OF SEPTEMBER 11, 2013

The meeting was called to order at 6:00pm by Chairman Herb Peschel.

MEMBERS PRESENT:

- Dennis Konapatzke, Jeff Jensen, Ron Hauf, Sharon Morrison (arrived at 6:13 pm), Herb Peschel, Scott Ringer, Greg Gunderson and Joe Malletta. Nikki Bond of the Whitefish Planning Office was also present.

MEMBERS ABSENT: None

ADDITIONS/CORRECTIONS to TONIGHT'S AGENDA:

- Ron Hauf asked to move the Trillium Shores application to the first item of business as the other permit was continued from the previous meeting and may be a lengthy review. The committee agreed unanimously.

GENERAL PUBLIC COMMENT: <none>

ADOPTION of MINUTES from LAST MEETING:

- Minutes of August 14, 2013 were reviewed with Scott Ringer moving to adopt; Ron Hauf seconded. All in favor and motion carried.

NEW BUSINESS

WLP-13-W33 – Trillium Shores LLC – Floating Walking
[Present: Curt Olson, Applicant]
Discussion:

OLD BUSINESS

WLV-13-W29 – Sherwood Capital – Variance for retaining wall; restore harbor to lakebed; restoration of disturbed areas and gravel supplement – Continued from 8-14-13
[Present: Bill Hart, Applicant]
Discussion:
Nikki Bond the staff report had three different options for the committee to consider based on possible outcomes of the application – to approve the variance as requested; to approve the variance with modifications to the retaining wall; and to deny the retaining wall variance while approving the restoration of the man-made harbor. The committee members had performed a site visit on September 3rd with the property owner, applicant and Mike Kopell of the Whitefish Lake Institute. The staff report had been updated to include site photos that were taken at the visit.

The application requests to restore a man-made harbor and a 404 permit had been issued for the work by the U.S. Army Corps of Engineers. The property owner was also requesting to remove an existing wall and replace it with a larger dry-set stone wall behind the current position and to

extend the wall to an area to the east. The application as submitted would require the removal of three (3) established trees.

Herb Peschel opened the discussion noting that the restoration of the harbor seemed to be a matter that required little discussion as it was straight-forward, would restore the lakebed and it had received Army Corps approval. He expressed that there were other options for the retaining wall variance and that the applicant could choose to face the existing wall with stone or replace the wall in the same spot. Joe Malletta stated that the end goal of the project needed to be thought through in entirety due to the sloughing that was taking place on site. Ron Hauf concurred with the others and added that the application was not intended to add additional beach area. However, he felt that moving the wall on the northwest end and tapering back the new wall to curve around the area where erosion is beginning at the toe of the slope made sense. Even though the current wall is starting to lean it appears to have life left in it so maybe fascia would be an option but he was concerned the erosion behind the wall would continue if the wall was left as is. Herb Peschel noted the new wall should be curved and not parallel like the existing wall. It would help displace wave action as noted at the site visit by Mike Koppel of the Whitefish Lake Institute.

Sharon Morrison said the erosion on the site is problematic and would continue to occur without modification. The existing wall is too short. Waves wash over the wall at high water which exasperates the soil loss behind the wall and to the edges. She felt the replacement wall could be higher and be engineered to address the issues. Herb Peschel stated that he felt the wall should remain in the same spot and should not be moved back into the hill. With some excavation of material on site they may end up with a slightly higher wall in the same location. He noted that the new section of the wall along the exposed slope would be a no-brainer and his issues were regarding the location of the replacement section. He was also concerned about the removal of trees which he felt should stay on site and did not need to be removed in order to replace the wall in the same location.

The applicant, Bill Hart, spoke to the tree removal stating that he felt if the wall was replaced in the same spot the trees may die due to exposed roots from the excavation. He said the site plan was provided by an engineer but the wall was not engineered. Ron Hauf reiterated that the new portion of wall should start at the corner of the existing wall and wrap around the slope. The replacement section of the wall should go in the same location.

Jeff Jensen said that he felt the original plan wouldn't diminish water quality and would improve the value and scenic nature of the property. Keeping the replacement wall at the same height of the existing wall wouldn't accomplish anything as the erosion behind the wall would continue. The plan as proposed would account for wave action and would fix the problem from reoccurring.

The applicant, Bill Hart, stated if the committee didn't approve the project as presented, that the property owner would probably leave the property as-is and not attempt to do any part of the project. The fill material for the harbor restoration was to come from the excavation area for moving the wall further back into the hillside.

Greg Gunderson asked to bring the application into the discussion phase for consideration. The

committee agreed. Greg said the wall as proposed should require engineering and he had concerns regarding the aesthetics of the wall. He felt the existing wall was rather ugly and agreed it could look better. It should be engineered to withstand wave action and support the slope not alter it. He noted the slope behind the existing wall is a native hill. The erosion at the toe of the slope was fixed with the installation of the wall. The toe of the slope has already been lost so moving the wall back further wouldn't fix the issue. The abrupt ending to wall and its parallel form to lake is what has caused the erosion to move to the adjacent area. If the wall is move to a different location, it should be moved towards the lake and not further from it. Moving in towards the lake is a more natural migration process. Gunderson said the new wall portion to the east should morph into a taller structure as it winds back into the steeper slope. He said he didn't like the look of cut and stacked stone but if there was vegetation planted in front of it or in the terraces and behind it that it would help it look less man-made.

Sharon Morrison expressed concern that further engineering would require another update to the plan and she didn't think the committee should pick and choose parts of the project to alter if it would require more work. She felt that engineers balance all considerations when designing a project. She said the wave action on site is evident due to the progression of erosion that has occurred in the past five (5) years.

Scott Ringer questioned the applicant, asking if the original intent of the application was just to move the wall back and away from the lake. The applicant, Bill Hart, said that when he began to have the project drawn up he was advised to move the wall back behind the high water mark. A hydrologist involved with the original design advised them where the new/replacement wall should start to avoid the high water mark. The design of the wall was intended to move portions outside of the lakeshore zone and also to preserve the root system of a large tree that they wanted to preserve. Ron Hauf asked the applicant if he could consult with the engineer to remove the existing wall and replace it in the current location. He also noted that a replacement wall would need to be slighter taller due to wave action causing water to push over the wall and eroding the slope from behind.

Scott Ringer made a motion to move the matter into discussion for a vote and asked if members had any other discussion or concerns first. Greg Gunderson said that the property owner has done an amazing job with the protection of Hell Roaring creek on the property and that he was impressed with conservation efforts that he saw on site. Engineering is a matter of man over nature and it is extremely complex when water meets land. Greg felt that the riparian environment should be preserved and the project should be modified to account for the land-water interface. The water has been going over the wall because it is a vertical structure. If it was a stepped wall with a roughness coefficient that helped disburse the energy of the waves it would be better. The project could be redesigned to account for the water action, keep the wall in the same location and cohesively extend the wall to eroding slope. Jeff Jensen felt that starting the wall low and stepping it back until it reached the higher portions of the slope made sense. Greg Gunderson pointed out that doing so may require some beach loss. Jeff said if the goal is to stop the sedimentation that is occurring solely replacing the wall at the same height in the same location would not fix the issue. Ron Hauf stated that he would like to see the wall remain in the same location and not be moved back.

Motion:

- Jeff Jensen moved to approve the application as submitted with variances for the restoration of the harbor, relocation of the wall and removal of three (3) trees. Sharon Morrison seconded. No further discussion. Morison, Ringer, Jensen and Konapatzke voted to approve the project. Maletta, Gunderson, Hauf and Peschel voted to deny. Motion failed due to majority vote and ended in a tie.
- Sharon Morrison moved to approve the harbor restoration only. Ron Hauf seconded. All in favor and motion carried. Staff was asked to revise the staff report to include conditions of approval for the harbor reclamation only.

The committee briefly spoke with the applicant and stated if a revised plan was submitted that kept the wall in the same location and preserved the trees that they would reconsider the project.

By-Laws Discussion

ADJOURNMENT
Meeting was adjourned at 8:15 pm.

NEXT MEETING

October 9, 2013 * 6:00pm
Whitefish Planning & Building Office
510 Railway Street – Whitefish, MT

DRAFT

SHERWOOD CAPITAL LLC
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-13-W29
SEPTEMBER 26, 2013

Owner:	Sherwood Capital LTD
Mailing Address:	PO Box 4052 Whitefish, MT 59937
Applicant/Contractor:	Bill Hart Hart Builders, Inc.
Mailing Address:	PO Box 2097 Whitefish, MT 59937
Telephone Number:	406.253.5204
Property Legal Description:	Government Lots 5 & 6 in Section 3, Township 31 North, Range 22 West
Property Address:	2982 East Lakeshore Drive
Lake:	Whitefish Lake
Lake Frontage:	2,828' per previous applications and survey
Project Description:	Variance to build stone wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; and restoration of disturbed areas.

Discussion and Background Information: This application was originally before the Lakeshore Protection Committee on August 14, 2013. The application was tabled until the next meeting in order to members of the Lakeshore Protection Committee to visit the site. At the September 11, 2013 meeting the variance to fill the man-made harbor was approved. The remainder of the variance failed to receive a majority vote to approve. It was considered a denial and was scheduled to go before the City Council consent agenda on October 7th, 2013.

On September 24th, the applicant submitted a revised site plan specific to the retaining wall portion of the project. Based on committee member feedback at the previous meeting, the applicant is now proposing to remove the portion of the existing concrete wall that is situated to the west of the where the stairs are currently situated. This part of the wall is very low to the ground and doesn't hold back a slope. It resembles a concrete curb and is covered with riprap for the majority of this section. The area would then be restored. At the point of where the stairs currently exist, a new portion of the wall would angle to the northwest to tie into the retaining that is located outside of the lakeshore protection near the gazebo structure. This reduces the area proposed to be excavated by more than 75% of the original request. Staff notes that new steps would be located in the portion of the wall and would feed into the existing trail on the slope which currently leads to where the steps are located now. This area can be shown on the applicant's photo

of the property looking from the towards the retaining wall. The portion of the wall to be removed is located in the far left of the photo and is covered with rock.

The remainder of the concrete wall is proposed to be covered with stone fascia. The wall would remain in place and a new wall would tie into the structure at the east end and would then follow the contours of the lakeshore zone along the portion of the slope that is eroding. The application no longer calls for the removal of three (3) mature trees on the slope.

The two walls will tie together. The proposed stone wall will be terraced with stone blocks that stair step up the slope rather than create a vertical profile.

The project will require the use of heavy equipment and restoration of those areas disturbed during construction and/or removal of the wall(s) will is proposed. The use of gravel consistent with existing rock will be used to supplement and restore the area where the wall is removed; where disturbance happens during construction and restoration of the man-made harbor.

At the site visit on September 4, 2013, the property owner and the applicant walked the property with members of the lakeshore protection committee (Konapatzke and Ringer were absent), Planner Bond and Mike Koppel of the Whitefish Lake Institute. The erosion of the slope on the eastern 70' of the proposed wall site was evident and is shown in photos from the applicant and staff.

At high water, the lake exceeds the height of the existing concrete wall and removes soils behind it which causes soils from the slope above to fill in behind it. At the eastern edge of the wall, wave action caused by the abrupt termination of the wall, has begun to cause slope degradation which is evident in the pictures of the slope and the before and after pictures showing the root balls of two trees located at the base of the slope.

<u>Frontage and allowable constructed area:</u> The property has 2,828 feet of lake frontage according to the survey and previous applications. The allowable constructed area based on 8 square feet per lineal foot of frontage is 22,624 square feet.

<u>Existing Constructed Area:</u> The application as submitted would bring the total constructed area to 1,349 square feet (dock of 1,204 square feet, retaining wall 120 square feet).

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing*

wall" (this pertains to the angled 20' section with the stairs); and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block),* (this pertains to the proposed new wall). In reviewing a minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require placing the replacement wall in the same location as the existing concrete wall which would need to be at the same height or lower than the existing wall. A lower wall or keeping the wall at the same height would not protect the property from further erosion. The wall would eventually fail which would cause an undue hardship on the property owner to mitigate the effects of siltation and water degradation caused by an abrupt failure due to erosion.

Strict enforcement of the existing requirements and standards would require placing the replacement portion of the wall in the same location. The portion to be removed is extremely low-lying and is not currently visible beneath the riprap stacked upon it. The angled nature of this part of the wall will allow new steps to be placed to tie into the existing path that currently leads the stairs. The 60' to be removed will restored. The topography in this area is rather flat and does not need a wall to support a slope. The angle of the wall in this portion will hold the toe of the slope. A strict enforcement would require a wall to be reinstalled where it is not needed and does not prevent further erosion. The use of natural stone as opposed to concrete will not require pouring concrete into the lakeshore zone. The wall material and design is consistent with an existing wall on the property. Strict enforcement including the zoning standards (which are separate from this application but apply to portions of the project) would create a terraced wall which disturbs more land area than necessary to stabilize the slope and prevent further erosion.

2. **No reasonable alternatives exist which do meet the standards herein.**

Reasonable alternatives that meet the standards do not exist. Keeping the higher portion of the existing wall on site will minimize disruption of the lakeshore zone and is in-line with the requirements of the lakeshore regulations. The current regulations do not allow replacement of a portion of a wall be moved to contain the toe of a slope as is proposed. The parallel placement of the wall to the lake causes wave action to be dispersed around the edges of the wall which has led to additional erosion to the area adjacent to the east of the wall.

3. **Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.**

The Policy Criteria for all permits include:

A. Materially diminish water quality;
B. Materially diminish habitat for fish or wildlife;
C. Interfere with navigation or other lawful recreation;
D. Create a public nuisance or public safety hazard;
E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
F. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope. The proposed variance would not create a visual impact discordant with natural scenic values as the proposed wall materials and stone fascia over the existing wall would tie into the predominate landscape elements already on site with the use of stone on areas outside the lakeshore zone and visible from the lake.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Recommended Conditions of Approval:

1. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.

2. Temporary storage of vehicles, trailers, debris, other equipment or construction materials in the lakeshore protection zone is prohibited.

3. The work authorized under this permit shall be completed in substantial compliance with the methods and materials described within the application.

4. At no time shall the wheels of any vehicle come in contact with the lake.

5. All work shall be done when the construction site is dry.

6. If lake siltation occurs, work will be immediately halted and the City of Whitefish Planning Department shall be contacted.

7. All available methods will be made to preserve and protect all of the existing trees in the lakeshore protection zone.

8. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.

9. Natural vegetation in the Lakeshore Protection Zone shall be preserved wherever possible.

10. Silt fencing, straw waddles or other erosion and sedimentation measures shall be utilized during construction. An approved plan for erosion and sedimentation during construction shall be required. Approval of the methods proposed shall be issued by the City of Whitefish in compliance with the Critical Areas Ordinance or other development standards.

11. The proposed projects shall not exceed the dimensions or deviate from the proposed location as specified in the application, except as amended by the Whitefish Lake and Lakeshore Protection Regulations. Changes or modification to increase any dimension (or change configuration) must be approved through permit amendment. The owner must request an amendment before the permit expires.

12. All work shall be done when the lake is at low pool, before April 20th or after August 15th, and when the construction site is dry. Construction dates can be modified with approval by the Planning Department to account for fluctuations with high water and low water cycles dependent on late thawing or early lowering of lake levels.

13. The construction of the wall shall be as described by the applicant with the permit application and shall follow best management practices during construction.

14. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

15. Riprap complying with the dimensions mentioned above shall be placed on the waterward side of the retaining wall such that the toe of the riprap shall not extend waterward of high water and the top of the rock shall extend to within at least six inches (6”) of the top of the wall where practical.

16. The riprap rock shall be angular and sized property for the specific task. Nominal rock size to be 6-12" (18" maximum) in diameter. Changes or modifications to increase any of these dimensions must be approved through permit amendment.

17. Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays, or fines.

18. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner as to prohibit re-entry of the material into the lake.

19. The wall shall be built as presented, at or landward of the mean high water elevation, and shall conform to the contours of the existing shoreline. No attempt shall be made to extend the land area into the lake any further.

20. All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the lakeshore protection zone.

21. Backfill shall be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side.

22. Landscaping shall be hand irrigated to ensure long-term survivability of the vegetation and trees.

23. The trees and vegetation shall be maintained for a ten (10) year period. If the trees and vegetation die within the ten year maintenance period, they shall be replaced to the standards which they were approved.

24. The areas disturbed shall be restored to the condition prior to construction. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

25. All fill shall be clean, washed gravel of three-fourths inch (¾”) to one and one-half (1 ½”) diameter, free of silts, sands and fine materials. Gravel type and color shall approximate that existing on the adjacent lakeshore.

26. Maximum fill depth for beach gravel is four inches (4”) to six inches (6”).

27. Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it washed away, silted in or revegetated over time is prohibited.

28. The application of beach gravel is only for those areas disturbed by construction of the retaining wall. The gravel is not to be placed across the entire lakeshore area and is specific only to those areas shown on the site plan for placement of the retaining wall removal and installation. The gravel is not to go any wider than where the retaining wall was removed to cover the soil that becomes exposed. Prior to the placement of the gravel, the applicant shall request a site visit from staff to verify where the gravel will be allowed.

29. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Nikki Bond

Bill Hart / Hart Builder's Inc.
PO Box 2097
Whitefish, Mt. 59937
406.253.5204

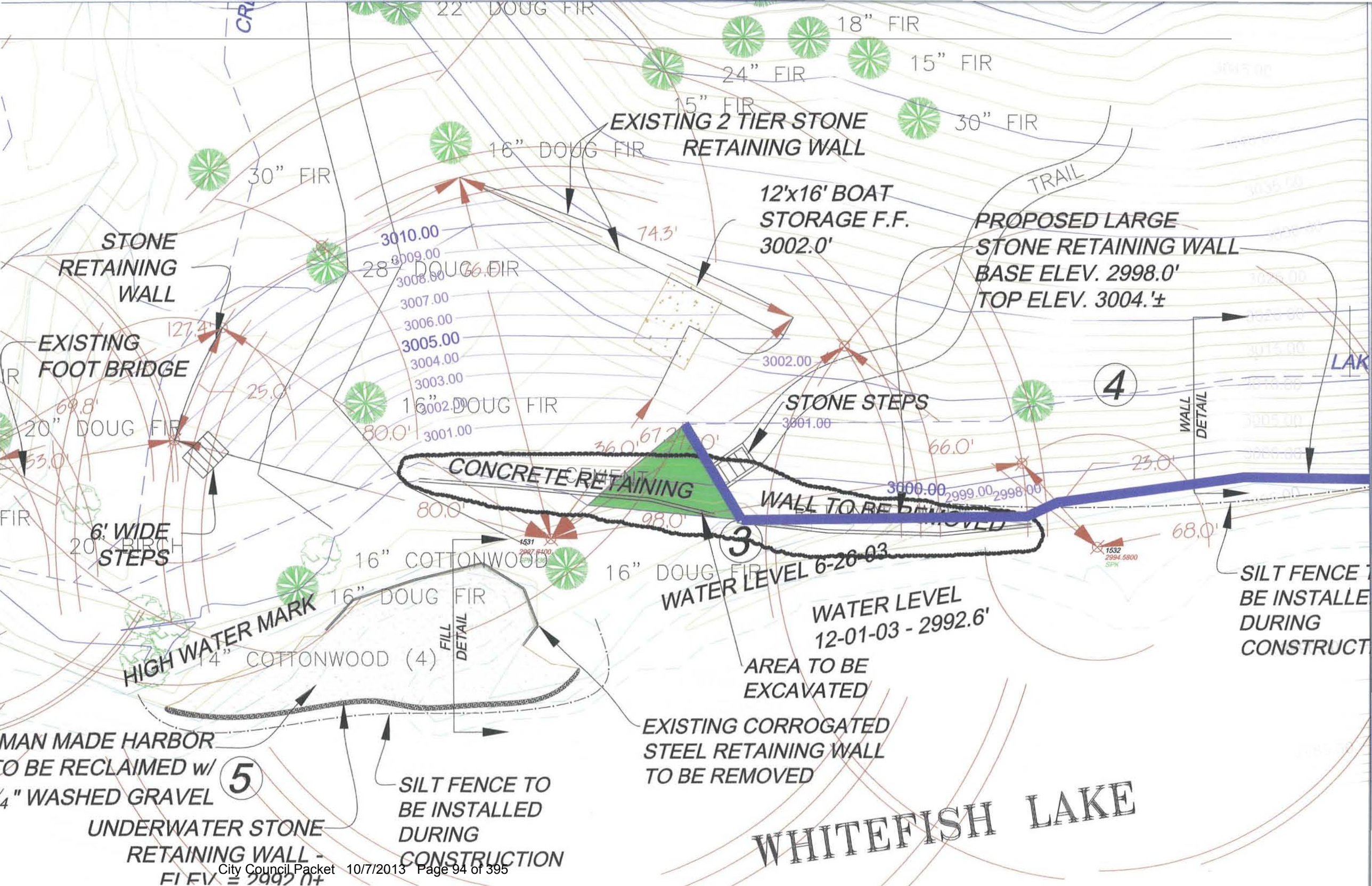
September 24, 2013

Whitefish Planning & Building Dept.
510 Railway Street / PO Box 158
Whitefish, MT. 59937

: Proposal to make amendment to Whitefish Lakeshore Permit application WLV-13-W29

In consideration of the outcome of the Whitefish Lakeshore Committee meeting on September 11, 2013 and the split vote on the new stone retaining wall, we propose to place the new stone retaining wall in the same location as the existing "ugly pink wall" to the east of the existing stairs after it is removed. We then propose to remove the existing steps and replace with new stone steps and stone wall to the point approximately 11' south of the existing "boat storage" building. This will reduce the amount of "area to be excavated" by about 75%. The balance of the "area to be excavated" will be disturbed by the removal of the existing wall and steps, and will need to be re-graded afterwards.
We also propose to leave the 3 trees previously proposed to be removed. We will do our best to protect these trees from the work, but as previously stated, this work will come in contact with the roots of these trees and we can not guarantee (nor be held responsible) these trees will survive.

We thank you for your consideration of this proposal,
Bill Hart


22" DOUG FIR
18" FIR
15" FIR
24" FIR
15" FIR
30" FIR
EXISTING 2 TIER STONE RETAINING WALL
16" DOUG FIR
30" FIR
TRAIL
12'x16' BOAT STORAGE F.F. 3002.0'
PROPOSED LARGE STONE RETAINING WALL BASE ELEV. 2998.0' TOP ELEV. 3004.'±
STONE RETAINING WALL
28" DOUG FIR
3010.00
3009.00
3008.00
3007.00
3006.00
3005.00
3004.00
3003.00
3002.00
3001.00
3000.00
2999.00
2998.00
74.3'
66.0'
127.4'
25.0'
69.8'
80.0'
36.0'
67.2'
98.0'
23.0'
68.0'
EXISTING FOOT BRIDGE
4
WALL DETAIL
LAK
16" DOUG FIR
STONE STEPS
20" DOUG FIR
53.0'
CONCRETE RETAINING
WALL TO BE REMOVED
6' WIDE STEPS
20" BIRCH
FIR
3
16" COTTONWOOD
16" DOUG FIR
WATER LEVEL 6-26-03
SILT FENCE T BE INSTALLE DURING CONSTRUCT
HIGH WATER MARK
16" DOUG FIR
14" COTTONWOOD (4)
FILL DETAIL
WATER LEVEL 12-01-03 - 2992.6'
AREA TO BE EXCAVATED
EXISTING CORROGATED STEEL RETAINING WALL TO BE REMOVED
MAN MADE HARBOR TO BE RECLAIMED w/ 1/4" WASHED GRAVEL
5
SILT FENCE TO BE INSTALLED DURING CONSTRUCTION
UNDERWATER STONE RETAINING WALL - ELEV. = 2992.0±
WHITEFISH LAKE

SHERWOOD CAPITAL LTD
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-13-W29
SEPTEMBER 11, 2013

Owner:	Sherwood Capital LTD
Mailing Address:	PO Box 4052 Whitefish, MT 59937
Applicant/Contractor:	Bill Hart Hart Builders, Inc.
Mailing Address:	PO Box 2097 Whitefish, MT 59937
Telephone Number:	406.253.5204
Property Legal Description:	Government Lots 5 & 6 in Section 3, Township 31 North, Range 22 West
Property Address:	2982 East Lakeshore Drive
Lake:	Whitefish Lake
Lake Frontage:	2,828' per previous applications and survey
Project Description:	Variance to build stone wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas and planting replacement trees.

Discussion: This application was originally before the Lakeshore Protection Committee on August 14, 2013. The application was tabled until the next meeting in order to members of the Lakeshore Protection Committee to visit the site.

The applicant is proposing a number of different projects in conjunction with the variance request. There are two items that require a variance: the installation of a stone retaining wall and the use of fill to restore an area of lakebed that had been altered to create a man-made harbor.

The project involves removing a concrete retaining wall and excavating the toe of the slope behind the existing wall. It would be replaced with a stacked stone retaining wall situated above the high water mark for half the length of the wall. This would remove a triangular area of soils which would be excavated to follow the natural contours of the lakeshore protection zone adjacent to the site. The wall would then follow the high water line at the base of slope which has been eroding. A retaining wall of large natural stone block is proposed to be consistent with an existing wall located outside of the lakeshore zone. The two walls will tie together. The existing stone wall is vertical in nature. The proposed stone wall will be terraced with stone blocks that stair step up the slope rather than create a vertical profile.

The original site plan proposed to excavate portions of the existing slope to place the new wall outside of the lakeshore zone. The revised site plan situates most of the wall at the 20' setback for the lakeshore protection zone. The proposed wall would start directly north of the western edge of the concrete retaining wall to be removed. The wall would follow the contours of the existing slope and tie into the existing stone wall (located on the site plan to the north of the boat storage area). The wall would traverse to the south towards the lakeshore protection zone then turn due east. In this location the wall would span approximately 70 linear feet (as shown on the scaled site) and angle from the lakeshore setback to the high watermark. At the high water mark the wall would span an additional 70 linear feet where it would terminate to the eastern portion of the slope that has been eroding.

The application requests excavation of the slope located behind the existing concrete retaining wall in order to place the proposed wall at the toe of the slope. The existing concrete wall is vertical. The area behind the wall is eroding in portions due to wave action at high water. The slope above the wall has begun to push the wall forward due to the removal of soils from water erosion and the additional weight of materials which have been deposited from the slope.

Three (3) trees will be removed with the installation of the wall and the applicant is proposing to replace these with six (6) native trees. Two of the trees that are being removed have rootballs that are exposed due to surrounding erosion and are shown on the photos submitted by the applicant. An additional tree proposed to be removed, while considered healthy, would be removed to situate the wall along the contours of the slope. Other trees on the slope and within the lakeshore zone would not be removed as the wall placement was designed to preserve their root systems.

City Zoning requires that retaining walls be terraced with specific standards. The applicant has requested an exemption from the planning director as a wall meeting the city's requirement would require removal of vast amounts of slope and disturb more area of the lakeshore protection zone than is necessary. The proposed wall is stepped back into the slope but is not in 3' increments per the city ordinance.

The property also has a man-made harbor that has silted in over time. The lake covers this area during high water. When the lake recedes it leaves a stagnant water body. A rusty metal retaining wall divides the harbor area from the rest of the lakeshore zone. The proposal requests to remove the metal wall. The entire area will be restored back to natural contours consistent with the surrounding topography. The fill material is not soil. The fill is clean rock and gravel and some sand to hold it in place. It is more consistent with the swim beach application of rock/gravel than filling an area of the lake. Since the project does not create additional land area and is not using soil, a minor variance has been requested as opposed to a major variance for fill which would create more shoreline. A permit for the rock/gravel fill was issued by the US Army Corps. It also allowed for the removal of the rusty metal wall as it is located below mean high water.

The project will require the use of heavy equipment and restoration of the those areas disturbed during construction and/or removal of the wall(s) will is proposed. The use of gravel consistent with existing rock will be used to supplement and restore the area where the wall is removed; where disturbance happens during construction and restoration of the man-made harbor.

At the site visit on September 4, 2013, the property owner and the applicant walked the property with members of the lakeshore protection committee (Konapatzke and Ringer were absent), Planner Bond and Mike Koppel of the Whitefish Lake Institute. The erosion of the slope on the eastern 70' of the proposed wall site was evident and is shown in photos from the applicant and staff.

At high water, the lake exceeds the height of the existing concrete wall and removes soils behind it which causes soils from the slope above to fill in behind it. At the eastern edge of the wall, wave action caused by the abrupt termination of the wall, has begun to cause slope degradation which is evident in the pictures of the slope and the before and after pictures showing the root balls of two trees located at the base of the slope.

The existing wall could remain on site with stone fascia to provide visual continuity with the stone used for the eastern portion of the slope. However, it was noted that the wall will give out at a later time due to erosive forces and the soil migration from the upper portions of the slope behind the wall. It appears that when the concrete wall was built the toe of the slope was supported by the wall. Over time the slope has moved backwards and created a large flatter area behind the wall.

Frontage and allowable constructed area: The property has 2,828 feet of lake frontage according to the survey and previous applications. The allowable constructed area based on 8 square feet per lineal foot of frontage is 22,624 square feet.

Existing Constructed Area: The application as submitted would bring the total constructed area to 1,349 square feet (dock of 1,204 square feet, retaining wall 120 square feet).

Staff has provided options to granting the variance in whole, granting the variance in part and denying the variance for the wall based on different interpretations of the lakeshore regulations.

Scenario 1: Approval of the Variance as Submitted

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone*

and the replacement wall shall be constructed in the same location as the existing wall"; item c "*A replacement retaining wall shall be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall be constructed to the minimum height necessary to stabilize the bank"* and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block).* In reviewing a minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require placing the replacement wall in the same location as the existing concrete wall which would need to be at the same height or lower than the existing wall. A lower wall or keeping the wall at the same height would not protect the property from further erosion. The wall would eventually fail which would cause an undue hardship on the property owner to mitigate the effects of siltation and water degradation caused by an abrupt failure due to erosion. The use of natural stone as opposed to concrete will not require pouring concrete into the lakeshore zone. The wall material and design is consistent with an existing wall on the property. Strict enforcement including the zoning standards (which are separate from this application but apply to portions of the project) would create a terraced wall which disturbs more land area than necessary to stabilize the slope and prevent further erosion.

2. **No reasonable alternatives exist which do meet the standards herein.**

Reasonable alternatives that meet the standards do not exist. Keeping the existing wall on site will continue to exasperate the erosion as the height and placement of the wall are not effective. The parallel placement of the wall to the lake causes wave action to be dispersed around the edges of the wall which have led to additional erosion to the area adjacent to the east of the wall.

The placement of the fill for the manmade harbor reclamation is not allowed within the lakeshore regulations however it restores the disturbed area to a natural state. The project has received approval from the U.S. Army Corps of Engineers as it is located below the high water mark.

3. **Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.**

The Policy Criteria for all permits include:

A. Materially diminish water quality;
B. Materially diminish habitat for fish or wildlife;

C. Interfere with navigation or other lawful recreation;
D. Create a public nuisance or public safety hazard;
E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
F. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope. The proposed variance would not create a visual impact discordant with natural scenic values as the proposed wall materials would tie into the predominate landscape elements already on site with the use of stone on areas outside the lakeshore zone and visible from the lake.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake. Removal of the rusty wall and filling the harbor would restore the lake to a natural state.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Scenario 2: Approval of the Variance with Modification

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing wall"*; item c "*A replacement retaining wall shall be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall be constructed to the minimum height necessary to stabilize the bank"* and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block).* In reviewing a

minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require placing the replacement wall in the same location as the existing concrete wall which would need to be at the same height or lower than the existing wall. Options do exist to leave the existing concrete wall on site and face it with natural stone to provide visual continuity with a new wall beginning at the eastern edge of the existing wall. An undue hardship would not be created by continuing to use the existing wall. The use of natural stone as opposed to concrete will not require pouring concrete into the lakeshore zone. The wall material and design of the proposed wall is consistent with an existing wall on the property. Strict enforcement including the zoning standards (which are separate from this application but apply to portions of the project) would create a terraced wall which disturbs more land area than necessary to stabilize the slope and prevent further erosion.

2. **No reasonable alternatives exist which do meet the standards herein.**

Reasonable alternatives that meet the standards do exist. Keeping the existing wall on site will not disturb existing areas and would not require the removal of a tree in order to install a new wall closer to the steeper portion of the slope. Modifying the application as submitted to allow the proposed stone retaining wall only along the exposed slope to the east of the concrete retaining would meet the standards of the lakeshore regulations.

The placement of the fill for the manmade harbor reclamation is not allowed within the lakeshore regulations however it restores the disturbed area to a natural state. The project has received approval from the U.S. Army Corps of Engineers as it is located below the high water mark.

3. **Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.**

The Policy Criteria for all permits include:

G. Materially diminish water quality;
H. Materially diminish habitat for fish or wildlife;
I. Interfere with navigation or other lawful recreation;
J. Create a public nuisance or public safety hazard;
K. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
L. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope. The proposed variance would create a visual impact discordant with natural scenic values as the proposed removal and replacement of the concrete wall would alter the existing shoreline characteristics by creating more land area on the lakeside portion of the property.

4. **Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.**

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake. Removal of the rusty wall and filling the harbor would restore the lake to a natural state.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval with modifications to the original application of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Scenario 3: Denial of the Variance Request for the Wall and Approval of Fill

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing wall*"; item c "*A replacement retaining wall shall be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall be constructed to the minimum height necessary to stabilize the bank"* and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block).* In reviewing a minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require placing the replacement wall in the same location as the existing concrete wall which would need to be at the same height or lower than the existing wall. Options do exist to leave the existing concrete wall on site and face it with natural stone to provide visual continuity with a new wall beginning at the eastern edge of the existing wall. An undue hardship would not be created by continuing to use the existing wall. The erosion on the eastern edge of the slope could be mitigated with the use of riprap stacked at the lake/land interface of the high water mark. While the slope above the area will continue to erode over time, no residences are directly threatened by bank failure.

2. No reasonable alternatives exist which do meet the standards herein.

Reasonable alternatives that meet the standards do exist. Keeping the existing wall on site will not disturb existing areas and would not require the removal of a tree in order to install a new wall closer to the steeper portion of the slope. The use of riprap along the base of the slope has not been utilized to demonstrate that such use would not curtail the erosive forces.

The placement of the fill for the manmade harbor reclamation is not allowed within the lakeshore regulations however it restores the disturbed area to a natural state. The project has received approval from the U.S. Army Corps of Engineers as it is located below the high water mark.

3. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.

The Policy Criteria for all permits include:

M. Materially diminish water quality;
N. Materially diminish habitat for fish or wildlife;
O. Interfere with navigation or other lawful recreation;
P. Create a public nuisance or public safety hazard;
Q. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
R. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope. The proposed variance for the wall would create a visual impact discordant with natural scenic values as the proposed removal and replacement of the concrete wall and installation of a new wall along the high water mark would alter the existing

shoreline characteristics by creating more land area on the lakeside portion of the property and placing more structures within the lakeshore protection zone.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake. Removal of the rusty wall and filling the harbor would restore the lake to a natural state.

Conclusion: The applicant meets the criteria for a variance for the reclamation of the manmade harbor. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Recommended Conditions of Approval (Will need to be discussed upon complete approval, modification or denial of portions of the variance):

1. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.

2. Temporary storage of vehicles, trailers, debris, other equipment or construction materials in the lakeshore protection zone is prohibited.

3. The work authorized under this permit shall be completed in substantial compliance with the methods and materials described within the application.

4. At no time shall the wheels of any vehicle come in contact with the lake.

5. All work shall be done when the construction site is dry.

6. If lake siltation occurs, work will be immediately halted and the City of Whitefish Planning Department shall be contacted.

7. All available methods will be made to preserve and protect all of the existing trees in the lakeshore protection zone.

8. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.

9. Natural vegetation in the Lakeshore Protection Zone shall be preserved wherever possible.

10. Silt fencing, straw waddles or other erosion and sedimentation measures shall be utilized during construction. An approved plan for erosion and sedimentation during construction shall be required. Approval of the methods proposed shall be issued by the City of Whitefish in compliance with the Critical Areas Ordinance or other development standards.

11. The proposed projects shall not exceed the dimensions or deviate from the proposed location as specified in the application, except as amended by the Whitefish Lake and Lakeshore Protection Regulations. Changes or modification to increase any dimension (or change configuration) must be approved through permit amendment. The owner must request an amendment before the permit expires.

12. All work shall be done when the lake is at low pool, before April 20th or after August 15th, and when the construction site is dry. Construction dates can be modified with approval by the Planning Department to account for fluctuations with high water and low water cycles dependent on late thawing or early lowering of lake levels.

13. The construction of the wall shall be as described by the applicant with the permit application and shall follow best management practices during construction.

14. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

15. Riprap complying with the dimensions mentioned above shall be placed on the waterward side of the lower retaining wall such that the toe of the riprap shall not extend waterward of high water and the top of the rock shall extend to within at least six inches (6”) of the top of the wall where practical.

16. The riprap rock shall be angular and sized property for the specific task. Nominal rock size to be 6-12" (18" maximum) in diameter. Changes or modifications to increase any of these dimensions must be approved through permit amendment.

17. Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays, or fines.

18. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner as to prohibit re-entry of the material into the lake.

19. The wall shall be built as presented, at or landward of the mean high water elevation, and shall conform to the contours of the existing shoreline. No attempt shall be made to extend the land area into the lake any further.
20. All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the lakeshore protection zone.

21. Backfill shall be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side.

22. Landscaping shall be hand irrigated to ensure long-term survivability of the vegetation and trees.

23. The trees and vegetation shall be maintained for a ten (10) year period. If the trees and vegetation die within the ten year maintenance period, they shall be replaced to the standards which they were approved.

24. The areas disturbed shall be restored to the condition prior to construction. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

25. All fill shall be clean, washed gravel of three-fourths inch (¾") to one and one-half (1 ½") diameter, free of silts, sands and fine materials. Gravel type and color shall approximate that existing on the adjacent lakeshore.

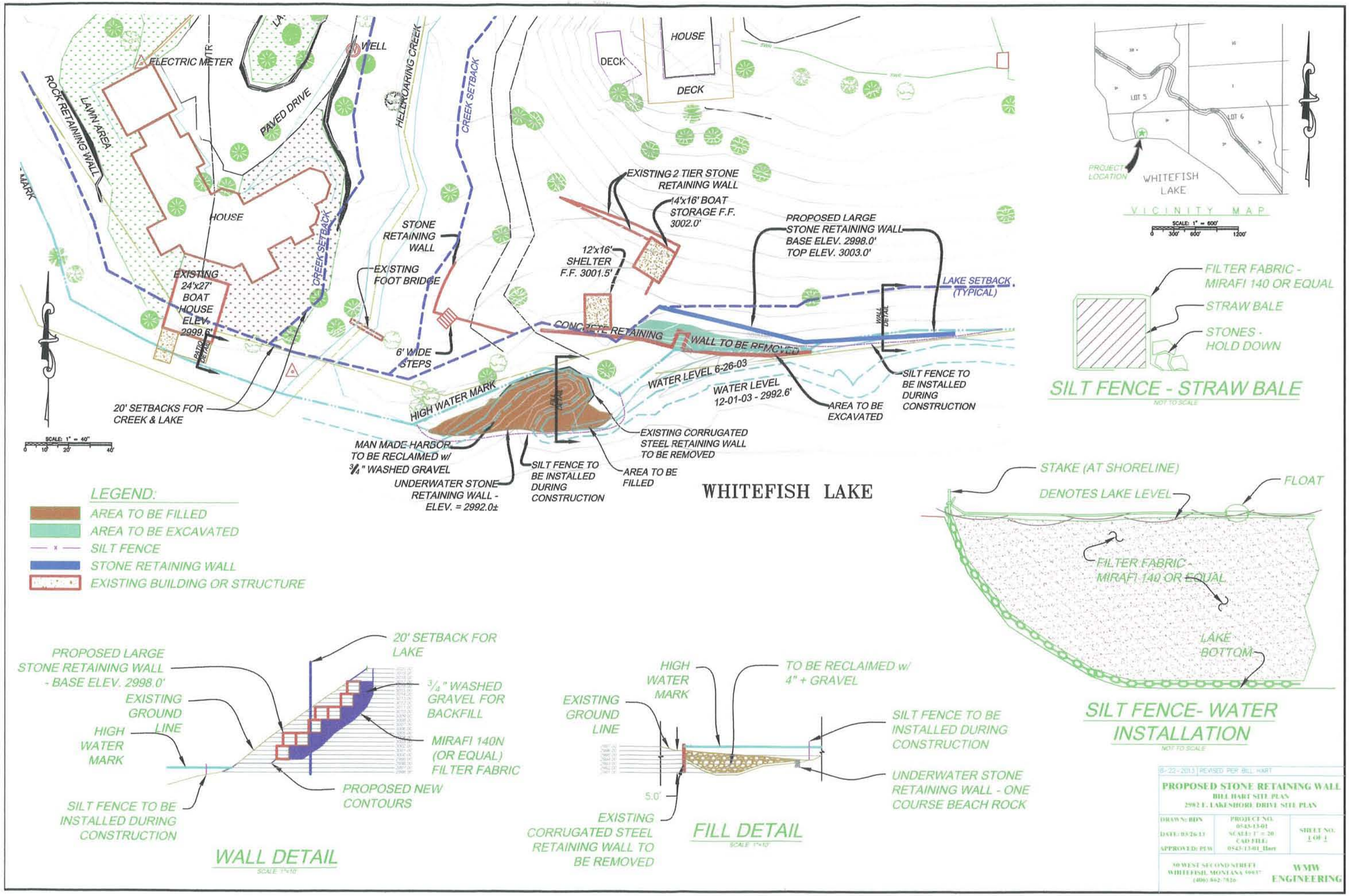
26. Maximum fill depth for beach gravel is four inches (4") to six inches (6").

27. Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it washed away, silted in or revegetated over time is prohibited.

28. <u>The application of beach gravel is only for those areas disturbed by construction of the retaining wall. The gravel is not to be placed across the entire lakeshore area and is specific only to those areas shown on the site plan for placement of the retaining wall removal and installation. The gravel is not to go any wider than where the retaining wall was removed to cover the soil that becomes exposed. Prior to the placement of the gravel, the applicant shall request a site visit from staff to verify where the gravel will be allowed.</u>

29. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Nikki Bond


ELECTRIC METER
L.A.
WELL
HELLROARING CREEK
CREEK SETBACK
DECK
HOUSE
DECK
ROCK RETAINING WALL
LAWN AREA
PAVED DRIVE
HOUSE
CREEK SETBACK
EXISTING 24'x27' BOAT HOUSE ELEV. 2999.6'
PATIO DETAIL
STONE RETAINING WALL
EXISTING FOOT BRIDGE
6' WIDE STEPS
EXISTING 2 TIER STONE RETAINING WALL
14'x16' BOAT STORAGE F.F. 3002.0'
12'x16' SHELTER F.F. 3001.5'
PROPOSED LARGE STONE RETAINING WALL BASE ELEV. 2998.0' TOP ELEV. 3003.0'
LAKE SETBACK (TYPICAL)
WALL DETAIL
CONCRETE RETAINING WALL TO BE REMOVED
WATER LEVEL 6-26-03
WATER LEVEL 12-01-03 - 2992.6'
HIGH WATER MARK
FILL AREA
20' SETBACKS FOR CREEK & LAKE
SCALE: 1" = 40'
0 10' 20' 40'
MAN MADE HARBOR TO BE RECLAIMED w/ 3/4" WASHED GRAVEL
UNDERWATER STONE RETAINING WALL - ELEV. = 2992.0±
SILT FENCE TO BE INSTALLED DURING CONSTRUCTION
EXISTING CORRUGATED STEEL RETAINING WALL TO BE REMOVED
AREA TO BE FILLED
AREA TO BE EXCAVATED
SILT FENCE TO BE INSTALLED DURING CONSTRUCTION
WHITEFISH LAKE
LEGEND:
AREA TO BE FILLED
AREA TO BE EXCAVATED
SILT FENCE
STONE RETAINING WALL
EXISTING BUILDING OR STRUCTURE
PROJECT LOCATION
WHITEFISH LAKE
LOT 5
LOT 6
VICINITY MAP
SCALE: 1" = 600'
0 300' 600' 1200'
FILTER FABRIC - MIRAFI 140 OR EQUAL
STRAW BALE
STONES - HOLD DOWN
SILT FENCE - STRAW BALE
NOT TO SCALE
STAKE (AT SHORELINE)
DENOTES LAKE LEVEL
FLOAT
FILTER FABRIC - MIRAFI 140 OR EQUAL
LAKE BOTTOM
SILT FENCE- WATER INSTALLATION
NOT TO SCALE
PROPOSED LARGE STONE RETAINING WALL - BASE ELEV. 2998.0'
20' SETBACK FOR LAKE
EXISTING GROUND LINE
3/4" WASHED GRAVEL FOR BACKFILL
HIGH WATER MARK
MIRAFI 140N (OR EQUAL) FILTER FABRIC
PROPOSED NEW CONTOURS
SILT FENCE TO BE INSTALLED DURING CONSTRUCTION
WALL DETAIL
SCALE 1"=10'
HIGH WATER MARK
TO BE RECLAIMED w/ 4" + GRAVEL
EXISTING GROUND LINE
SILT FENCE TO BE INSTALLED DURING CONSTRUCTION
UNDERWATER STONE RETAINING WALL - ONE COURSE BEACH ROCK
5.0'
EXISTING CORRUGATED STEEL RETAINING WALL TO BE REMOVED
FILL DETAIL
SCALE 1"=10'
8-22-2013 REVISED PER BILL HART
PROPOSED STONE RETAINING WALL
BILL HART SITE PLAN
2982 E. LAKESHORE DRIVE SITE PLAN
DRAWN: BDN
DATE: 03/26/13
APPROVED: PLW
PROJECT NO. 0543-13-01
SCALE: 1" = 20'
CAD FILE: 0543-13-01_Hart
SHEET NO. 1 OF 1
50 WEST SECOND STREET
WHITEFISH, MONTANA 59937
(406) 862-7820
WMW ENGINEERING

Areas of the slope located to the east of the concrete wall

Areas of the slope located to the east of the concrete wall

Existing wall and slope to the east – Erosion behind existing wall

Base of the Slope and Exposed Tree Roots

Area of harbor to be filled – Tree to be removed due to wall installation

SHERWOOD CAPITAL LTD
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-13-W29
AUGUST 14, 2013

Owner:	Sherwood Capital LTD
Mailing Address:	PO Box 4052 Whitefish, MT 59937
Applicant/Contractor:	Bill Hart Hart Builders, Inc.
Mailing Address:	PO Box 2097 Whitefish, MT 59937
Telephone Number:	406.253.5204
Property Legal Description:	Government Lots 5 & 6 in Section 3, Township 31 North, Range 22 West
Property Address:	2982 East Lakeshore Drive
Lake:	Whitefish Lake
Lake Frontage:	2,828' per previous applications and survey
Project Description:	Variance to build stone wall, remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline, restoration of disturbed areas and planting replacement trees.

Discussion:

Proposal:

The applicant is proposing a number of different projects in conjunction with the variance request. There are two items that require a variance: the installation of a stone retaining wall and the use of fill to restore an area of lakebed that had been altered to create a man-made harbor.

The project involves removing a concrete retaining wall that has erosion behind it which renders parts of the wall useless. A retaining wall made of large natural stone block is proposed to be consistent with an existing wall located outside of the lakeshore zone. The two walls will tie together. A reduction of 40' of retaining wall Is proposed as the wall can be moved outside of the lakeshore zone in some areas. Three (3) trees will be removed with the installation of the wall and the applicant is proposing to replace these with six (6) native trees. The trees that are being removed have rootballs that are exposed due to surrounding erosion and are shown on the photos submitted by the applicant.

City Zoning requires that retaining walls be terraced as opposed to vertical. The applicant has requested an exemption from the planning director as a wall meeting

the city's requirement would require removal of vast amounts of slope and disturb more area of the lakeshore protection zone than is necessary. The proposed wall is stepped back into the slope but is not in 3' increments per the city ordinance.

The property also has a man-made harbor that has silted in over time. The lake covers this area during high water but when the lake recedes it leaves a stagnant water body. A rusty metal retaining wall divides the harbor area from the rest of the lakeshore zone. The proposal requests to remove the metal wall. The entire area will be restored back to natural contours consistent with the surrounding topography. The fill material is not soil. The fill is clean rock and gravel and some sand to hold it in place. It is more consistent with the swim beach application of rock/gravel than filling an area of the lake. Since the project does not create additional land area and is not using soil, a minor variance has been requested as opposed to a major variance for fill which would create more shoreline. A permit for the rock/gravel fill was issued by the US Army Corps. It also allowed for the removal of the rusty metal wall as it is located below mean high water.

The project will require the use of heavy equipment and restoration of the those areas disturbed during construction and/or removal of the wall(s) will is proposed. The use of gravel consistent with existing rock will be used to supplement and restore the area where the wall is removed; where disturbance happens during construction and restoration of the man-made harbor.

Frontage and allowable constructed area: The property has 2,828 feet of lake frontage according to the survey and previous applications. The allowable constructed area based on 8 square feet per lineal foot of frontage is 22,624 square feet.

Existing Constructed Area: The application as submitted would bring the total constructed area to 1,349 square feet (dock of 1,204 square feet, retaining wall 120 square feet).

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1-O of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Marinas, which requires item b *"Any existing wall shall be completely removed from the lakeshore protection zone and the replacement wall shall be constructed in the same location as the existing wall"*; item c "*A replacement retaining wall shall be constructed to the same height, or lower than, the existing wall to be removed. A new retaining wall shall be constructed to the minimum height necessary to stabilize the bank"* and item h *"Preferred retaining wall construction materials, in order of preference, are: rock faced concrete retaining wall, interlocking precast concrete stone (i.e., keystone block).* In reviewing a minor variance there are three criteria that the request must meet prior to granting said variance (13-4-2A-1):

1. **Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.**

Strict enforcement of the existing requirements and standards would require lower wall which would not protect the property from further erosion as the slope is quite steep. The use of natural stone is a preferred material according to the lakeshore regulations. The wall material and design is consistent with an existing wall on the property. Strict enforcement including the zoning standards (which are separate from this application but oversee the project) would create a terraced wall which disturbs more land area than necessary to stabilize the slope and prevent further erosion.

2. **No reasonable alternatives exist which do meet the standards herein.**

Reasonable alternatives that meet the standards do not exist. A low lying wall will need to be replaced in the future as shown by the need to remove the existing wall and the extent of the erosion shown in the pictures.

3. **Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.**

The Policy Criteria for all permits include:

A. Materially diminish water quality;
B. Materially diminish habitat for fish or wildlife;
C. Interfere with navigation or other lawful recreation;
D. Create a public nuisance or public safety hazard;
E. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,
F. Alter the characteristics of the shoreline.

The proposed variance would not materially diminish water quality, diminish fish or wildlife habitat, interfere with navigation or lawful recreation, or create a public nuisance or safety hazard. The proposed variance will restore some areas of the shoreline and will protect the lake from silt and sedimentation from future erosion of the slope.

4. **Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.**

The applicant states that the project will improve the scenic and monetary value of the shoreline. Staff feels that eliminating active erosion from the lakeshore protection zone is a general public benefit to all who use the lake.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Recommended Conditions of Approval:

1. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.

2. Temporary storage of vehicles, trailers, debris, other equipment or construction materials in the lakeshore protection zone is prohibited.

3. The work authorized under this permit shall be completed in substantial compliance with the methods and materials described within the application.

4. At no time shall the wheels of any vehicle come in contact with the lake.

5. All work shall be done when the construction site is dry.

6. If lake siltation occurs, work will be immediately halted and the City of Whitefish Planning Department shall be contacted.

7. All available methods will be made to preserve and protect all of the existing trees in the lakeshore protection zone.

8. The natural protective armament of the lakebed and lakeshore shall be preserved wherever possible.

9. Natural vegetation in the Lakeshore Protection Zone shall be preserved wherever possible.

10. Silt fencing, straw waddles or other erosion and sedimentation measures shall be utilized during construction. An approved plan for erosion and sedimentation during construction shall be required. Approval of the methods proposed shall be issued by the City of Whitefish in compliance with the Critical Areas Ordinance or other development standards.

11. The proposed projects shall not exceed the dimensions or deviate from the proposed location as specified in the application, except as amended by the Whitefish Lake and Lakeshore Protection Regulations. Changes or modification

to increase any dimension (or change configuration) must be approved through permit amendment. The owner must request an amendment before the permit expires.

12. All work shall be done when the lake is at low pool, before April 20th or after August 15th, and when the construction site is dry. Construction dates can be modified with approval by the Planning Department to account for fluctuations with high water and low water cycles dependent on late thawing or early lowering of lake levels.

13. The construction of the wall shall be as described by the applicant with the permit application and shall follow best management practices during construction.

14. Cultured or natural stone or rock shall be used for the proposed work within the lakeshore protection zone. The stones or rock to be used shall be dry set.

15. Riprap complying with the dimensions mentioned above shall be placed on the waterward side of the lower retaining wall such that the toe of the riprap shall not extend waterward of high water and the top of the rock shall extend to within at least six inches (6”) of the top of the wall where practical.

16. The riprap rock shall be angular and sized property for the specific task. Nominal rock size to be 6-12" (18" maximum) in diameter. Changes or modifications to increase any of these dimensions must be approved through permit amendment.

17. Rock or stone from the immediate lakeshore protection zone may be used for a project if its removal does not reduce the effectiveness of the existing lakeshore armament or expose silts, sands, clays, or fines.

18. Any material which is excavated from the lakebed or lakeshore shall be removed entirely from the lake and lakeshore protection zone and deposited in such a manner as to prohibit re-entry of the material into the lake.

19. The wall shall be built as presented, at or landward of the mean high water elevation, and shall conform to the contours of the existing shoreline. No attempt shall be made to extend the land area into the lake any further.
20. All material excavated for placement of the footings may be used as backfill behind the wall or else be deposited outside of the lakeshore protection zone.

21. Backfill shall be limited to that amount necessary to reestablish the preexisting slope and contours of the landward side.

22. Landscaping shall be hand irrigated to ensure long-term survivability of the vegetation and trees.

23. The trees and vegetation shall be maintained for a ten (10) year period. If the trees and vegetation die within the ten year maintenance period, they shall be replaced to the standards which they were approved.

24. The areas disturbed shall be restored to the condition prior to construction. New plants shall be native to the Flathead Valley or cultivars whose form, color, texture, and character approximates that of natives. A resource file on native plants is available at Whitefish Planning Department. Application of fertilizer is permitted only in minimal amounts to establish new plantings.

25. All fill shall be clean, washed gravel of three-fourths inch (¾") to one and one-half (1 ½") diameter, free of silts, sands and fine materials. Gravel type and color shall approximate that existing on the adjacent lakeshore.

26. Maximum fill depth for beach gravel is four inches (4") to six inches (6").

27. Application of gravel shall be permitted one time only to supplement a stable gravel beach. Reapplication of gravel where it washed away, silted in or revegetated over time is prohibited.

28. <u>The application of beach gravel is only for those areas disturbed by construction of the retaining wall. The gravel is not to be placed across the entire lakeshore area and is specific only to those areas shown on the site plan for placement of the retaining wall removal and installation. The gravel is not to go any wider than where the retaining wall was removed to cover the soil that becomes exposed. Prior to the placement of the gravel, the applicant shall request a site visit from staff to verify where the gravel will be allowed.</u>

29. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Nikki Bond

WHITEFISH, BLANCHARD & LOST COON LAKE
Lakeshore Construction Permit Application

A permit is required for any work, construction, demolition, dock/shore station/buoy installation, and landscaping or shoreline modification in the lake and lakeshore protection zone - an area extending 20 horizontal feet landward from mean high water of 3,000.79' msl (NAVD 1988) for Whitefish Lake, 3,144.80' msl (NAVAD 1988) for Blanchard Lake and 3,104' msl (NAVD 1988) for Lost Coon Lake. Please fill in all information, sign and pay the appropriate fees. In order to be on the next Lakeshore Protection Committee Meeting agenda the completed application must be submitted a minimum of **3 weeks** prior to the next regularly scheduled meeting and all required information must be provided in order to be deemed complete and scheduled for the next meeting date. The Committee meets on the second Wednesday of every month. An incomplete application will not be accepted.

Submit Application To:

Whitefish Planning and Building Department
PO Box 158
510 Railway Street
Whitefish MT 59937
Phone (406) 863-2410 Fax (406) 863-2409

OWNER
Name SHERWOOD Capital LTD Phone
Mail Address P.O. BOX 4502
City, State, Zip Whitefish, MT. 59937
Project address (if other than above): 2962 E. Lakeshore Dr.

APPLICANT (If Other Than Owner)
Name BILL HART Phone 406-253-5204
Mail Address P.O. Box 2097
City, State, Zip Whitefish, MT. 59937

How many feet of the lake frontage do you own? 2600'+

Legal Description (available from annual property tax notice)
Lot/Tract#: Gov't Lots 5 & 6 Section: 3 Township 31N Range: 22W
Subdivision Name:

CONTRACTOR: HART BUILDERS, INC. PHONE#: 406-253-5204

Mail Address: P.O. Box 2097 Whitefish, MT. 59937

FEES:

Administrative Permit (no committee meeting) Administrative Permit (w/ committee meeting)	$75 $255
Standard Permit ***(Activity is defined as a separate component or project that by itself would require a permit)***	$350 base fee (1 activity) $140 each additional activity
Variance – Minor	$490/variance – added to standard permit fee Supplemental Application Required
Variance – Major	$1,400/variance – added to standard permit fee Supplemental Application Required
"After-the-Fact" Permit	4 times the normal fee

1. Nature of the Proposed Work (describe what you propose to build, demolish, or install. Give dimensions, material and list heavy equipment, if any to be used).

see attached; #1

2. Describe any Environmental Impacts (e.g. impacts on water quality or fish and wildlife habitat, increased sedimentation, etc.). Explain what measures will be taken to alleviate these impacts.

see attached #2

3. Describe existing improvements on the property within the lakeshore protection zone along with the square footage of each such as an existing dock, stairs, deck or patio and when they were constructed, if known, or the permit number.

WLP-95-23 ✓
WLP-99-C14 ✓
WLP-06-W52 ✓
WLP-98-C14 ✓

3. If a variance is requested in addition to this permit, specify the reasons or conditions which require or warrant the variance on a separate variance form. An additional fee is required for a variance request. What is the variance proposal?

4. The following Project Information must be included.

Is VICINITY MAP attached? ✓
Is SITE PLAN attached? ✓
Is PROJECT DRAWING attached? ✓
Are at least 3 PHOTOS of work site attached? ✓

1 photo of property from lake, 2 photos showing lakeshore protection zone from property boundary towards other property boundary, i.e., from north property line across to south property line, and photos of each existing structure or constructed area within the lakeshore protection zone (dock, boat house, stairs, etc)

I hereby state that the statements contained herein and the materials attached hereto are a true and complete statement of all proposed work and its effects (or probable effects) on the lake and lakeshore and that I have answered all questions in the application. The signing of this application signifies approval for City Planning staff to be present on the property for routine monitoring and inspection during the approval and development process.

B. Hatch 2/21/13

Owners Signature (May be signed by applicant but authorization letter from owner must be attached.) Date:

BILL HATCH (Property manager)

Print Name

All work will be inspected for conformity with permit. The permit is valid for one year from date of approval. The permit can be renewed by the governing body upon request.

1. NATURE OF PROPOSED WORK:

- Remove approximately 120 ft. existing "red" concrete retaining wall from within "20 ft. setback" and replace with approximately 145 ft. natural stone (see photos) placed above setback where possible, with approximately 80 ft. placed within setback to retain bank where erosion is evident, (see photos).
- With removal of existing retaining wall, 3 live trees will be removed and replaced with 6 new, native trees behind new retaining wall.
- Remove existing "rusty" corrugated steel and re-bar retaining wall from below high water mark, fill "man made" harbor with 4" plus clean, native stone and restore shoreline to original state.
- Replace protective armament to disturbed areas with suitable gravel.
- Equipment used; Excavator, Front End Loader, Hand tools.

- **Photos # 1,2,3;** Concrete wall to be removed.

- **Photos # 4,5;** Proposed Natural Stone to be used.

- **Photos # 6,7,8,9;** Show erosion of bank over 10 years.

- **Photos # 10,11,12;** Rusty Corrugated Steel Retaining Wall and Man-Made Harbor to be Removed and Reclaimed.

2. Environmental Impact Statement:

- All work will be performed during "low pool" which should minimize any contact with lake water. Our intent would be to not allow any equipment and materials to come in contact with the lake.
- The removal of the "rusty" corrugated steel and re-bar retaining wall will eliminate its adverse effects on water quality. As the result sediment from natural runoff, the man made harbor is to shallow for its intended use and is a non conforming structure by today's standards, and should be restored to its original shoreline.
- With the removal of the "red" concrete retaining wall and its replacement with a natural stone wall above the 20' setback and the placement of 80 ft. of the wall East, beyond the end of the existing wall will mitigate the erosion that is evident, causing sloughing of the bank and sediment to be washed into the lake.
  It will also be an approximate 30% reduction of retaining wall within the lakeshore zone.
- With proper use of a "turbidity fence" placed in the lake and filtration fabric placed behind proposed retaining wall, and care taken by excavation crew not to disturb, and if disturbed, reclaim shoreline armament, water quality should not be impacted significantly.
- There should be no significant impact on fish or wildlife in proposed work.
- No interference to navigation or recreation.
- No public nuisance or safety hazards.
- As shoreline has already been altered by previous work done in the 1960's, and is not in a natural state, visual impact discordant with natural scenic values has already been compromise. Proposed work should restore some of the natural shoreline, and improve the scenic value of the balance of the lakeshore within the constructed area. The proposed improvements to this lakeshore by the nature of the materials used as opposed to existing conditions, should in fact, enhance the scenic and monetary value of this lakeshore property.
- Construction materials proposed in this project generally falls in line with approved construction materials. Construction techniques need to be practiced with care and in line with construction standards outlined in Section 4.2.

RETAINING WALL - 2003
to be removed

#1

RETAINING WALL-2003
to be removed

#2

RETAINING WALL 2013 to be removed

Existing NATURAL STONE WALL 2013
proposed to extend
X-20'-
setback
PIN
#4

Existing NATURAL STONE WALL 2013 Proposed to extend

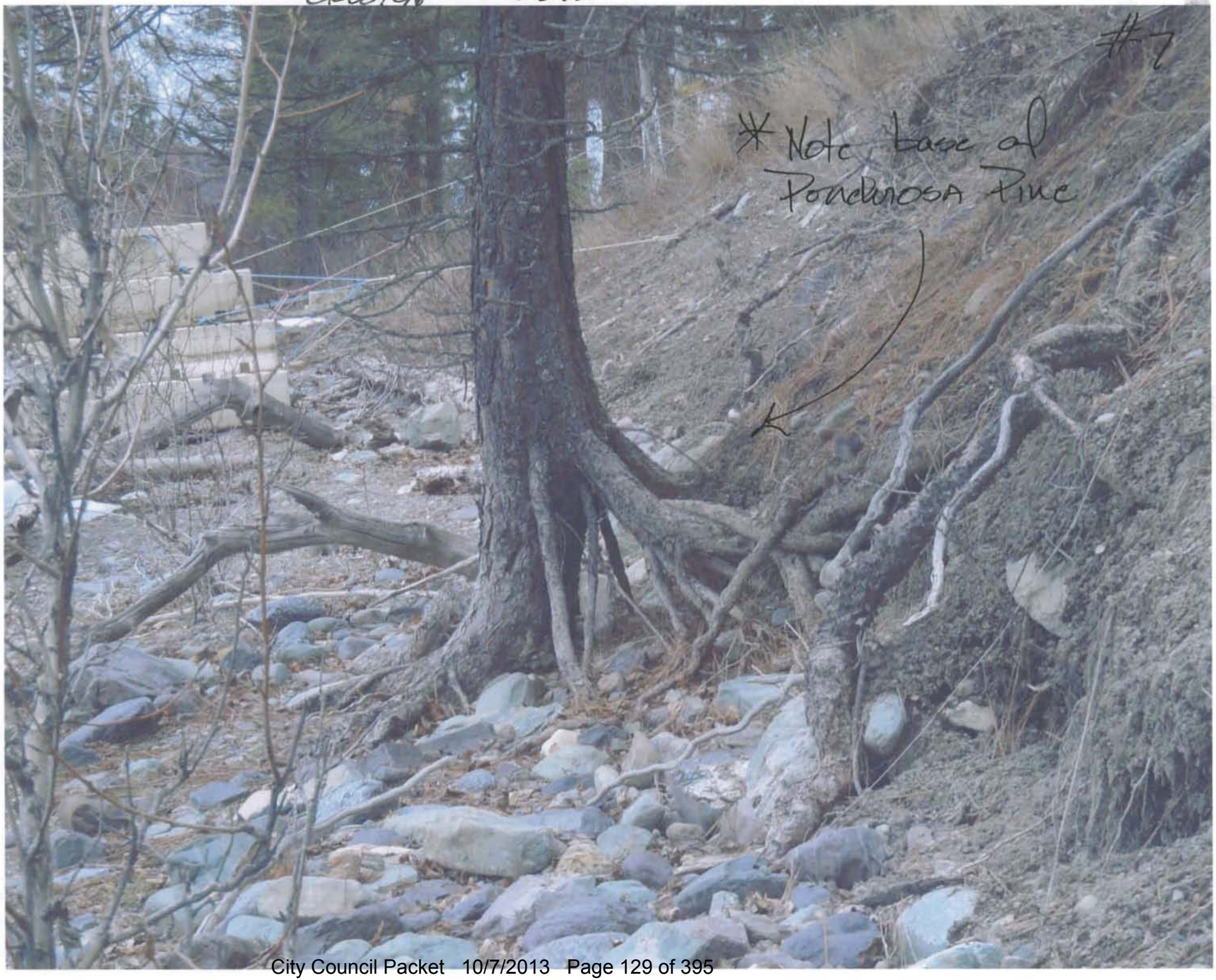
#5

EROSION - 2003 #4

2003 photos to compare with 2013 photos show erosion.

* Note base of Ponderosa Pine.

ERUSION 2013



EROSION 2013

#8

EROSION 2013

CORRUGATED STEEL -2013- Retaining Wall
& MAN MADE HARBOR
#10

2013

2013

2982 E Lakeshore Drive
Whitefish, Montana

FAXED Feb 26/13 @ 12:34 PM M.L.

February 26, 2013

To Whom It May Concern:

Please be advised that Bill Hart is authorized to sign any documents related to the operation and construction at the property of Sherwood Capital Montana Ltd. Located at our Hell Roaring Property at 2982 East Lakeshore Drive, Whitefish, Montana.

Yours truly,

DJ Taylor
Chairman

DT/mdl

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

SUPPLEMENTAL APPLICATION FOR A VARIANCE TO THE WHITEFISH LAKE AND LAKESHORE PROTECTION REUGLATIONS

PLEASE READ CAREFULLY

An application for a Whitefish Lake and Lakeshore Construction Permit must accompany the variance request form.

The variance mechanism is not intended to address situations that are a matter of convenience rather than hardship. It is not intended to provide economic relief from a specific standard requirement. A lakeshore variance is not intended to address a violation that does not conform to the lakeshore regulations.

A staff recommendation for approval of a variance does not provide an guarantee that the variance will be approved. The staff makes a recommendation to the Whitefish Lake and Lakeshore Protection Committee who in turn make a recommendation to the Whitefish City Council. The Whitefish City Council has the final authority whether a variance is approved or denied. Any appeal of the decision of the Whitefish City Council must be made in district court as per Section 75-7-215 of the Montana Code.

There is a filing fee for a variance that is non-refundable in the event that a variance is denied.

SITE PLAN AND PROJECT DRAWING – These are required as part of your lakeshore permit application and the request for a variance.

> Submit a site plan, either drawn to scale or with dimensions added, which shows in detail your proposed project, your property lines, existing and proposed buildings, traffic circulation, driveways, parking, landscaping, fencing, and any unusual topographic features such as slopes, drainage, ridges, etc. Where new buildings or additions are proposed, building sketches and elevations must be submitted.

A Pre-application meeting is required with City staff. The City of Whitefish will only accepted completed lakeshore variance applications from individuals who have completed a pre-application meeting.

A pre-application meeting was held on: 7.23.13
Date:

Applicant Signature

Nikki Bond
City Staff Signature

SECTION 13-6-2 OF THE WHITEFISH LAKE AND LAKESHORE PROTECTION REGULATIONS REQUIRES THE FOLLOWING:

FINDINGS - The following criteria form the basis for approval or denial of the variance request. The burden of satisfactorily addressing these criteria lies with the applicant. These criteria are intended to prevent the circumvention of the lakeshore protection regulations and are typically based on a unique circumstance over which the property owner has no control.

DESCRIBE THE NATURE OF THE VARIANCE REQUEST: (PLEASE ATTACH A SEPARATE DESCRIPTION IF NEEDED)

Remove existing retaining wall and replace with new stone retaining behind existing wall.
Place fill in "man made" harbor.

EXPLAIN WHICH SPECIFIC SECTION OF THE LAKESHORE PROTECTION REGULATIONS THE VARIANCE WOULD APPLY TO AND THE EXTENT TO WHICH YOUR REQUEST WOULD DEVIATE FROM THE STANDARD.

"Q" RipRap "Retaining Walls #2b,c
New Wall will be placed ~~at~~ behind existing wall.
New wall will be higher due to grade
"Q" 5-11 Dredging and Filling.

EXPLAIN THE REASON WHY THE VARIANCE IS NEEDED.

Erosion occuring adjacent to and behind existing wall is present.
To restore shoreline @ harbor to natural shore.

DESCRIBE ALTERNATIVES TO THE PROPOSED PROJECT THAT HAVE BEEN EXPLORED AND DESCRIBE WHY SUCH ALTERNATIVES ARE UNACCEPTABLE.

"Leave as is" erosion of bank is depositing sediment into lake.
continued erosion will cause need for larger retaining wall.
HARBOR is ugly & water sets stagnate most of the year.

DESCRIBE THE CONDITIONS OF THE SITE AS THEY NOW EXIST WITHOUT THE VARIANCE.

Approx 120' of "Fed" concrete retaining wall placed below high water mark and the bank is eroding behind wall at east end.
Rusty steel retaining wall & rebar, wood dock @ harbor.

6.2.A.1: GENERAL CRITERA (Applicable to all Variance Requests):

DESCRIBE THE ANTICIPATED IMPACTS AS THEY RELATE TO THE POLICY CRITERIA BELOW: (Note: A "yes" or "no" answer or simple restatement of the question is not acceptable.)

a. Due to unusual circumstances, a strict enforcement of such requirements and standards would result in undue hardship;

Erosion of Bank is evident in photos and loss of shoreline due to erosion is unacceptable and has negative impact to lake. Man made harbor is a liability and has negative impact to lake & shoreline.

b. No reasonable alternatives exist which do meet the standards herein; and,

as homeowners we choose to implement repairs & restoration to conform with existing improvements for a more comprehensive plan.

c. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit" contained in Chapter 4 of the Whitefish Lake and Lakeshore Protection Regulations.

To the contrary, this will improve the lakeshore as part is a restoration and the retaining wall will eliminate sediment into the lake.

d. Alternatively to (a) and (b), the granting of a variance would result in a general and universal public benefit.

As is the guidelines for the lakeshore regulations, this will improve the "scenic and monetary value" of the shoreline.

6.2.A.2: MAJOR VARIANCE CRITERIA (Applicable to Major Variance Requests)

REQUIRES DETAILED ANSWERS TO EACH OF THE FOLLOWING CRITERIA BELOW AND SUBMITAL OF AN ENVIRONMENTAL IMPACT STATEMENT AS OUTLINED IN SECTION 6.2.B.2:

a. The variance request does not meet the requirements of Section 6.2.A.1;

b. The variance request deviates substantially from the construction requirements or design standards of these regulations; and;

_____

_____

_____

_____

c. The variance request creates a major environmental impact.

_____

_____

_____

_____

I hereby certify under penalty of perjury and the laws of the State of Montana that 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 City of Whitefish staff to be present on the property for ~~routine~~ monitoring and inspection during the approval and development process.

Applicant's Signature _____ Date: 7/23/13

1. NATURE OF PROPOSED WORK:

- Remove approximately 120 ft. existing "red" concrete retaining wall from within "20 ft. setback" and replace with approximately 145 ft. natural stone (see photos) placed above setback where possible, with approximately 80 ft. placed within setback to retain bank where erosion is evident, (see photos).
- With removal of existing retaining wall, 3 live trees will be removed and replaced with 6 new, native trees behind new retaining wall.
- Remove existing "rusty" corrugated steel and re-bar retaining wall from below high water mark, fill "man made" harbor with 4" plus clean, native stone and restore shoreline to original state.
- Remove existing wood dock from "man made" harbor area.
- Replace protective armament to disturbed areas with suitable gravel.
- Equipment used; Excavator, Front End Loader, Hand tools.

- **Photos # 1,2,3;** Concrete wall to be removed.

- **Photos # 4,5;** Proposed Natural Stone to be used.

- **Photos # 6,7,8,9;** Show erosion of bank over 10 years.

- **Photos # 10,11,12;** Rusty Corrugated Steel Retaining Wall and Man-Made Harbor to be Removed and Reclaimed.

- **Photo # 13.14.15:** Supplemental Retaining Wall Photos from Lake.

- **Photo # 16.** Existing Gravel Armament along Shoreline

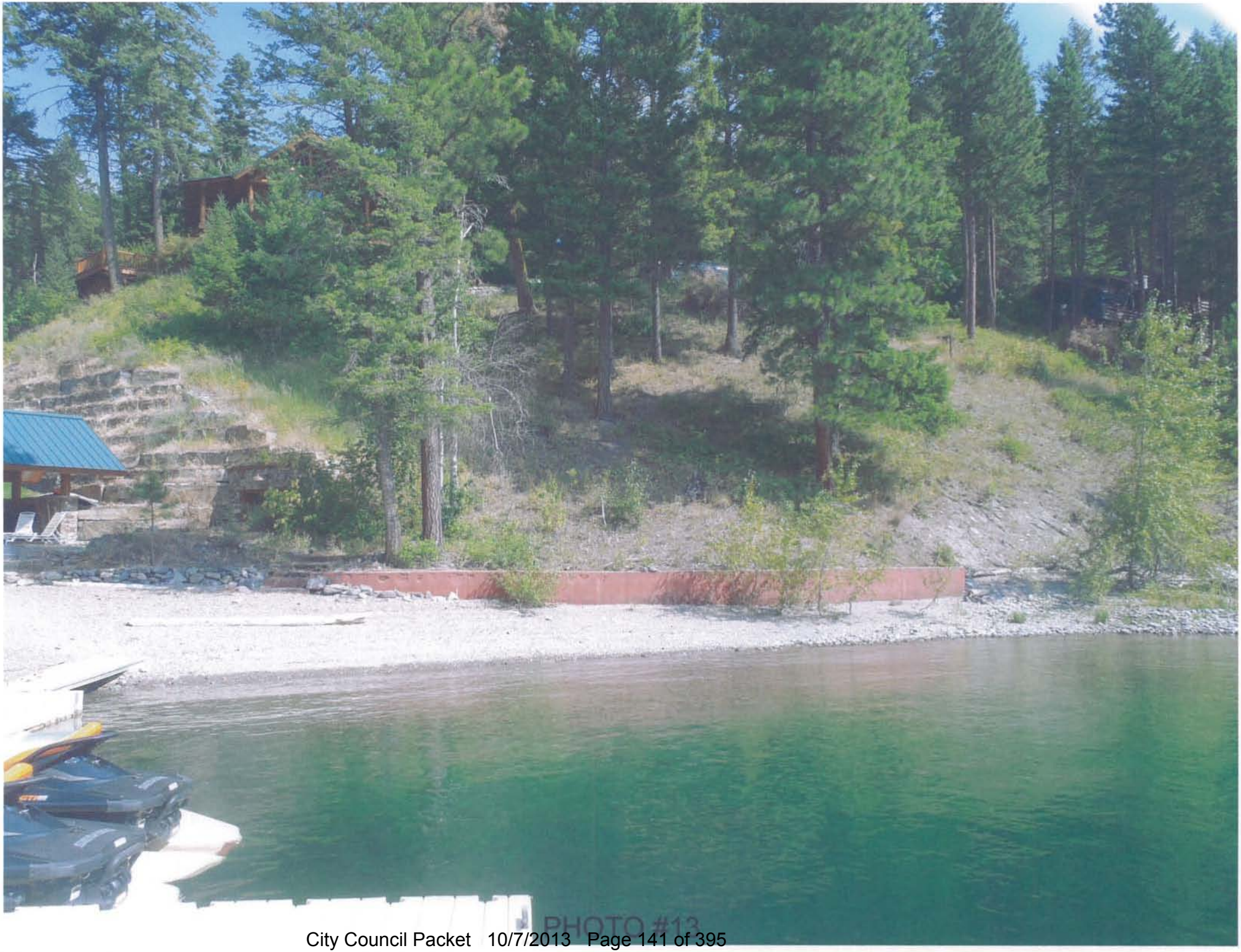


PHOTO #13

PHOTO#14

PHOTO#15

EXISTING GRAVEL ARMAMENT ALONG SHORELINE PHOTO#16

July 31, 2013

David Taylor
Whitefish Planning & Building
510 Railway St.
Whitefish, MT. 59937

Re: Proposed Retaining Wall Variance on Whitefish Lake.

David,
We are planning a removal of an existing concrete retaining wall and replacing with large natural stone within the lakeshore zone and extending the wall to protect our shoreline from any further erosion. According to section 11-3-11-"B-Retaining walls" paragraph #3, "due to extreme topography" a proposal can be submitted for a waiver to these standards.
Due to the existing grade, some as a result of erosion along our lakeshore, the standards described in this section can not be achieved due to the slope of the bank, that in some locations are approximately 55 degrees. In order to minimize the impact of a retaining wall against these slopes we request a waiver from these standards to retain our lakeshore from further erosion.
We have submitted an application for a lakeshore permit and a minor variance that shows our intent to remove the existing concrete wall and replacing with large oversize natural stone. All of the information required to support our request for a waiver is included with this application. (ie: grading plan, wall detail, photos,etc)
Thank you for your consideration of this waiver and we are looking forward to hearing from you.

Bill Hart
Property Manager
Don Taylor/ Sherwood Capital LTD.
2982 E. Lakeshore Dr.
PO Box 2097
Whitefish, MT. 59937
406-253-5204

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
HELENA REGULATORY OFFICE
10 WEST 15TH STREET, SUITE 2200
HELENA, MONTANA 59626-9705

REPLY TO
ATTENTION OF

March 26, 2013

Regulatory Branch
Montana State Program
Corps No. **NWO-2013-00339-MTH**

Subject: Beach Restoration, Whitefish Lake

Sherwood Capital, Ltd.
Attn: Don Taylor
Post Office Box 4502
Whitefish, Montana 59937

Dear Mr. Taylor:

We have reviewed your request for Department of the Army (DA) authorization to restore a manmade harbor back to a natural beach. The proposed work is located in Whitefish Lake, at 2982 East Lakeshore Drive, near the Town of Whitefish, Section 3, Township 31 North, Range 22 West, in Flathead County, Montana (Latitude: 48.47423°N, Longitude: -114.3937°W).

Specifically, you requested authorization for the following work in waters of the U.S.:

Work Item	Description
a.	Restore a manmade harbor back to a natural beach, restoring approximately 55 linear feet of shoreline by filling in 1200 square feet of manmade harbor with 150 cubic yards of pea gravel and sand.
b.	Remove existing corrugated steel retaining wall.
c.	Barricade fencing and temporary barriers will be used to prevent sedimentation into Whitefish Lake.

Under the authority of Section 404 of the Clean Water Act (CWA), DA permits are required for the discharge of fill material into waters of the U.S. Waters of the U.S. include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis.

The Corps of Engineers (Corps) prepared the enclosed preliminary jurisdictional determination (JD) for the sites. A preliminary JD is a written indication that waterways and wetlands within your project area may be waters of the U.S. These waters were treated as jurisdictional waters of the U.S. for the purposes of determining project impacts and compensatory mitigation requirements. Preliminary JDs may not be appealed.

If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD **prior to your commencement of any work in a water of the U.S.** An approved JD is an appealable official determination regarding the presence or absence of waters of the U.S. Completion of an approved JD may require coordination with the U.S. Environmental Protection Agency.

If you believe the preliminary JD is accurate and do not want the Corps to complete an approved JD, please sign the preliminary JD and return it to the letterhead address within two weeks. If you agree with the preliminary JD, you may proceed with the proposed project in accordance with the terms and conditions of DA Nationwide Permit (NWP) **27** found in the February 21, 2012 Federal Register (76 FR 9174), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this NWP and lists the General and Regional Conditions that must be complied with.

Although an Individual DA permit involving a public interest review will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal, and local permits as required. The Montana Department of Environmental Quality waived CWA Section 401 water quality certification for this NWP. This does not eliminate the need to obtain other permits that may be required by that agency.

This verification will be valid until **March 18, 2017.**

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office. In compliance with General Condition 30, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

The Omaha District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://per2.nwp.usace.army.mil/survey.html. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax. Please contact me at (406) 441-1365 if you have any questions and reference Corps File Number NWO-2013-00339-MTH.

Sincerely,

Stephanie McCary
Regulatory Project Manager

Enclosures:
Compliance Certification
Preliminary JD
Fact Sheet for NWP 27 with Regional Conditions

Printed on Recycled Paper

COMPLIANCE CERTIFICATION

Corps File Number:	NWO-2013-00339-MTH
Name of Permittee:	Sherwood Capital, Ltd.
County:	Flathead County, Montana
Date of Issuance:	March 26, 2013
Corps Project Manager:	Stephanie McCary

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers
Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena, Montana 59626-9705

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the conditions of this permit, you are subject to permit suspension, modification, or revocation.

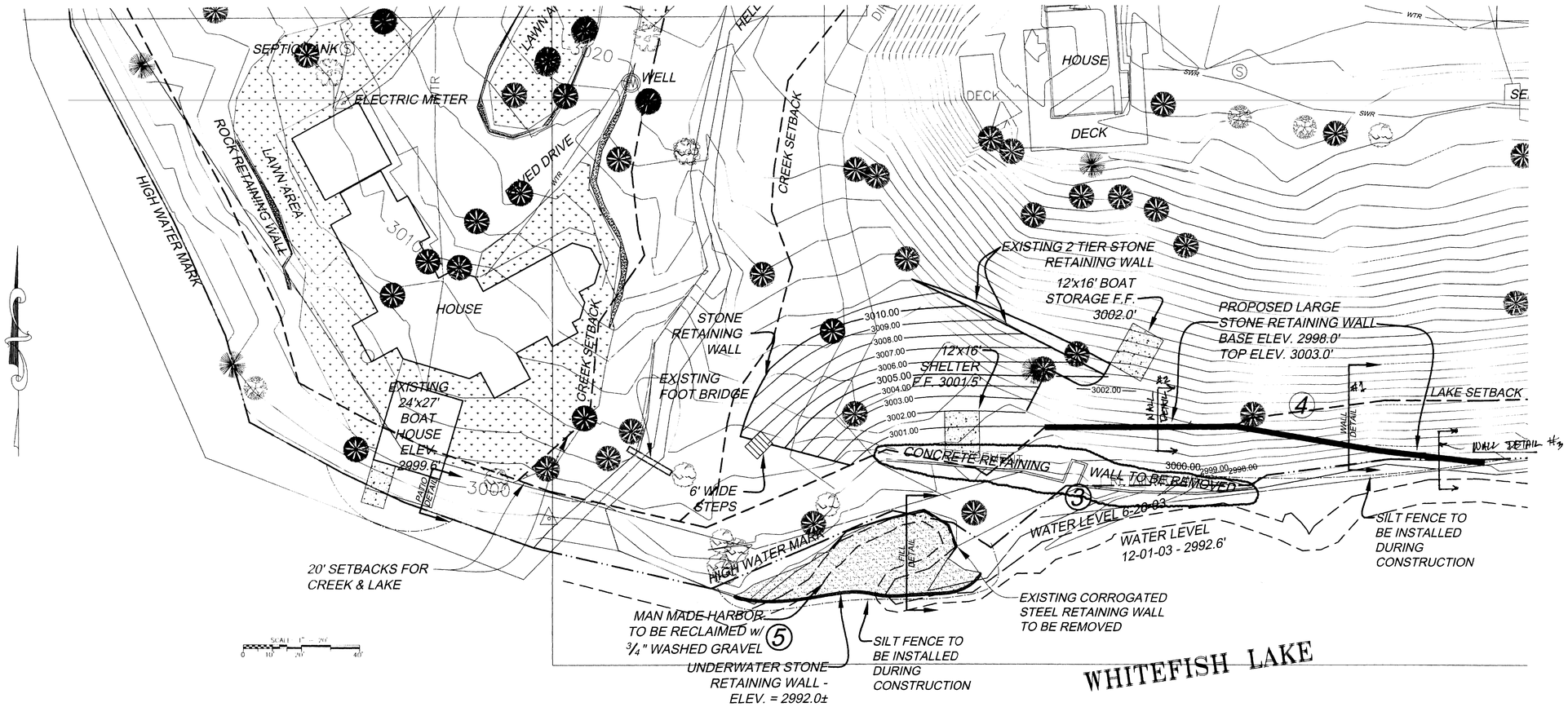
- -

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

_____
Signature of Permittee

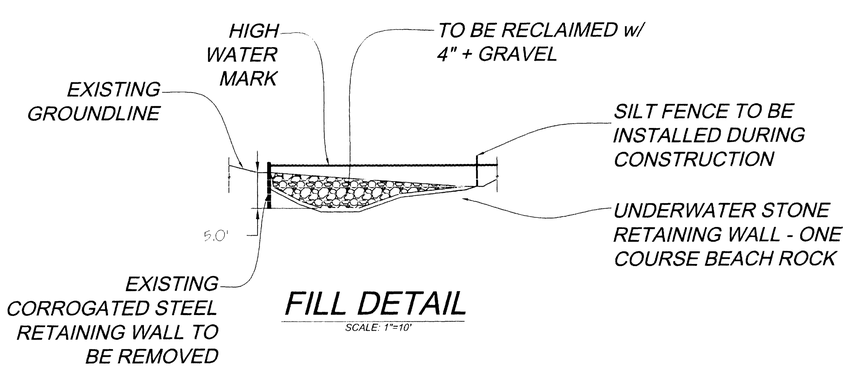
_____
Date

Printed on Recycled Paper



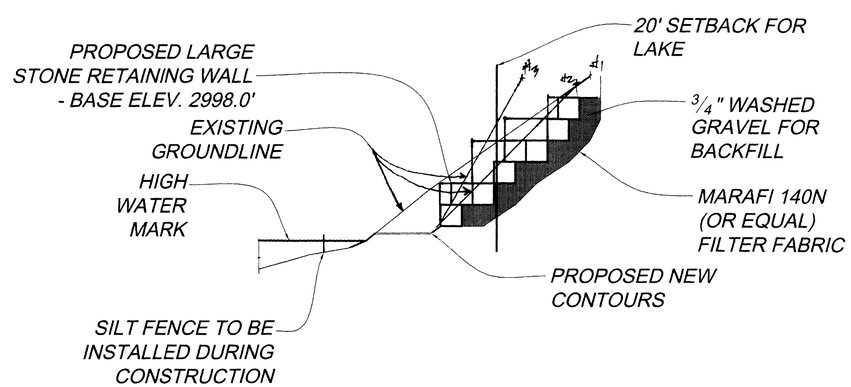
VICINITY MAP

SCALE: 1" = 600'



FILL DETAIL

SCALE: 1"=10'



WALL DETAIL

SCALE: 1"=10'

PROPOSED STONE RETAINING WALL
BILL HART SITE PLAN
2982 E. LAKESHORE DRIVE SITE PLAN

DRAWN: BDN DATE: 03/26/13 APPROVED: PLW	PROJECT NO. 0543-13-01 SCALE: 1" = 20' CAD FILE: 0543-13-01_Hart	SHEET NO. 1 OF 1

50 WEST SECOND STREET
WHITEFISH, MONTANA 59937
(406) 862-7826

WMW ENGINEERING

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

RESOLUTION NO. 13-___

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 416 Ramsey Avenue, for which the owners have petitioned for and consented to annexation.

WHEREAS, William J. Bennett and MaiBritt Bennett have filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owners of 416 Ramsey Avenue, real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, attached hereto and made a part hereof. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

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

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

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

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

the Clerk and Recorder of Flathead County, Montana, and legally described as:

> LOT 9 OF BLOCK 2 OF RAMSEY'S ADDITION TO WHITEFISH, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA, EXCEPTING THEREFROM THE SOUTH 142.5 FEET. ALL SITUATED WITHIN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION THIRTY-FIVE (S35), TOWNSHIP THIRTY-ONE NORTH (T31N), RANGE TWENTY-TWO WEST (R22W), OF MONTANA MERIDIAN.

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

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the October 7, 2013 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to §7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

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

Paula Robinson, Flathead County MT by NW

201300023774
Page: 1 of 1
Fees: $7.00
9/13/2013 12:59 PM

PETITION
BEFORE THE CITY COUNCIL
OF THE
CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 6th day of September, 2013.

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

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 6th day of September, 2013.

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

D120700

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

Lot 9 of the Ramsey Addition except for the south 142.5 feet.
MB

PROPERTY ADDRESS: 416 Ramsey Avenue, Whitefish
ZONED AS: WR 2

William J. Bennett
William J. Bennett
[Printed Name]

Mai Britt Bennett
Mai Britt Bennett
[Printed Name]

STATE OF Montana)
) :ss
County of Flathead)

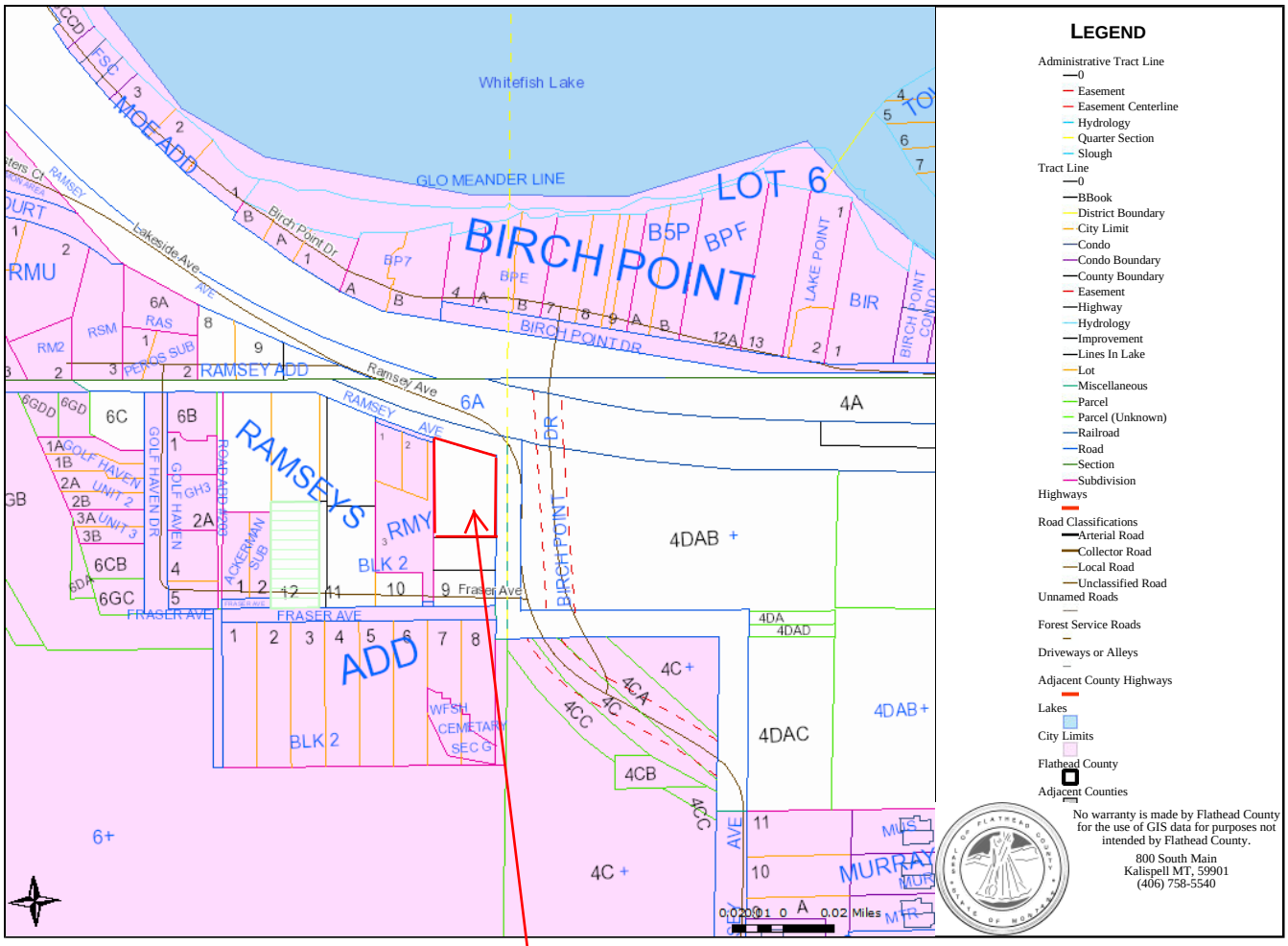
On this 6 day of September, 2013, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared William J. Bennett and Maribritt Bennett, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

VANICE WOODBECK
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
February 23, 2016
(SEAL)

Vanice Woodbeck
Notary Public for the State of
Print or Type Name of Notary:
Residing at
My Commission expires:

EXHIBIT "A"



Ramsey property for annexation

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

RESOLUTION NO. 13-____

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City certain tracts of land known as 2524, 2522 and 2520 East Lakeshore Drive, for which the owners have petitioned for and consented to annexation.

WHEREAS, Michael J. Covey and Stacy D. Covey, as Trustees of the Amended and Restated Covey Family Trust u/d/t dated October 23, 2006, have filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owners of 2524 East Lakeshore Drive, real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, Page 1, attached hereto and made a part hereof; and

WHEREAS, Cora Belle Montalban has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of 2522 East Lakeshore Drive, real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, Page 2, attached hereto and made a part hereof; and

WHEREAS, Patrick M. Montalban has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of 2520 East Lakeshore Drive, real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, Page 3, attached hereto and made a part hereof; and

WHEREAS, the City Council will consider these Petitions for Annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

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

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide and has been providing municipal

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

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

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

> LOT 7 OF FIRST ADDITION TO WHITEFISH LAKE SUMMER HOMES AMENDED, Sec. 14, T31N, R22W, Flathead County, Montana.
>
> and
>
> LOT 8 OF THE FIRST ADDITION TO WHITEFISH LAKE SUMMER HOMES AMENDED in Sec. 14, T31N, R22W, P.M.M. as described in Assessor's #0589730, Geocode #07429214203010000, Book 544, Page 462 Recorded October 30, 1972, deed records for the County of Flathead, Montana. (WO #20120967 DP)
>
> and
>
> LOT 9 OF THE FIRST ADDITION TO THE WHITEFISH LAKE SUMMER HOMES AMENDED in Sec. 14, T31N, R22W, P.M.M. as described in Assessor's #0283440, Flathead County, Montana.

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

Section 3: If the City annexation of any lot(s), parcel(s), block(s) or tract(s) of land annexed into the City pursuant to this City annexation Resolution or any provision of this Resolution is ever held to be invalid or unconstitutional, the City Council hereby declares that any such decision shall not affect the validity of the annexation of the remaining lot(s), parcel(s), block(s) or tract(s) of land annexed into the City or the remaining provisions of this Resolution. The City Council hereby declares that it would have passed this Resolution and annexed each lot(s), parcel(s), block(s) or tract(s) of land into the City as well as each provision of this Resolution irrespective of the fact that the annexation of any one or more lot(s), parcel(s), block(s) or tract(s) of land annexed into the City or provision of this Resolution may have been declared invalid or unconstitutional, and if for any reason the annexation of any lot(s), parcel(s), block(s) or

tract(s) of land or any provision of this Resolution should be declared invalid or unconstitutional, the annexation of the remaining lot(s), parcel(s), block(s) or tract(s) of land and Resolution provisions are intended to be and shall be in full force and effect as enacted by the City Council.

Section 4: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the October 7, 2013 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to §7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

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

Paula Robinson, Flathead County MT by NW

201300023778
Page: 1 of 1
Fees: $7.00
9/13/2013 12:59 PM

PETITION
BEFORE THE CITY COUNCIL
OF THE
CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 22 day of July, 2013.

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

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 22 day of July, 2013.

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

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

Lot 7 First Addition, Whitefish Lake Summer Homes Amended
S.14, T 31N, R 22W

PROPERTY ADDRESS: 2254 E. Lakeshore Dr., Whitefish MT 59937

ZONED AS:

Michael J. Covey, Trustee Covey Family Trust (Printed Name)

Stacy D Covey, Trustee Covey Family Trust (Printed Name)

STATE OF Washington)
County of Spokane) :ss

On this 23rd day of July, 2013, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Michael J. Covey and Stacy D. Covey, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

Notary Public
State of Washington
LORI DAWN SHERMAN
MY COMMISSION EXPIRES
July 05, 2016

Lori Dawn Sherman
Notary Public for the State of Washington
Print or Type Name of Notary: Lori Dawn Sherman
Residing at Spokane, WA
My Commission expires: 7/5/16

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

Paula Robinson, Flathead County MT by NW

201300023776
Page: 1 of 1
Fees: $7.00
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PETITION

BEFORE THE CITY COUNCIL

OF THE

CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 29th day of July, 2013.

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

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 29th day of July, 2013.

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

0589730

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

LOT 08 OF THE FIRST ADDITION TO THE WHITEFISH LAKE SUMMERS HOMES AMENDED in Sec.14, T31N, R22W, P.M.M. as described in Assessor's #0589730, Geocode#07429214203010000, Book 544, Page 462 Recorded October 30, 1972, deed records for the County of Flathead, Montana. (WO # 20120967 DP)

PROPERTY ADDRESS: 2522 E. Lakeshore Drive, Whitefish, MT 59937

ZONED AS:

Cora Belle Montalban
Cora Belle Montalban
(Printed Name)

(Printed Name)

STATE OF MONTANA)
) :ss
County of Flathead)

On this 29th day of July, 2013, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Cora Belle Montalban and N/A, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

JUDAH M. GERSH
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
March 25, 2014

Notary Public for the State of Montana
Print or Type Name of Notary: Judah Gersh
Residing at Whitefish, MT
My Commission expires: 3/25/2014

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

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Page: 1 of 1
Fees: $7.00
9/18/2013 12:11 PM
Paula Robinson, Flathead County MT by NW

PETITION
BEFORE THE CITY COUNCIL
OF THE
CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this 27th day of August, 2013.

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

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the 27th day of August, 2013.

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

0283440

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

Lot 09 of the First Addition to the Whitefish Lake Summer Homes Amended in Sec. 14, T31N, R22W, P.M.M. as described in Assessor's #0283440.

PROPERTY ADDRESS: 2520 East Lakeshore Drive, Whitefish, MT 59937
ZONED AS:

Patrick M. Montalban
[Printed Name]

[Printed Name]

STATE OF Montana)
) :ss
County of Glacier)

On this 27 day of August, 2013, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Patrick M. Montalban and _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

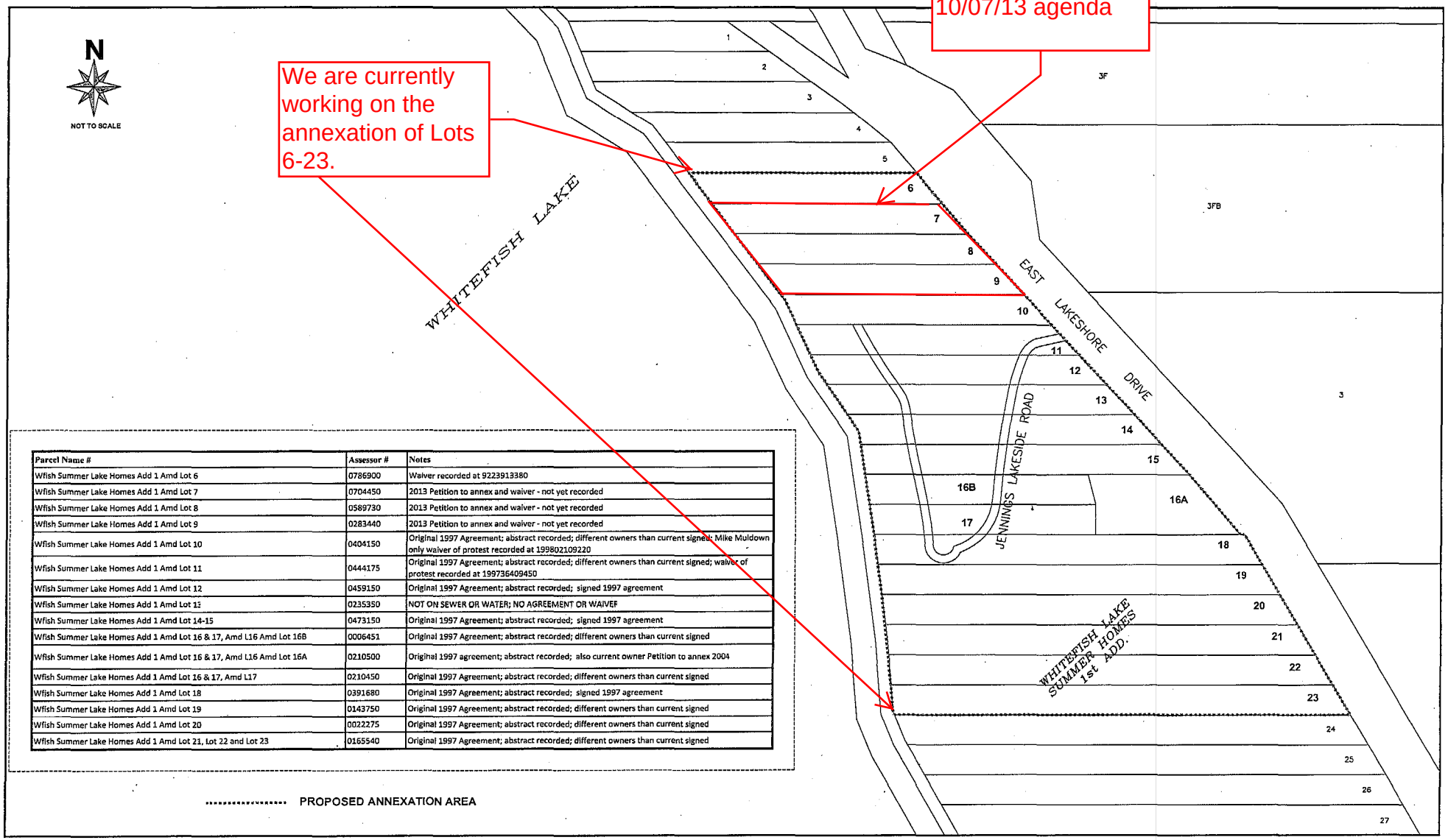
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

JUDY VERMULM
(SEAL) NOTARY PUBLIC for the
State of Montana
Residing at Cut Bank, Montana
My Commission Expires
August 8, 2015

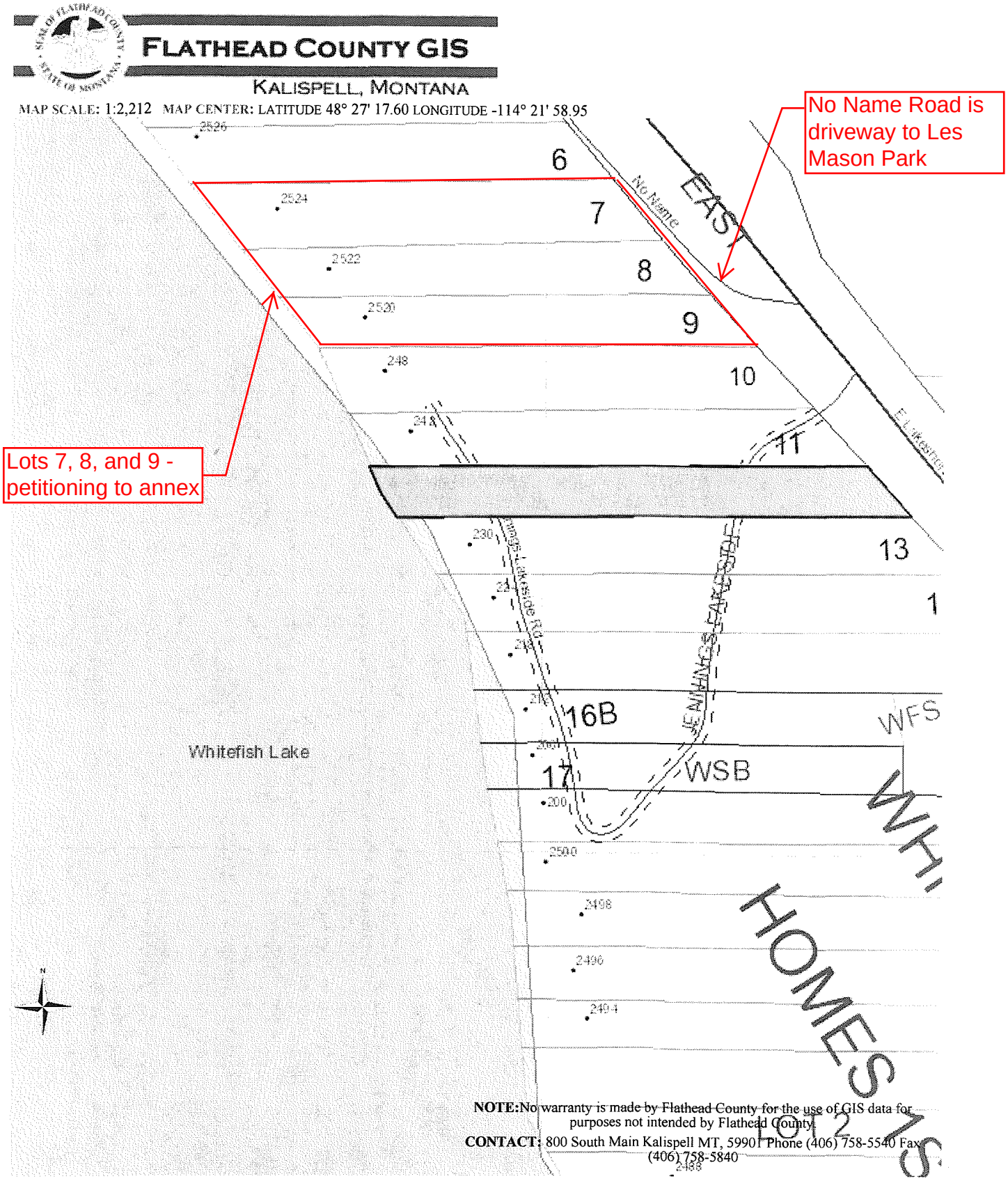
Notary Public for the State of Montana
Print or Type Name of Notary: Judy Vermulm
Residing at Cut Bank, MT 59427
My Commission expires: 08/08/15

These three lots are the lots petitioning to annex for the 10/07/13 agenda

We are currently working on the annexation of Lots 6-23.



Parcel Name #	Assessor #	Notes
Wfish Summer Lake Homes Add 1 Amd Lot 6	0786900	Waiver recorded at 9223913380
Wfish Summer Lake Homes Add 1 Amd Lot 7	0704450	2013 Petition to annex and waiver - not yet recorded
Wfish Summer Lake Homes Add 1 Amd Lot 8	0589730	2013 Petition to annex and waiver - not yet recorded
Wfish Summer Lake Homes Add 1 Amd Lot 9	0283440	2013 Petition to annex and waiver - not yet recorded
Wfish Summer Lake Homes Add 1 Amd Lot 10	0404150	Original 1997 Agreement; abstract recorded; different owners than current signed; Mike Muldown only waiver of protest recorded at 199802109220
Wfish Summer Lake Homes Add 1 Amd Lot 11	0444175	Original 1997 Agreement; abstract recorded; different owners than current signed; waiver of protest recorded at 199736409450
Wfish Summer Lake Homes Add 1 Amd Lot 12	0459150	Original 1997 Agreement; abstract recorded; signed 1997 agreement
Wfish Summer Lake Homes Add 1 Amd Lot 13	0235350	NOT ON SEWER OR WATER; NO AGREEMENT OR WAIVEF
Wfish Summer Lake Homes Add 1 Amd Lot 14-15	0473150	Original 1997 Agreement; abstract recorded; signed 1997 agreement
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16B	0006451	Original 1997 Agreement; abstract recorded; different owners than current signed
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16A	0210500	Original 1997 agreement; abstract recorded; also current owner Petition to annex 2004
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L17	0210450	Original 1997 Agreement; abstract recorded; different owners than current signed
Wfish Summer Lake Homes Add 1 Amd Lot 18	0391680	Original 1997 Agreement; abstract recorded; signed 1997 agreement
Wfish Summer Lake Homes Add 1 Amd Lot 19	0143750	Original 1997 Agreement; abstract recorded; different owners than current signed
Wfish Summer Lake Homes Add 1 Amd Lot 20	0022275	Original 1997 Agreement; abstract recorded; different owners than current signed
Wfish Summer Lake Homes Add 1 Amd Lot 21, Lot 22 and Lot 23	0165540	Original 1997 Agreement; abstract recorded; different owners than current signed


FLATHEAD COUNTY GIS
KALISPELL, MONTANA
MAP SCALE: 1:2,212 MAP CENTER: LATITUDE 48° 27' 17.60 LONGITUDE -114° 21' 58.95
No Name Road is driveway to Les Mason Park
Lots 7, 8, and 9 - petitioning to annex
6
7
8
9
10
11
13
1
16B
17
WSB
WFS
Whitefish Lake
EAST
No Name
E Lakeshore
Jennings Lakeshore Rd
JENNINGS PARCEL
WHI
HOMES 7S
LOT 2
NOTE: No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead County.
CONTACT: 800 South Main Kalispell MT, 59901 Phone (406) 758-5540 Fax (406) 758-5840

Chuck Stearns

From: Andy Hergesheimer [ahergesheimer@cityofwhitefish.org]
Sent: Wednesday, September 25, 2013 3:12 PM
To: 'Whitefish Parks and Recreation'; 'Chuck Stearns'; 'Necile Lorang'
Subject: Ice rink advisory committee

Karl, Chuck, Necile,

On the ice rink advisory committee, the position of Adult hockey representative was vacated by Nolan Butkovich when he was hired to work here at the Stumptown Ice Den. We would like to appoint Kelly Davidson to the position of Adult Hockey Representative on the ice rink advisory committee. Kelly resides at 585 armory rd, Whitefish.

Is this email enough to get the ball rolling on her appointment to the committee?

Andy Hergesheimer
Recreation Facilities Manager
City of Whitefish
Parks and Recreation
406-863-2477 rink office
406-212-0750 cell

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
AND
CONDITIONS, COVENANTS AND RESTRICTIONS, AND EASEMENTS FOR THE LAKES COTTAGES

WHEREAS ~~DECLARANT, Lakes Development Group, A Montana Limited Liability Company with principal place of business at 100 St. Andrews Drive, Columbia Falls, Montana 59912, is the beneficial~~ The Lakes Master Homeowners Association, A Montana Non-Profit Corporation with principal place of business at 4219 River Lakes Parkway manages certain real property in Whitefish, Flathead County, Montana, more particularly described o~~i~~n Exhibit "A" attached hereto,

~~AND~~ WHEREAS, ~~Declarant acknowledges that~~ The Lakes Cottages is a sub-development of Riverside at Whitefish subdivision and subject to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RIVERSIDE AT WHITEFISH (OMNIBUS)** filed~~FILED~~ ~~A~~as~~S~~ Doc No. 200321010460, as amended in Doc. No. 200714316050 and amended by No. 200900024464~~200321010460~~ ~~201200028382~~, Records of Flathead County, Montana,

WHEREAS, the Declarant, Lakes Development Group, LLC, A Montana Limited Liability Company previously made the Lakes Cottages subject to Declaration of Protective Covenants and Covenants for the Lakes ~~Cottages filed~~Cottages filed as Doc. No. ~~200701612000~~200714316050 and amended by No. 200900024464, Records of Flathead County, Montana,

WHEREAS, the day to day management, operations and authority of the Lakes Development, including but not limited to the Lakes Cottages, has been transferred to the Lakes Master Homeowners Association,

~~AND~~ WHEREAS, ~~THE Declarant wishes to subject~~ the Owners of the Lots contained within the Lakes Cottages wish to amend and restate the Declaration of Protective Covenants and Covenants for the Lakes Cottages previously recorded as Doc. No. 200701612000, Records of Flathead County, Montana to subject each and every property in the Lakes Cottages to the Amended and Restated Declaration and Protective Covenants, Conditions, Covenants and Restrictions, and Easements hereinafter set forth amending the Declaration of Protective Covenants and Covenants for the Lakes Cottages, each and all of which is and are for the benefit of said propert~~y~~ies and for each O~~o~~wner thereof and shall inure to the benefit and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any O~~o~~wner thereof;

AND WHEREAS, the Owners of Lots 34-~~44~~40 more particularly described in Exhibit B attached hereto, wish to declare that those Lots identified as Lots 34-40~~44~~ be held, sold and conveyed subject to the following Amended and Restated Declaration and Protective Covenants, Conditions, Covenants and Restrictions, and Easements all of which are for the purpose of enhancing, protecting and preserving the value, desirability, and attractiveness of the real property as a desirable residential development. These restrictions, covenants,

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conditions and ~~easments~~easements shall run with the real property and shall be binding upon all parties having or acquiring any rights, title or interest in the described property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

NOW, THEREFORE, THE Lakes Master Homeowners Association~~Declarant,~~ and the undersigned, being the manager and O~~o~~wners of all of the real property above-described, hereby declare~~s~~ that the real property described above in attached Exhibit "A" and "B" ~~said real property~~ is, and shall be, held, transferred, sold and conveyed, subject to the conditions, restrictions, covenants and reservations hereinafter set forth and as amended; and

All persons or entities who now or shall hereafter acquire any interest in and to the above-described property shall be held to agree and covenant with the O~~o~~wner of any of the property hereinabove described, or any parcel thereof, and with their heirs and successors and assigns, to conform to and observe the following covenants, restrictions, and conditions as to the use thereof, and as to the construction of dwellings and improvements thereon.

1. DEFINITIONS: As used in this~~is~~ Amended Declaration of Protective Covenants and Conditions, Covenants and Restrictions and Easements (hereafter "Amended Declaration")~~Agreement~~, the following words and terms shall have the following meanings:
   a. Homeowners Association: The Lakes Master Homeowners Association, or its successors or assigns.
   b. Omnibus Covenants: Omnibus Declaration of Covenants, Conditions and Restrictions of Riverside, filed as Doc No. 200321010460, as amended in Doc. No. ~~200321010460~~ 201200028382, Records of Flathead County, Montana,
   c. Cottage: A Cottage residence, its Lot and improvements.
   d. Owner: The person or persons owning a parcel of land in fee simple absolute, individually or as an owner in any real estate tenancy relationship recognized under the laws of the State of Montana.
   e. Lot: Any parcel, unit or other ownership interest in real estate described in attached Exhibit "A" and "B".
   f. Vote or Voter: An Owner entitled to one vote per Lot owned~~; Declarant herein shall be entitled to a vote for each Lot interest it owns~~.
   g. Zero Lot Line: The location of a building on a L~~l~~ot in such a manner that one or more of the building's sides rests directly on a L~~l~~ot line. The eave of each building, rather than the foundation or wall, shall be considered the side of the building for purposes of measuring setback.

2. GENERAL PURPOSES: The benefits of the p~~P~~rotective c~~C~~ovenants, conditions and restrictions set forth herein are intended to run with the land and to each Owner, his or her heirs, personal representatives, administrators, successors and assigns. This Amended Declaration~~Agreement~~ is made and amended for the purpose of creating and keeping The Lakes Cottages a desirable, private, attractive, beneficial and suitable place of abode, and of providing rules and regulations otherwise for the mutual benefit and protection of each of the Owners.

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3. ASSOCIATION MEMBERSHIP: The Lakes Master Homeowners Association has been formed to perform certain functions and to hold and manage certain property for the common benefit of some or all of the owners or lessees holding an interest in real property therein. Owners of a Cottage become members of the Association as defined in the Articles of Incorporation and ~~ByLaws~~Bylaws thereof and will be entitled to the benefits and subject to the obligations as a member. Such obligations include, but are not limited to, the obligation to pay taxes and special assessments and other charges as set forth in the respective Declarations and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association, as may be amended ~~as~~ from time to time, and are in force and effect. This Amended Declaration~~Agreement~~ does not alter, limit or otherwise affect the obligations of any Owner under any of those instruments, but shall establish additional rights and obligations among Owners of The Lakes Cottages.

4. CONSTRUCTION OF COTTAGES:

a. Each Cottage shall be constructed so as to have one and only one side thereof situated on a zero lot line, with the eave of the structure on that side extending to the boundary line. Buildings on each Lot shall be set back at least 10 feet from the boundary opposite the zero lot line with no encroachments.

b. The zero lot line boundary for each lot shall be as follows: Lots 34-49 shall be to the side boundary on the left when viewed from the street. Lots 50-64 shall be the side boundary on the right when viewed from the street.

c. The Owners of each of the Lots sharing a zero-lot-line grant to each other, are granted by each other, and shall have, an easement over and across the zero lot line property line for the purpose of construction and maintenance of their Cottage. In the event that an Owner's Lot is damaged by his neighboring Owner's exercise of rights hereunder, whether such damage is intentional or negligent, the Owner causing such damage shall repair or restore the damage, and bear the cost therefore.

i. Each Owner shall grant to his, her or its~~its~~ neighbor on the zero lot line boundary a surface easement that extents five feet (5") from the boundary line. In addition, each Owner shall grant to its neighbor on the zero lot line boundary a two foot (2') below-ground easement for the construction and maintenance of the structures, utilities, drainage and other actions reasonably necessary to the construction and maintenance of that Lot.

ii. Before an Owner may commence construction on a Lot, that Owner shall post a ~~Five Thousand Dollar ($5,000) sufficient bond or cash~~ deposit with the Homeowner's Architectural Review Board in the amount provided for ~~staed~~ in the governing Architectural Guidelines. This ~~bond or~~ deposit may be utilized to satisfy the Owner's obligations to restore any damage to neighboring property as set forth in paragraph 4c above.

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d. Each Cottage shall incorporate the following design criteria:

i. Wall Height: Exterior walls shall be a minimum of nine feet (9') in height at their lowest point.

ii. Wall Length: Exterior walls shall not exceed thirty-six feet (36') without a break or corner. Each such break or corner shall be at minimum a two foot (2') jog in the wall. At least one-third of the exterior wall on the zero lot line boundary shall be offset a minimum of two feet.

iii. Garage: Garages must be located on the zero lot line side of the Cottage. Utility meters must be located on the garage and concealed from neighbors' view.

iv. Driveway: Driveway material must be poured concrete or asphalt. ~~Asphalt is not permitted.~~

v. Covered Deck: A covered deck or patio must be incorporated into the design of the house on the side of the Cottage that faces the lake.

vi. Siding: The Cottage shall bear ~~Hardy Board~~ prefinished wood grain appearance cement board siding, cedar lap siding with its main body using, at minimum, six inch (6") lap. Three inch (3") lap cedar siding will be permitted as an accent. As an alternative to cedar lap siding, or a board on board siding. Siding must be finished with a semi-transparent stain that is of a color comparable with natural colors found in Northwest Montana.

vii. Masonry: Masonry must be used on a feature on all four sides of Cottage. The use of masonry must accentuate certain structural features of the Cottage. All column bases for all overhanging roof structures must utilize masonry in the design. Masonry is also required to break up the large plane of the zero lot line side of the Cottage. At minimum, twenty-five percent (25%) of the area of the zero lot line side of the Cottage must be covered in masonry. The masonry material may be real rock, veneer thin cut stone or manufactured stone. River rock material is not permitted.

viii. Roof: The Cottage roof shall consist of ~~forty (40)~~ lifetime or 30 year composite shingle of architectural grade. The roof on the zero lot line side of the Cottage must incorporate a break in the roof plane.

ix. Landscape: The street side of the Cottage must incorporate grass lawns that connect to neighboring lawns and create consistent view from the side of the street. On the waterfront side of the Cottage, grass shall not break the lake waterline. A five foot (5') minimum buffer of pea gravel shall exist along the shoreline and shall tie into the neighboring property to create a consistent view from the water~~.~~.

x. Fencing: A six foot (6') privacy fence is permitted to screen the Cottage courtyard from the street. This fence must be vertical wood and ~~must be stained the same color as the main body of siding on the Cottage.~~ the color must sufficiently blend with the home colors and be approved in writing by the Architectural Review Committee ("ARC"). The fence must start from the courtyard of the Cottage and may extend to the garage of the neighboring Cottage. The fence shall not interfere with or prohibit access to the electric and gas meters installed on the neighboring Cottage's garage. A gate must be installed which will permit access to the courtyard.

xi. Minimum square footage: No dwelling shall be permitted or erected on any Lot with a fully enclosed ground floor area devoted to living purpose~~d~~s, exclusive of porches, patios, terraces, garages and any other outbuildings of less than 1600 square feet on the main floor.

5. ENFORCEMENT: Any O~~o~~wner shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include proceedings to enjoin the

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violation, to recover damages, or both. Failure by any Oowner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. The City of Whitefish is an interested party and shall, like an Oowner, at its sole election, have the authority to enforce thisese Amended DeclarationCovenants. In the event of litigation, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

6. FEES: By virtue of the Omnibus Covenants, each Owner covenants and agrees to contribute and pay certain fees to the Lakes Master Homeowners Association to be used for the purposes set forth therein. In addition, each Owner of a Cottage covenants and agrees to pay the maintenance fees set forth in Paragraph 7 (c) below.

6.

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7. MAINTENANCE AND REPAIRS:

a. Owners shall maintain and repair the exterior surface of their building and the driveway leading to their building, including without limitation, the painting, staining or repair of the same as often as is reasonably necessary to maintain the character of the Cottage neighborhood. The replacement of trim and caulking, and the maintenance and repair of the roof and driveway, and to be liable for the cost of any such maintenance or repairs made on their building.
b. Any repairs or maintenance performed or allowed to be performed by an owner to the exterior of his dwelling shall employ materials uniform or consistent with those materials already incorporated into the dwelling and improvements, and shall comply with all of the provisions of thisese Amended DeclarationCovenants, the Omnibus Covenants, and the persons, committees, organizations and/or entities designated thereby.
c. The Homeowners Association shall have the right and the duty to maintain all of the common areas, beaches, and landscaping, including the exterior landscaping of each Llot.

8. EASEMENT: As set forth in paragraph 4 above, the Owners of each of the Lots sharing a zero-lot-line grant, were and hereby are granted, and shall have a non-exclusiven easement over and across those portions of the property occupied by the other for the purpose of access to underground utilities and, in addition, access to any curb boxes, water and sewer laterals, which together or separately service their respective Cottages, for the purpose of construction, maintenance, repair and if necessary, replacement, and for general and customary maintenance or repair of their Cottage. Such easement shall also include the right to travel over and across the property for the purposes of reasonably addressing an exigent threat to property or persons. In addition, each Owner has, and hereby shall affirms and grants to the property adjacent to the zero-lot line boundary an easement for the use of any additional ground space created by the exterior jogs required in Section 4 above, and such use may be for any reasonable and lawful purpose including the placement of landscaping, furniture, patios and similar uses which are not inconsistent with the covenants and restrictions herein. Absent exigent

circumstances, any Owner exercising his, her or its rights under any easement granted herein shall schedule any such activities with the Owner of the Lot granting easement so as to minimize any inconvenience to the parties. Any damage caused by virtue of an Owner's exercise of his, her or its~~its~~ rights under the easements granted hereunder shall be promptly repaired to its prior condition at the cost of the Owner causing such damage. The easements granted in this document, or any preceeding document, shall run with the land and shall benefit or burden all future purchasers, heirs, successors and assigns of the parties hereto.

9. TERMS: The provisions of these protective covenants as more particularly set forth in the Amended Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date they are recorded, after which time said protective covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument executed by the Owners of seventy-five percent (75%) of the Lots located on the land described as all that land as shown on and described as Plat of the Lakes Cottages, Phase I, II and III, Records of Flathead County, Montana, has been recorded agreeing to terminate said protective covenants or change them in whole or in part. Each Lot shall be entitled to one vote under this Amended Declaration~~Article~~, as determined in Article I.

10. CANOE CLUB MEMBERSHIP: Each Lot has separately been accorded a membership interest in the Canoe Club recreational facility. The~~at~~ membership is subject to the fees, currently $50 per month, rights and responsibilities set forth in the Canoe Club organizational documents as they now exist or as they may be lawfully amended by the members in the future.

11. AMENDMENT: This Amended Declaration may be amended by an instrument signed by the Owners of seventy-five percent (75%) of the single family Lots located on the land described as all that land as shown on and described as Plat of The Lakes Cottages, Phase I, II, and III, Records of Flathead County, Montana, which instrument has been recorded, agreeing to such amendment. Each Lot shall be entitled to one vote as determined in Article I under this Amended Declaration~~Article~~, provided that in any event an amendment shall not be valid unless approved in writing by the City of Whitefish.

12. GENERAL:
    a. Each Owner, by accepting conveyance of a deed to the Cottage, is subject to the provision of~~n~~ this Amended Declaration~~Agreement~~ and further agrees that the covenants and other provisions contained herein~~hereof~~ are reasonable in scope and effect and are essential to the form of ownership in which such Cottage is held.
    b. If any of the provisions of the Amended Declaration~~Agreement~~ or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Amended Declaration~~Agreement~~, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

c. The provisions of this Amended Declaration~~Agreement~~ shall be governed by the laws of the State of Montana.

d. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Undersigned~~Declarant~~ has duly executed this Agreement this _____ day of _____, 2013.

The Lakes Master Homeowners Association

By: _____

Ryan Gunlikson

_____Its President

STATE OF MONTANA)

: ss.

County of Flathead)

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the President of The Lakes Master Homeowners Association the corporation whose name is subscribed to the within instrument, and acknowledged to me that such corporation 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.

_____

Notary Public for the State of Montana

Residing at:_____

(SEAL)My Commission Expires:_____

(LOT 34)

By:

John J. Murphy, Trustee of

Irrecovable Trust u/a of David J Leishman

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John J. Murphy as Trustee of Irrevocable Trust u/a of David J. Leishman, known to me to be an individual whose name is subscribed to the within instrument, and acknowledged to me that such individual 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.

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

(LOTS 35 & 36)

By:
Phillip R Hambley

By:
Carol I Hambley

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STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Phillip R and Carol I Hambley, known to me to be individuals whose names are subscribed to the within instrument, and acknowledged to me that such individuals 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.

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

(LOT 37)

By:
Donald J Hamilton

By:
Susan B Hamilton

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Donald J and Susan B Hamilton, known to me to be individuals whose names are subscribed to the within instrument, and acknowledged to me that such individuals 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.

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Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

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(LOT 38)
By:
John Hamilton

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John Hamilton, known to me to be an individual whose name is subscribed to the within instrument, and acknowledged to me that such individual 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.

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

(LOTS 39 & 40)

By:
Donald G Hanson

By:
Marianne P Hanson

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Donald G and Marianne P Hanson, known to me to be individuals whose names are subscribed to the within instrument, and acknowledged to me that such individuals 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.

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

(LOT 41)

By:
John W Camp

By:
Donna E Camp

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John W and Donna E Camp, known to me to be individuals whose names are subscribed to the within instrument, and acknowledged to me that such individuals 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.

~~Notary Public for the State of Montana~~
~~Residing at:~~

~~(SEAL)My Commission Expires:~~

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~~(LOT 42)~~
~~By:~~
~~Marianne Laurel Gray~~

~~STATE OF MONTANA)~~

~~: ss.~~

~~County of Flathead)~~

~~On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Marianne Laurel Gray, known to me to be an individual whose name is subscribed to the within instrument, and acknowledged to me that such individual 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.~~

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

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(LOT 43) Lakes Development Group, LLC

By:
Mark Johnson
Authorized Representative

STATE OF MONTANA)

: ss.

County of Flathead)

On this day of , 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Mark Johnson, known to me to an authorized representative of The Lakes Development Group, LLC whose name is subscribed to the within instrument, and acknowledged to me that such individual 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.

Notary Public for the State of Montana
Residing at:

(SEAL)My Commission Expires:

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(LOT 44)

By:
Kenneth R Schoof

By:
Mary Kathleen Schoof

STATE OF MONTANA)

: ss.

County of Flathead)

~~On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Kenneth R and Mary Kathleen Schoof, known to me to be individuals whose names are subscribed to the within instrument, and acknowledged to me that such individuals 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.~~

~~_____~~
~~Notary Public for the State of Montana~~
~~Residing at: _____~~

~~(SEAL)My Commission Expires: _____~~

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2013 Revised
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AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS, COVENANTS AND RESTRICTIONS, AND EASEMENTS FOR THE LAKES COTTAGES

WHEREAS The Lakes Master Homeowners Association, A Montana Non-Profit Corporation with principal place of business at 4219 River Lakes Parkway manages certain real property in Whitefish, Flathead County, Montana, more particularly described on Exhibit "A" attached hereto,

WHEREAS, The Lakes Cottages is a sub-development of Riverside at Whitefish subdivision and subject to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RIVERSIDE AT WHITEFISH (OMNIBUS)** filed as Doc No. 200321010460, as amended in Doc. No 201200028382, Records of Flathead County, Montana,

WHEREAS, the Declarant, Lakes Development Group, LLC, A Montana Limited Liability Company previously made the Lakes Cottages subject to Declaration of Protective Covenants and Covenants for the Lakes Cottages filed as Doc. No. 200714316050 and amended by No. 200900024464, Records of Flathead County, Montana,

WHEREAS, the day to day management, operations and authority of the Lakes Development, including but not limited to the Lakes Cottages, has been transferred to the Lakes Master Homeowners Association,

WHEREAS, the Owners of the Lots contained within the Lakes Cottages wish to amend and restate the Declaration of Protective Covenants and Covenants for the Lakes Cottages previously recorded as Doc. No. 200714316050 and amended by No. 200900024464, Records of Flathead County, Montana to subject each and every property in the Lakes Cottages to the Amended and Restated Declaration and Protective Covenants, Conditions, Covenants and Restrictions, and Easements hereinafter set forth amending the Declaration of Protective Covenants and Covenants for the Lakes Cottages, each and all of which is and are for the benefit of said properties and for each Owner thereof and shall inure to the benefit and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any Owner thereof;

AND WHEREAS, the Owners of Lots 34-40 more particularly described in Exhibit B attached hereto, wish to declare that those Lots identified as Lots 34-40 be held, sold and conveyed subject to the following Amended and Restated Declaration and Protective Covenants, Conditions, Covenants and Restrictions, and Easements all of which are for the purpose of enhancing, protecting and preserving the value, desirability, and attractiveness of the real property as a desirable residential development. These restrictions, covenants, conditions and easements shall run with the real property and shall be binding upon all parties having or acquiring any rights, title or interest in the described property, or any part thereof, and shall inure to the benefit of and be binding upon each successor in interest to the Owner thereof.

NOW, THEREFORE, THE Lakes Master Homeowners Association and the undersigned, being the manager and Owners of all of the real property above-described, hereby declare that the real property

described above in attached Exhibit "A" and "B" is, and shall be, held, transferred, sold and conveyed, subject to the conditions, restrictions, covenants and reservations hereinafter set forth and as amended; and

All persons or entities who now or shall hereafter acquire any interest in and to the above-described property shall be held to agree and covenant with the Owner of any of the property hereinabove described, or any parcel thereof, and with their heirs and successors and assigns, to conform to and observe the following covenants, restrictions, and conditions as to the use thereof, and as to the construction of dwellings and improvements thereon.

1. DEFINITIONS: As used in this Amended Declaration of Protective Covenants and Conditions, Covenants and Restrictions and Easements (hereafter "Amended Declaration"), the following words and terms shall have the following meanings:
   a. Homeowners Association: The Lakes Master Homeowners Association, or its successors or assigns.
   b. Omnibus Covenants: Omnibus Declaration of Covenants, Conditions and Restrictions of Riverside, filed as Doc No. 200321010460, as amended in Doc. No. 201200028382, Records of Flathead County, Montana,
   c. Cottage: A Cottage residence, its Lot and improvements.
   d. Owner: The person or persons owning a parcel of land in fee simple absolute, individually or as an owner in any real estate tenancy relationship recognized under the laws of the State of Montana.
   e. Lot: Any parcel, unit or other ownership interest in real estate described in attached Exhibit "A" and "B".
   f. Vote or Voter: An Owner entitled to one vote per Lot owned.
   g. Zero Lot Line: The location of a building on a Lot in such a manner that one or more of the building's sides rests directly on a Lot line. The eave of each building, rather than the foundation or wall, shall be considered the side of the building for purposes of measuring setback.

2. GENERAL PURPOSES: The benefits of the protective covenants, conditions and restrictions set forth herein are intended to run with the land and to each Owner, his or her heirs, personal representatives, administrators, successors and assigns. This Amended Declaration is made and amended for the purpose of creating and keeping The Lakes Cottages a desirable, private, attractive, beneficial and suitable place of abode, and of providing rules and regulations otherwise for the mutual benefit and protection of each of the Owners.

3. ASSOCIATION MEMBERSHIP: The Lakes Master Homeowners Association has been formed to perform certain functions and to hold and manage certain property for the common benefit of some or all of the owners or lessees holding an interest in real property therein. Owners of a Cottage become members of the Association as defined in the Articles of Incorporation and ByLaws thereof and will be entitled to the benefits and subject to the obligations as a member. Such obligations include, but are not limited to, the obligation to pay taxes and special assessments and other charges as set forth in the respective Declarations and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association, as may be amended from time to time, and are in force and effect. This Amended

Declaration does not alter, limit or otherwise affect the obligations of any Owner under any of those instruments, but shall establish additional rights and obligations among Owners of The Lakes Cottages.

4. CONSTRUCTION OF COTTAGES:

a. Each Cottage shall be constructed so as to have one and only one side thereof situated on a zero lot line, with the eave of the structure on that side extending to the boundary line. Buildings on each Lot shall be set back at least 10 feet from the boundary opposite the zero lot line with no encroachments.

b. The zero lot line boundary for each lot shall be as follows: Lots 34-49 shall be to the side boundary on the left when viewed from the street. Lots 50-64 shall be the side boundary on the right when viewed from the street.

c. The Owners of each of the Lots sharing a zero-lot-line grant to each other, are granted by each other, and shall have, an easement over and across the zero lot line property line for the purpose of construction and maintenance of their Cottage. In the event that an Owner's Lot is damaged by his neighboring Owner's exercise of rights hereunder, whether such damage is intentional or negligent, the Owner causing such damage shall repair or restore the damage, and bear the cost therefore.

i. Each Owner shall grant to his, her or its neighbor on the zero lot line boundary a surface easement that extents five feet (5") from the boundary line. In addition, each Owner shall grant to its neighbor on the zero lot line boundary a two foot (2') below-ground easement for the construction and maintenance of the structures, utilities, drainage and other actions reasonably necessary to the construction and maintenance of that Lot.

ii. Before an Owner may commence construction on a Lot, that Owner shall post a cash deposit with the Homeowner's Architectural Review Board in the amount provided for in the governing Architectural Guidelines. This deposit may be utilized to satisfy the Owner's obligations to restore any damage to neighboring property as set forth in paragraph 4c above.

d. Each Cottage shall incorporate the following design criteria:

i. Wall Height: Exterior walls shall be a minimum of nine feet (9') in height at their lowest point.

ii. Wall Length: Exterior walls shall not exceed thirty-six feet (36') without a break or corner. Each such break or corner shall be at minimum a two foot (2') jog in the wall. At least one-third of the exterior wall on the zero lot line boundary shall be offset a minimum of two feet.

iii. Garage: Garages must be located on the zero lot line side of the Cottage. Utility meters must be located on the garage and concealed from neighbors' view.

iv. Driveway: Driveway material must be poured concrete or asphalt.

v. Covered Deck: A covered deck or patio must be incorporated into the design of the house on the side of the Cottage that faces the lake.

vi. Siding: The Cottage shall bear prefinished wood grain appearance cement board siding or cedar lap siding with its main body using, at minimum, six inch (6") lap. Three inch (3") lap cedar siding will be permitted as an accent. As an alternative to cedar lap siding, the Cottage may bear a cedar board and minimum one by four batten siding, or a board on board siding. Siding must be finished

with a semi-transparent stain that is of a color comparable with natural colors found in Northwest Montana.

vii. Masonry: Masonry must be used on a feature on all four sides of Cottage. The use of masonry must accentuate certain structural features of the Cottage. All column bases for all overhanging roof structures must utilize masonry in the design. Masonry is also required to break up the large plane of the zero lot line side of the Cottage. The masonry material may be real rock, veneer thin cut stone or manufactured stone. River rock material is not permitted.

viii. Roof: The Cottage roof shall consist of lifetime or 30 year composite shingle of architectural grade. The roof on the zero lot line side of the Cottage must incorporate a break in the roof plane.

ix. Landscape: The street side of the Cottage must incorporate grass lawns that connect to neighboring lawns and create consistent view from the side of the street. On the waterfront side of the Cottage, grass shall not break the lake waterline. A five foot (5') minimum buffer of pea gravel shall exist along the shoreline and shall tie into the neighboring property to create a consistent view from the water.

x. Fencing: A six foot (6') privacy fence is permitted to screen the Cottage courtyard from the street. This fence must be vertical wood and the color must sufficiently blend with the home colors and be approved in writing by the Architectural Review Committee ("ARC'). The fence must start from the courtyard of the Cottage and may extend to the garage of the neighboring Cottage. The fence shall not interfere with or prohibit access to the electric and gas meters installed on the neighboring Cottage's garage. A gate must be installed which will permit access to the courtyard.

xi. Minimum square footage: No dwelling shall be permitted or erected on any Lot with a fully enclosed ground floor area devoted to living purposes, exclusive of porches, patios, terraces, garages and any other outbuildings of less than 1600 square feet.

5. ENFORCEMENT: Any Owner shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. The City of Whitefish is an interested party and shall, like an Owner, at its sole election, have the authority to enforce this Amended Declaration. In the event of litigation, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

6. FEES: By virtue of the Omnibus Covenants, each Owner covenants and agrees to contribute and pay certain fees to the Lakes Master Homeowners Association to be used for the purposes set forth therein. In addition, each Owner of a Cottage covenants and agrees to pay the maintenance fees set forth in Paragraph 7 (c) below.

7. MAINTENANCE AND REPAIRS:

a. Owners shall maintain and repair the exterior surface of their building and the driveway leading to their building, including without limitation, the painting, staining or repair of the same as often as is reasonably necessary to maintain the character of the Cottage neighborhood. The replacement of trim and caulking, and the maintenance and repair of the roof and driveway, and to be liable for the cost of any such maintenance or repairs made on their building.
b. Any repairs or maintenance performed or allowed to be performed by an owner to the exterior of his dwelling shall employ materials uniform or consistent with those materials already incorporated into the dwelling and improvements, and shall comply with all of the provisions of this Amended Declaration, the Omnibus Covenants, and the persons, committees, organizations and/or entities designated thereby.
c. The Homeowners Association shall have the right and the duty to maintain all of the common areas, beaches, and landscaping, including the exterior landscaping of each Lot.

8. EASEMENT: As set forth in paragraph 4 above, the Owners of each of the Lots sharing a zero-lot-line grant, were and hereby are granted, and shall have a non-exclusive easement over and across those portions of the property occupied by the other for the purpose of access to underground utilities and, in addition, access to any curb boxes, water and sewer laterals, which together or separately service their respective Cottages, for the purpose of construction, maintenance, repair and if necessary, replacement, and for general and customary maintenance or repair of their Cottage. Such easement shall also include the right to travel over and across the property for the purposes of reasonably addressing an exigent threat to property or persons. In addition, each Owner has, and hereby affirms and grants to the property adjacent to the zero-lot line boundary an easement for the use of any additional ground space created by the exterior jogs required in Section 4 above, and such use may be for any reasonable and lawful purpose including the placement of landscaping, furniture, patios and similar uses which are not inconsistent with the covenants and restrictions herein. Absent exigent circumstances, any Owner exercising his, her or its rights under any easement granted herein shall schedule any such activities with the Owner of the Lot granting easement so as to minimize any inconvenience to the parties. Any damage caused by virtue of an Owner's exercise of his, her or its rights under the easements granted hereunder shall be promptly repaired to its prior condition at the cost of the Owner causing such damage. The easements granted in this document, or any preceding document, shall run with the land and shall benefit or burden all future purchasers, heirs, successors and assigns of the parties hereto.

9. TERMS: The provisions of these protective covenants as more particularly set forth in the Amended Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date they are recorded, after which time said protective covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument executed by the Owners of seventy-five percent (75%) of the Lots located on the land described as all that land as shown on and described as Plat of the Lakes Cottages, Phase I, II and III,

Records of Flathead County, Montana, has been recorded agreeing to terminate said protective covenants or change them in whole or in part. Each Lot shall be entitled to one vote under this Amended Declaration, as determined in Article I.

10. CANOE CLUB MEMBERSHIP: Each Lot has separately been accorded a membership interest in the Canoe Club recreational facility. The membership is subject to the fees, currently $50 per month, rights and responsibilities set forth in the Canoe Club organizational documents as they now exist or as they may be lawfully amended by the members in the future.

11. AMENDMENT: This Amended Declaration may be amended by an instrument signed by the Owners of seventy-five percent (75%) of the single family Lots located on the land described as all that land as shown on and described as Plat of The Lakes Cottages, Phase I, II, and III, Records of Flathead County, Montana, which instrument has been recorded, agreeing to such amendment. Each Lot shall be entitled to one vote as determined in Article I under this Amended Declaration, provided that in any event an amendment shall not be valid unless approved in writing by the City of Whitefish.

12. GENERAL:
    a. Each Owner, by accepting conveyance of a deed to the Cottage, is subject to the provision of this Amended Declaration and further agrees that the covenants and other provisions contained herein are reasonable in scope and effect and are essential to the form of ownership in which such Cottage is held.
    b. If any of the provisions of the Amended Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Amended Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
    c. The provisions of this Amended Declaration shall be governed by the laws of the State of Montana.
    d. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Undersigned has duly executed this Agreement this 30 day of August, 2013.

The Lakes Master Homeowners Association

By: _____

Ryan Gunlikson
Its President

STATE OF MONTANA)

: ss.

County of Flathead)

On this 30th day of AUGUST, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared RYAN GUAZLIKSON, known to me to be the President of The Lakes Master Homeowners Association the corporation whose name is subscribed to the within instrument, and acknowledged to me that such corporation 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.

Cynthia Schlesinger

CYNTHIA SCHLESINGER NOTARY PUBLIC for the STATE OF MONTANA Residing at Columbia Falls, MT My Commission Expires January 16, 2016

CYNTHIA SCHLESINGER NOTARIAL SEAL STATE OF MONTANA

Notary Public for the State of Montana

Residing at: COLUMBIA FALLS, MT

(SEAL)My Commission Expires: 1-16-16

Exhibit A

The Lakes Cottages, Phase 2, Lots 41-44 according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Lakes Cottages, Phase 3, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Amended Plat of Lots 55 and 56 of The Lakes Cottages, Phase 3, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

Exhibit B

The Lakes Cottages, Phase 1, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Amended Plat of Lots 35 & 36 of the Amended Plat of The Amended Plat of Lots 34-37, Park & Canoe Club House, The Lakes Cottages, Phase 1, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Amended Plat of The Amended Plat of Lots 34-37, Park & Canoe Club House The Lakes Cottages, Phase 1, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Amended Plat of Lots 35 & 36 of the Amended Plat of the Amended Plat of Lots 34-37, Park & Canoe Club House, The Lakes Cottages, Phase1, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Lakes Cottages, Phase 2, Lots 38-40 according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

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RESOLUTION NO. 13-___

A Resolution of the City Council of the City of Whitefish, Montana, specifying rate increases for water, wastewater and garbage collection services beginning October 1, 2013.

WHEREAS, as established by Resolution Nos. 06-51 and 07-12, on October 1 of every year, the City water and wastewater rates and charges are to be automatically increased, based on the increase, if any, in the U.S. Department of Labor's Water, Sewer and Trash Collection Services Consumer Price Index for All Urban Consumers (Consumer Price Index) for the twelve-month period ending the preceding December 31; and

WHEREAS, as established by Resolution No. 11-52, beginning on October 1, 2012, and continuing through October 31, 2016, the four-year term of the City's agreement with Montana Waste Systems, Inc., d/b/a North Valley Refuse, the City garbage collection rates and charges are to be automatically increased by 3% annually; and

WHEREAS, during the September 16, 2013 Regular Meeting, the City Council was notified of the 5.7% rate increase in the Consumer Price Index and discussed whether to implement the 2013 automatic annual inflationary rate increases of 5.7% for water and wastewater services, and 3% for garbage collection services, in order to generate adequate funds to operate the utilities and charge each customer class their fair share of the costs; and

WHEREAS, under Title 69, Chapter 7 of the Montana Code Annotated, and under the terms of City Resolution Nos. 06-51, 07-21, and 11-52, the City of Whitefish is authorized to regulate the City's municipal water, wastewater, and garbage collection rates and charges and to change such rates and charges as may be deemed by the City Council to be reasonable and just; and

WHEREAS, at a lawfully noticed hearing on October 7, 2013, after receiving public comment and reviewing staff reports, and having considered the 5.7% increase of the Consumer Price Index, the study of the cost of water and wastewater services, and forecasted expenses, the Whitefish City Council determined that beginning October 1, 2013, the municipal water and wastewater rate increases would be 5.7%, and the garbage collection rate increase would be 3%; and

WHEREAS, beginning October 1, 2014, and continuing thereafter, the City water and wastewater services rates and charges will be automatically increased, based on the increase, if any, in the Consumer Price Index, as provided by Resolution Nos. 06-51 and 07-12.

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

Section 1: Those rates and charges as reflected on Exhibit "A", attached hereto and incorporated herein by reference, are hereby adopted and approved by the City Council of

the City of Whitefish and shall be implemented for water, wastewater, and garbage collection services billed after October 1, 2013.

Section 2: In addition to the rate increase reflected on the attached Exhibit, on October 1 of every year, beginning October 1, 2014, and continuing thereafter indefinitely, the City water and wastewater services rates and charges will be automatically increased, based on the increase, if any, in the Consumer Price Index, all as provided by Resolution Nos. 06-51 and 07-12. The City Council will be notified of the amount of the increase based on the Consumer Price Index.

Section 3: In addition to the rate increase reflected on the attached Exhibit, on October 1, 2014, and continuing through October 31, 2016, the term of the City's agreement with Montana Waste Systems, Inc., d/b/a North Valley Refuse, the City garbage collection services rates and charges will be automatically increased by 3% annually.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

Section 5: Once this Resolution becomes final, the City Public Works Department is authorized and directed to implement the adjustments reflected in the attached Exhibit, and the automatic increases described in Sections 2 and 3 above.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Exhibit "A"

Rate Code Description	Proposed Base	Proposed Usage	Current Base	Current Usage
WATER	5.7%			
Inside City				
IN .625"	$23.21	$3.66	$21.96	$3.46
IN .625" Low Income/Senior	$5.80	$3.66	$5.49	$3.46
IN .750"	$34.26	$3.66	$32.41	$3.46
IN .750" Low Income/Senior	$8.56	$3.66	$8.10	$3.46
IN 1"	$48.62	$3.66	$46.00	$3.46
IN 1" Low Income/Senior	$12.16	$3.66	$11.50	$3.46
IN 1.5"	$149.19	$3.66	$141.14	$3.46
IN 1.5" Low Income/Senior	$37.30	$3.66	$35.29	$3.46
IN 2"	$246.44	$3.66	$233.15	$3.46
IN 3"	$295.06	$3.66	$279.15	$3.46
IN 4"	$487.35	$3.66	$461.07	$3.46
Pressurized Zone				
PZI .625"	$26.52	$4.65	$25.09	$4.40
PZI .625" Low Income/Senior	$6.63	$4.65	$6.27	$4.40
PZI .750"	$39.78	$4.65	$37.64	$4.40
PZI .750" Low Income/Senior	$9.95	$4.65	$9.41	$4.40
PZI 1"	$57.46	$4.65	$54.37	$4.40
PZI 1" Low Income/Senior	$14.37	$4.65	$13.59	$4.40
PZI 1.5"	$160.24	$4.65	$151.60	$4.40
PZI 1.5" Low Income/Senior	$40.06	$4.65	$37.90	$4.40
Outside City				
OUT .625"	$29.84	$5.38	$28.23	$5.09
OUT .625" Low Income/Senior	$7.46	$5.38	$7.06	$5.09
OUT .750"	$43.10	$5.38	$40.77	$5.09
OUT .750" Low Income/Senior	$10.77	$5.38	$10.19	$5.09
OUT 1"	$64.10	$5.38	$60.64	$5.09
OUT 1" Low Income/Senior	$16.02	$5.38	$15.16	$5.09
OUT 1.5"	$173.50	$5.38	$164.14	$5.09
OUT 2"	$287.32	$5.38	$271.83	$5.09
SPRINKLER				
.625" IN	$9.95	$2.32	$9.41	$2.20
.625" OUT	$13.26	$4.09	$12.55	$3.87
.625" PZ	$13.26	$3.32	$12.55	$3.14
.750" IN	$14.37	$2.32	$13.59	$2.20
.750" OUT	$18.79	$4.09	$17.77	$3.87
.750" PZ	$19.89	$3.32	$18.82	$3.14
1" IN	$24.31	$2.32	$23.00	$2.20
1" OUT	$30.94	$4.09	$29.27	$3.87
1" PZ	$33.15	$3.32	$31.37	$3.14
1.5" IN	$60.78	$2.32	$57.50	$2.20

1.5" OUT	$78.46	$4.09	$74.23	$3.87
1.5" PZ	$60.78	$3.32	$57.50	$3.14
2" IN	$102.77	$2.32	$97.23	$2.20
2" OUT	$131.51	$4.09	$124.41	$3.87
2" PZ	$102.77	$3.32	$97.23	$3.14
4" IN	$206.65	$2.32	$195.51	$2.20
SPRINKLER MAX (12,000 gallons per month)		$2.32		$2.20

	Proposed		Current	
Rate Description	Base	Usage	Base	Usage
SEWER	5.7%			
Inside City				
SC-1 IN	$19.57	$3.28	$18.51	$3.10
SC-1 IN Low Income/Senior	$4.89	$3.28	$4.63	$3.10
LAUNDRY	$19.57	$3.28	$18.51	$3.10
SC-2 IN	$34.24	$5.84	$32.40	$5.52
SC-2 IN Low Income/Senior	$8.57	$5.84	$8.10	$5.52
SC-3 IN	$39.92	$8.19	$37.77	$7.75
SC-3 IN Low Income/Senior	$9.98	$8.19	$9.44	$7.75
GRINDERS	$49.89	$12.46	$47.20	$11.78
GRINDERS Low Inc/Sr	$12.48	$12.46	$11.81	$11.78
STEP PACK RAT	$51.85	$15.40	$49.06	$14.57
STEP PKRAT Low Inc/Sr	$12.97	$15.40	$12.27	$14.57
Outside City				
SC-1 OUT	$22.87	$5.05	$21.63	$4.78
SC-2 OUT	$38.36	$8.05	$36.29	$7.62
SC-3 OUT	$44.00	$9.74	$41.63	$9.21
STEP REST HAVEN	$55.66	$19.86	$52.66	$18.79
BIG MOUNTAIN	$67.12	$8.05	$63.50	$7.62

Service Class (SC) is determined by number of lift stations and/or complexity of system.

Exhibit "A"

City of Whitefish Solid Waste Collection Rates

3% Rate increase effective 10/1/2013

RESIDENTIAL CONTAINER RATES

	Frequency - # of Containers and/or # of Pick-ups				
Type/Size	**1**	**2**	**3**	**4**	**5**
Curbside Recycle	$4.00				
1 Container	$8.76	$15.89	$22.77	$29.66	$36.54
1 Bear Cart	$10.87	$19.63	$28.38	$37.13	$45.89

COMMERCIAL CONTAINER RATES

For commercial rates, add number of businesses multiplied by $5.50 for the admin charge

All commercial accounts that contract directly for service with a licensed private hauler due to specific needs (such as weekend, rolloff or hazardous material service) shall be charged a minimum fee of $6.50

	Frequency - # of Containers and/or # of Pick-ups				
Type/Size	**1**	**2**	**3**	**4**	**5**
300 Gallon	$23.40	$46.80	$70.20	$93.61	$117.01
300 Gal Shared	$11.70	$23.40	$35.10	$46.80	$58.50
1.5 Yard	$48.57	$97.15	$145.72	$194.30	$242.87
1.5 Yd Shared	$24.29	$48.57	$72.85	$97.14	$121.42
2 Yard	$54.64	$109.28	$163.92	$218.57	$273.21
2 Yd Shared	$27.32	$54.64	$81.96	$109.28	$136.60
2 Yard Bear	$60.24	$120.49	$180.73	$240.98	$301.22
2 Yd Bear Shared	$30.13	$60.25	$90.37	$120.50	$150.62
3 Yard	$58.29	$116.58	$174.86	$233.15	$291.44
3 Yd Shared	$29.14	$58.28	$87.42	$116.56	$145.70
3 Yard Bear	$64.36	$128.73	$193.09	$257.46	$321.82
3 Yd Bear Shared	$32.19	$64.38	$96.57	$128.75	$160.94
4 Yard	$80.13	$160.27	$240.40	$320.54	$400.67
4 Yd Shared	$40.07	$80.14	$120.21	$160.27	$200.34
4 Yard Bear	$86.70	$173.39	$260.08	$346.77	$433.47
4 Yd Bear Shared	$43.34	$86.69	$130.04	$173.39	$216.73
6 Yard	$106.85	$213.70	$320.55	$427.40	$534.25
6 Yd Shared	$53.43	$106.85	$160.27	$213.70	$267.12
6 Yard Bear	$114.44	$228.89	$343.33	$457.77	$572.22
6 Yd Bear Shared	$57.23	$114.45	$171.68	$228.90	$286.13
8 Yard	$136.00	$272.00	$408.00	$544.00	$680.01
8 Yd Shared	$67.99	$135.99	$203.98	$271.98	$339.97

GENERAL FEES

Special Pick-Ups (Off Route)	
Standard Cart - Per Lift	$7.70
Bear Cart-Per Lift	$9.53
300 Gallon-Per Lift	$24.42
1.5 Yard-Per Lift	$24.42
2 Yard-Per Lift	$32.24
3 Yard	$47.84
4 Yard	$51.50
6 Yard	$55.62
8 Yard	$59.74

Extra Pick-up on Site Outside of Container	
Standard-Per Lift	$7.70
Bear Cart-Per Lift	$9.53
300 Gal-Per Lift	$13.80
1.5 Yard-Per Lift	$13.80
2 Yard-Per Lift	$15.45
3 Yards-Per Lift	$16.82
4 Yards-Per Lift	$20.46
6 Yards-Per Lift	$26.53
8 Yards-Per Lift	$32.60

GENERAL FEES-CONTINUED

Change from Regular Cart to Bear Cart		**$48.42**	
New or Additional Cart:	**Regular Cart**	**$65.00**	
	Bear Cart	**$107.00**	
Cleaning of Carts:	**1st Cart**	**$13.36**	
	Additional Cart	**$9.24**	**each**
Delivery Fee-Change out 300g thru 8Yd		**$30.75**	**not applicable to new construction**

Damaged Containers:

Standard Cart	**$103.88**
Bear Cart	**$185.25**
300 Gal	**$525.15**
1Yd to 8Yd Refurbished	**$468.50**
Bear 1 Yd - 8 Yd	**$777.50**

MWS bills customers directly who have compactors and cardboard recycling

Grass clippings need to be bagged and placed in cart - up to 3 bags only (single carts not 300 gal)

All overnight or weekly residential rental units shall be charged at commercial rates.

An admin fee is included in the Residential rate. The admin fee of $5.50 per business is not included in the Commercial rate.

Extra collection charges for garbage outside of containers, special pickups, and cleaning of carts are charged the cost of collection billed to the City plus a $1.00 administration fee. The $1.00 is included in rate schedule.

Extra Pick-ups charges will be waived for two weeks after December 25 for residential pickups.

All new accounts requiring service at a location not previously served or accounts requesting additional cart(s) will be assessed a one-time charge of the cost of the cart(s) billed to the city plus a $5.00 set-up fee. The $5.00 fee is included in the rate schedule above.

Change from regular cart to bear cart, delivery fee for change out 300g thru 8yd, and damaged containers will be assessed the charge of the cost to the city plus a $5.00 admin fee. The $5.00 fee is included in the rate schedule.

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

September 30, 2013

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Recommendation to Adopt a Resolution Specifying Rate Increases for Water, Wastewater and Garbage Collection Services

Introduction/History
The Public Works Department presented information to the City Council on September 16th regarding current policy for annual rate increases for water, wastewater and garbage collection services, in accordance with City Resolutions 6-51, 7-12 and 11-52. The outcome of Council discussion was to direct staff to prepare a resolution for a Public Hearing and Council consideration at the October 7th City Council meeting.

This memo is to present that resolution, along with exhibits to illustrate the result of water and wastewater rate increases of 5.7% and a garbage collection rate increase of 3%. Values associated with lesser water and wastewater rate increases of 3% are attached for your information. A copy of the staff memo from the September 16th City Council meeting packet is attached, as well.

Current Report
If enacted, a 5.7% water and wastewater rate increase would result in an additional charge of approximately $4.25 per month for a typical family. Likewise, a 3% rate increase for garbage collection services would result in an additional charge of approximately $0.25 per month for a typical family. More information is available in the attached staff memo.

Also attached is a draft resolution to enact these rate increases, along with the necessary exhibits.

Financial Requirement
These rate adjustments would increase revenues to the Water, Wastewater and Solid Waste funds, but would not require any new expenditures.

Estimated annual revenue increases for the Water and Wastewater funds, based on the US Bureau of Labor Statistics' Consumer Price Index of 5.7% for Water, Sewer and Trash Collection for All Urban Customers for the twelve month period ending December 31, 2012 would be $168,532 and $213,248, respectively. The estimated annual revenue increase for the Solid Waste Fund, based on a 3% rate increase for garbage collection services, would be $22,445.

Recommendation

We respectfully recommend the City Council consider the information provided with this memo, as well as information and comments presented at the Public Hearing, and direct staff as to how to proceed with proposed rate increases for water, wastewater and garbage collection services.

Sincerely,

John C. Wilson
Public Works Director

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

September 4, 2013

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Recommendations Regarding Annual Utility Rate Adjustments

Introduction/History

In 2006 and 2007, the City Council adopted Resolutions 6-51 and 7-12, which generally provide for water and sewer rates to be adjusted on October 1st of each year "based on the increase, if any, in the U.S. Department of Labor's Water, Sewer and Trash Collection Services Consumer Price Index for All Urban Consumers for the twelve-month period ending the preceding December 31." Copies of those resolutions are attached.

Resolution 11-52 was adopted in October 2011, approving a new five year contract for solid waste hauling services and providing a 3% annual increase for contract fees, as well as a 3% annual increase for user rates. A copy of that resolution is attached.

Current Report

The provisions for annual water and wastewater rate adjustments, or indexing, found in Resolutions 6-51 and 7-12 are an important aspect of these rate plans that enable revenues to keep pace with rising costs such as fuel, power, labor and insurance. Indexing also helps us avoid abrupt rate increases, such as the three successive 30% water rate hikes we experienced in the late 1990s. A table from the Bureau of Labor Statistics' report on the Consumer Price Index for All Urban Customers is attached, indicating the CPI for Water, Sewer and Trash Collection Services for the 12 month period ending December 2012 was 5.7%. If enacted, a 5.7% water and wastewater rate increase would result an additional charge of approximately $4.25 per month for a typical single family home. This calculation is based on an average monthly water and wastewater charge of $74.50.

In the course of adopting Resolution 11-52 for solid waste services, the City Council indicated a preference to forego the annual 3% user rate increase in those years when cash reserves are sufficient to cover the increased charges for contract hauling. A copy of the minutes from that City Council discussion is attached. The Finance Director reports the Solid Waste Fund currently has approximately $78,000 in cash reserves, with projections for that amount to increase slightly under the current rate schedule in FY14.

As such, the fund has adequate reserves to forego a 3% user rate increase; although the Council may want to consider the advisability of building up the cash reserve to allow the option of resuming in-house services for solid waste hauling at some time in the future. If enacted, a 3% rate increase would result in an additional charge of approximately $0.25 per month for a typical single family home.

Financial Requirement

This matter does not involve a financial requirement for the Water or Wastewater Utility, although significant consequences could result if effective revenues were allowed to decline due to inflation.

Cash reserves in the Solid Waste Fund are capable of absorbing the 3% annual increase for contract hauling services. Nevertheless, cash reserves will increase at a slower rate if the Council chooses not to implement a 3% annual user rate increase, as proposed in Resolution 11-52.

Recommendation

Staff respectfully recommends the City Council approve a 5.7% user rate increase for the water and wastewater utilities, effective October 1, 2013, as provided in City Resolutions 6-51 and 7-12.

Staff further recommends the City Council consider the information provided above on the Solid Waste Fund and provide staff with direction as to whether or not to implement the 3% user rate increase proposed in Resolution 11-52. If the Council chooses to direct staff to implement the 3% user rate increase, it is recommended that increase take effect on October 1, 2013.

Sincerely,

John C. Wilson
Public Works Director

RESOLUTION NO. 06-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AMENDING AND ESTABLISHING NEW RATES AND CHARGES FOR WATER SERVICE SUPPLIED TO ITS INHABITANTS AND ALL OTHER PARTIES SERVED BY THE CITY'S WATER UTILITY SYSTEM.

WHEREAS, staff has recommended that a water rate adjustment is necessary to cover the rising costs of operations and maintenance, as well as cash flow requirements for existing debt obligations of the water utility, adequate provision for capital improvements, and discounts for low income and senior citizens; and

WHEREAS, City staff determined that it would be appropriate for the City Council to conduct a public hearing at its September 5, 2006, Council Meeting; and

WHEREAS, pursuant to Sections 69-7-111(2) and (3)(a), MCA, a Notice of Hearing was properly published in the Whitefish Pilot; and

WHEREAS, pursuant to Section 69-7-111(3)(b), MCA, the proper notice was mailed to all customers receiving water utility service from the City of Whitefish; and

WHEREAS, pursuant to Section 69-7-111(5), MCA, a Notice of the hearing was mailed to the Montana Consumer Council; and

WHEREAS, on September 5, 2006, a public hearing was conducted, and members of the public expressed their opinions concerning the proposed adjustment; and

WHEREAS, the City Council of the City of Whitefish has determined that it will be in the best interests of the City of Whitefish, its inhabitants, and all other parties served by the City's water utility system to adjust the rates and charges for water utility service;

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

Section 1: That those rates and charges as reflected on Exhibits "A-1," "A-2," "A-3," and "A-4," attached hereto and incorporated herein by reference, are hereby adopted and approved by the City Council of the City of Whitefish and shall be implemented effective for water use billed after October 1, 2006.

Section 2: In addition to the rate increase reflected on the attached exhibits, on October 1 of every year, beginning October 1, 2009, and continuing thereafter indefinitely, the basic service charge component of the City water rate, the commodity rate component rate of the City water rate, and the sprinkling rate will be automatically increased, based on the increase, if any, in the US Department of Labor's Water, Sewer and Trash Collection Services Consumer Price Index for All Urban Consumers for the twelve-month period ending the preceding December 31. For instance, the automatic rate increase that will take

effect on October 1, 2009, will be based on the increase in the above-referenced Consumer Price Index for the previous calendar year. The City Council will be notified of the amount of the increase based on the Consumer Price Index.

Section 3: This Resolution shall be filed immediately with the City Clerk, and shall become final ten (10) days after being filed with the City Clerk.

Section 4: Once this Resolution becomes final, a copy of the Resolution, together with the attached exhibits, shall be filed with the Public Service Commission.

Section 5: Once this Resolution becomes final, the City Public Works Department is authorized and directed to implement the adjustments reflected on the attached exhibits, and the automatic increase described in Section 2, above.

Section 6: That the City Council of the City of Whitefish hereby repeals any and all prior Motions or Resolutions implementing rates and charges for water utility service that are inconsistent with the terms hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 5TH DAY OF SEPTEMBER, 2006.

ANDY FEURY, MAYOR

ATTEST:

Necile Lorang, City Clerk

RESOLUTION NO. 07-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AMENDING AND ESTABLISHING NEW RATES AND CHARGES FOR SEWER SERVICE SUPPLIED TO ITS INHABITANTS AND ALL OTHER PARTIES SERVED BY THE CITY'S SEWER UTILITY SYSTEM.

WHEREAS, staff has recommended that a sewer rate adjustment is necessary to cover the rising costs of operations and maintenance, as well as cash flow requirements for existing debt obligations of the sewer utility, adequate provision for capital improvements, and discounts for low income and senior citizens; and

WHEREAS, City staff determined that it would be appropriate for the City Council to conduct a public hearing at its March 5, 2007, Council Meeting; and

WHEREAS, pursuant to Sections 69-7-111(2) and (3)(a), MCA, a Notice of Hearing was properly published in the Whitefish Pilot; and

WHEREAS, pursuant to Section 69-7-111(3)(b), MCA, the proper notice was mailed to all customers receiving sewer utility service from the City of Whitefish; and

WHEREAS, pursuant to Section 69-7-111(5), MCA, a Notice of the hearing was mailed to the Montana Consumer Council; and

WHEREAS, on March 5, 2007, a public hearing was conducted, and members of the public expressed their opinions concerning the proposed adjustment; and

WHEREAS, the City Council of the City of Whitefish has determined that it will be in the best interests of the City of Whitefish, its inhabitants, and all other parties served by the City's sewer utility system to adjust the rates and charges for sewer utility service;

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

Section 1: Those rates and charges as reflected on Exhibit "A," attached hereto and incorporated herein by reference, are hereby adopted and approved by the City Council of the City of Whitefish and shall be implemented effective for sewer use billed after October 1, 2007.

Section 2: In addition to the rate increase reflected on the attached exhibit, on October 1 of every year, beginning October 1, 2010, and continuing thereafter indefinitely, the City sewer rates and charges shall be automatically increased, based on the increase, if any, in the US Department of Labor's Water, Sewer and Trash Collection Services Consumer Price Index for All Urban Consumers for the twelve-month period ending the preceding December 31. For instance, the automatic rate increase that will take effect on October 1, 2010, will be based on the increase in the above-referenced

Consumer Price Index for the previous calendar year. The City Council will be notified of the amount of the increase based on the Consumer Price Index.

Section 3: This Resolution shall be filed immediately with the City Clerk, and shall become final ten (10) days after being filed with the City Clerk.

Section 4: Once this Resolution becomes final, a copy of the Resolution, together with the attached exhibit, shall be filed with the Public Service Commission.

Section 5: Once this Resolution becomes final, the City Public Works Department is authorized and directed to implement the adjustments reflected on the attached exhibit, and the automatic increase described in Section 2, above.

Section 6: The City Council of the City of Whitefish hereby repeals any and all prior Motions or Resolutions implementing rates and charges for sewer utility service that are inconsistent with the terms hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 5TH DAY OF MARCH, 2007.

ANDY FEURY, MAYOR

ATTEST:

Necile Lorang, City Clerk

RESOLUTION NO. 11-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, APPROVING A CONTRACT WITH MONTANA WASTE SYSTEMS, INC., D/B/A NORTH VALLEY REFUSE FOR SOLID WASTE COLLECTION AND DISPOSAL AND ESTABLISHING A GARBAGE COLLECTION FEE SCHEDULE.

WHEREAS, Section 7-5-4301, MCA, authorizes the City of Whitefish to make any contract necessary to carry into effect its municipal powers authorized by Montana law; and

WHEREAS, since 2004, the City of Whitefish has contracted for the collection and disposal of solid waste for its residential and commercial businesses within the City boundaries with Montana Waste Systems, Inc., d/b/a North Valley Refuse, a Montana corporation licensed and authorized to collect and haul solid waste to the Flathead County Solid Waste District Landfill; and

WHEREAS, according to the terms of the contract, the City charges City residents and commercial businesses for the cost of solid waste collection and disposal, and the City compensates the City's contractor; and

WHEREAS, in order to initiate the process for approval of the five-year contract with North Valley Refuse, which beginning in 2012 would have a three percent (3%) annual increase in fees, and incorporate the monthly base rate for all solid waste collection and disposal customers and a garbage collection fee schedule, the City scheduled a public hearing before the Whitefish City Council, to be held at 7:10 p.m. on October 17, 2011; and

WHEREAS, prior to such hearing, a notice of the type required by Section 69-7-111, MCA, was published in the *Whitefish Pilot* three times, in compliance with subsection 69-7-111(3)(a), MCA; and

WHEREAS, notice of the hearing with the proposed monthly base rate, rate increases and fee schedule was also mailed to all persons receiving solid waste collection and disposal services, in the manner required by subsection 69-7-111(3)(b), MCA; and

WHEREAS, notice of the hearing was mailed, first class, postage prepaid, to the Montana Consumer Counsel, as required by subsection 69-7-111(5), MCA; and

WHEREAS, all notices referenced above comply fully with the requirements of Section 69-7-111, MCA; and

WHEREAS, at the October 17, 2011, public hearing, the City Council permitted all interested persons to speak, and all written comments received prior to the hearing were considered by the City Council and made a part of the public record; and

WHEREAS, upon completion of the public hearing, the City Council determined that it would be in the best interests of the City of Whitefish and its inhabitants and businesses,

to approve the proposed five-year contract with North Valley Refuse, with its annual three percent (3%) increases for solid waste collection and disposal, monthly base rates, and establish a garbage collection fee schedule.

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

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

Section 2: The new five (5) year contract for solid waste collection and disposal, which beginning in 2012 would incorporate an annual three percent (3%) increase, and fee schedule as shown as Exhibit "1", attached hereto and incorporated by reference, are hereby adopted and approved, and the City Public Works Department is directed to implement the garbage collection fee schedule beginning immediately.

Section 3: The Whitefish City Manager is authorized to negotiate and execute a contract on behalf of the City of Whitefish, which incorporates the above-referenced terms, and is directed to fulfill all of the City's obligations under such contract.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor or Deputy Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 17TH DAY OF OCTOBER, 2011.

John M. Muhlfeld

John Muhlfeld, Deputy Mayor

ATTEST:

Necile Lorang

Necile Lorang, City Clerk

EXHIBIT "1"

City of Whitefish Garbage Collection Fees

RATES

Monthly residential ($8.50 per month) & commericial rates are unchanged - no increase until Oct 2012.

Beginning Oct 2012 rates are proposed to increase 3% annually for four years.

Only the fees below are proposed to be changed or added at this time.

GENERAL FEES

Special Pick-Ups (Off Route)		Proposed
Standard Cart - Per Lift	$7.49	
Bear Cart-Per Lift	$9.25	
300 Gallon-Per Lift	$23.71	
1.5 Yard-Per Lift	$23.71	
2 Yard-Per Lift	$31.30	
3 Yard	$46.45	$50.00
4 Yard	$61.60	$54.00
6 Yard	$91.89	$58.00
8 Yard	$122.19	

Extra Pick-up on Site Outside of Container		Proposed
Standard-Per Lift	$7.49	
Bear Cart-Per Lift	$9.25	
300 Gal-Per Lift	$13.40	
1.5 Yard-Per Lift	$13.40	
2 Yard-Per Lift	$13.40	$15.00
3 Yards-Per Lift	$16.33	
4 Yards-Per Lift	$19.86	
6 Yards-Per Lift	$25.76	
8 Yards-Per Lift	$31.65	

GENERAL FEES-CONTINUED

		Proposed	
Change from Regular Cart to Bear Cart		$47.16	
New or Additional Cart:	Regular Cart	$65.00	
	Bear Cart	$107.00	
Cleaning of Carts:	1st Cart	$13.00	
	Additional Cart	$9.00	each
Delivery Fee-Change out 300g thru 8Yd		$30.00	not applicable to new construction
Damaged Containers:			
Standard Cart		$101.00	
Bear Cart		$180.00	
300 Gal		$510.00	
1Yd to 8Yd Refurbished		$455.00	
Bear 1 Yd - 8 Yd		$755.00	

Extra Pick-ups charges will be waived for two weeks after December 25 for residential pickups.

Extra collection charges for garbage outside of containers, special pickups, and cleaning of carts are charged the cost of collection billed to the City plus a $1.00 administration fee. The $1.00 is included in the rates.

Montana Waste Systems bills customers directly who have compactors and cardboard recycling

Grass clippings need to be bagged and placed in cart - up to 3 bags only (single carts not 300 gal)

All overnight or weekly residential rental units shall be charged at commercial rates.

Change from regular cart to bear cart, delivery fee for change out 300g thru 8yd, and damaged containers will be assessed the charge of the cost to the city plus a $5.00 admin fee. The $5.00 fee is included in the rates.

mess certain times of the week and he asked how they control that. Manager Stearns said that is in the next resolution and contract. They have to clean up their collection sites as part of the contract.

Deputy Mayor Muhlfeld opened the public hearing.

Richard Hildner, 104 E. 5th Street, said he approves because it is fair to share the fixed costs.

No one else wished to speak and Deputy Mayor Muhlfeld closed the public hearing.

Councilor Kahle asked what the base rate is and what it covered. Finance Director Knapp said the lowest and most common base rate for water is $21, sewer $17.20, and garbage $8.50 for a total of $46.70. The base rate varies on size of meter and number of lift stations. The base rate is charged regardless of use, so if the customer has no use for a month, their bill will still be a minimum of $46.70. Public Works Director Wilson said there was a specific analysis to determine the fixed costs. Councilor Kahle agreed with Richard Hildner that they need to cover the fixed costs. Councilor Mitchell asked and Director Knapp said he didn't know how Columbia Falls or Kalispell break down their base rate. He said Flathead Electric is about $21 for their base rate on electric use.

Councilor Friel asked and Rose Elliott, City of Whitefish Utilities Services Supervisor, said Columbia Falls has a tiered system based on usage. She said Kalispell has a flat rate plus usage. In Columbia Falls they can turn off the water, but Kalispell does not. The base rate for Clyde Park, MT with 4,000 gallons of water usage is $52. The City of Whitefish is low based on 4,000 gallons. She said this will also reduce staff work load for utility billing. Director Wilson said he has tried to get another water clerk for the last three years because they have a lot of work for two people. He said this will make the system more manageable for the staff. Councilor Friel agreed that this was a sensible way to be equitable for all customers.

Councilor Friel offered a motion, seconded by Councilor Kahle, to approve Resolution No. 11-51; A Resolution establishing a year round, monthly base rate for all customers of city water, wastewater, and garbage collection services. The motion passed unanimously.

6b. Resolution No. 11 - 52; A Resolution approving a five year contract with Montana Waste Systems, Inc., d/b/a North Valley Refuse for solid waste collection and disposal and establishing a garbage collection fee schedule (p. 27)

Assistant City Manager/Finance Director Knapp passed out a new resolution because the contract in the packet wasn't the final contract from Montana Waste Systems, Inc. because their lawyer had a few small issues with the contract. This resolution authorizes the City Manager to finalize the final details. He reported that in May 2004, the City moved from collecting solid waste in house to contracting with Montana Waste Systems Inc. (MWS); however the billing remains in house. Staff looked into bidding out the solid waste service, only to discover pursuant to Public Service Commission's regulations for service area, the only other potential bidder, Evergreen, was several miles too far away. The only competition is the City.

The new five year MWS contract major changes include the following:

1. No fee increase until October 2012,

2. Customer is charged garbage even if the customer's water/sewer is turned off. (MWS does not prorate or cease any charges to the city)
3. Cost increase is established at 3% annually.
4. No charge for public unit street cans on Central Avenue & downtown area.
5. MWS establishes new fees for delivery, damaged carts and cardboard special pickup.
6. Also, since we are not turning off garbage billing, MWS agrees to waive the extra garbage charge for two weeks after Christmas each year so the snowbirds who are visiting their house for holidays could put out extra garbage (present boxes, etc) at holidays in return for the months they are billed for no pickups. This benefit would apply to all residential pickups as well. He said Roger, with Montana Waste Systems was in the audience to answer questions if they had any.

The proposed contract (Exhibit "1") and exhibits are included in the packet.

Solid Waste-Collection Fees

Some garbage fees were never identified in our fees charged to residents, the schedule in the packet lists out the fees with some changes. A 3% increase, starting October 2012, will result in about a 25 cent residential increase each year of the contract. Current residential is $8.50, Oct 2012-$8.75, Oct 2013-$9.00, Oct 2014-$9.25, and Oct 2015-$9.50. A 3% increase will have a greater effect on commercial due to higher rates.

Councilor Friel said it might be a good idea to let the public look at the contract since they just received the new resolutions.

Deputy Mayor Muhlfeld opened the public hearing.

Richard Hildner, 104 E. Fifth Street, said this is also fair and equitable. He said on page 57, Exhibit A, page 8 of 26 item 5 has a word missing. Manager Stearns said Finance Director Knapp will address it on the next agenda item. Councilor Mitchell said it was his understanding that the 3% increase would come before the Council each year. Finance Director Knapp said it isn't set up that way now. Other Councilors said they also remembered that as what they requested in a work session.

No one else wished to speak and Deputy Mayor Muhlfeld closed the public hearing.

Councilor Mitchell asked and Rodger Bridgeford, Montana Waste Systems, Inc. said they adjusted fees—they raised some and lowered some to encourage people to use larger containers to reduce MWS trips. Mr. Bridgeford explained that they charge fees for collection, transportation and container maintenance; this enables them to pass affordable rates on to the customers in rural areas. Councilor Mitchell asked if there is a way to promote recycling. Mr. Bridgeford said they collect three times/week at the recycling sites, but if they have a problem they'll get out there and clean it up within a few hours. Councilor Kahle asked how close they are to having recycling at individual homes. Mr. Bridgeford said the transportation costs are a large deterrent and they can't find a recovery place for glass. He said they do good curbside recycling of cardboard. Manager Stearns said it is an additional cost because it is a separate truck. Mr. Bridgeford said it is $4.00/month for bi-weekly pick-up. Manager Stearns said they received several emails about garbage pick-up and the base rate. Those were handled out to the Council at the work session today. Finance Director Knapp said the contract currently says there will be a 3% increase every year. Councilor Mitchell clarified that senior rates remain discounted. He asked and Finance Director Knapp said the 3% increased is built into the

contract. Councilor Mitchell said if the City is doing well with cash and can pay it with cash he doesn't want to see them increase the fee by 3% annually. The rest of the Council indicated agreement.

Councilor Mitchell offered a motion, seconded by Councilor Friel, to approve Resolution No. 11 - 52; A Resolution approving a five year contract with Montana Waste Systems, Inc., d/b/a North Valley Refuse for solid waste collection and disposal and establishing a garbage collection fee schedule. The motion passed unanimously.

6c. Resolution No. 11-_____; A Resolution adopting updated Rules and Regulations for the city's water, wastewater, and garbage utility (p. 48)

Assistant City Manager/Finance Director Knapp reported that staff went through the Utility Rules and Regulations and identified several areas that need updating. The main changes dealt with location of meters and refunding deposits. Some updates relate to the proposed year round base rate, some from billing changes made in the August 15 Council Meeting, and some are new recommendations from staff. He said the Council was handed a new page 8 with amendments including the correction Richard Hildner mentioned earlier. Deputy Mayor Muhlfeld asked about the location of meters and Rose Elliott, City Utilities Services Supervisors, said since 9/11, Homeland Security did a vulnerability test and one of the vulnerabilities is the water structure issue. Meters are supposed to be in meter pits outside the home. It is safer and also allows easier access for staff. It will be phased in with new construction and replacement of water lines. Deputy Mayor Muhlfeld asked and Supervisor Elliott said individuals pay about $1200 for the replacement and repair costs for the meter and the plumber. Manager Stearns said they've been implementing this already and some people have been angry. For someone it resulted in $2000 in costs. He wondered if it was an absolute requirement of Homeland Security. Ms. Elliott said she believes it is. He also wondered if the meter was bad could they replace the existing meter inside. Ms. Elliott said if only the meter is broken then the owner can just replace the meter. Councilor Askew asked about #5 on page 14 of 26, which says that "Meters can be moved at the discretion of the City staff at the cost of the resident." She said some of the older meters are in pits the staff can't get to and the lines are pretty deteriorated. Public Works Director Wilson said some of the older meters are in crawl spaces under old homes and it isn't safe or convenient. It impedes safety and accessibility. Deputy Mayor Muhlfeld said they should get a definite answer from the Homeland Security. Councilor Mitchell said it is a large expense for homeowners so he wants to be sure it is required. Councilor Hyatt asked if there was consensus to move this to the next meeting so they could address wording and determine the Homeland Security Issue.

Councilor Friel moved, seconded by Councilor Hyatt, to table the resolution updating Rules and Regulations for the city's water, wastewater, and garbage utility to the November 3 meeting. The motion passed unanimously.

7. COMMUNICATIONS FROM CITY MANAGER

7a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 76)

Councilor Mitchell asked and City Manager Stearns said Grouse Mountain Lodge had just recently joined the WCVB.

7b. Other items arising between October 12th and October 17th

Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by expenditure category and commodity and service group

(1982-84=100, unless otherwise noted)

Item and group	Relative importance, December 2011	Unadjusted indexes		Unadjusted percent change to Dec. 2012 from—		Seasonally adjusted percent change from—		
		Nov. 2012	Dec. 2012	Dec. 2011	Nov. 2012	Sep. to Oct.	Oct. to Nov.	Nov. to Dec.
Expenditure category								
All items	100.000	230.221	229.601	1.7	-0.3	0.1	-0.3	0.0
All items (1967=100)	-	689.639	687.782	-	-	-	-	-
Food and beverages	15.256	234.742	235.230	1.8	.2	.2	.2	.2
Food	14.308	234.896	235.390	1.8	.2	.2	.2	.2
Food at home	8.638	232.295	232.901	1.3	.3	.3	.3	.2
Cereals and bakery products	1.242	267.817	268.057	.8	.1	.4	.3	.2
Meats, poultry, fish, and eggs	1.960	232.303	232.262	1.5	.0	.8	-.1	.0
Dairy and related products [1]	.916	218.921	219.443	.5	.2	.8	.8	.2
Fruits and vegetables	1.287	284.367	288.516	1.8	1.5	.6	.2	.6
Nonalcoholic beverages and beverage materials	.961	168.222	168.204	-.2	.0	-.3	.5	.2
Other food at home	2.272	204.531	204.626	2.0	.0	-.1	.4	.1
Sugar and sweets [1]	.307	212.272	213.265	1.1	.5	-.2	-1.2	.5
Fats and oils	.263	231.588	231.540	1.7	.0	-.1	.8	.0
Other foods	1.703	216.748	216.708	2.2	.0	-.1	.6	.1
Other miscellaneous foods [1 2]	.627	128.936	129.455	2.5	.4	-.4	.4	.4
Food away from home [1]	5.669	240.038	240.359	2.5	.1	.1	.1	.1
Other food away from home [1 2]	.361	167.835	167.816	2.3	.0	.2	.2	.0
Alcoholic beverages	.948	231.178	231.572	1.9	.2	-.1	.2	.4
Housing	41.020	223.814	224.032	1.7	.1	.2	.3	.1
Shelter	31.539	258.999	259.298	2.2	.1	.3	.2	.1
Rent of primary residence [3]	6.485	263.365	264.098	2.7	.3	.4	.2	.2
Lodging away from home [2]	.749	132.399	129.021	.7	-2.6	.5	-1.0	-.9
Owners' equivalent rent of residences [1 3 4]	23.957	267.099	267.480	2.1	.1	.2	.2	.1
Owners' equivalent rent of primary residence [1 3 4]	22.543	267.073	267.454	2.1	.1	.2	.2	.1
Tenants' and household insurance [1 2]	.348	132.468	133.852	3.4	1.0	.2	.5	1.0
Fuels and utilities	5.372	217.964	218.496	.4	.2	.4	.7	.4
Household energy	4.216	187.141	187.642	-1.1	.3	.4	.8	.4
Fuel oil and other fuels [1]	.343	335.075	335.590	-1.4	.2	1.1	.3	.2
Energy services [3]	3.873	187.359	187.880	-1.1	.3	.3	.9	.4
Water and sewer and trash collection services [2]	1.156	192.921	193.237	5.7	.2	.4	.4	.4
Household furnishings and operations	4.109	125.500	125.202	.0	-.2	-.1	.4	-.2
Household operations [1 2]	.727	155.921	156.143	2.2	.1	-.1	.4	.1
Apparel	3.562	129.573	125.656	1.8	-3.0	.7	-.6	-.1
Men's and boys' apparel	.855	122.155	118.525	2.2	-3.0	-.5	.8	-.2
Women's and girls' apparel	1.507	117.143	111.974	1.0	-4.4	1.7	-1.4	-.6
Infants' and toddlers' apparel	.201	121.410	119.652	1.4	-1.4	.8	-1.7	.4
Footwear	.678	135.849	133.908	4.4	-1.4	.7	.1	.4
Transportation	16.875	214.525	211.853	1.6	-1.2	-.1	-2.6	-.6
Private transportation	15.694	209.745	206.874	1.5	-1.4	-.3	-2.8	-.8
New and used motor vehicles [2]	5.651	99.645	99.743	-.1	.1	-.5	-.1	.0
New vehicles	3.195	144.762	145.181	1.6	.3	-.1	.2	.0
Used cars and trucks	1.913	145.862	145.234	-2.0	-.4	-.9	-.5	-.4
Motor fuel	5.463	299.777	287.408	1.7	-4.1	-.6	-7.3	-2.3
Gasoline (all types)	5.273	298.131	285.606	1.7	-4.2	-.6	-7.4	-2.3
Motor vehicle parts and equipment [1]	.438	148.509	148.761	.9	.2	-.1	-.1	.2
Motor vehicle maintenance and repair [1]	1.155	258.943	258.845	1.3	.0	.2	.1	.0
Public transportation	1.181	272.244	273.364	2.4	.4	1.7	.8	1.0
Medical care	7.061	418.653	418.654	3.2	.0	.0	.1	.1
Medical care commodities [1]	1.716	334.285	332.684	1.7	-.5	.0	-.4	-.5
Medical care services	5.345	445.278	445.955	3.7	.2	.0	.3	.3
Professional services	3.005	344.158	344.409	1.9	.1	.0	.1	.2

See footnotes at end of table.

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

October 1, 2013

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

Request to Extend Preliminary Plat for Lookout Ridge – (WPP-10-10/WPUD-10-11)

Honorable Mayor and Council:

Request/Background:
Taylor Horst of Whitefish Credit Union on behalf of Lookout Ridge Investors llc has requested a 2-year extension to the Lookout Ridge preliminary plat pursuant to §12-3-8.

Lookout Ridge is a 139 units on 267.7 acres located north of Iron Horse and Ptarmigan off the Big Mountain Road. Attached to this report are the conditions of approval and a preliminary plat map. The preliminary plat was approved by the Whitefish City Council on June 18, 2007. On May 5, 2008, the Council approved an amended preliminary plat to add nearly 40 acres to the subdivision. On June 21, 2010, the Council granted a second amendment to the preliminary plat in order to place 16 cabins on individual lots, as they had previously been located on a common lot.

Whitefish Subdivision Regulations:
Pursuant to §12-3-8, Time Limits for Preliminary Plat Approval, the Council may grant a two-year extension prior to the end of the preliminary plat expiration "provided the subdivider can show continued good faith in working toward final plat."

Montana Subdivision and Platting Act:
Pursuant to §76-3-610(2), M.C.A., "After the application and preliminary plat are approved, the governing body … may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period."

Current Report:
The Council reviewed the request for a two-year extension on June 17, 2013 (minutes are attached). At the meeting the Council only granted a six month extension, but asked the Credit Union and/or developer to return to address the landslide area that occurred in early June 2011. It appears from the minutes that there was also an expectation that the property ownership issue between the Credit Union and the developer would be resolved in order for remediation of the landslide area to occur.

Attached please find a report from Roger Noble of Applied Water Consulting llc addressing the cause of the landslide. Mr. Noble attributes the landslide to saturated soils associated with a wetland complex that was triggered due to an intense rainfall event that accelerated snowmelt runoff volumes and not due to the installation of infrastructure. Please carefully review its findings.

In addition, please find a letter of support for the extension from Bruce Boody of Bruce Boody Landscape Architects, as the project lead for Lookout Ridge. Mr. Boody points out that the location of the landslide (lots 59 and 60) was also an area with a condition of approval that required additional critical area review. This review was underway when the recession hit, but was not completed. Mr. Boody also points out some of the community benefits for the project – public trails, public parking to access the trails and a $50,000/year over 10-years to the Whitefish Housing Authority.

Finally, since an earlier report on the landslide was completed by Tom Cowan of Carver Engineering, on behalf of Iron Horse, staff has also included the report. Mr. Cowan also points to the highly saturated soils, heavy rain, melting snow and possibly subsurface water flowing along a sewer line.

The ownership issue between the Credit Union and the developer are still unresolved. The Credit Union is acting on behalf of the developer only for the extension request, but the Credit Union still is not the owner of the property.

Recommendation:
Financial institutions do not typically assume the role of developer, but are more likely to sell an entitled development to someone that will fulfill the conditions of the project. Staff is concerned that if this plat isn't extended the Credit Union will have a difficult time selling the land without an entitlement and the landslide area will not be remediated in the near-term.

The plat now expires on December 21, 2013. Staff recommends Council **approve** the 18-month extension request until June 21, 2015.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

Att: Conditions of approval, June 23, 2010
Extension Letter dated June 10, 2013
Preliminary plat map, dated April 26, 2007
Letter, Roger Noble, Applied Water Consulting llc, 9-26-13
Letter, Bruce Boody, Bruce Boody Landscape Architect Inc, 9-30-13

Minutes, City Council, 6-17-13
Report, Tom Cowan, Carver Engineering, 6-11-11

c/w/att: Necile Lorang, City Clerk

c/w/o/att: Taylor Horst, Whitefish Credit Union, PO Box 37 Whitefish, MT 59937

Lookout Ridge
Preliminary Plat/Planned Unit Development
WPP-10-10/WPUD-10-11
Whitefish City Council
Conditions of Approval
June 21, 2010

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

2. Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, accompanying reports along with their recommendations, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as "approved plans" by the City Council.

3. Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, stormwater management, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's Engineering Standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, trails and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. Public utilities shall be located only in road rights-of-way unless otherwise approved by the Public Works Director. (City Engineering Standards, 2009)

4. The water system shall be privately owned, operated and maintained. All water valves, water storage tanks, fire hydrants, water piping and appurtenances located within the subdivision boundaries shall be owned, operated and maintained by the Lookout Ridge Homeowners' Association. (City Engineering Standards, 2009)

5. A tree retention plan shall be submitted to the Planning Department for review and approval. Appropriate trees outside building envelopes, driveways and roads shall be preserved. Any additional tree removal is subject to approval by the Planning & Building Department. To ensure proper root protection, all trees to be retained shall be barricaded to the dripline prior to any construction activity. Contact the Planning & Building Department for a field inspection prior to any construction activity after final engineering plans have been approved. Inspection of barricades shall be on-going during construction. (Subdivision Regulations, 12-4-5)

6. A wetland restoration plan shall be submitted to Planning and Public Works Departments for review and approval and shall include a minimum 25-foot buffer from the edge of the wetland after its restoration. (Staff Report, Finding 3)

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

8. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:
   - Dust abatement and control of fugitive dust.
   - Hours of construction activity.
   - Noise abatement.
   - Control of erosion and siltation.
   - Routing for heavy equipment, hauling, and employees.
   - Construction office siting, staging areas for material and vehicles, and employee parking.
   - Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
   - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
   - Notation of any street closures or need to work in public right-of-way.

9. All roads within the subdivision shall be built to City of Whitefish Public Works Standards and the Whitefish Subdivision Regulations. The roadway within the subdivision shall be privately owned and maintain, but open to the public, including parking. (City Engineering Standards, 2009)

10. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance. (Zoning Section 11-3-25)

11. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works

Department approving the stormwater management, water and sewage collection facilities for the subdivision. (Subdivision Regulations, Appendix C)

12. A landscaping plan for the open space, trails and landscaping buffers shall be submitted to the Planning Department for review and approval. Landscaping plans shall also be approved by the Public Works Department, as they relate to LID design. (Staff Report, Finding 4)

13. The applicant shall provide a public parking area/trailhead for the public to access the public trail. (Staff Report, Finding 4)

14. The developer shall coordinate with the City's contractor, North Valley Refuse (NVR), regarding garbage collection. The Homeowners' Association shall be responsible to maintain all weather access to the pick up site or sites. If required by NVR, a centralized site or sites shall be established prior to final plat. (City Engineering Standards, 2009)

15. Prior to final plat, the developer shall enter into an agreement with the City whereby the Homeowners' Association shall either assume responsibility for individual property owner's past due bills for sewer service and garbage pick-up services or assist the City by shutting off water service to delinquent accounts. (City Engineering Standards, 2009)

16. Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for the Lookout Ridge Subdivision Homeowners' Association (HOA) providing for:
    - Long-term maintenance of the open spaces, landscape buffers, private streets, sidewalks, trails and the street trees;
    - Snow removal on the roads and emergency access as a HOA responsibility; and
    - Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat.
    - Long-term maintenance plan for drainage and stormwater management.
    - Long-term maintenance for the water system including all water valves, water storage tanks, fire hydrants, water piping and appurtenances.
    - All recommended restrictions from the Wildlife Management Plan.
    - The fire protection zone guidelines (appendix K of the subdivision regulations) shall be made a component of the covenants.

    (Subdivision Regulations 12-4-29; Staff Report Finding 4; City Engineering Standards, 2009)

17. The following notes shall be placed on the face of the plat:
    a. Garbage shall be stored in a secure location until the day of pick up or in a bear proof container.
    b. House numbers shall be located in a clearly visible location.

c. Only class A and class B fire-rated roofing materials are allowed.
d. Defensible Space Standards shall be incorporated around all primary structures, as described in the Covenants.
e. The internal roads shown on the final plat are intended to be privately owned and maintained and open to the public, including parking. 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.
f. Lots 22, 26, 31, 32, 35, 37, 59, and 60 shall comply with the critical area ordinance in effect at the time of building permit issuance.

(Subdivision Regulations, Appendix D; Staff Report Finding 3)

18. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and the spread of noxious weeds. (Subdivision Regulations 12-4-29)

19. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (UFC; Subdivision Regulations 12-4-19; Engineering Standards, 2009)

20. Mail facilities shall be provided by the developer and approved by the local post office. (Subdivision Regulations 12-4-23)

21. No building permits shall be issued by the City of Whitefish until the applicant has received final plat, water and sewer lines are installed and inspected and all-weather drivable surface is installed and inspected. (Subdivision Regulations 12-3-11)

22. Development of lot 76 shall require an amended Planned Unit Development prior to the start of construction. Density of lot 76 shall not exceed eight units, as identified on the approved plans. (Staff Report Background)

23. This preliminary plat and planned unit development is valid for three years from Council action. (Subdivision Regulations 12-3-8)

24. Install a trail that is open to the public. Work with the City's Bike and Pedestrian Committee and neighboring properties to place the trail in the best location. (Staff Report, Finding 4)

25. All plans (forest management, wildlife management, etc.) submitted as part of the application shall be adhered to. (Staff Report, Finding 3)

26. Prior to final plat, the applicant shall enter into an agreement with the Whitefish Housing Authority to provide and secure $50,000.00 per year for 10 years to the WHA. (Staff Report, Finding 7)

27. Lots 22, 26, 31, 32, 35, 37, 59, and 60 shall obtain a Critical Areas Compliance Permit and comply with the critical area ordinance in effect at the time of building permit issuance. (Staff Report, Finding 3)

28. A map of fire protection features shall be submitted to the fire chief or designee for review and approval prior to final plat. This map will show access roads, hydrants, water supply point and any other pertinent items. It shall also be made a component of the homeowners' covenants. (Subdivision Regulations 12-4-6)

29. Roads signs shall be approved by the fire marshal. Such signs shall be noncombustible and reflective. (Subdivision Regulations 12-4-6)

Whitefish Credit Union

P.O. Box 37
WHITEFISH, MONTANA 59937-0037

300 Baker Ave. • 862-3525
Whitefish

234 E. Montana • 257-3123
Kalispell

320 Nucleus Ave. • 892-8000
Columbia Falls

110 3rd Ave. E. • 883-3600
Polson

202 Dewey Ave. E. • 297-7800
Eureka

107 Pond St. • 827-5626
Thompson Falls

215 E. Idaho Ave. • 257-6042
Kalispell

6/10/2013

• • •

Whitefish City Council
418 E. 2nd Street
Whitefish, MT 59937

To whom this may Concern:

The Whitefish Credit Union would like to request a two (2) year extension on the Lookout Ridge Second Amended Preliminary Pat/Planned Unit Development; WPP-10-10/WPUD-10-11. Please see attached agreement executed by both parties that authorizes the credit union to make such a request on behalf of Lookout Ridge Investors, LLC.

Sincerely,

Taylor Horst
SVP/Chief Lending Officer
Whitefish Credit Union

06-10-13 A11:26 IN

AGREEMENT

THIS AGREEMENT is made this 7 day of June, 2013, by WHITEFISH CREDIT UNION ("WCU") of Whitefish, Montana and LOOKOUT RIDGE INVESTORS, LLC of Whitefish, Montana.

1. APPOINTMENT. Lookout Ridge Investors, LLC hereby appoints WCU as its lawful agent, with all necessary authority to apply for and obtain an extension to that Preliminary Plat (WPP-10-10/WPUD-10-11) from the City of Whitefish, MT and any/all other government permits and licenses in any way relating to the following described real property, currently owned by Lookout Ridge Investors, LLC:

   See "Exhibit A" attached hereto.

2. COST OR FINANCIAL OBLIGATIONS. If there is any cost associated with the authority given in Paragraph 1 or the activities described in Paragraph 1, or the approval process requires a commitment of future resources, or there are any other monetary obligations involved, WCU agrees to fund the effort.

3. ASSIGNMENT OF RIGHTS. Lookout Ridge Investors, LLC plans to assign whatever permits or rights it obtains in this process to WCU along with the foreclosure judgment. WCU agrees to accept such assignment.

4. FACTUAL REPRESENTATIONS / CANDOR. If questions arise or the context requires it, WCU agrees to act with, and respond to any questions from public officials and others with, the utmost candor, disclosure of all material facts and fairness. This would include, but not be limited to: the status of the lawsuit and expected judgment; the financial condition of Lookout Ridge Investors, LLC and its inability to carry out any commitments it may make via WCU's activities described in Paragraph 1.

5. BINDING AGREEMENT AND ENFORCEABLE. The terms in this Agreement are a contract, binding on Lookout Ridge Investors, LLC and WCU and each attorney hereto represents to the other that he has his respective client's authority, permission and consent to enter into this agreement. Any breach of this agreement or need to enforce it will be undertaken in the pending foreclosure action, Flathead County Cause No. DV-10-1620B.

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed on those dates indicated below.

(WHITEFISH CREDIT UNION)

X _____

Brian Joos or Ryan Purdy/Attorneys

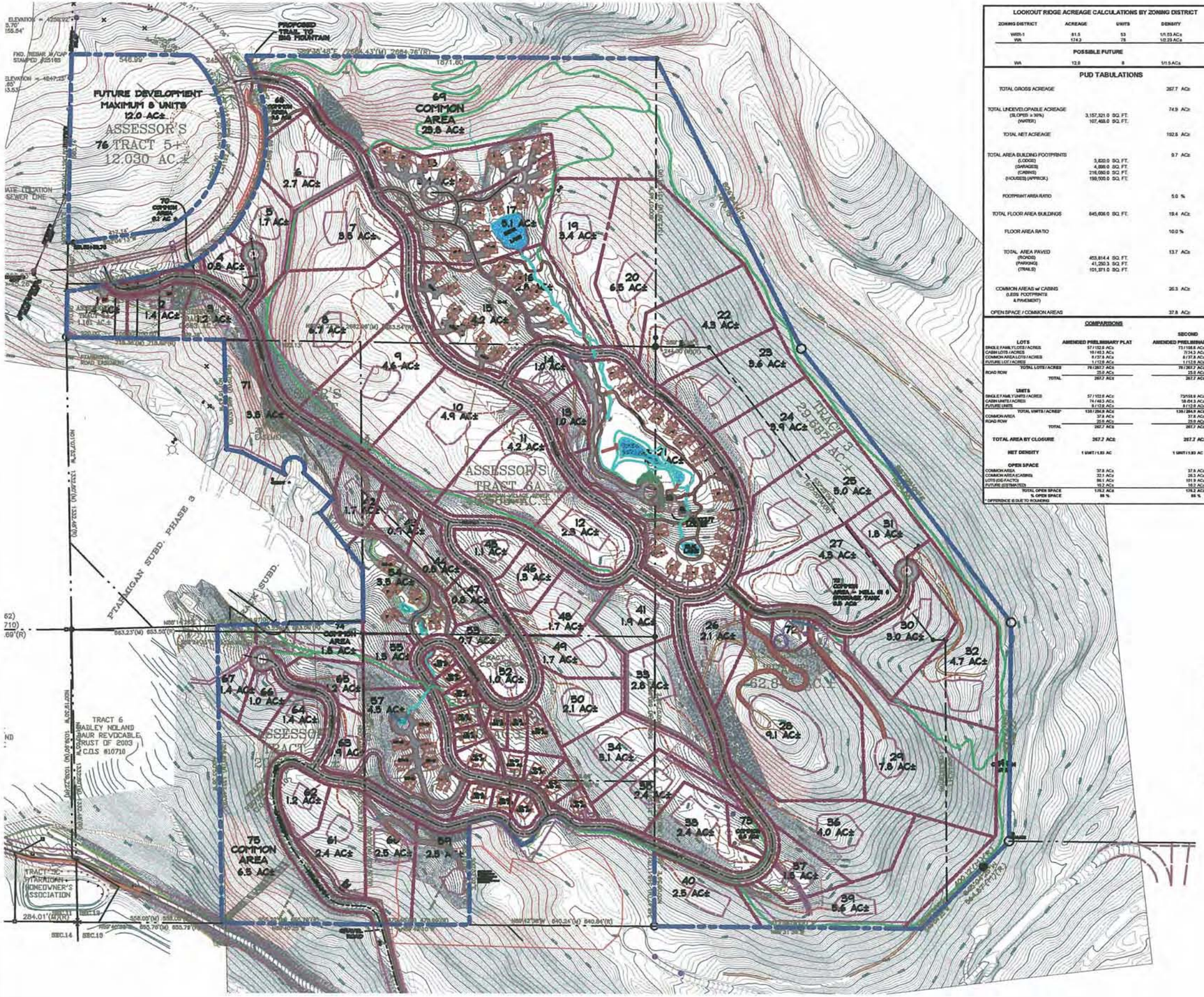
(LOOKOUT RIDGE INVESTORS, LLC)

X /s/ James H. Cossitt

Jim Cossitt/Attorney

APPROVED

By James H (Jim) Cossitt at 3:46 pm, Jun 07, 2013



LOOKOUT RIDGE ACREAGE CALCULATIONS BY ZONING DISTRICT

ZONING DISTRICT	ACREAGE	UNITS	DENSITY
WRR-1	81.5	53	1/1.53 ACs
WA	174.3	78	1/2.23 ACs
POSSIBLE FUTURE			
WA	12.0	8	1/1.5 ACs

PUD TABULATIONS

TOTAL GROSS ACREAGE		267.7 AC±
TOTAL UNDEVELOPABLE ACREAGE (SLOPES > 30%) (WATER)	3,157,321.0 SQ. FT. 107,463.0 SQ. FT.	74.9 AC±
TOTAL NET ACREAGE		192.8 AC±
TOTAL AREA BUILDING FOOTPRINTS (LODGE) (CABINS) (CABINS) (HOUSES) (APPROX.)	3,630.0 SQ. FT. 4,656.0 SQ. FT. 216,050.0 SQ. FT. 198,500.0 SQ. FT.	9.7 AC±
FOOTPRINT AREA RATIO		5.0 %
TOTAL FLOOR AREA BUILDINGS	845,606.0 SQ. FT.	19.4 AC±
FLOOR AREA RATIO		10.0 %
TOTAL AREA PAVED (ROADS) (PARKING) (TRAILS)	453,914.4 SQ. FT. 41,250.3 SQ. FT. 101,371.0 SQ. FT.	13.7 AC±
COMMON AREAS w/ CABINS (LESS FOOTPRINTS & PAVEMENT)		26.3 AC±
OPEN SPACE / COMMON AREAS		37.8 AC±

COMPARISONS

LOTS	AMENDED PRELIMINARY PLAT	SECOND AMENDED PRELIMINARY PLAT
SINGLE FAMILY LOTS / ACRES	57 / 132.6 AC±	73 / 155.6 AC±
CABIN LOTS / ACRES	16 / 45.3 AC±	7 / 14.3 AC±
COMMON AREA LOTS / ACRES	6 / 37.8 AC±	6 / 37.8 AC±
FUTURE LOT / ACRES	1 / 12.0 AC±	1 / 12.0 AC±
TOTAL LOTS / ACRES	79 / 267.7 AC±	79 / 267.7 AC±
ROAD ROW	25.0 AC±	25.0 AC±
TOTAL	267.7 AC±	267.7 AC±
UNITS		
SINGLE FAMILY UNITS / ACRES	57 / 132.6 AC±	73/155.6 AC±
CABIN UNITS / ACRES	74 / 45.3 AC±	56 / 54.3 AC±
FUTURE UNITS	8 / 12.0 AC±	8 / 12.0 AC±
TOTAL UNITS / ACRES*	139 / 204.9 AC±	139 / 204.9 AC±
COMMON AREA	37.8 AC±	37.8 AC±
ROAD ROW	25.0 AC±	25.0 AC±
TOTAL	267.7 AC±	267.7 AC±
TOTAL AREA BY CLOSURE	267.7 AC±	267.7 AC±
NET DENSITY	1 UNIT / 1.93 AC	1 UNIT / 1.93 AC
OPEN SPACE		
COMMON AREA	37.8 AC±	37.8 AC±
COMMON AREA (CABINS)	32.1 AC±	26.3 AC±
LOTS (DEFACTO)	96.1 AC±	101.9 AC±
FUTURE (ESTIMATED)	10.2 AC±	10.2 AC±
TOTAL OPEN SPACE	176.2 AC±	176.2 AC±
% OPEN SPACE	66 %	66 %

* DIFFERENCE IS DUE TO ROUNDING

LOT TABULATIONS

Lots	Type	Area	Units
1	SINGLE FAMILY	1.4 ACs	1
2	SINGLE FAMILY	1.4 ACs	1
3	SINGLE FAMILY	1.2 ACs	1
4	SINGLE FAMILY	0.8 ACs	1
5	SINGLE FAMILY	1.7 ACs	1
6	SINGLE FAMILY	2.7 ACs	1
7	SINGLE FAMILY	3.5 ACs	1
8	SINGLE FAMILY	8.7 ACs	1
9	SINGLE FAMILY	4.6 ACs	1
10	SINGLE FAMILY	4.9 ACs	1
11	SINGLE FAMILY	4.2 ACs	1
12	SINGLE FAMILY	2.3 ACs	1
13	SINGLE FAMILY	1.8 ACs	1
14	SINGLE FAMILY	1.0 ACs	1
15	COMMON / CABINS	4.2 ACs	5
16	COMMON / CABINS	2.8 ACs	3
17	COMMON / CABINS	5.1 ACs	9
18	COMMON / CABINS	3.4 ACs	5
19	SINGLE FAMILY	3.4 ACs	1
20	SINGLE FAMILY	6.5 ACs	1
21	COMMON / CABINS	10.6 ACs	16
22	SINGLE FAMILY	4.3 ACs	1
23	SINGLE FAMILY	3.6 ACs	1
24	SINGLE FAMILY	3.9 ACs	1
25	SINGLE FAMILY	5.0 ACs	1
26	SINGLE FAMILY	2.1 ACs	1
27	SINGLE FAMILY	4.3 ACs	1
28	SINGLE FAMILY	9.1 ACs	1
29	SINGLE FAMILY	7.8 ACs	1
30	SINGLE FAMILY	3.0 ACs	1
31	SINGLE FAMILY	1.8 ACs	1
32	SINGLE FAMILY	4.7 ACs	1
33	SINGLE FAMILY	2.8 ACs	1
34	SINGLE FAMILY	3.1 ACs	1
35	SINGLE FAMILY	2.4 ACs	1
36	SINGLE FAMILY	4.0 ACs	1
37	SINGLE FAMILY	1.5 ACs	1
38	SINGLE FAMILY	2.4 ACs	1
39	SINGLE FAMILY	5.6 ACs	1
40	SINGLE FAMILY	2.5 ACs	1
41	SINGLE FAMILY	1.9 ACs	1
42	SINGLE FAMILY	1.7 ACs	1
43	SINGLE FAMILY	0.9 ACs	1
44	SINGLE FAMILY	0.8 ACs	1
45	SINGLE FAMILY	1.1 ACs	1
46	SINGLE FAMILY	1.3 ACs	1
47	SINGLE FAMILY	0.8 ACs	1
48	SINGLE FAMILY	1.7 ACs	1
49	SINGLE FAMILY	1.7 ACs	1
50	SINGLE FAMILY	2.1 ACs	1
51A	SINGLE FAMILY	0.34 ACs	1
51B	SINGLE FAMILY	0.38 ACs	1
51C	SINGLE FAMILY	0.60 ACs	1
51D	SINGLE FAMILY	0.35 ACs	1
51E	SINGLE FAMILY	0.40 ACs	1
51F	SINGLE FAMILY	0.48 ACs	1
51G	SINGLE FAMILY	0.40 ACs	1
52	SINGLE FAMILY	1.0 ACs	1
53	SINGLE FAMILY	0.7 ACs	1
54	COMMON / CABINS	3.5 ACs	5
55	SINGLE FAMILY	1.3 ACs	1
56A	SINGLE FAMILY	0.32 ACs	1
56B	SINGLE FAMILY	0.36 ACs	1
56C	SINGLE FAMILY	0.35 ACs	1
56D	SINGLE FAMILY	0.40 ACs	1
56E	SINGLE FAMILY	0.30 ACs	1
56F	SINGLE FAMILY	0.48 ACs	1
57	COMMON / CABINS	4.5 ACs	7
58A	SINGLE FAMILY	0.44 ACs	1
58B	SINGLE FAMILY	0.25 ACs	1
58C	SINGLE FAMILY	0.32 ACs	1
58	SINGLE FAMILY	2.5 ACs	1
60	SINGLE FAMILY	2.5 ACs	1
61	SINGLE FAMILY	2.4 ACs	1
62	SINGLE FAMILY	1.2 ACs	1
63	SINGLE FAMILY	0.9 ACs	1
64	SINGLE FAMILY	1.4 ACs	1
65	SINGLE FAMILY	1.2 ACs	1
66	SINGLE FAMILY	1.0 ACs	1
67	SINGLE FAMILY	1.4 ACs	1
68	COMMON AREA	8.6 ACs	0
69	COMMON AREA	23.8 ACs	0
70	COMMON AREA	0.1 ACs	0
71	COMMON AREA	3.8 ACs	0
72	COMMON WELL #1	0.5 ACs	0
73	COMMON WELL #2	0.6 ACs	0
74	COMMON AREA	1.8 ACs	0
75	COMMON AREA	6.5 ACs	0

SINGLE FAMILY LOTS		73
CABIN UNITS		58
TOTAL		131
SINGLE FAMILY LOTS		155.6 ACs
COMMON AREAS	(W/ CABINS)	34.3 ACs
COMMON AREAS	(W/O CABINS)	32.8 ACs
ROAD ROW		31.2 ACs
TOTAL		252.9 ACs
Average Area/Unit		1.8 ACs

(NOTE: TOTAL ACREAGE OF ALL LOTS = 267.7 ACs)

POSSIBLE FUTURE DEVELOPMENT

76	COMMON / CABINS	12.0 ACs	8

TOTAL OF ALL ACREAGE = 267.7

Bruce Boody,
Landscape Architect Inc.
801 East 2nd Street, Suite 1B
Whitefish, Montana 59937
Phone: (406) 862-4755
Fax: (406) 862-4755

SURVEY BY:
SAM CORDI
974 COLORADO AVE.
P.O. BOX 323
WHITEFISH, MT 59937
PHONE: (406) 862-8577

LAND PLANNING:
CACHE CREEK CONSULTING
10 OREGON AVE.
WHITEFISH, MT 59937
PHONE: (406)-862-1107

ENGINEER:
THOMAS, DEAN & HOSKINS, LLC
475 N. BAILEY ST
P.O. BOX 7957
KALISPELL, MT 59904
PHONE: (406)752-2580

BAILEY CONSULTING
31 THREE MILE DR #101
KALISPELL, MT 59901
PHONE: (406) 752-5246

Revisions:

LOOKOUT RIDGE

NORTH

NOT TO SCALE

DATE: 08/22/10

JOB #: 08-62

SECOND AMENDED PUD & PRELIMINARY PLAT PLAN OVERALL

SHEET 2 OF 5

Applied Water CONSULTING LLC

September 26, 2013

Taylor Horst
Whitefish Credit Union
P.O. Box 37
Whitefish, MT 59937

Re: Lookout Ridge Subdivision Preliminary Plat Extension
AWC Project No. 117.05

Dear Taylor:

It is our understanding that Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, requested a 24-month extension to the existing preliminary plat that was set to expire on June 21, 2013. In lieu of granting the requested extension, the Whitefish City Council extended the preliminary plat for an additional six months and requested further information regarding the landslide that occurred on or about June 4, 2011. Therefore, the purpose of this letter report is to respond to the Council's request for supplemental information regarding the cause and status of the landslide.

Background Information

The original preliminary plat for the Lookout Ridge Planned Unit Development (PUD) was approved by the City Council, subject to 26 conditions, on June 18, 2007. The approval was for a total of 139 units, which included 119 single-family lots and cabin sites and 20 undefined units. The amended plat was approved on June 7, 2010 and included an additional 39.2 acres, but no additional units. The initial preliminary plat and PUD were approved with a density of one dwelling unit per 1.65 acres (139 units on 229 acres), while the amended plat has an overall density of one dwelling unit per 1.93 acres (139 units on 268 acres).

Hydrogeologic Setting

The Lookout Ridge PUD is located on a south-facing slope of the Whitefish Mountain Range. The Whitefish Range is underlain by Precambrian-aged strata of the Belt Supergroup Series consisting of metasedimentary rocks with a thickness that may exceed 20,000 feet. The underlying bedrock within the subdivision property consists of a sequence of Precambrian carbonate rocks identified as the Helena Formation (Harrison, 2000).

The Whitefish Range has been extensively glaciated. Most of the Lookout Ridge PUD is mantled with a layer of glacial till that consists of gravel to cobble-size clasts within a clayey-silt matrix. The two primary aquifers in this area are: 1) the shallow, perched aquifer that occurs within the glacial till; and 2) the fractured bedrock aquifer.

P.O. Box 7667 • Kalispell, Montana 599(• ..l: 406 756-2550 • Fax: 406 756-0527

The shallow, perched aquifer consists of thin sand and gravel layers within the glacial till. The underlying, relatively impermeable clayey-silt (glacial till), creates discontinuous saturated lenses with unsaturated conditions existing above and below. The perched aquifer manifests as numerous springs, seeps, and wetlands throughout the property. By definition, wetlands are directly linked to groundwater and typically occur in groundwater discharge areas. The depth to the water table varies from being exposed on the surface to 20 feet below ground surface. The perched aquifer typically does not yield sufficient water to be used as a domestic supply source.

The primary rock unit in the vicinity of the Lookout Ridge PUD is the Helena Formation. This formation is characterized as a metamorphosed limestone. Fractures, fissures, and karst features provide the primary conduits for groundwater storage and movement. The bedrock aquifer is primarily recharged from snowmelt infiltration migrating downward to the water table. Well yields range from 90 gallons per minute to 400 gpm, with the average well yield being 188 gpm. There is an upward vertical head in all of the wells indicating that groundwater occurs under semi-confined conditions.

Wetland Delineation

An initial wetland delineation was conducted in association with the proposed land development in 2006 (PBS&J) and a more detailed delineation that was specific to individual lots was performed in 2008 (Calypso Ecological Consulting, LLP). The 2008 delineation was performed on Lots 59 and 60 in compliance with the Whitefish Water Quality Protection Rule 11-3-29 (formerly the Critical Areas Ordinance). The purpose of this assessment was to locate the wetland(s) and determine the appropriate setback requirements.

The wetland complex primarily consists of emergent vegetation with fringe herbaceous vegetation. Wetland hydrology is provided by springs and seeps. Wetland hydrology was evident during the site visit as saturated soils less than 12 inches below the surface. Indicators of hydric soil include low chroma surface soils overlying depleted subsoils.

Wetland boundaries were flagged in the field and the locations surveyed by a licensed Montana professional land surveyor. Figure 1 is a site map showing the two delineated wetlands. As shown, a large, contiguous wetland transects Lots 59 and 60. The majority of the wetland is located at the upper elevations of Lot 59 and then narrows and tapers on Lot 60. Standing water and marshy conditions are present in the upper reaches of the Lot 59. The water coalesced into a small stream (denoted by dashed and solid line) on Lot 59 but then diminished and submerged underground on Lot 60. A second small wetland is also located in the northwest corner of Lot 59.

Landslide Field Investigation

The landslide reportedly occurred on or about June 4, 2011. A field investigation was conducted on June 15, 2011 by personnel from Applied Water Consulting, TD&H Engineering, and Bruce Boody Landscape Architect, Inc. The characteristics of the slide area and adjacent land were inspected to ascertain the type of movement and cause of the slide and

possibly the trigger mechanism. The causes of landslides are commonly related to slope instability. It is usually possible to identify one or more landslide causes and one trigger mechanism. A landslide cause is the reasons that a slide occurred in that location and at that time. Causes include geological factors, morphological factors, physical factors and factors associated with human activity. In comparison, the trigger is the single event that initiates the landslide.

Our field inspections identified an arcuate scarp at the head of the slide area. Glacial till sediments consisting of gravel to cobble-size clasts in a clayey-silt matrix were exposed in the face of the scarp. Rivulets of water were issuing from the base of the scarp, which is approximately 33 feet below the shoulder of the road. In addition, the headwall of the scarp was measured to be 54 feet from the centerline of the road or about 25 feet from the edge of the road. The scarp face has a concave shape indicative of a rotational slide, but the remainder of slide appeared to be planner, following the slope of the drainage basin, which is characteristic of a transitional slide. It is estimated the separation distance between the scarp face and debris mass was on the order of 80 to 100 feet. The topsoil at the northeast corner of the scarp was pulled off the subsurface soils like a bed sheet, leaving striations in its wake. This type of feature indicates the slide likely occurred instantaneously. The debris train had a hummocky shape and collected as a lobate pile at the base of the drainage. The soil was saturated and small streams were flowing along the margins of the slide. It appears the slide material was transported as a liquefied mass that occurred as a single surge.

With regard to landslide classification, the Lookout Ridge slide would be considered a debris flow (Compton, 1985; Hungr and others, 2001). The key characteristic of a debris flow is the presence of an established channel or regular confined path. The wetland delineation map was geo-referenced and overlain on a 2013 aerial photograph of this area (see Figure 2). As shown, the path of the debris flow directly followed the delineated wetland channel. Another distinguishing characteristic of debris flows is the presence of a certain degree of rough sorting and the accumulation of boulders and timber debris near the front of the surge. This type of material is consistent with the debris found at the toe of the flow.

According to the literature, the majority of debris flows are triggered by heavy or prolonged rainfall. In order to evaluate this premise, weather data including precipitation, temperature, and wind speed were obtained from the Glacier International Airport weather station. This information is graphically displayed on Figure 3. As shown, temperatures were well above freezing, ranging from 42°F to 59°F during the prior week. In addition there had been 2.36 inches of rainfall the prior week, of which 1.14 inches fell the day before the landslide. This rain on snow event coupled with a warm updraft wind, triggered significant snowmelt runoff. The water infiltrated into the ground, surcharging the perched aquifer. The rainfall infiltration increased the hydrostatic pore pressures in the soil and provided the mechanism for the cohesiveness of the soil to fail, thus releasing a debris flow.

The incidence of this slide does not appear to be a first time occurrence. Further site inspection and examination of the site topographic map indicates there have been other historic slumps or slides, but to a much less expanse. While conducting our initial inspection, it was observed there are a number of historic slump features at the head of this drainage

basin. These features are distinguished as subtle displacement on hill slopes and mounds that are concealed by the heavy vegetative cover. These historic slump features are evident as arcuate contour lines on the topographic map. However, this map was not available at the time the PUD application was submitted. Slope failure appears to have previously occurred in this area at an elevation of approximately 3500 to 4000 feet amsl. Slope failures have been observed in other areas at this elevation and appear to be associated with a weakening of the soil structure from the stillstand of Glacial Lake Missoula at this elevation (personnel communication with Terrance Stockhocker).

The occurrence of the Lookout Ridge debris flow was also not unique to this area. A mudslide also occurred near Blue Bay on the east side of Flathead Lake, which blocked Montana Highway 35 on June 12, 2011. In addition, on June 18, 2011 one of the maintenance staff at Whitefish Mountain Resort noticed a slump in the ground 25 feet above Tower 6 on Chair One. The slump continued to expand and moved the tower out of alignment. The ground movement was attributed to the heavier than normal spring rainfall, which further exacerbated snowmelt runoff.

It has been postulated by others that road construction at Lookout Ridge PUD and the installation of the sewer stub for Lot 59 may have activated the slide. However, this could not be the cause because the sewer line is bedded and filled with compacted native material and therefore, would not provide a conduit for water movement. In addition, the sewer line stub is 25 lateral feet and 30 vertical feet above the seep line. The failure plane appears to have occurred at the top of the water table, which is well below the base of the sewer stub.

Summary and Conclusions

Based on our evaluation, the cause of the slide/debris flow is the inherent instability of the continually saturated soils associated with the wetland complex that occurs on Lots 59 and 60 in Lookout Ridge PUD. The debris flow appears to have been triggered by the intense rainfall event that accelerated snowmelt runoff volumes. The runoff infiltrated into the ground creating high pore-water pressures resulting in the soil to rapidly lose strength and flow downslope as a unified mass.

The debris has been cleared from Lookout Ridge Road and the lower slope has been has also been cleared and re-vegetated. An approval of a 24-month extension of the preliminary plat will allow the Whitefish Credit Union to more actively market the property because of the added value to a perspective buyer. A potential buyer will have to outlay significant funds to complete the infrastructure (water, sewer, stormwater, and roads). Mitigation of the slide area will require investigation and remedial design by a geotechnical engineer that specializes in these types of mass-waste occurrences. It would be more cost-effective to complete the slide reclamation work concurrently with infrastructure installation. As such, it would not be fair to penalize the Whitefish Credit Union or anyone else, as this was an act of nature.

If you have any questions regarding the information contained in this letter report or other project management activities, please do not hesitate to contact me.

Sincerely,

Applied Water Consulting LLC

Sr. Hydrogeologist

Attachments: Figure 1 – Wetland Delineation Map of Lots 59 and 60 LOR
Figure 2 – Overlay of Delineated Wetlands on 2013 Aerial Photograph
Figure 3 – Precipitation/Temperature Graph
Various Newspaper Articles

References Cited

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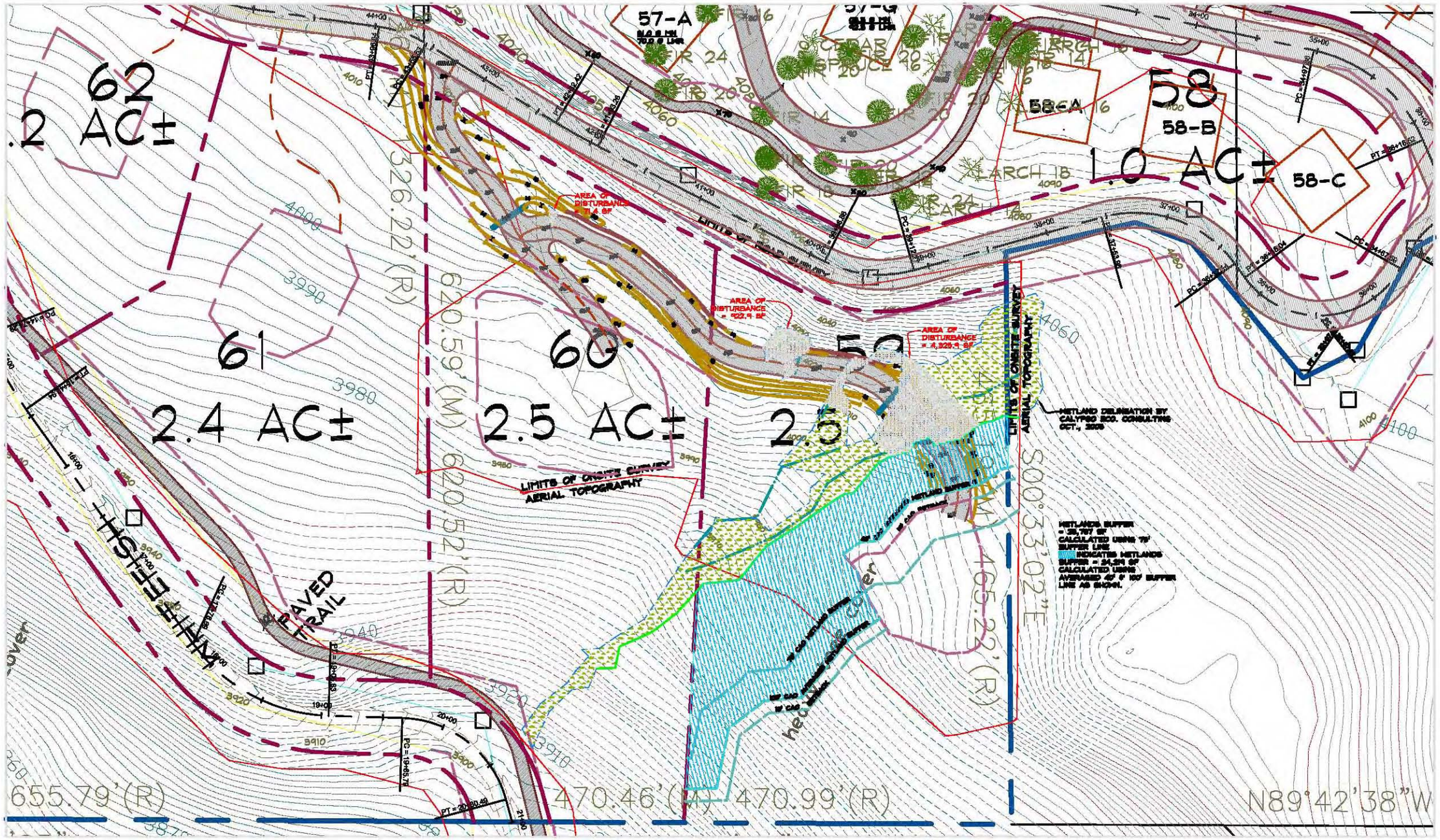
62
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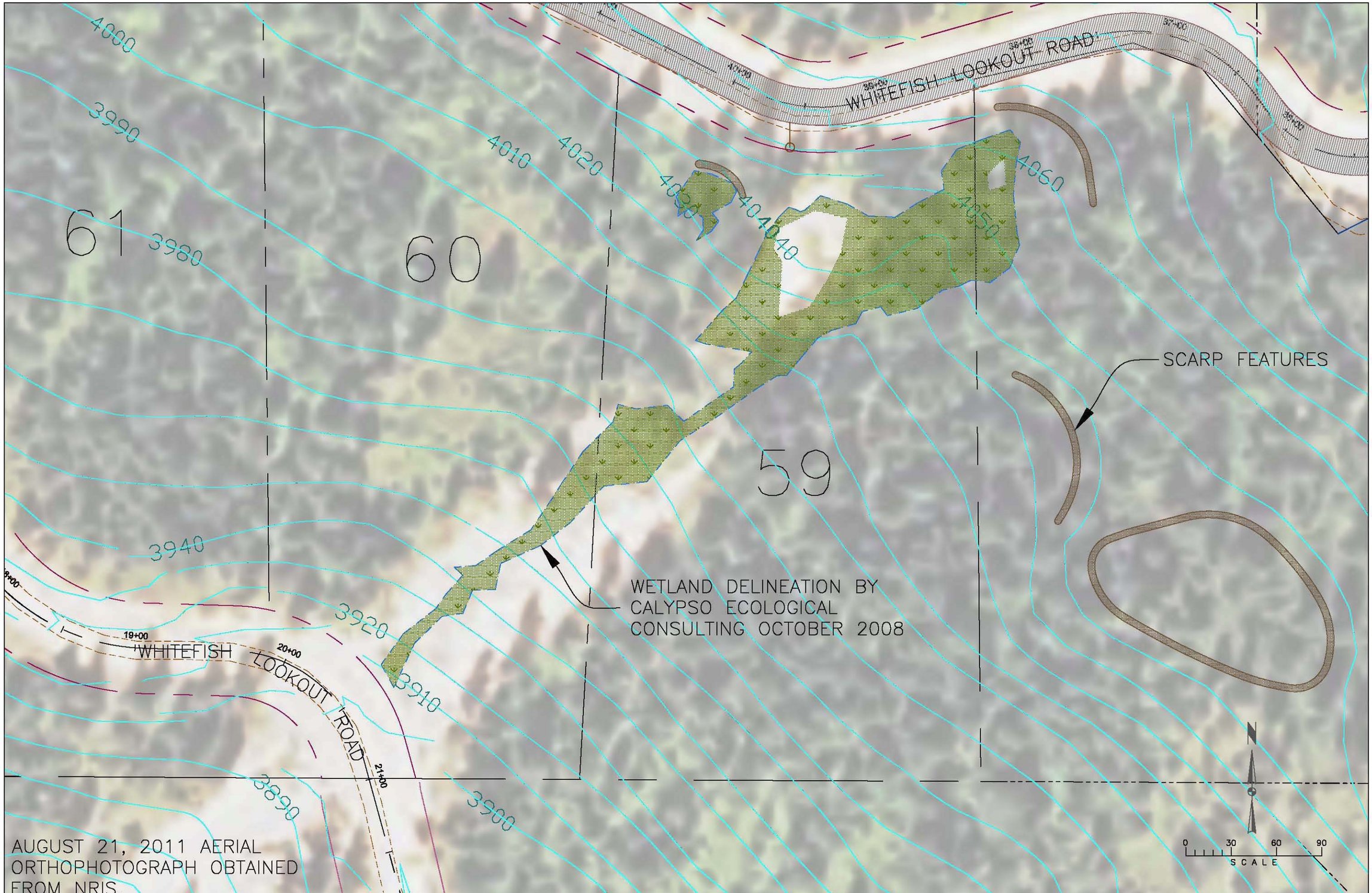
58
1.0 AC±
58-A
58-B
58-C
AREA OF DISTURBANCE = 722.9 SF
AREA OF DISTURBANCE = 4,329.9 SF
LIMITS OF ONSITE SURVEY AERIAL TOPOGRAPHY
WETLAND DELINEATION BY CALYPSO ECO. CONSULTING OCT., 2008
WETLANDS BUFFER = 39,707 SF CALCULATED USING 75' BUFFER LINE
INDICATES WETLANDS BUFFER = 34,314 SF CALCULATED USING AVERAGED 40' & 100' BUFFER LINE AS SHOWN.
PAVED TRAIL
FISH
wetland cover
620.59'(M) 620.52'(R)
326.22'(R)
S00°33'02"E
465.22'(R)
655.79'(R)
470.46'(M) 470.99'(R)
N89°42'38"W
Revisions:
LOOKOUT RIDGE
SCALE: NTS
DATE: 11/05/08
JOB #: 08-62
LOTS 61 & 60
WETLANDS DELINEATION & WETLANDS AREAS OF DITURBANCE
SHEET 1 OF 1


WHITEFISH LOOKOUT ROAD
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SCARP FEATURES
WETLAND DELINEATION BY
CALYPSO ECOLOGICAL
CONSULTING OCTOBER 2008
AUGUST 21, 2011 AERIAL
ORTHOPHOTOGRAPH OBTAINED
FROM NRIS.
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FIGURE 2

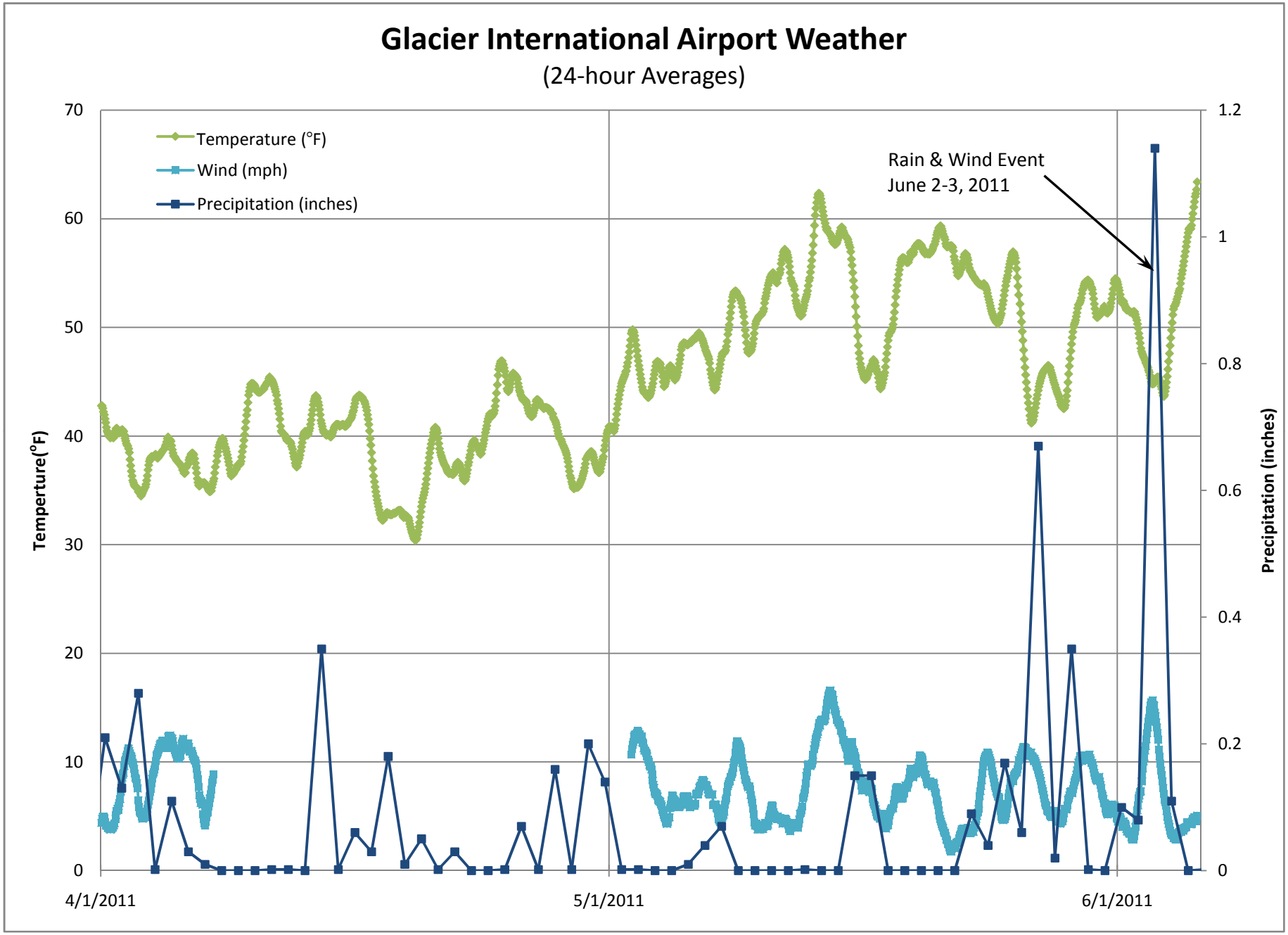
Glacier International Airport Weather
(24-hour Averages)
Temperature (°F)
Wind (mph)
Precipitation (inches)
Rain & Wind Event
June 2-3, 2011
Temperture(°F)
Precipitation (inches)
70
60
50
40
30
20
10
0
1.2
1
0.8
0.6
0.4
0.2
0
4/1/2011
5/1/2011
6/1/2011

Figure 3

Soggy weather triggers landslide

By MATT BALDWIN Whitefish Pilot | Posted: Wednesday, June 8, 2011 10:28 am

Saturated soils likely led to a massive landslide on Lookout Ridge near Big Mountain, City Manager Chuck Stearns reported at the June 6 council meeting.

The crown of the slide was about 60 feet wide and 10 feet deep. It ran about 300 vertical feet along a swath about 1,000 feet in length.

"It was an impressive land movement," Stearns said.

Lookout Ridge is a proposed development on the flanks of Big Mountain near Iron Horse. The slide has blocked a city maintained road that is used as the emergency egress for Iron Horse. No structures were damaged and no injuries were reported.

The slide started on private land that is a natural spring area, Public Works Director John Wilson noted.

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Mudslide blocks traffic on Hwy 35

By Brandon Hansen, Sports editor

Mudslide

This mudslide occurred near mile marker 11 on Highway 35 north of Polson.

Related Galleries

Father's Day Mudslide
Here are images from the Father's Day mudslide today.

Posted: Sunday, June 19, 2011 5:44 pm | *Updated: 9:59 am, Mon Jun 20, 2011.*

Lisa Broadt | 0 comments

BLUE BAY — Members of the Finley Point/Yellow Bay Volunteer Fire Department got an unwelcome Father's Day surprise this afternoon: a landslide on the northbound side of U.S. Hwy 35, just past the 11-mile marker.

Dispatch was alerted around 12:30 p.m. to the slide, which was blocking one lane of traffic, but caused no injuries or property damage. The volunteer fire department and Mission Valley Power responded shortly thereafter.

According to fire chief Chris Ricciardi, once on scene, the fire department determined the most immediate threat to safety to be a number of trees caught in the power lines running parallel to the highway. Mission Valley Power technicians turned off local power for about four hours while they extricated the necessary lines, but had it back up and running by 4:05 p.m.

The cause of the slide was mountain run-off, Ricciardi said.

By 4:30 p.m., the volunteer firefighters had traffic flowing past the north-lane blockage with little delay, and the techs had moved up the mountainside to begin preventative work.

"They're cutting down the trees that are in danger of coming down later," Ricciardi said. "They have a couple more trees to cut down, and then we'll start cleaning up."

The chief said he hoped the fire department would be able to re-open the north lane by 5 p.m., but added that he doesn't think this will be the last landslide the department will respond to this summer.

"More than likely it's going to get worse,"Ricciardi said.

For the moment though, the volunteer firefighters and MVP technicians were anxious to get out of the chilly drizzle and back to their father's day gatherings, or at the very least, to get some lunch.

"Where's a pizza delivery man when you need one?" Ricciardi asked, with a smile.

For more information on Lake County flooding and weather visit http://www.wrh.noaa.gov and check www.leaderadvertiser.com for updates as they become available.

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Tilting tower prompts lift closure

The Daily Inter Lake | Posted: Tuesday, June 21, 2011 2:00 am

Whitefish Mountain Resort's Chair One, used in the summer season for scenic lift rides and carrying mountain bikes, will be closed indefinitely to repair a slump above tower six that likely was caused by heavy moisture this spring.

All hiking and mountain biking trails under Chair One — including the Danny On Trail and upper sections of the Go Fish and Gopher biking trails — also are closed until further notice, resort spokeswoman Riley Polumbus said.

The Summit House at the top of Chair One also is closed.

On Saturday the resort's lift maintenance crew noticed a slump in the ground 25 feet above tower six, Polumbus said. Chair One is a detachable quad lift and is equipped with safety mechanisms, auto-stop modes and alarms that warn operators.

The lift ran until closing at 6 p.m. without any significant warnings. Saturday was the first day of Whitefish Mountain Resort's summer season.

Lift maintenance and lift operators monitored the area and the lift throughout the day. In the afternoon, the area around the slump was marked with flags.

On Sunday morning the area was re-inspected and it was observed that the slump had grown overnight. During a visual inspection of the lift it was determined that tower six was about four inches out of plumb. Chairs and gondola cars were removed to release tension on the lift cable to enable crews to tie back and secure the tower.

The lift manufacturer, a hydrologist and a soil engineer have been contacted, Polumbus said.

"We will know more about the solution after their analysis," she said.

A helicopter is being brought in to remove the tower.

The following activities still are available on the mountain: Alpine Slide, Zip Line Tours, Walk in the Treetops and lower-mountain cross-country biking trails.

Chair 6 and Chair 9 are running and the Base Lodge Café and bar also are open.

"We will be putting all necessary resources toward assessing the situation, finding a solution and getting our scenic lift up and running as soon as the lift is back to engineering standards," Dan Graves, president of Whitefish Mountain Resort, said in a prepared statement. "Our main concern is for the safety of our customers and employees."

By DAN TESTA *of the Beacon*

WHITEFISH – In three trips Friday, the helicopter picked up tower six off of Big Mountain and deposited its pieces in the Willow parking lot of Whitefish Mountain Resort. The tower – which supported the resort's Chair One lift – didn't fail; the ground did. And it's unclear when Chair One might be up and running again, and what the impact may be on Whitefish Resort's summer operations.

Resort officials will offer now offer scenic lift rides from Chair Two, and aim to begin that operation July 2, after building ramps for pedestrians to get on and off the chair, along with bike racks. Mountain bikers will be able to access the Summit Trail from the top of Chair Two also.

"Running Chair Two will be a nostalgic experience, as the old T-Bar ran up the same line in the 1950s with single chairs," Whitefish Mountain Resort President Dan Graves said.

The previous weekend, two lift maintenance employees inspected tower six after an internal alarm system indicated a problem. They ran the lift that Saturday, June 18, all day without incident, according to Riley Polumbus, the resort's public relations manager. But the crew noticed a fracture, or "slump," about 25 feet above the tower's foundation.

The fracture runs roughly parallel to the chairlift's direction of travel, down the hill from Toni Matt. Skiers will also know the area as just beyond the tree festooned with underwear and plastic Mardi Gras beads.

The maintenance staff marked the width of the fracture with stakes on either side, and measured their distance.

"When they went up Sunday, it had opened by 10 inches," Polumbus said, adding that over the course of the day it continued to spread. Visual inspection revealed the tower was tilted about four inches. Crews removed the gondola cars and chairs, relieving tension on the cable around the tower and allowing it to be secured with a winch to a cat up the slope on Toni Matt.

The fracture appears to be caused by the heavy moisture in the ground due to snow melting, and as the temperature rose last week, creeks descending the mountain flowed noisily. Polumbus said the resort has contacted hydrologists, geologists, soil specialists and Doppelmayr, the manufacturer of the chairlift.

The instability of the ground and tower prompted the temporary closure of hiking in the area, including on the Danny On Trail and upper sections of the Go Fish and Gopher biking trails. (Those trails are now open.) The Chair One stoppage also forces the Summit House restaurant to close, though Polumbus said the 11 employees affected will be reassigned.

Routes to the summit for scenic lift rides via Chair Four and Chair Five are not an option, she said, because those lifts are not detachable, and the chairs swing around too quickly for summer riders not on skis.

It's too early to tell how long Chair One will be closed. Upper mountain bike trails are still closed due to snow and crews are working on getting the Summit Trail open below Chair Two by July 2. But Polumbus emphasized that the majority of summer activities on offer at Whitefish Resort are unaffected: The alpine slide, zip line, "Walk in the Treetops," and mountain biking trails along lower sections of the mountain are up and running, along with a new bar at the base lodge. The Summit Nature Center has been temporarily moved to the top floor of the base lodge, with an opening day of June 25. And when huckleberry season begins in earnest, Polumbus said the picking will be good from the top of the Chair Two area as well.

"Fortunately we have a pretty diverse list of activities that are not affected by this," Polumbus said. "Come on up."

dtesta@flatheadbeacon.com

September 30, 2013

Taylor Horst
Whitefish Credit Union
300 Baker Avenue
Whitefish, MT 59937

RE: Request from Whitefish Credit Union for a 2 year extension of the Preliminary Plat for Lookout Ridge Subdivision.

Dear Taylor,

The purpose of this letter is to provide an overview and some background information in support of the Credit Union's request for the Plat Extension.

As the Project Lead for the Original Platting, I am writing in support of the Plat Extension for Lookout Ridge. The property, with the current Plat and PUD in place, holds significant value for a potential developer and for the City of Whitefish. Even though the last 4 years of inactivity, due to the recession, have had impacts on the property, the 5 years of planning and 2 years of infrastructure construction have substantial value, but only if the Plat and PUD are continued through the 2 year extension.

I feel the interests of the City have been addressed in the 29 Conditions of the Second Amended Plat. Specifically, **Condition 27** reads as follows: *Lots 22, 26, 31, 32, 35, 37, 59 and 60 shall obtain a Critical Areas Compliance Permit and comply with the critical area ordinance in effect at the time of building permit issuance.*

The developer/primary investor in the project was undertaking this effort prior to placing those parcels on the market. The planning team had just begun the investigations to determine if the lot in question was buildable when the recession began. Calypso Ecological Consulting had completed their Wetland Deliniation, and Sam Cordi Land Surveying had field surveyed and updated our project maps to include the wetland information. The recession overpowered the project so quickly that Calypso was not able to complete their report on the conditions.

It is obvious at this point that the original developers, Lookout Ridge Investors, LLC (still the current owner of record) does not have the capability to move forward with the project, nor address the issue of the landslide. The Whitefish Credit Union, who is not the current owner, would also be penalized if the Plat is not extended. The current site conditions are a result of unfortunate circumstances. These site conditions can best be addressed by making it possible

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Whitefish, MT
59937

phone 406 862-4755
fax 406 862-9755

for a new owner to take over the project and develop the property with a remedy to the slide and the project as a whole.

It is also important for the City of Whitefish to remember the history of this project in the context of what the original developer had offered the City. The proposed plan was above and beyond what was required through the Plat and PUD processs.

Condition 24 reads: *Install a trail that is open to the public. Work with the City's Bike and Pedestrian Committee and neighboring properties to place the trail in the best location.*

Condition 13 reads*: The Applicant shall provide a public parking area/trailhead for the public to access the Public Trail.*

Condition 26 reads: *Prior to Final Plat, the Applicant shall enter into an agreement with the Whitefish Housing Authority (WHA) to provide and secure $ 50,000.00 per year for 10 years to the WHA.*

I feel it is in the best interests of the City and our community as a whole to extend this Plat. I am hopeful that the decision will be to allow the Plat Extension, which will in turn encourage the sale of the property to a new developer, which will accelerate reclamation of the slide area.

Respectfully,

Bruce Boody

Bruce Boody ASLA
Bruce Boody Landscape Architect Inc
301 Second Street, Suite 1B
Whitefish, MT 59937
Phone: 406.862.4755
boodyla@bruceboody.com

Councilor Hildner thanked Finance Director Knapp and the staff for the fine job they did on this.

Councilor Hyatt asked about the pre-purchase of power from Flathead Electric Coop and Finance Director Knapp said they will probably hit that power production level well before the eight years are up. Public Works Director Wilson said the production is way ahead of schedule and City Manager Stearns said that was part of the agreement that was approved by Council.

The motion passed unanimously.

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)

Kellie Danielson, 12 Wheatgrass Lane, said she works at Montana West Economic Development. She said they appreciate working with City Manager Stearns and all of the staff. She said they wanted to express their support of the Hurraw! project.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hyatt said the Park Board finished up the Master Plan review and it will come before the Park Board on July 9th and before the Council in August. Parks and Recreation Director Cozad said 12-15 people stopped by the office to give comments at the last Farmer's Market.

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

6a. Minutes from the June 3, 2013 Council special session (p. 96)
6b. Minutes from the June 3, 2013 Council regular session (p. 97)
6c. Consideration of approving request from Whitefish Credit Union for a 2 year extension of the Preliminary Plat for Lookout Ridge subdivision (p. 104)

Councilor Hildner asked to remove Item 6c from the Consent Agenda.

Councilor Hildner said the request for an extension from Lookout Ridge presents them with an opportunity to exam the benefits of this project and to look at it again. He said a project of this size and scope should be re-examined. Instead of making a decision tonight about extending this plat, he would like to extend the period of the current plat for 90 days which will allow Senior Planner Compton-Ring and the loan officer from the Credit Union to be present and comment on this issue. They could then just extend the plat for 21 months to equal the normal 2-year extension. Councilor Hyatt said the Council has been working with every bank and landowner so far on similar requests, so he is disappointed in Councilor Hildner's actions. Councilor Hildner said one of his main concerns about Lookout Ridge is that this is where there was a major landside a couple of years ago. This gives the holder of the plat a chance to propose changes and perhaps improve this plat. Councilor Mitchell said they have been extending plats through difficult times. He feels there have been precedents set that indicate that they should approve this request. He thinks Councilor Hildner is asking for a different treatment of this particular plat and he didn't think it was fair to hold them up. He thought it would be good to have a work session on this whole issue and not pick out one plat.

Councilor Sweeney said this is a request to extend a plat where they know there have been problems with movement of ground. He said it is a reasonable thing to ask the current owner of the plat to look at it in detail. The extension is a last minute request, so giving them 90 days is reasonable. He thinks the Council will ultimately extend it, but it gives them a mechanism to address problems. He hopes the Credit Union will agree. Councilor Hyatt said this is different than the Big Mountain request they saw last month. Big Mountain was the owner when the original plat was approved and they still own the land. He said that in this case the Credit Union had the loan and now owns the land and this would create a hardship for them. He has a problem with treating them differently.

Councilor Kahle asked what their options were and Attorney VanBuskirk said the City's review criteria provides for extensions where good faith is shown in working toward final plat. Councilor Kahle said if they extend it for 90 days and have a discussion regarding the preliminary plat with the Credit Union, and then the City decides they don't like the current layout of the plat, do they have the discretion to make any changes? Attorney VanBuskirk said they cannot impose additional conditions or make any changes to the plat, but they can entertain a request for changes from the applicant. Manager Stearns said they cannot change the conditions of the plat, but they can force it by rejecting the plat. Obviously, the applicants have an interest in maintaining as much of the plat as they can. He said the Council can't be arbitrary or capricious and they must state their reasons and findings. Manager Stearns said the 90 days would give each party time to review it.

Councilor Anderson asked and Manager Stearns said a motion to take some action would be appropriate. Councilor Kahle said there was some instability in the soil and a landside. He only wants to see them address that issue, not the lot sizes or details of the plat. He said no one wants this to work well more than the Credit Union. Councilor Hildner said 90 days gives them time to make sure that the interests of the Credit Union and the City are considered and that is his goal. He wants to protect water quality. He said Ryan Purdy is in the audience to answer questions. He said he also talked with the CEO from the Credit Union and they are willing to have the 90 day delay.

Ryan Purdy said he wanted to clarify that the Credit Union does not own the property. They are going through the foreclosure process now, which may take a long time. He said they would be more than happy to have a conversation, but 90 days doesn't get them anywhere. They can't touch it until they own it which could be for many months. He asked if this would be the first extension or just a postponement of the first extension. Purdy said the 2nd extension is more onerous on the applicant and the City. City Attorney VanBuskirk said City law allows more than one extension and the Council's discussion included a possible extension for a period of months with a possible additional extension up to 24 months. He said in his notes the 2nd extension is $750 and they have to notify all landowners who are adjacent. City Attorney VanBuskirk said the discussion was about a 90-day extension, which may be later extended up to 2 years. Purdy said he did a site review two weeks ago and saw the landslide issue. He said if a plat expires and there aren't any changes to the original plat or City regulations then it is usually approved. He said if they can't add new conditions why have a 90-day discussion. He said the Whitefish Credit Union (WCU) will want to turn this property over and sell it. Councilor Anderson said they have a letter from WCU and a representative from WCU, but no representation from Lookout Ridge. Purdy said the Credit Union has been appointed as the agent to apply for the extenstion of this preliminary plat. Councilor Mitchell said he looked at the property and he thinks some best management practices weren't adhered to and then there was a really wet year. He doesn't think it is going to happen again. He thinks a 90-day delay is a hardship for the WCU and he thinks they would be treating this application differently.

Councilor Sweeney said if WCU is an agent for the current owner, they could perhaps come in and discuss the issues along with the existing owners during this time period. He asked and Attorney VanBuskirk city code provides that if the developer lets the plat expire then the City would review the resubmitted plat and whether there have been substantial change from the previous preliminary plat, the conditions of the previous approval, city regulations or standards. Director Taylor said there have been several changes in regulations and standards but he didn't know which ones would apply. Purdy said he didn't know if they could go back to Mr. Cossett on behalf of Lookout Ridge. Councilor Anderson said he thinks Mr. Cossett gave him that authority in the letter. Purdy said he hasn't had that conversation and doesn't feel they have the authority to get an engineer up there. Councilor Kahle said he thinks they need to be really careful what they do here. They don't know why the land slid. If they don't extend this plat they will leave the WCU with a property that has no value. They are aware of the problem, so he would like to grant the extension. The subsequent owners will realize there will be potential problems and the Council will get to see this again when they come for the final plat.

Mayor Muhlfeld said when this landslide occurred he went up there when Iron Horse had Carver Engineering do a geotechnical study. The road was not built to standards and was built after the preliminary plat was approved. There is an engineer's report on record that indicates why it slid. He cautioned them that it is in their interest to protect the interests of the adjacent property owners, including Iron Horse, who are concerned that this not happen again. Councilor Kahle asked if it was fixed and Mayor Muhlfeld said the City cleared the slide from the road giving emergency and other access to adjacent properties because the owner had been unresponsive. Councilor Kahle said they need to keep people engaged so that they don't unplug the whole situation. He asked and Director Taylor said there are conditions on the plat to deal with the drainage issues and road conditions. If they get to final plat then the problem will be permanently fixed. Director Wilson said it would be logical for the problem to be fixed. He said the place where it failed, everyone will watch. He said the problem is that the road was only partially constructed and they can definitely watch that spot. Councilor Hildner said he is merely asking them to consider a 90-day extension of this preliminary plat. He said there are new regulations and one of the reasons for allowing plats to expire is to deal with the upgraded standards.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to extend the Lookout Ridge Plat Second Amended Preliminary Plat/PUD from 2010 for a period not to exceed 90-days at which point the Council will make a decision on whether to extend the Preliminary Plat/PUD further.

Councilor Anderson said there are a lot of issues here that need to be addressed. He wondered whether 90 days would be enough because the court moves slowly. He wondered if they should give them 6 months.

Councilor Anderson offered an amendment, seconded by Councilor Sweeney, the extend for 6 months.

Councilor Hildner wondered if that would make any follow-up requests be a 2nd request and would kick-in the $750 fee? Purdy asked and Attorney VanBuskirk said the possible two-step extension was the first extension and the amount of the fee would be negotiable. Purdy asked them to give them as much time as possible. Manager Stearns agreed the next request for extension is $750, but there is some discretion on the Council's part to say this 6-month extension is part of an extension of anytime up

to two years for a $50 fee; that is up to the Council. Councilor Hildner said he was okay with the amendment.

The amendment passed 5-1 with Kahle voting in opposition.

Councilor Sweeney said, to clarify, he would like the Council to consider including Manager Stearns' comment that any extension up to two years is part and parcel of the first extension giving the applicant sufficient time to address these issues. He doesn't want to see an additional $750 fee when they come back in 6 months, it would just be part of this extension. Councilor Hildner and the rest of the Councilors agreed.

Councilor Hyatt asked and Purdy said the WCU is okay with 6 months, but he can't be sure they'll have this resolved. Ryan Purdy said once the property is under the Credit Union's ownership they will meet with the City to address these issues. Councilor Hyatt said he will vote for this because Purdy said it is okay, but he is disappointed that this ever came up; and Councilor Mitchell agreed.

Councilor Mitchell suggested that the motion state that there is a one-time $50 fee for extensions for up to 2 years. The other Councilors said it was already implied.

Councilor Kahle said he thinks the 6-month extension is a waste of time, so he will vote against it. He would like to have a policy discussion about preliminary plats and what they look at when they come before them. He thinks they need a work session. He said they could nit-pick any preliminary plat and that is a dangerous process. Councilor Anderson said he doesn't think they're singling anyone out because they worked out a water quality issue with Big Mountain when they came back for a plat extension. They are trying to deal with commonsense concerns before they approve a long extension of a subdivision. Mayor Muhlfeld agreed with Councilor Anderson's comments. He reassured the Credit Union that they won't have to bring the project under current standards, but to address the issues that have been brought to their attention.

The original motion, as amended, passed 4-2 with Councilors Kahle and Mitchell voting in opposition.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to approve Agenda Items 6a and 6b on the Consent Agenda. The motion passed unanimously.

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

7a. FY14 Budget - Consideration of approving City Manager's proposed budget as the FY14 preliminary budget and setting final public hearing on the FY14 budget for August 19, 2013 (p. 114)

City Manager Stearns said the proposed budget for FY14 was enclosed with the packet. He said that the City Council held two work sessions on the budget so far, on May 28th and June 10th. There will be another work session scheduled in July or August prior to adoption of the budget on August 19th. In the past the City Council has been comfortable adopting the City Manager's proposed budget as the preliminary budget which the Council is required by state law to adopt by June 30th. After adoption of the Preliminary budget, the City Council then makes changes to the budget in July and August prior to final adoption which is scheduled for August 19th.

LOOKOUT RIDGE LAND SLIDE

At the request of Michele Irelan, of the Iron Horse Homeowner's Association, I visited the site on June 6, 2011 to observe a land slide that had apparently occurred several days earlier. From Michele's description of the slide, it was obvious this was something that would require the expertise of a geotechnical engineer, so I contacted Josh Smith, of CMG Engineering, and asked him to meet me at the site.

Observations

Josh and I first met at the locked gate at the end of Lookout Lane and walked down to the slide where it crossed the lower section of Lookout Road. At that point it looked like surface debris that had slid down from above as we could not see any signs of slumping only surface scour. The slide appeared to be somewhat contained within a natural drainage area. The debris consisted of rock, silty/clayey soils, trees and shrubs. See picture below:

At this location we could see Prairiesmoke Circle below and, according to Michele, the debris slide stopped just short of the road.

With Michele guiding the way, Josh and I then hiked to the top or beginning of the slide, coming in from above through Iron Horse property off Stonecrop Lane. At this location, we found a pressure sewer service off the edge of an unfinished roadway in Lookout Ridge approximately 20 ft. above a drainage area. About 15 ft. below this sewer service

it was observed that a section of the steep slope (approx. 1.5H:1V) had broken off and apparently slid into the drainage. We hiked down to the drainage area and could see flagging indicating that the area had been delineated as a wetland. The surface was very wet and soft and there were surface streams of water throughout the still intact portion of the drainage. At that location, the “flowline” slope of the drainage, area uphill and to the south of the start of the slide, was moderate at only about a 12% to 15% grade. The side slopes of the drainage were very steep, especially on the north slope leading up to the sewer service and road. Water was observed flowing out of the exposed soils at numerous locations and at various elevations. It was obvious the soils in and around the slump area were at or near saturation.

Pressure sewer service with displaced drainage area below
(Head scarp or beginning point of slide)

The picture above was taken on a follow-up visit on June 9, 2011 after a rain event and it clearly shows water flowing downslope toward the pressure sewer service valve box. There was also water running down the adjacent roadway and a portion of this water left the road at this sewer service location. This Lookout Ridge roadway is unfinished and its surface currently consists of native glacial till (gravelly to cobbly silty clay loam) soils.

The pictures on the following page show the sloughed section just below the sewer service and the scour and debris within the drainage at the head scarp of the slide.

Sloughed area just below sewer service

Debris and scour in drainage near upper end of slide

Hypotheses

From our observations, it would appear the slide was started by a section of steep sloping ground just below the Lookout Ridge sewer service slumping or sloughing off and slipping into the drainage/wetland area immediately below. The soils within the drainage/wetland area were likely saturated to some significant depth, unstable and unable to support the weight of the slumping materials from above. This caused the soils and vegetative materials within the drainage to start moving downhill and the added weight and momentum of the sliding soils and debris continued to move and displace everything in its downhill path.

Subsurface and surface water, along with soil conditions that could not remain stable under elevated moisture levels and the steepness of the existing slope, were most likely the causes of the slide. It is possible that subsurface water flowed within the bedding and backfill material of the sewer main and then within the bedding and backfill material along the pressure sewer service. The pressure sewer service was likely installed to provide at least 6 ft. of cover and is likely sloped away (running downhill) from the connecting sewer main. The sewer service valve box is about 6 ft. lower than the road. This could help divert or channel at least some of the subsurface water flowing down the sewer main trench to the sewer service lateral. Assuming the end of the sewer service is lower than the sewer main, water would then pond at the end of the sewer service trench which is near the top of a steep approximately 1.5H:1V slope. This could have saturated the soils and could have caused the steep sloping section downslope from the end of the sewer service to begin slumping.

This may have happened over time and could have opened up a surface fracture that then allowed surface water to flow into the fracture. Heavy rainfall then occurred on June 2, 2011 and it is likely that some surface runoff water flowed along the sewer service lateral and into the fracture giving it the final “push”. This area recently experienced a spring thaw after an above-average snow year. In addition, snow is still melting in higher elevations above this area contributing to significant water in the drainage.

Recommendations

At this point the most important things to do are to clean the debris from the roads to allow vehicle access and to control or manage the water flowing within, flowing out and draining into the drainage area. The following are several improvements that could be made to hopefully deal with the most pressing issues.

- When the debris is cleared from the road crossings, some debris should be pulled down from the uphill sides of the road and the finished slopes should be no steeper than 3H:1V. We anticipate that slopes of 3H:1V will provide an adequate factor of safety against sliding. These slopes should be observed by an engineer for final evaluation.
- The ditches along the cut sides of the roads should be cleared and cut, if necessary, to make them capable of receiving and conveying drainage water. Straw wattles and/or check dams should be installed along the ditch at intervals of not less than 50 ft. Existing downslope culverts should be

inspected to make sure the inlets are not obstructed and that they are clean and able to convey their respective maximum capacity of runoff water.

- There is already a significant flow of water that is leaving the drainage area just above the paved private drive in Iron Horse and flowing across City sewer cleanout manholes. Some of the water then flows to a ditch along Lookout Road and disappears at a rock cut a relatively short distance from the manhole and some bypasses the ditch and runs down the road. A ditch or channel should be constructed to contain and divert this flow of water to preclude damage to the paved drive, gravel road and to the City's sewer system.
- Just below this above-noted rock cut along Lookout Road, the near vertical cut slope turns to a glacial till material and sections of this material have sloughed and are plugging the inlet end of a culvert. This sloughing is not related to the bigger slide we have been talking about in this report; however, the material does need to be removed to open up the roadside ditch drainage. Something also needs to be done to stabilize this steep cut slope to keep the sloughing from propagating further back into the paved private drive; however, this could be a separate project.
- Grading and ditch shaping work should be done on the existing Lookout Ridge unfinished roadway to divert surface runoff water away from rather than toward the pressure sewer service at the top end of the slide area. Grading should also be done at other locations along this unfinished roadway to keep runoff water from flowing toward and into the drainage where the slide occurred.
- Something should also be done to stabilize the exposed steep slope just below the pressure sewer service to keep the sloughing from propagating further back into the roadway. We anticipate the fix for this area will require significant earthwork, subsurface drainage improvements and possibly a mechanically stabilized earth (MSE) wall.
- A curtain or cut-off drain should be installed that connects to the bedding material in the sewer main and sewer service lateral trenches near the head scarp of the side. The drainage outlet should be designed as part of slope reconstruction in this area.
- Evaluation of the debris flow side slopes should occur to evaluate the possibility of additional propagation of the slide laterally, An updated topographic map will be necessary to properly evaluate these areas further.

Prepared by,

Tom Cowan, P.E.	Joshua C. Smith, P.E.
Carver Engineering	CMG Engineering, Inc.

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RESOLUTION NO. 13-__

A Resolution of the City Council of the City of Whitefish, Montana, indicating its intention to adopt amendments to the Whitefish Downtown Business District Master Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy).

WHEREAS, the Whitefish City-County Master Plan (Growth Policy) was adopted by the City of Whitefish by Resolution No. 96-3 on February 20, 1996; and

WHEREAS, at a lawfully notice public hearing on March 20, 2006, the Whitefish Downtown Business District Master Plan was presented to the public by Crandall Arambula, PC, public comment was solicited and received and the City Council adopted Resolution No. 06-18, a Resolution of Intent to adopt the Whitefish Downtown Business District Master Plan as an amendment to the Whitefish City-County Master Plan (Growth Policy); and

WHEREAS, at a lawfully noticed public hearing on April 3, 2006, the City Council adopted the Whitefish Downtown Business District Master Plan as an amendment to the Whitefish City-County Master Plan (Growth Policy) pursuant to Resolution No. 06-21; and

WHEREAS, the 2007 Whitefish City-County Growth Policy (2007 Growth Policy) was adopted by the City Council pursuant to Resolution No. 07-57 on November 19, 2007; and

WHEREAS, pursuant to a Consultant Agreement dated April 19, 2012, and Addendum No. 1 dated November 9, 2012, the City engaged Crandall Arambula, PC, to assist the City in updating the Downtown Master Plan; and

WHEREAS, thereafter, public meetings were conducted to receive public input regarding Downtown Business District needs and proposals; and

WHEREAS, on September 19, 2013, at a lawfully noticed public hearing, the Whitefish City-County Planning Board considered the Whitefish Downtown Business District Master Plan 2013 Update, received an oral report, reviewed Staff Report WGPA 13-02, took public comment, and thereafter voted to recommend that the Master Plan be adopted by the Whitefish City Council, with one amendment; and

WHEREAS, at a lawfully noticed public hearing on October 7, 2013, the City Council received a report from Planning Department staff concerning the Whitefish Downtown Business District Master Plan 2013 Update and one amendment, solicited and received public comment, and following discussion adopted a Resolution of Intent to approve the Whitefish Downtown Business District Master Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) as amended; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to adopt a Resolution of Intent to approve the Whitefish Downtown Business

District Master Plan 2013 Update and one amendment, as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy).

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

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

Section 2: The City Council of the City of Whitefish, Montana, hereby indicates its intent to adopt the Whitefish Downtown Business District Master Plan 2013 Update and one amendment, as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy).

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

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

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

October 7, 2013

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

Re: Downtown Master Plan Update (WGPA 13-02)

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend and update the 2006 Downtown Whitefish Business District Master Plan as an amendment to the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on September 19, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced Growth Policy Amendment with one amendment and adopted the supporting findings of fact in the staff report (Vail and Konopatzke were absent). The amendment (Gunderson/Smith) was to keep the pedestrian tunnel under the Baker/Wisconsin viaduct project in the revised master plan.

City Staff Recommendation: Staff recommended approval of the attached Downtown Business District Master Plan update as an amendment to the 2007 Whitefish City-County Growth Policy.

Public Hearing: At the public hearing, three members from the public and the city manager spoke.

Jennifer Franzen, 12 Dakota Avenue, brought up an issue with the proposed bikeway bringing bike traffic to the Railway/Baker intersection, which has no crossing. The proposed crosswalk is on First/Baker. She said it needed to be addressed as a safety issue. She said the plan was being proactive with regard to property acquisition.

Diane Conradi, 115 Hummingbird Lane, was concerned about how zoning would be implemented, especially in the current WR-4 zoned areas on south Central Avenue. She thought the city should initiate it rather than it being piece-meal

driven by developers. She brought up small lots and setbacks that limit commercial development in the WR-4 as well as parking limitations.

City Manager Chuck Stearns spoke in favor of keeping the underground pedestrian crossing issue at Railway and Baker and answered questions from the board about parking structures, financing large projects, and large trucks doing downtown deliveries.

Ian Collins supported the plan and discussed how having a plan facilitates getting grant funding for projects.

The draft minutes of the Planning Board hearing including the full public comments are attached.

This item has been placed on the agenda for your regularly scheduled meeting on October 7, 2013. Should Council have questions or need further information on this matter, please contact the Whitefish City-County Planning Board or the Planning Department.

Respectfully,

David Taylor, AICP
Director

Att: Draft minutes of the 09-19-13 Planning Board meeting

Exhibits from 09-19-13 Staff Packet to Planning Board

1. Staff Report, 09-19-13
2. Downtown Master Plan Update draft

c: w/att Necile Lorang, City Clerk

DOWNTOWN MASTER PLAN UPDATE
PLANNING STAFF REPORT
GROWTH POLICY AMENDMENT WGPA 13-02
SEPTEMBER 19, 2013

A report to the Whitefish City-County Planning Board and the Whitefish City Council regarding an amendment to the Whitefish Growth Policy to adopt an updated Downtown Whitefish Business District Master Plan. A public hearing is scheduled before the Whitefish City-County Planning Board on September 19, 2013 and a subsequent hearing is set before the City Council on October 7, 2013.

BACKGROUND

The Whitefish Downtown Master Plan 2013 Update Public Review Draft has been forwarded to the Planning Board and City Council for review, comment, and adoption. This plan has been prepared for the City of Whitefish by consultants Crandall-Arambula from a contract prepared by the City Manager's office at the request of the City Council. The original Downtown Master Plan, which was also completed by Crandall-Arambula in conjunction with the City of Whitefish and the Heart of Whitefish, was adopted in April of 2006. This update effort was initiated in the fall of 2012.

The study area encompasses the downtown core, including the BNSF rail yard and corridor commercial area to the north along Wisconsin, rail and residential area along Somers and Pine to the east, 6th Street to the south, and the Whitefish River to the west.

The plan is meant to be a guide for future downtown projects, zoning, and development. This plan works as a companion document to the 2007 Whitefish City-County Growth Policy and area neighborhood plans.

To engage the public, the consultant hosted several meetings with staff and the public, including a public review of the existing plan and an open house where oral and written responses from the public were logged.

NEW ELEMENTS

Highlights of the proposed changes from the 2006 adopted Downtown Master Plan include:

- A downtown 'Retail Loop" that permits only retail uses that follows Central to First, then over to the Railway District on Lupfer, up to Third and back over to Central.
- Expansion of commercial type uses south on Spokane Avenue
- A recommendation for three major parking structures downtown
- A 'Downtown Living Room" concept that includes additional hard-scape for Depot Park
- New park space in the Railway District

- New City Hall at the current location at Second and Baker rather than near Depot Park
- Elimination of the 'Whitefish Landing' waterway project near BNSF Railway Yard from original plan
- Elimination of bicycle and pedestrian underpass below Baker Avenue near viaduct from original plan (this item is controversial and should be looked at more closely)
- A protected bikeway up Spokane and over to Wisconsin, including a leg going out East Second
- Additional multi-family land use southwest of downtown and north of Railway
- New proposed future streets south of the railroad
- Additional future traffic signals at Second and Lupfer, First and Baker, and Third and Baker to calm traffic and facilitate pedestrian traffic
- Improved 'Gateways' at three downtown entry points, including landscaping and signage

IMPLEMENTATION ITEMS

The Next Steps portion outlines several updates that need to be made to other regulatory documents and establishes priority development projects. These include:

- Change the 2007 Growth Policy Future Land Use maps in the 'Whitefish Landing" region northwest of the Railway District from Resort Residential to Urban. I think that resort residential may remain more appropriate than urban and may be impacted by the Highway 93 West Corridor Plan and its vision for the Idaho Timber property, so that item could use some discussion by the board.
- Eventually changing the WI zoning south of the BNSF tracks to residential of some sort.
- Amend zoning to require ground floor retail exclusively in the downtown loop (First to Central to Third to Lupfer)
- Require zero lot line development in core
- Amend ARC standards to require 70% transparent glass along ground floor facades on Central and parts of First and Third streets (see page 49)
- Amend ARC standards to require 50% transparent glass along ground floor facades on fringe streets in the downtown core (see page 49)
- Require parking access restricted frontages in the downtown core
- Establishes City Hall and a Second and Baker Parking Structure as the Number 1 priority project
- Establishes a parking garage at Second and Spokane as the Number 2 priority project (the rankings of these priorities should be reviewed and debated)
- Establishes Baker Avenue streetscape and roadway improvements as the Number 3 priority
- Establishes Depot Park hardscape improvements as the Number 4 priority

- Establishes other projects as priorities such as Railway District and Central Avenue pedestrian street improvements, a Railway District anchor site, etc.

RELATIONSHIP WITH THE GROWTH POLICY

The Downtown Business District Master Plan was included as part of the 2007 Whitefish City-County Growth Policy. The Growth Policy features a section on downtown planning under the Land Use section in Chapter Three.

The Goals, Policies, and Recommended Actions from the Land Use element of the Growth Policy related to the downtown are listed below, along with a brief synopsis of how the plan addresses the issues.

2007 WHITEFISH CITY-COUNTY GROWTH POLICY, LAND USE ELEMENT:

Goals:

3. Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

This plan is the roadmap to continuing to support downtown Whitefish and its role as the driving economic and administrative force in our community.

Finding 1: The plan update continues to support the downtown as the commercial, financial, and administrative center of the community. Retail and commercial growth is encouraged, and the plan calls for city hall to remain in the downtown core.

7. Preserve and protect important historic buildings, neighborhoods, and landmarks in downtown Whitefish.

The plan does not address preservation of buildings, neighborhoods, and landmarks. The Growth Policy calls for an inventory to first be done of historic buildings, neighborhoods and landmarks, and that has not yet been established as a priority.

Policies:

1. *The city of Whitefish shall continue to implement and update the Downtown Whitefish Business District Master Plan.*

This document is the embodiment of that policy.

Finding 2: This proposed Downtown Business District Master Plan update supports the Future Land Use Policy to implement and update the Downtown Business District Master Plan.

2. *For new development, redevelopment, and infill projects in downtown Whitefish, building height and massing shall be consistent with the scale of existing structures*

The Downtown Business District Master Plan update does not address building height and massing, but the recently updated Architectural Review Standards and revised WB-3 building heights do.

SUMMARY

The Downtown Whitefish Business District Draft Master Plan update establishes a good framework for future development and growth for the downtown core. There are several potentially controversial elements. The Planning Board and Council should thoroughly review the document, the proposed implementation elements, and the suggested priority projects and decide if they and the public agree with the recommendations contained therein.

Overall Recommendation: Staff recommends the Planning Board review and recommend any appropriate changes needed to the Downtown Business District Master Plan update document, and that it be forwarded it to the City Council with a recommendation for adoption as an amendment to the 2007 Whitefish City-County Growth Policy.

they moved into their new homes in Old Town.

Anderson said these are difficult issues, especially right now when there is a lot of traffic and road construction. He said the City needs to talk about how to mitigate traffic concerns. There are more people coming to town and there is always the need to ask when enough is enough. That is why there is a Growth Plan set by the public process.

MOTION

Anderson moved and Netteberg seconded to adopt staff report WPP 13-04 findings of fact and recommend that the Whitefish City Council approve the Haugen Heights preliminary plat.

AMENDMENT

Phillips moved and Blake seconded to amend the motion and require the applicant implement a traffic control device to slow the traffic down on Haugen Heights Road, in consultation with the Public Works Department.

VOTE ON THE AMENDMENT

The amendment passed 5-2 with Meckel and Netteberg voting in opposition.

VOTE

The original motion, as amended passed 5-2 with Blake and Smith voting in opposition. (Scheduled for City Council on October 21, 2013.)

CITY OF WHITEFISH GROWTH POLICY AMENDMENT REQUEST

A proposal by the City of Whitefish to amend the 2007 Whitefish City County Growth policy by adopting an updated and amended Downtown Master Plan.

RECESS

A 5-minute recess was called.

STAFF REPORT WGPA 13-02

Planning Director Taylor reported that the Whitefish Downtown Master Plan 2013 Update Public Review Draft has been forwarded to the Planning Board and City Council for review, comment, and adoption. This plan has been prepared for the City of Whitefish by consultants Crandall-Arambula from a contract prepared by the City Manager's office at the request of the City Council. The original Downtown Master Plan, which was also completed by Crandall-Arambula in conjunction with the City of Whitefish and the Heart of Whitefish, was adopted in April of 2006. This update effort was initiated in the fall of 2012.

Taylor provided a power point presentation of the highlights of the plan.

The following is from the staff report included with the packet:

The study area encompasses the downtown core, including the BNSF rail yard and corridor commercial area to the north along

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Wisconsin, rail and residential area along Somers and Pine to the east, 6th Street to the south, and the Whitefish River to the west.

The plan is meant to be a guide for future downtown projects, zoning, and development. This plan works as a companion document to the 2007 Whitefish City-County Growth Policy and area neighborhood plans.

To engage the public, the consultant hosted several meetings with staff and the public, including a public review of the existing plan and an open house where oral and written responses from the public were logged.

NEW ELEMENTS

Highlights of the proposed changes from the 2006 adopted Downtown Master Plan include:

- A downtown 'Retail Loop" that permits only retail uses that follows Central to First, then over to the Railway District on Lupfer, up to Third and back over to Central.
- Expansion of commercial type uses south on Spokane Avenue
- A recommendation for three major parking structures downtown
- A 'Downtown Living Room" concept that includes additional hard-scape for Depot Park
- New park space in the Railway District
- New City Hall at the current location at Second and Baker rather than near Depot Park
- Elimination of the 'Whitefish Landing' waterway project near BNSF Railway Yard from original plan
- Elimination of bicycle and pedestrian underpass below Baker Avenue near viaduct from original plan
- A protected bikeway up Spokane and over to Wisconsin, including a leg going out East Second
- Additional multi-family land use southwest of downtown and north of Railway
- New proposed future streets south of the railroad
- Additional future traffic signals at Second and Lupfer, First and Baker, and Third and Baker to calm traffic and facilitate pedestrian traffic
- Improved 'Gateways' at three downtown entry points, including landscaping and signage

IMPLEMENTATION ITEMS

The Next Steps portion outlines several updates that need to be made to other regulatory documents and establishes priority development projects. These include:

- Change the 2007 Growth Policy Future Land Use maps in

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the 'Whitefish Landing" region northwest of the Railway District from Resort Residential to Urban. He said he thinks that resort residential may remain more appropriate than urban and may be impacted by the Highway 93 West Corridor Plan and its vision for the Idaho Timber property, so that item could use some discussion by the board.

- Eventually changing the WI zoning south of the BNSF tracks to residential of some sort.
- Amend zoning to require ground floor retail exclusively in the downtown loop (First to Central to Third to Lupfer)
- Require zero lot line development in core
- Amend ARC standards to require 70% transparent glass along ground floor facades on Central and parts of First and Third streets (see page 49)
- Amend ARC standards to require 50% transparent glass along ground floor facades on fringe streets in the downtown core (see page 49)
- Require parking access restricted frontages in the downtown core
- Establishes City Hall and a Second and Baker Parking Structure as the Number 1 priority project
- Establishes a parking garage at Second and Spokane as the Number 2 priority project (the rankings of these priorities should be reviewed and debated)
- Establishes Baker Avenue streetscape and roadway improvements as the Number 3 priority
- Establishes Depot Park hardscape improvements as the Number 4 priority
- Establishes other projects as priorities such as Railway District and Central Avenue pedestrian street improvements, a Railway District anchor site, etc.

RELATIONSHIP WITH THE GROWTH POLICY

The Downtown Business District Master Plan was included as part of the 2007 Whitefish City-County Growth Policy. The Growth Policy features a section on downtown planning under the Land Use section in Chapter Three.

The Goals, Policies, and Recommended Actions from the Land Use element of the Growth Policy related to the downtown are listed below, along with a brief synopsis of how the plan addresses the issues.

2007 WHITEFISH CITY-COUNTY GROWTH POLICY, LAND USE ELEMENT:

Goals:

3. Strengthen the role of Downtown Whitefish as the commercial,

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financial, and administrative center of the community.

This plan is the roadmap to continuing to support downtown Whitefish and its role as the driving economic and administrative force in our community.

Finding 1: The plan update continues to support the downtown as the commercial, financial, and administrative center of the community. Retail and commercial growth is encouraged, and the plan calls for city hall to remain in the downtown core.

7. Preserve and protect important historic buildings, neighborhoods, and landmarks in downtown Whitefish.

The plan does not address preservation of buildings, neighborhoods, and landmarks. The Growth Policy calls for an inventory to first be done of historic buildings, neighborhoods and landmarks, and that has not yet been established as a priority.

Policies:

1. *The city of Whitefish shall continue to implement and update the Downtown Whitefish Business District Master Plan.*

This document is the embodiment of that policy.

Finding 2: This proposed Downtown Business District Master Plan update supports the Future Land Use Policy to implement and update the Downtown Business District Master Plan.

2. *For new development, redevelopment, and infill projects in downtown Whitefish, building height and massing shall be consistent with the scale of existing structures*

The Downtown Business District Master Plan update does not address building height and massing, but the recently updated Architectural Review Standards and revised WB-3 building heights do.

The Downtown Whitefish Business District Draft Master Plan update establishes a good framework for future development and growth for the downtown core. There are several potentially controversial elements. The Planning Board and Council should thoroughly review the document, the proposed implementation elements, and the suggested priority projects and decide if they and the public agree with the recommendations contained therein.

Staff recommended the Planning Board review and recommend

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appropriate changes needed to the Downtown Business District Master Plan update document, and that it be forwarded it to the City Council with a recommendation for adoption as an amendment to the 2007 Whitefish City-County Growth Policy.

Phillips said staff put a lot of work into it and it has been done very well. He thanked them for it.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

Jennifer Franzen, 12 Dakota Avenue, said on page 25 the proposed bikeway goes on Railway Street with the current bike path on the north side of Railway. She said that is a lot of bike and pedestrian convergence. She said the proposed crosswalk is down on 1st Street, which is a block south. She isn't sure how to address it but asked them to realize they might need to address that safety issue.

Diane Conradi, 115 Hummingbird Lane, said she is a property owner at 404 Central Avenue. She also rents in downtown Whitefish. She applauded the efforts for coming up with a vision for how Whitefish grows. She is more concerned about the implementation of some of these concepts. On page 47 she said the proposal for extending the commercial zone, south of Third Street concerns her. It is zoned WR-4 and it will make that change difficult because it borders residential areas. She said they need to look at parking down there. She sees a lot of parking on the north side of town, but not a lot on the south end of town. She asked them to consider the setbacks. Under the WR-4 zoning, if there is intent to utilize the lots, they are limited by the small lot sizes there. She said on page 47 they make it sound like they will decide what they are going to do when someone comes to them. She didn't like them putting the onus on a particular property owner. It might create a rancorous process. She suggested that the City prioritize updating the regulatory framework to achieve what they are contemplating with the plan. On page 46 the policy and regulatory updates says they should look at existing zoning. She suggested they help staff prioritize looking at the broader brush zone changes so the regulatory framework processes are in place. She said south of Third Street is designated as residential and commercial. She said setbacks are a significant issue. She also brought up the median down the middle of Central at the south end, and said that could be removed to provide more parking.

Chuck Stearns, City Manager, said he was available to answer questions. He clarified that the current and existing Downtown Master Plan had an underground crossing at Railway and Baker Avenue. He said the consultant had taken it out of the Downtown Master Plan, but it is something they could look at in the future. He

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said he liked the idea of a parking garage near BNSF and if they did that parking deck it would make sense to put the crossing under the viaduct. He said an at-grade parking at Railway and Baker Avenue would be a tough sell to MDT unless there was a stop light there. He agreed with Diane Conradi on the re-zoning. He said this is an amendment to the Growth Policy and they need to implement zoning right behind it. He cited the example on E. Second Street when the Growth Policy was changed and the zoning didn't follow. He said long term planning often gets set back because of new projects so it detracts from staff's time to work on the long range planning.

Blake asked and Stearns said MDT completes traffic studies and warrants to decide where they will put in traffic lights. Meckel commented on page 20 and said he thinks it is not realistic. He thinks the traffic on Wisconsin Avenue is much higher than what they see. He thinks the crossing under the viaduct needs to be looked at again. Manager Stearns said this Planning Board can recommend that the underground crossing remain in the Growth Policy.

Blake asked if they can do anything about the 18-wheelers delivering downtown and Manager Stearns said they can regulate the hours for deliveries. He said the other option is a commodity distribution center. Phillips said he likes the idea of the northerly parking area. He said the parking area could be designed to be elevated to pick up the northerly traffic off Wisconsin Avenue before it comes into the town itself. Manager Stearns said it would be great to have a transit area from the parking garage because those people might transition downtown.

Meckel asked about the financing mechanism for projects like this and Manager Stearns the TIF money will end in 2020 and they will be able to finance one parking structure. The Council wants staff to look into payment-in-lieu of parking fees for new construction. It would be controversial because it would be another impact fee. It costs about $5,500 per space for a surface level parking lot. Smith asked if it was his preference to put the one by the viaduct first and Manager Stearns said it would take employees and ski traffic out of the downtown parking area, but it doesn't help with the retail parking needs. He said the parking structure with the new City Hall would be first and the one by BNSF would be his preference for priority #2. Blake said he didn't see the need for a parking garage. Manager Stearns said one of the reasons is to spur development, but at this point it is just a long term possibility.

Jen Franzen said this plan looked at property acquisition for the City now instead of 20 years from now and that is proactive.

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Ian Collins said Ken Meckel's question about financing was a very good question. He said that in the past the Master Plan positioned the City well for grants and provided the financing they needed for some of the big downtown projects. Meckel said he was pro-planning. He just wanted to take existing projects into consideration, too. Phillips said he came from a community that grew 17,000 people in 15 years. When every development was created the development was charged system development charges that helped with infrastructure costs.

PUBLIC HEARING

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

BOARD DISCUSSION

Gunderson said he would be interested in keeping the underpass in the Growth Policy. He likes the idea of connecting parks with trails. He said he wasn't sure if signals were important. He said they could go through this thing and revise it, but he could conceptually agree with the whole package. Meckel said these concerns would go in the public record and come before the Council.

MOTION

Anderson moved and Phillips seconded Whitefish to adopt staff report WGPA 13-02 with findings of fact and recommend that the Whitefish City Council amend the 2007 Whitefish City County Growth policy by adopting an updated and amended Downtown Master Plan.

BOARD DISCUSSION

Gunderson moved and Smith seconded to keep the pedestrian tunnel in the Master Plan.

VOTE ON THE AMENDMENT

The amendment passed unanimously.

BOARD DISCUSSION

Phillips said they should change the setbacks and Director Taylor said this is just the big picture. In the future they will have to create some mixed use hybrid zone and that will change the setbacks.

VOTE

The original motion, as amended, passed unanimously. (Scheduled for City Council on October 7, 2013.)

NEW BUSINESS
GOOD AND WELFARE

1. Matters from Board

Phillips said he would miss Netteberg and the rest of the Planning Board commended him for his years of service.

2. Matters from staff

Director Taylor thanked Netteberg for his support and service.
He said that on October 2nd there will be a new planner.

3. Poll of Board members available for next meeting (October 17, 2013.) All members indicated they would be available

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except for Smith and Blake.

ADJOURNMENT The meeting was adjourned by motion at approximately 10:15 p.m. The next regular meeting of the Whitefish City-County Planning Board will be held on October 17, 2013, 6:00 PM

_____ _____

Ole Netteberg, Chairman of the Board Jane Latus Emmert, Recording Secretary

APPROVED as submitted/corrected: _____/_____/13

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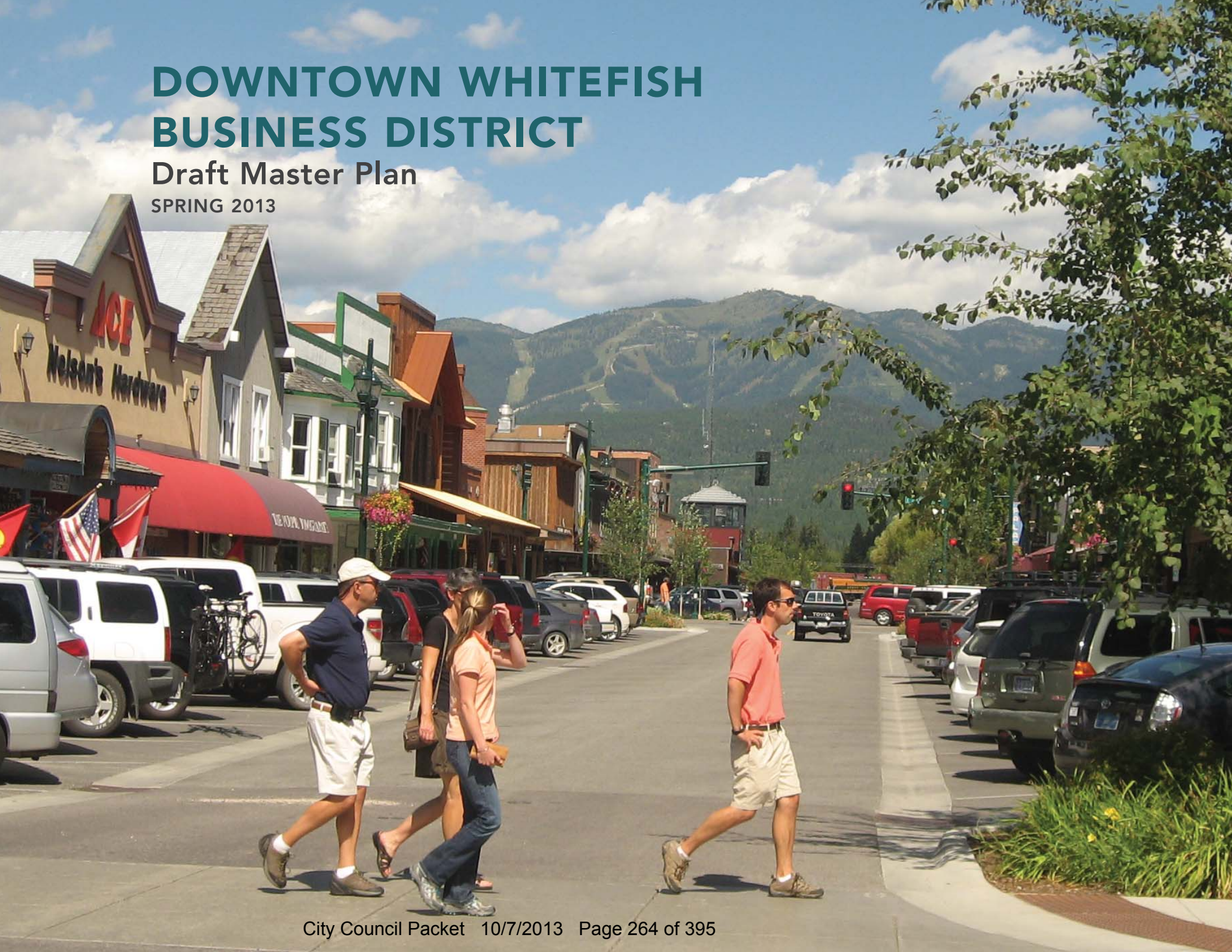
DOWNTOWN WHITEFISH BUSINESS DISTRICT

Draft Master Plan

SPRING 2013



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EXECUTIVE SUMMARY

OVERVIEW

The Whitefish Downtown Business District Master Plan 2013 is an update to the plan adopted in 2006. The plan update:

- Builds upon Central Avenue private development stimulated by considerable public investment that has occurred since 2006
- Focuses 'next phase' public improvement efforts on extending the downtown retail storefronts along Central Avenue one block south to Fourth Avenue and extending retail into the Railway District along First Avenue, Lupfer Street and Third Avenue
- Emphasizes the importance of providing essential retail parking. The Plan is consistent with the 2013 Parking Structure and City Hall Feasibility Study
- Provides for a new City Hall. The plan is consistent with the siting recommendations of the 2013 Parking Structure and City Hall Feasibility Study
- Replaces the adopted Plan of 2006 as an amendment to the Whitefish City-County Growth Policy. The Plan is compliant with the State of Montana Growth Policy requirements
- Sets forth a new implementation strategy for public projects that will stimulate significant private investment. High Priority projects are identified

Following Plan adoption, numerous projects identified in the Plan have been constructed or planned further, including:

- Completion of a new Depot Park Master Plan
- First, Second, and Third Streetscape Improvements including above and below grade street utilities, sidewalk, landscape and roadway reconstruction (Baker to Spokane Avenues)
- Central Avenue Streetscape Improvements including above and below grade street utilities, sidewalk, landscape and roadway reconstruction (Railway to Third Streets)
- Storefront improvements and expansion through renovation or conversion to ground-floor retail use
- Numerous new buildings constructed throughout the downtown
- New public retail parking lot at the intersection of Spokane and Second Street
- Improvements to the Middle School Performing Arts Center

Notable deviations from the 2006 plan incorporated into the update include:

- Proposed construction of a new City Hall at Second Street and Baker Avenue rather than at Depot Park
- Omission of the 'Whitefish Landing' waterway within the BNSF railway area
- Omission of a pedestrian and bicycle underpass below Baker Avenue

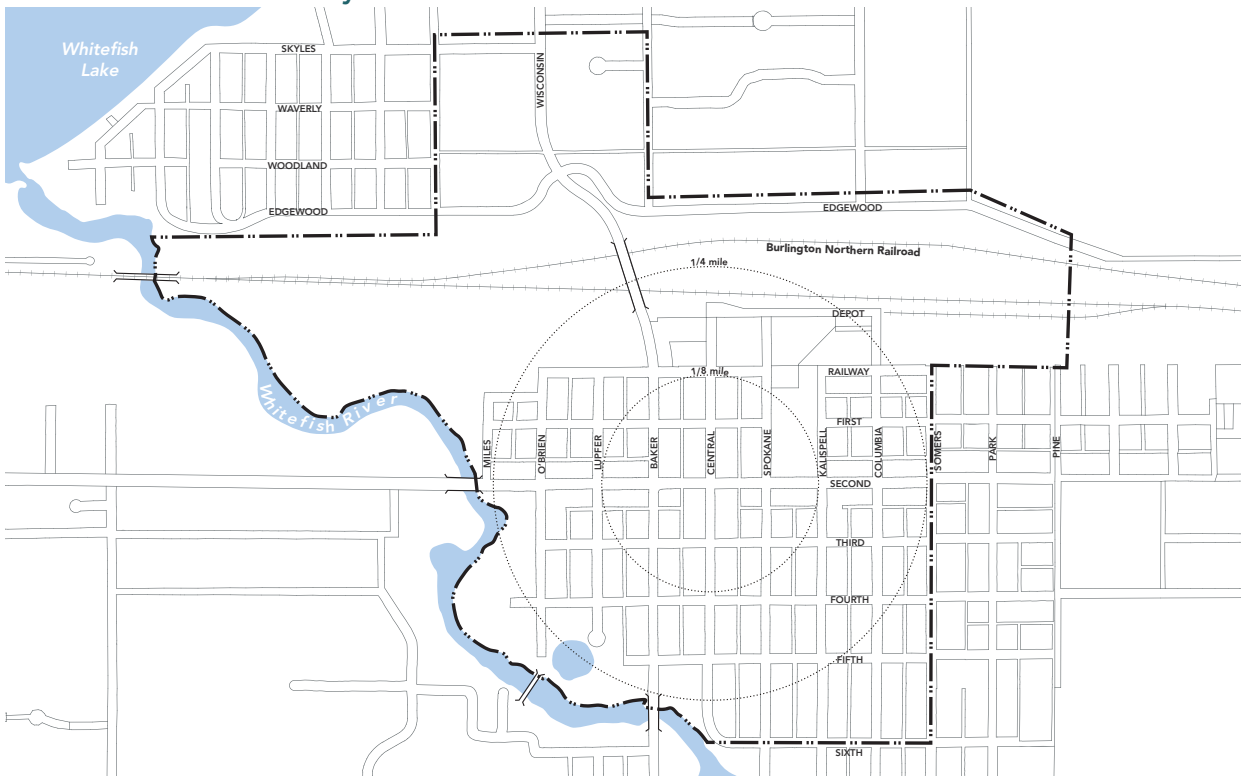
STUDY AREA

The plan update maintains the study area boundary established in 2006.

Study Area Description

The study area includes the Burlington Northern/Santa Fe rail yards and corridor commercial area to the north, rail and residential areas along Somers and Pine to the east, 6th Street to the south and the Whitefish River to the west.

Downtown Whitefish Study Area



PLANNING PROCESS

The Plan Update

The process for updating the plan was initiated in the fall of 2012 and completed in the spring of 2013. The planning process was informed by consultation and recommendations gained from the following sources:

- **City and Consultant–**At key milestones throughout the process, Whitefish City Staff, elected officials, the Parking Structure and City Hall Feasibility Study consultants reviewed Plan Update elements and provided comments and suggestions
- **Public–**The general public provided comments and input at two meetings. During the initial public meeting the existing plan was presented and community issues were solicited. During the second 'open house' meeting Master Plan updated document elements were displayed and presented. Following both meeting presentations the general public was invited to provide oral comments and respond to Plan proposals by filling out 'response sheet' questionnaires

Response Sheet

Whitefish Downtown Master Plan Tune-Up
Kick-Off Meeting

August 23, 2012

Issues and Concerns: For additional Comments Use Back of Sheet

List your three top issues and concerns regarding:

City Hall Location

1._____
2._____
3._____

Parking Structure Design and Location

1._____
2._____
3._____

Special Areas: For additional Comments Use Back of Sheet

On the map above, please note areas you believe:

- **Present special design opportunities**
- **Are areas of concern**

Name (optional): _____

If you need additional time to respond, please return your comments to:
Crandall Arambula 520 SW Yamhill, Roof Suite 4 Portland, Oregon 97204 (503) 417-7879 fax (503) 417-7904 jgraf@ca-city.com

GUIDING PRINCIPLES

A Coordinated Effort

The 2013 Master Plan Update addresses the objectives of the 2006 Master Plan which was developed by The City of Whitefish Staff, elected officials, the Heart of Whitefish downtown business association, and the general public. The Master Plan objectives are organized in the following five categories:

1) Downtown Business Vitality

- Keeps existing businesses healthy
- Provides opportunities for new community-serving businesses
- Better accommodates existing and future tourist industries
- Develops a strategy to strengthen downtown retail through proposals for additional retail development and building improvements
- Creates a pedestrian-friendly environment to encourage visitors and residents to utilize downtown businesses

2) Transportation

- Ensures that Highway 93 roadway and intersection changes enhance and support downtown businesses
- Accommodates increasing traffic volumes without degrading downtown livability and the retail environment
- Locates new parking facilities to support downtown retail and commercial businesses
- Accommodates alternative transportation modes (pedestrian, bicycle and transit) to reduce downtown congestion

3) Public Facilities

- Identifies appropriate public facilities and their locations to strengthen existing businesses
- Identifies public improvements needed to stimulate downtown development

4) Environment

- Protects and connects the downtown to the natural environment; Emphasizes the natural environment as a central feature in the community's appeal to visitors and residents alike
- Highlights the unique natural environment in design concepts

5) Growth Management

- Maximizes opportunities for higher-density market rate and affordable housing
- Demonstrates how Whitefish can stimulate downtown development that can complement and support Highway 93 corridor development outside of Downtown

FUNDAMENTAL CONCEPT

The essential key components of the future vision for growth, improved access and enhanced livability of the Whitefish Downtown Business District are to:

1) Create a Downtown Retail Loop

Extend Central Avenue retail shops and streetscape enhancements north to Depot Street and South to Fourth Street

Expand downtown retail opportunities into the Railway District along First Street, Lupfer Avenue, and Third Street. Match existing Central Avenue streetscape character along this loop

2) Provide Essential Retail Parking Structures

Construct two retail parking structures serving Central Avenue; One at Spokane and Second and the other at Baker and Second

Provide a new retail parking structure serving the Railway District. The structure is envisioned to encompass the entire block at the northwest intersection of First Street and Baker.

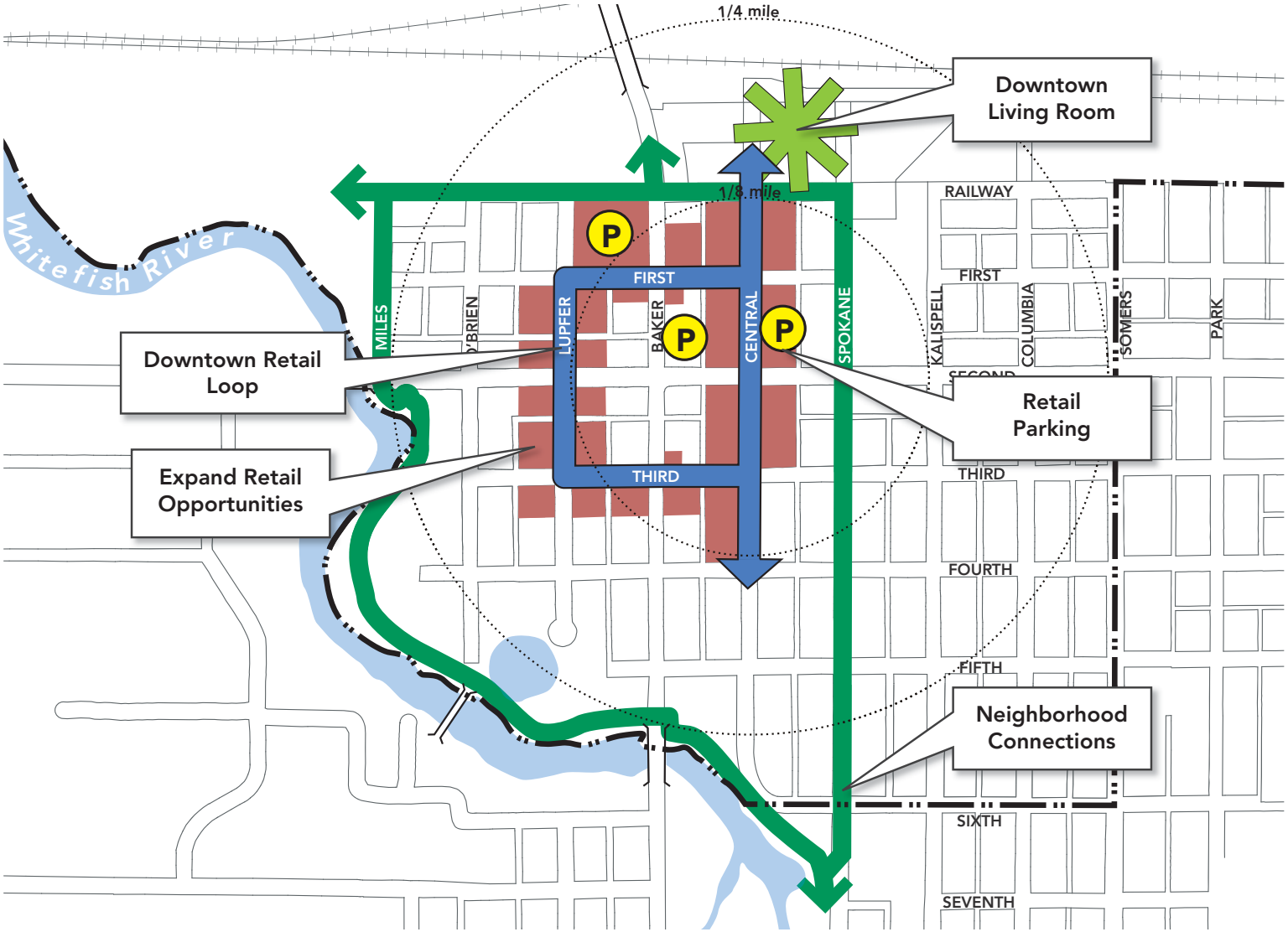
3) Create Safe and Convenient Neighborhood Connections

Provide a combined multi-use pedestrian and bicycle trail and protected bikeway along Spokane Avenue and Depot Street that encircles and connects the downtown to the Whitefish River, parks, and nearby residential neighborhoods

4) Establish a Downtown 'Living Room'

Construct planned enhancements identified in the Depot Park Master Plan with the following amendment: include a large paved 'plaza-like' multipurpose space for downtown events at the intersection of Railway Street and Central Avenue

Fundamental Concept Diagram



TRANSPORTATION FRAMEWORK

The framework identifies all transportation elements for all modes. It establishes a comprehensive 'complete street' network of integrated and balanced pedestrian, bicycle and auto facilities that connect to and within the downtown study area. While ensuring that essential auto and truck access is maintained, the transportation framework has a special emphasis on providing an 'active transportation' system. This system includes pedestrian and bike-friendly streets, intersections, sidewalks, and recreation trail elements that enhance mobility and the quality of life for those living, working or visiting Downtown Whitefish.

Key Framework Elements:

Auto Mobility Streets (Auto/Truck Emphasis)—Essential Highway 93 regional access routes to and within the Downtown are identified

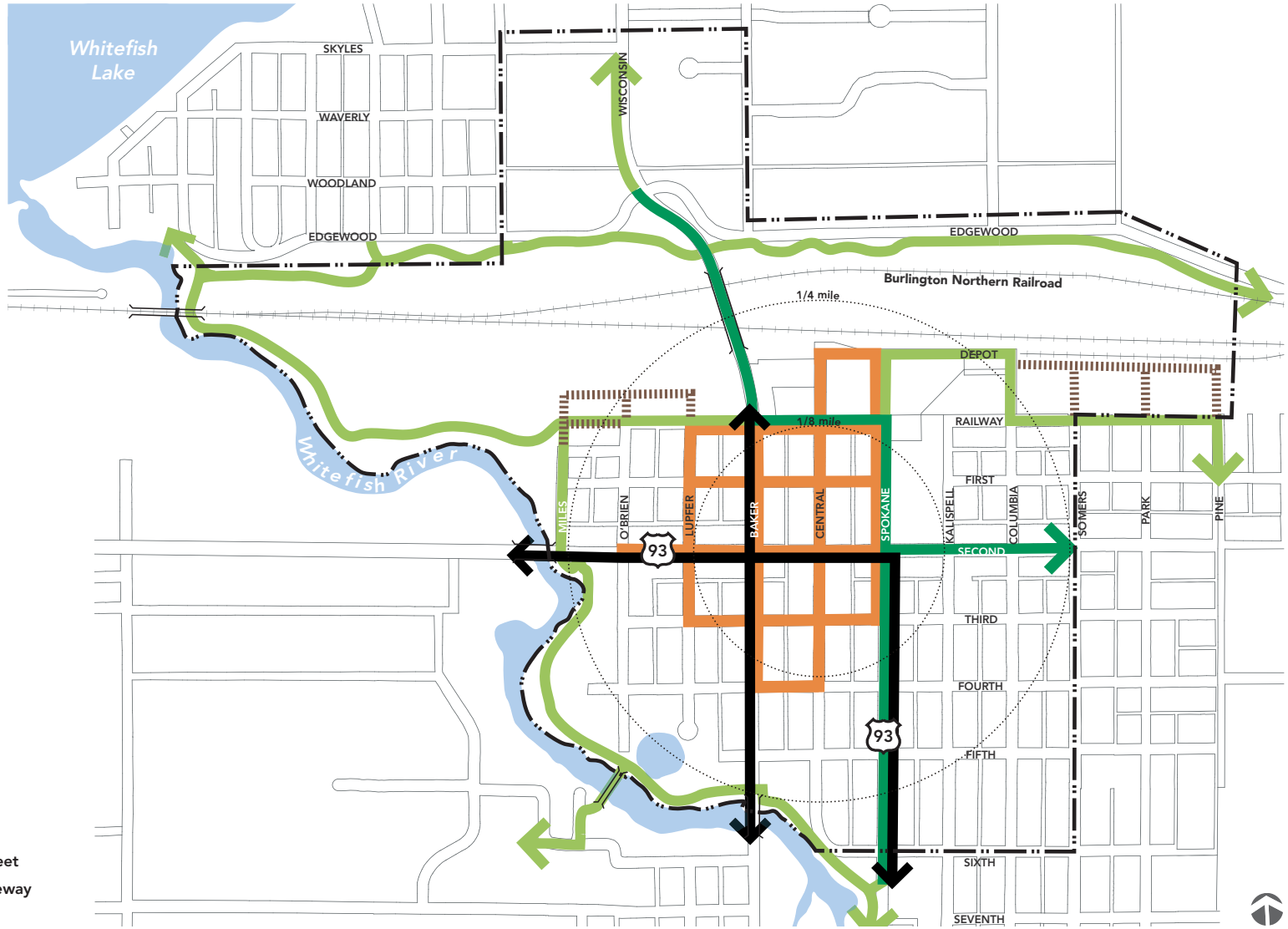
New Streets—Conceptual location for a new local street grid north of Railway Street is identified. These new streets would be constructed concurrently with adjacent new high density residential development

Pedestrian Emphasis Streets—Identifies key streets where either existing enhancements have been constructed or future enhancements are needed to stimulate additional retail development

Protected Bikeway—A safe and direct Downtown access bicycle facility physically separated from auto travel lanes by either a landscaped barrier, curb, sidewalk, parked cars or other means is identified

Multi-Use Trail—Existing, planned and proposed recreation trails connecting the Downtown to adjacent neighborhoods and natural features are identified

Transportation Framework



LEGEND

- Auto Mobility Street
- New Street
- Pedestrian Emphasis Street
- Proposed Protected Bikeway
- Multi-Use Trail

LAND USE FRAMEWORK

The Land Use Framework outlines the vision for long-term development of Downtown Whitefish. It is intended to describe the location and relationship between existing and potential new desirable uses. The Framework builds upon existing desirable uses and maximizes development opportunities. The Land Use Framework in itself does not change existing zoning (permitted uses or existing development regulations). Where zoning inconsistencies exist with this vision, future code changes will be required. In all cases, existing uses should be 'grandfathered', meaning they should be allowed to remain in place until renovated.

A Mix of Uses

The Land Use Framework describes primary land uses but promotes a mix of uses, both vertically and horizontally. Hatched areas indicate where multiple uses are appropriate. New development or renovation of existing structures should be pedestrian-friendly, compatible in scale and character with existing desirable adjacent buildings. Sustainable practices for construction and habitation should be fostered.

Key Framework Elements:

Retail—Identifies the required ground floor locations where the sale of goods, eating and drinking or entertainment businesses will be required

Public Parking—Identifies existing and proposed locations of public parking structures or lots

Civic—Identifies current locations of government buildings, churches, schools and the like

Commercial—Identifies the location where the sale of services is appropriate. Within these areas, retail sales are also appropriate

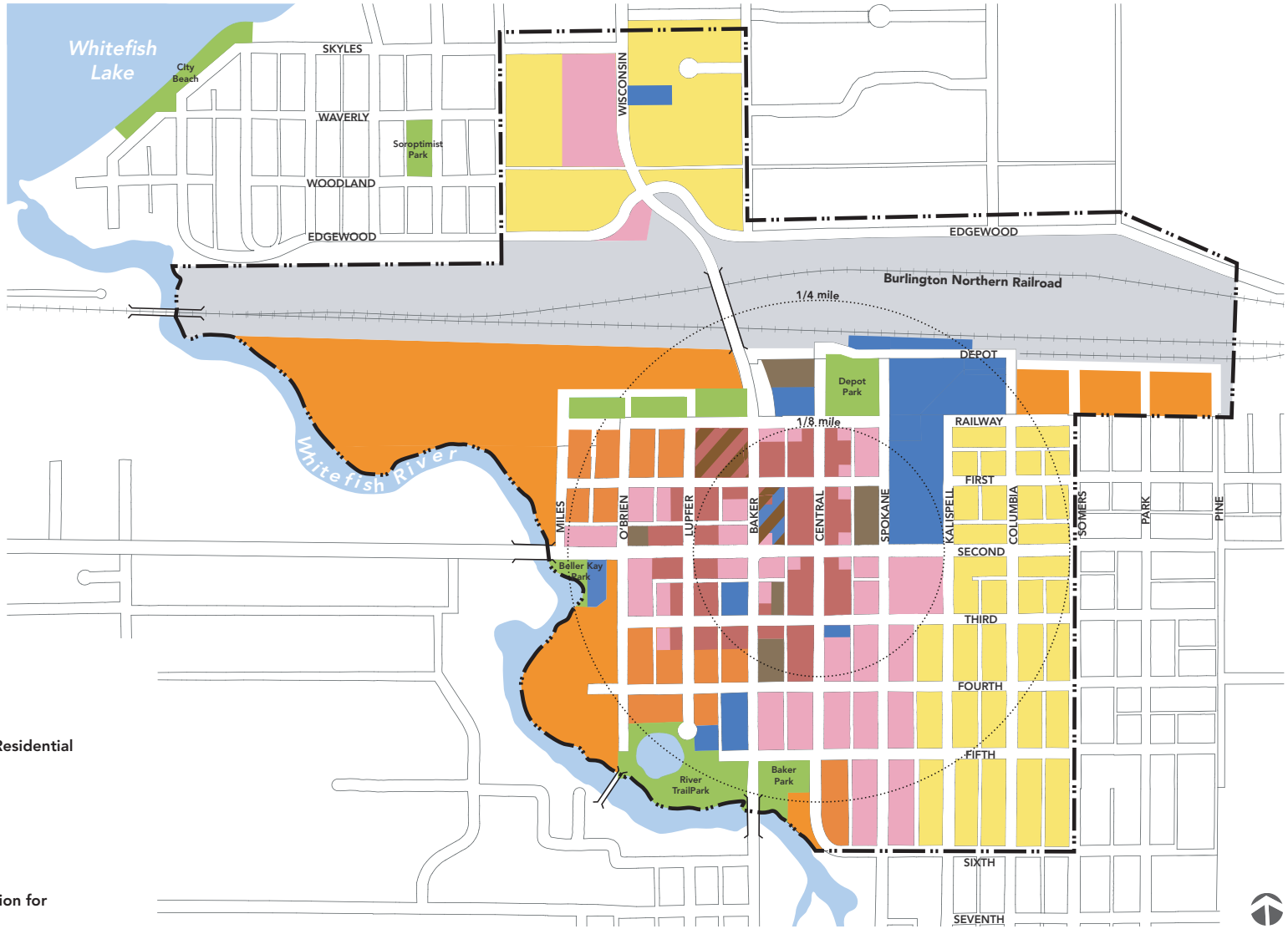
Parks—Identifies current and proposed locations of parks

Multi-family (Attached) Residential—Areas appropriate for apartments, condominiums, townhomes or duplex residential structures are identified. These structures may include mixed uses where hatched with commercial or retail uses

Single Family Residential—Identifies areas appropriate for one dwelling unit per parcel housing

Industrial—Identifies location of Burlington Northern Railway property that is envisioned to remain as currently used

Recommended Primary Land Use Framework



Primary Use
LEGEND

- Retail
- Commercial
- Multi-Family (Attached) Residential
- Single Family Residential
- Civic
- Public Parking
- Parks
- Industrial

Hatch indicates more than one option for potential primary use

IMPLEMENTATION

Three steps are necessary to transform the Whitefish Downtown Business District Master Plan from an aspiration to a development reality: 1) Adoption and distribution of the Plan; 2) Regulatory updates; and 3) Construction of High Priority and Priority Projects.

High Priority Projects

Strategic public investments are identified to stimulate private investment or meet critical public facility needs. The High-Priority Projects are:

1) City Hall and Second and Baker Parking Structure—The design should be consistent with the 2013 Parking Structure Feasibility Study and City Hall Concept Design recommendations.

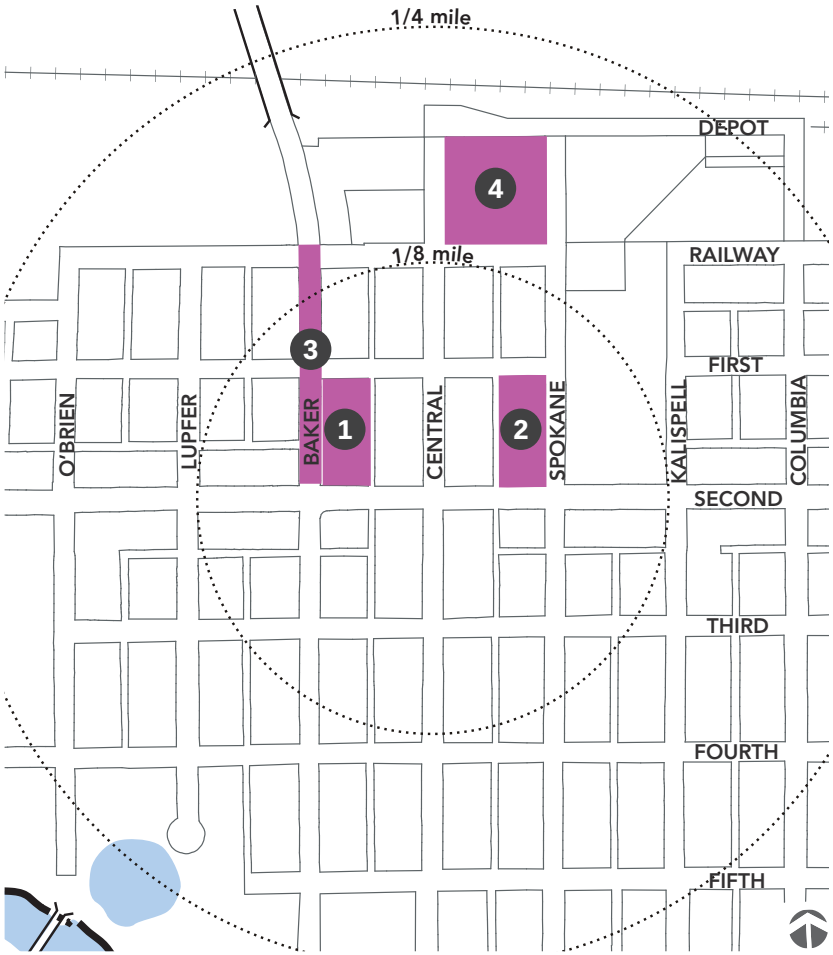
2) Spokane and Second Parking Structure—The structure should meet the parking needs of retail and commercial uses by replacing the current city parking lot with a retail serving parking garage. It should also provide ground floor commercial storefronts along the Spokane Avenue frontage.

3) Baker Avenue Streetscape and Roadway Improvements—Located between Railway and Second Street, the improvements should enhance the pedestrian environment while maintaining acceptable auto and truck mobility. It should create a welcoming environment for the proposed City Hall, retail and commercial ground floor uses. The Second and Baker intersection should be designed and constructed first and foremost as a safe and comfortable connection to the Railway District for pedestrians.

4) Depot Park—The park, as described in the adopted Depot Park Master Plan, should be implemented with possible refinements to include a plaza multi-purpose paved area (approximately 20,000 square feet) at the southwest corner of the park.

High-Priority Projects

Note: Numbering does not indicate phasing



TRANSPORTATION FRAMEWORK

OVERVIEW

Much of downtown Whitefish is within the public realm, including its roadways, sidewalks and trails. The recent completion of Central Avenue and adjacent streetscape improvements coupled with Highway 93 mobility enhancements has resulted in substantial private investment, improved livability and downtown access. The Transportation Framework builds upon these improvements and identifies a vision for additional future improvements.

Complete Street Network

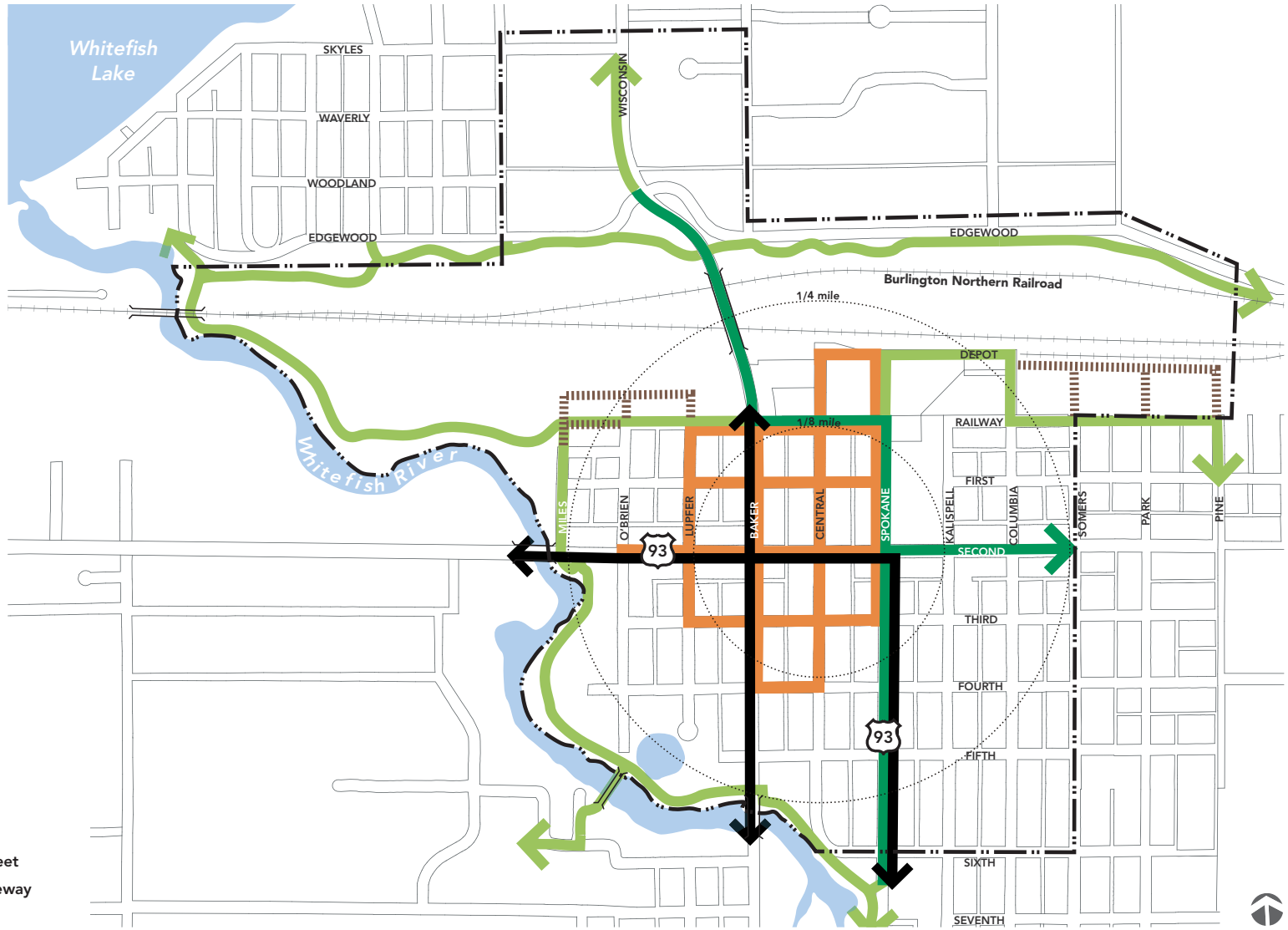
A prime objective of the Downtown Plan is to maintain and strengthen Downtown Whitefish as a destination rather than simply a place to pass through. While essential access and mobility is identified for key routes, a bias toward the pedestrian and cyclist should be fostered for all streets in the downtown, including Auto Mobility Streets. The Transportation Framework identifies key routes for pedestrian and bicycle improvements. To implement this vision, 'active transportation' (pedestrian and bicycle) enabling policies and regulating design standards should be created. The standards should be adopted and replace current street design standards that favor peak commuter period auto and truck through-traffic movement rather than destination 'placemaking'.

Street Hierarchy

The Transportation Framework creates a network of transportation elements that complement adjacent land uses and spur additional desirable Downtown development. The Framework elements include:

- Auto Mobility Streets
- New Streets
- Pedestrian Emphasis Streets
- Protected Bikeway Routes
- Multi-Use Trails

Transportation Framework



LEGEND

- Auto Mobility Street
- New Street
- Pedestrian Emphasis Street
- Proposed Protected Bikeway
- Multi-Use Trail

AUTO AND TRUCK

The Auto and Truck Element identifies regional and local access routes through and within the downtown. These routes are under the jurisdiction of both the City of Whitefish and the Montana Department of Transportation. Implementation of the vision may be led by the City or the MDT.

Auto Mobility Streets

Special 'Urban Highway' design standards unique to downtown Whitefish are suggested for the auto mobility street routes. The standards should result in 'calmed traffic' conditions that in turn maintain downtown livability, reduce or eliminate pedestrian barriers and strengthen the private investment environment. These standards would include:

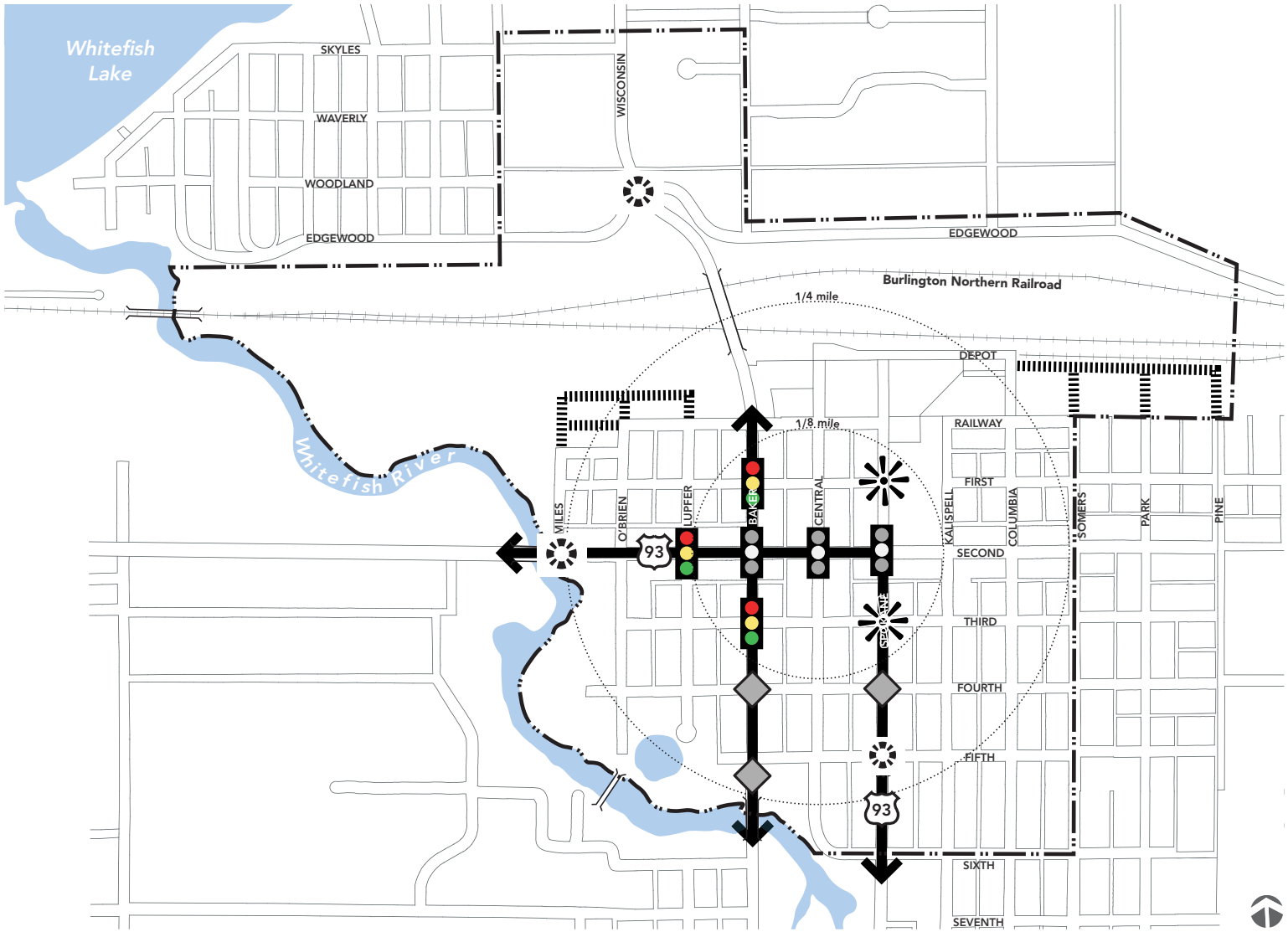
- Consideration for typical conditions rather than peak commuting hours. Additional signalization timing improvements or other innovative congestion management methods that maintain through traffic mobility at current levels should be encouraged
- Allowance for intersection signalization at First, Third and Baker and Second and Lupfer. The additional signalization will improve pedestrian access between the Railway District and Central Avenue retail destinations. Exceptions to typical highway signal 'warrant' thresholds may be necessary
- Street intersections designed for typical FedEx or similarly sized delivery vehicles that service business daily. Accommodate occasional large semi-trailer truck turning movements by laying down curbs at key intersections
- Maintained curbside parking wherever possible
- Reduced or maintained existing speed limits to 25 mph (maximum)
- Pedestrian activated signal or flashing beacons only at indicated busy intersections

New Streets

New local streets will be needed for residential development. New streets should be constructed concurrently with the development of new housing parcels. These streets should meet existing City local street standards at a minimum. Streets should include:

- Curbside parking
- Canopy street trees within a parkway between a sidewalk and curb line
- Pedestrian-scaled ornamental street lighting
- Underground utilities

Auto and Truck Elements



LEGEND

- Auto Mobility Street
- New Street
- Proposed Traffic Signal
- Existing Traffic Signal
- Existing and Planned Pedestrian Crossing Sign
- Planned Ped Activated Rapid Flashing Beacon
- Planned Flashing LED Pedestrian Signal

PEDESTRIAN

The Pedestrian Element identifies neighborhood to downtown access routes, existing improved pedestrian streets and additional streets targeted for streetscape improvements.

The Pedestrian is the Priority

Downtown Whitefish's visitor-driven economy is dependent on creating a pedestrian setting in which retail customers feel comfortable strolling from shop-to-shop, relaxing on comfortable benches or eating and drinking at café tables. The recent pedestrian-priority improvements include widened sidewalks, pedestrian-scaled street lights, landscaped curb extensions, 'tabled' intersections and well-defined intersection crosswalks. These improvements have created a welcoming environment that has enhanced Downtown character, livability and most importantly, has spurred increased retail activity. To maintain the economic momentum, and expand upon the past success, the Pedestrian Element identifies the full network of pedestrian improvements for the Downtown.

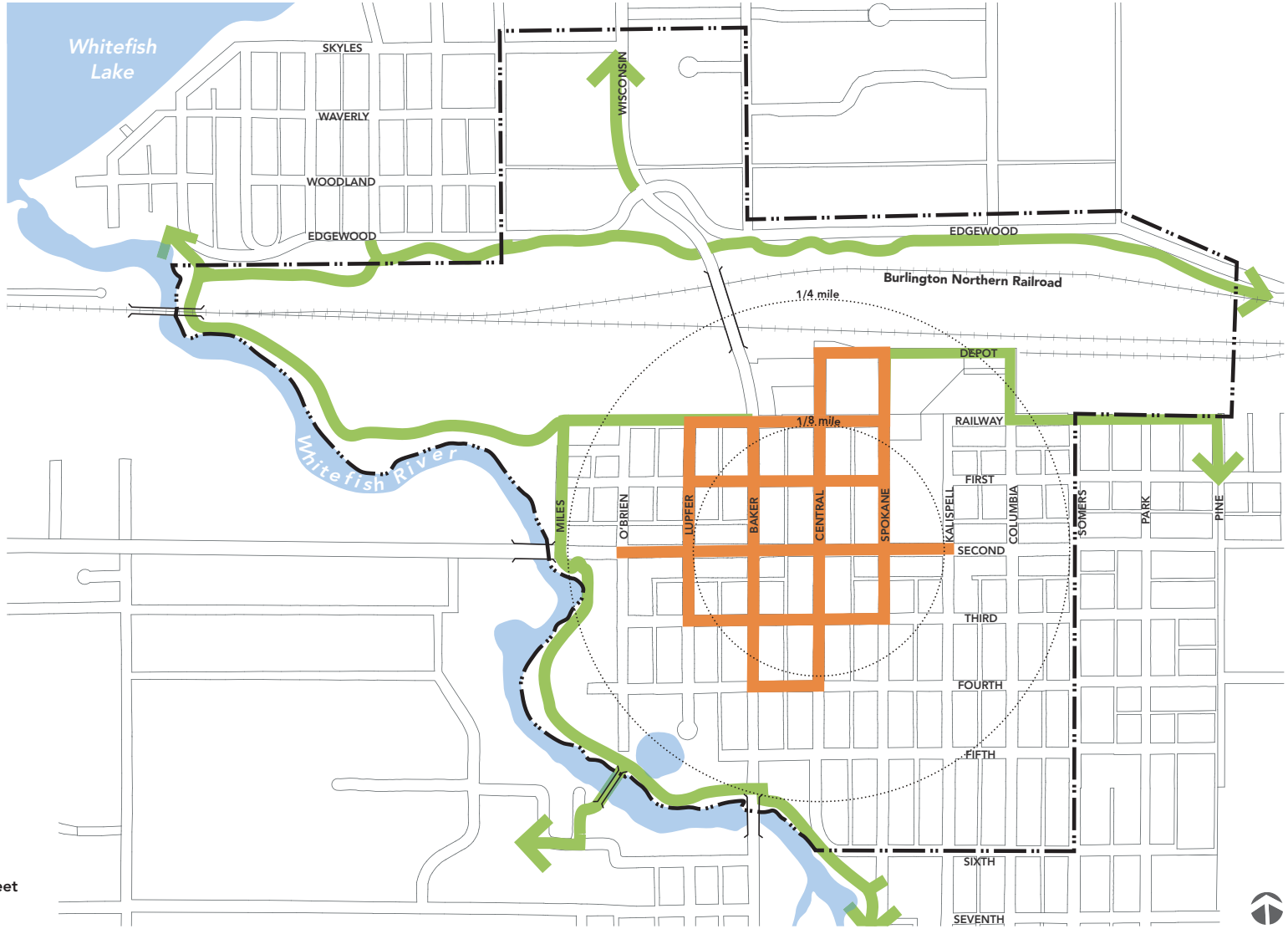
Pedestrian Emphasis Streets

The Pedestrian Element includes street segments where pedestrian-oriented improvements are needed to expand the retail offering on Central Avenue, link the Railway District to the Central Avenue corridor and provide an inviting setting for additional retail, commercial and housing development. A 'common thread' of similar Central Avenue sidewalk, intersection, lighting and landscape elements is recommended. 'Tabled' sidewalk-level intersections with concrete crosswalks should be provided at all intersections. Variations due to adjacent land use, building types, and physical setting should be considered in future design and construction phases. At a minimum, an 11-foot wide 'pedestrian zone' that includes a combination of wide sidewalks and landscaping should be provided for all identified street segments.

Multi-Use Trail

Connections to the neighborhoods, access to recreation areas and linkages to pedestrian emphasis streets are identified. The network includes existing, planned, and proposed new facilities. Proposed facilities should be a minimum of 12' in width to accommodate both pedestrian and bicycles comfortably.

Pedestrian Elements



LEGEND

- Pedestrian Emphasis Street
- Multi-Use Trail

BICYCLE

The Bicycle Element identifies safe, direct and convenient routes for daily transportation and recreation access for bicycles from adjacent neighborhoods and within the downtown.

The proposed protected bikeway has the potential to attract a large percentage of Whitefish residents and visitors who currently do not ride their bicycles because of auto conflict safety concerns. To attract these potential riders, the protected bikeway should be:

- Physically separated from auto traffic lanes by curbside parked vehicles, landscaping, a concrete curb or a combination of these elements
- Designed to provide safe cyclist crossings at intersections and driveways. Colored lane markings, special bicycle traffic signal phasing or other innovative approaches to creating safe bicycle intersection crossings should be considered
- Designed to minimize pedestrian conflicts on adjacent sidewalks, street corners, and crosswalks. In particular, no reduction in sidewalk area should result from the construction of the protected bikeway facility
- Well maintained. Bikeways should be swept or plowed frequently to keep debris, dirt, snow, and ice off cycling surfaces. The greatest deterrent to winter cycling is not cold weather; rather it is a slippery surface. A well-maintained network will extend cycling season well into winter months or, for more hardy cyclists, all year

When fully implemented, the benefits of a safe bicycle network can be significant. By transferring a reasonable portion of Downtown transportation trips from automobiles to bicycles, downtown auto congestion can be lessened and demand for limited parking facilities reduced.

Proposed Protected Bikeway

The Bicycle Element includes a north-south 'Protected Bikeway' route along Second Street, Spokane Avenue, Railway Street and Wisconsin Avenue. The route will need to accommodate at the following locations:

Spokane and Wisconsin–Bikeway should be implemented concurrently with any future Highway reconstruction projects initiated by the Montana Department of Highways. The design of the bike facilities should be coordinated with MDT to ensure that the bicycle facilities are constructed as envisioned.

Depot Park–The route should be incorporated within the park rather than within the right-of-way of Railway Street to preserve existing on-street parking along that segment. Adjustments to the adopted Depot Park Master Plan design may be required.

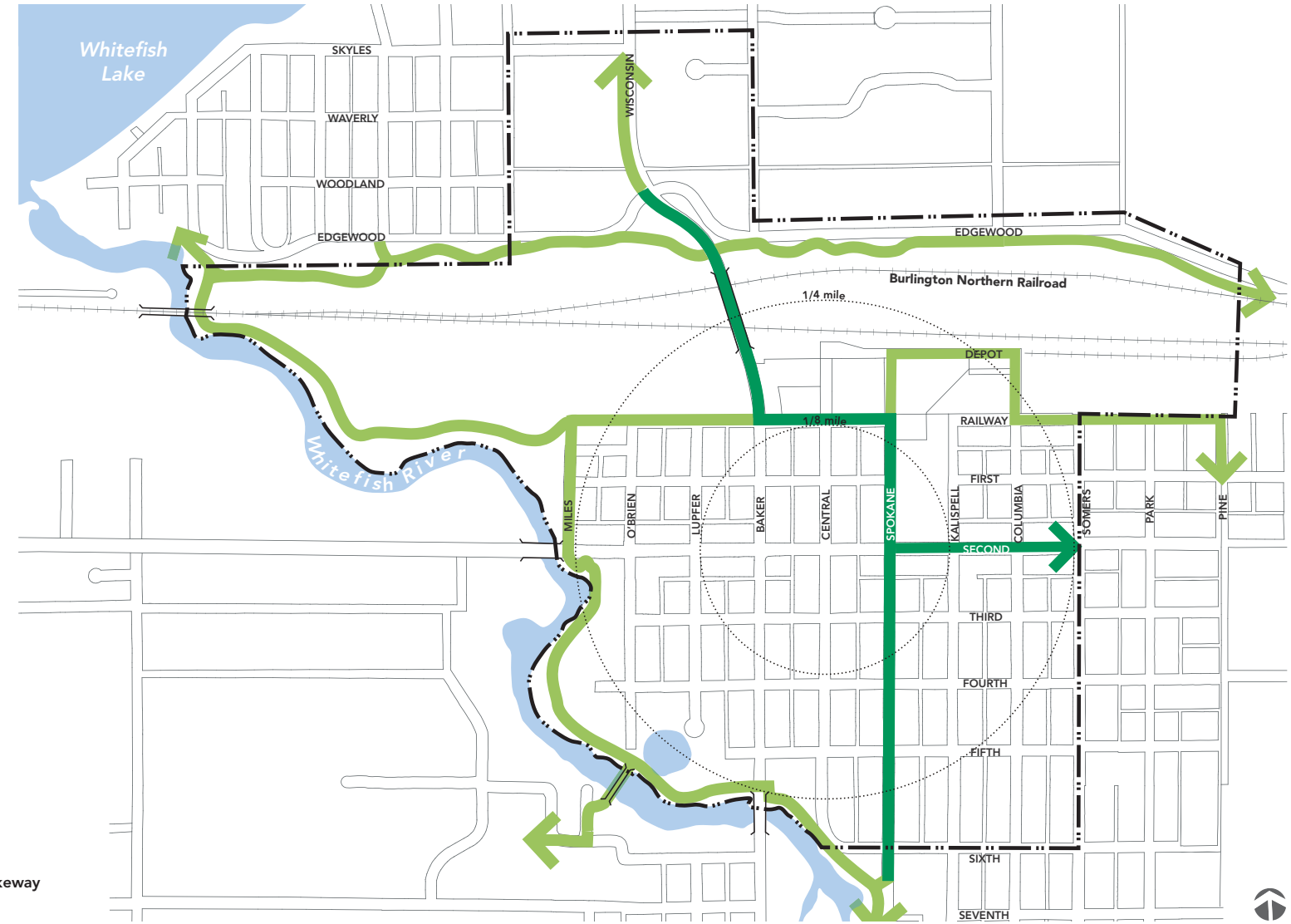
O'Shaughnessy Center–Along the north side of Railway Street, removal of curbside parking may necessary to accommodate the bicycle facility and to avoid conflicts with a planned public restroom.

Multi-Use Trail

East-west bike access into the Downtown is provided on existing planned and proposed multi-use trails. To avoid conflict with pedestrians, cyclists on these routes should:

- Yield to pedestrian traffic
- Be encouraged to ride at slow speeds. Where pathway width permits, cyclists and pedestrians should be separated by lane striping or a physical divider such as landscaping or a paved rumble strip

Bicycle Elements



LEGEND

- Proposed Protected Bikeway
- Multi-Use Trail

GATEWAYS

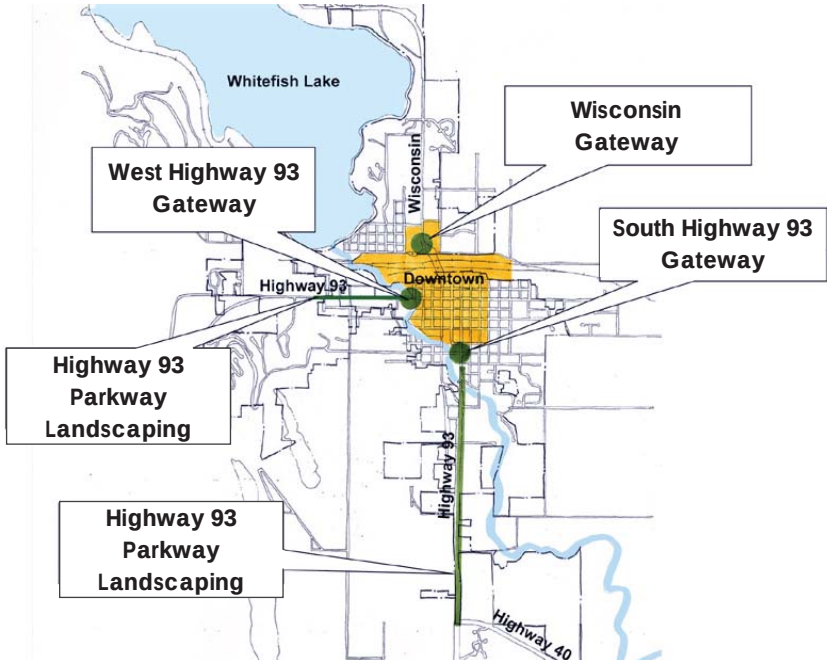
Special transition wayfinding elements that signal entry into the downtown should be provided.

'Downtown Thresholds'

To announce the entrance into Downtown Whitefish from the major transportation corridors, the following elements should be introduced at the west and south Highway 93 and Wisconsin Avenue entry points:

- 'Welcome to Downtown Whitefish' directional and information signing readable at-a-glance by moving pedestrians, motorists and cyclists alike; The signs should be constructed of high-quality, durable natural wood or metal materials and be consistently applied at all entries
- Distinctive parkway plantings of large conifer trees, native deciduous trees and shrub landscaping before and following the sign to signal a transition
- Backdrop ornamental trees, seasonal colorful flowers, grasses and evergreen landscaping
- Where necessary, evergreen landscape screening of unsightly adjacent uses
- Distinctive pole lighting and banners consistent with the downtown pedestrian street themes. Spot lighting of gateway sign and landscape elements should be considered
- Underground overhead cable and electric power lines in the vicinity of gateways

Gateway Diagram



LAND USE FRAMEWORK

OVERVIEW

The Land Use Framework provides a practical, proactive guide that outlines a long-term vision for development in downtown Whitefish. It is intended to attract new uses while maintaining and strengthening existing, desirable uses.

The framework is both realistic and achievable. It builds upon the recent new development and renovation and maximizes redevelopment opportunity sites throughout downtown.

Policy and Regulatory Plan Consistency

The framework does not in itself change the existing City-County comprehensive plan policies, the Whitefish zoning ordinance or other development regulations. Following Plan adoption:

- The Comprehensive Plan growth policies should be updated to be consistent with this document
- Zoning amendments or re-writes should be completed where existing zoning is not consistent with this vision. Throughout Downtown, existing uses should be 'grandfathered' to remain, be improved or sold and operated 'as-is' until renovated. Furthermore, existing private property shown for public uses such as a park would operate as-is until acquired by a public entity or transferred to public use by easement, dedication or other means

Mixed-Use Development

The Land Use Framework promotes a mix of uses, both vertically and horizontally. For example, buildings whose primary function is to provide housing or office uses may contain street-oriented retail or commercial uses on their ground floors.

The color shown on the Recommended Primary Land Use Framework indicates the predominate use. In some instances multiple use options are indicated by colored hash marks. Where multiple uses are indicated, a mix of uses is optional but not required with the exception of parcels where ground floor retail is identified.

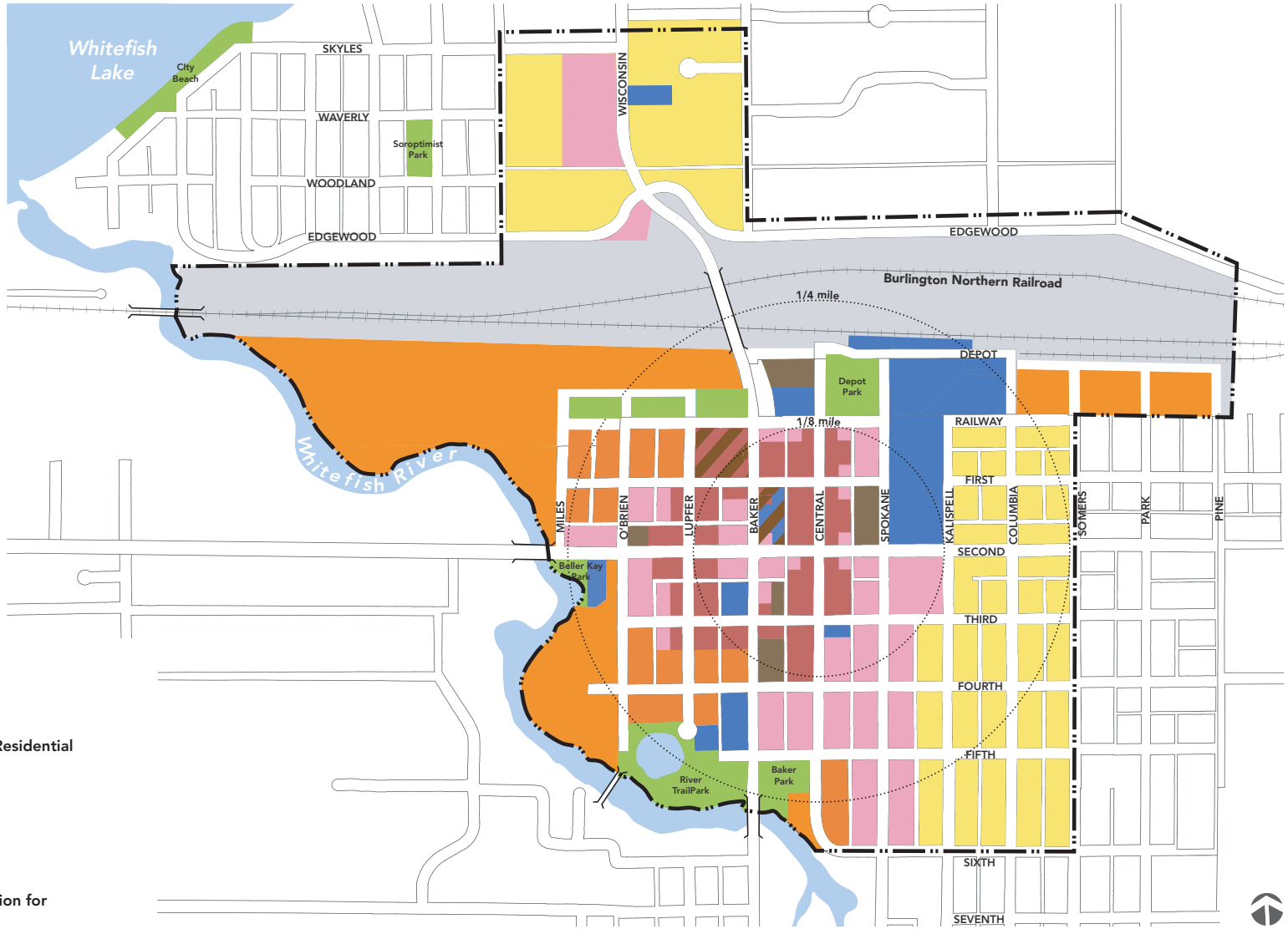
Mixed-Use Development Character

Throughout the Downtown, all development should be oriented to the pedestrian. Auto-oriented development that includes elements such as drive-through windows is not appropriate. New development should respect historic development forms and patterns by being compatible with existing or adjacent building scale, massing and materials. Sustainable practices for construction and habitation are encouraged.

Recommended Primary Land Use

The Recommended Primary Land Use Framework illustrates the preferred vision for long-term land use development of all parcels in the downtown. To understand where secondary, optional, or mixed land uses are envisioned refer to individual land use elements.

Recommended Primary Land Use Framework



Primary Use
LEGEND

- Retail
- Commercial
- Multi-Family (Attached) Residential
- Single Family Residential
- Civic
- Public Parking
- Parks
- Industrial

Hatch indicates more than one option for potential primary use

RETAIL

Successful retail is an indicator of a healthy downtown. Whitefish's primary retail street, Central Avenue, is vibrant and thriving. Storefronts along the corridor are mostly occupied and shopkeeper demand is present for additional retail storefronts. To meet this demand, the Retail Element identifies viable areas for expanding retail opportunities and incorporating existing retail shops into a 'retail loop' that extends the Central Avenue offering westward into the Railway District along First Street, Lupfer Avenue and Third Street.

The Retail Element includes sites that can accommodate both small scale retail establishments and potential larger floor plate single or multiple use retail development. An 'anchor' retail establishment is suggested at the intersection of First Street and Baker Avenue.

Implementation of the Plan will ensure that downtown Whitefish meets latent demand for local-serving uses such as an additional grocery store or pharmacy while strengthening existing visitor-oriented retailers.

Permitted Uses

Amendments to current permitted use regulations may be required to meet the vision. Permitted uses at ground floors of all indicated parcels should be limited to retail uses exclusively. Permitted retail uses are defined as and limited to:

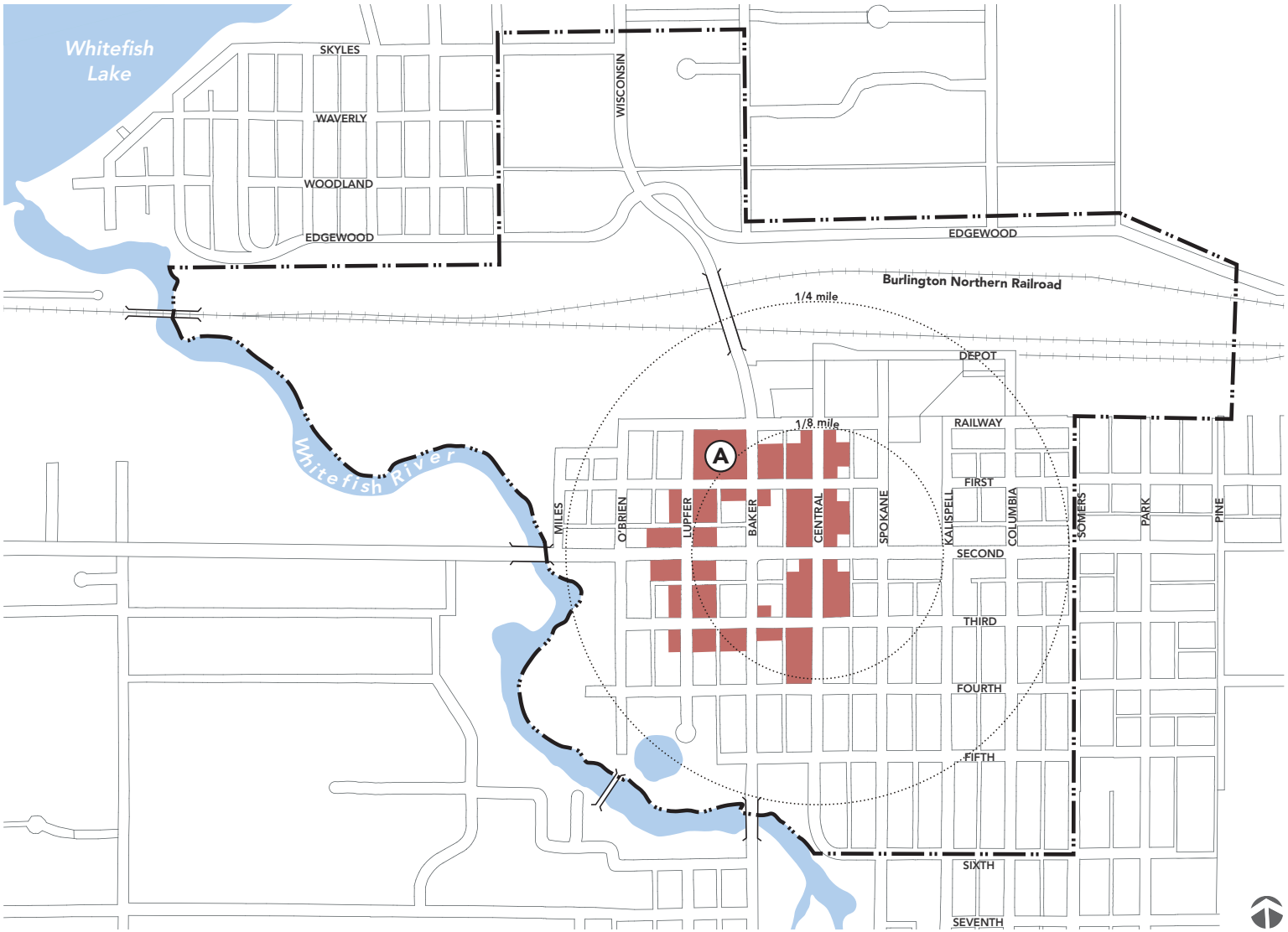
- Establishments that offer the sale of 'goods'- clothing, shoes, groceries, etc.
- Establishments that offer the sale of food and drink- restaurants, cafes, bars, etc.
- Establishments that offer the sale of entertainment- cinemas, night clubs, etc.

Development Standards

Amendments to current site development regulations may be required to meet the vision. Unique site conditions in the Railway District should be addressed. New or renovated retail shops should be:

- **Street-oriented–**storefront development should consist of continuous, edge-to-edge retail uses uninterrupted by parking lots, landscaping or other street frontage disruptions; Consideration for the unique existing residential-style retail buildings in the Railway District may be exempt from this requirement
- **Active–**Retail storefronts should foster 18-hour uses and promote an animated atmosphere by including highly transparent windows and doors; blank walls should be discouraged

Retail Elements



LEGEND

- Retail
- Ⓐ Retail Anchor

PUBLIC PARKING

To maintain Downtown business competitiveness with outlying Highway 93 commercial strip areas, providing adequate retail parking is the prime objective of the Parking Element. A downtown parking facility often serves as a Downtown's 'front door,' leaving either a lasting positive or negative impression on visitors and residents alike. It is simply good business practice to provide well-located, safe, and easy-to-use public parking that welcomes the shopper and supports other commercial, cultural, and government uses.

Parking in Downtown Whitefish is at or near capacity especially during the tourist season. To meet this demand, the Parking Element identifies strategic locations for downtown public parking structures and lots. Structures should be designed to include spaces for employees, visitors and those seeking government services.

The Parking Element identified sites that are consistent with the City of Whitefish's 2013 Parking Structure Feasibility and Concept Design Study recommendations.

Potential Public Parking Structures

Parking structures are expensive and due to their massive scale, have a potential to negatively impact the pedestrian environment and architectural character of the Downtown. With these concerns in mind, they must be sited and designed correctly. They should be located where they will be utilized most effectively by retail customers, on sites large enough to be constructed efficiently, and located where their form and scale can be either compatible with adjacent uses or be visually mitigated. The parking structure sites include:

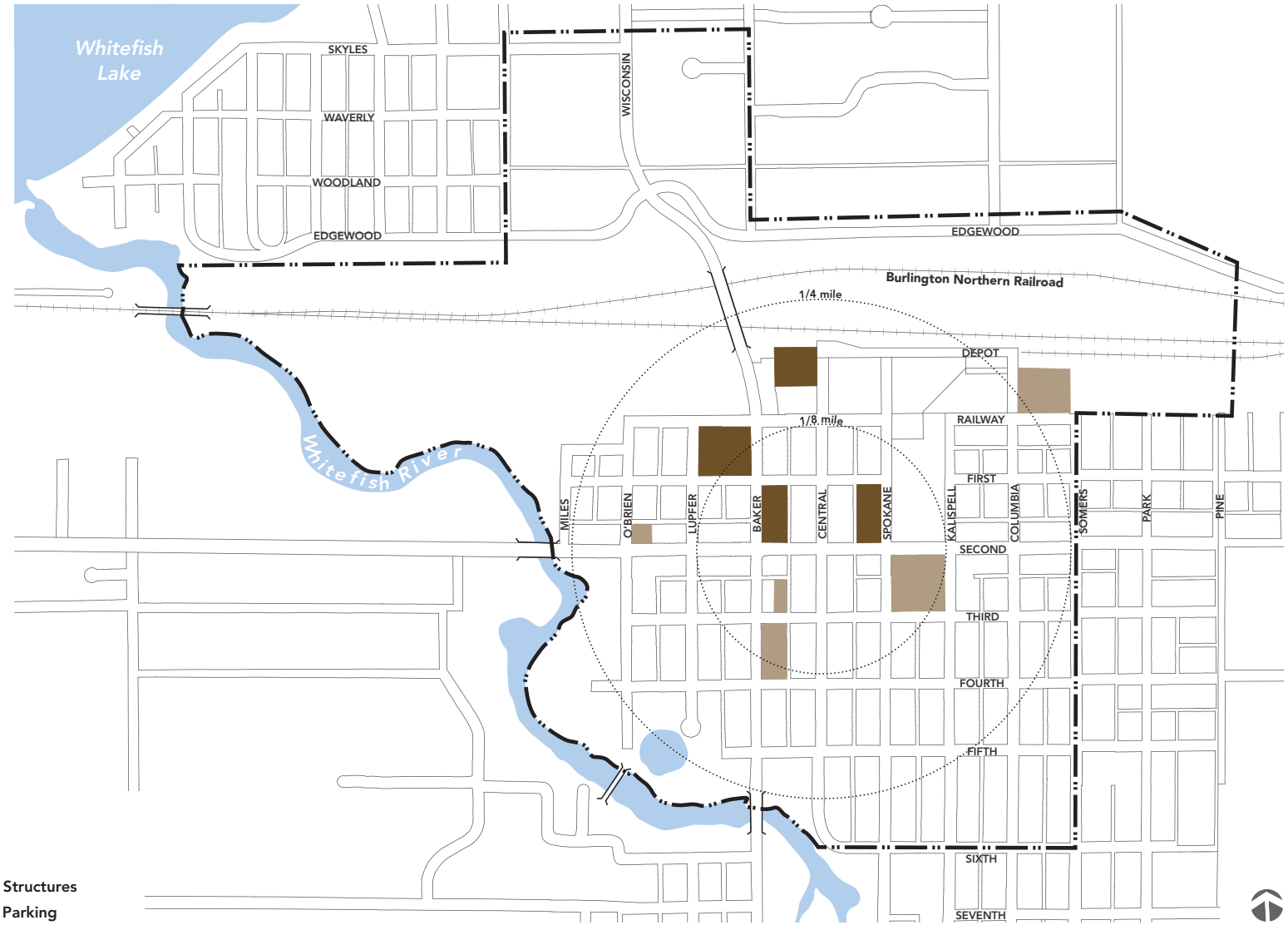
- **Second Street and Baker Avenue–**the structure should be constructed to include City Hall at the ground floor along Baker Avenue or along the southern end of the structure; A retail storefront should be provided at the intersection of Baker Avenue and First Street
- **Spokane Avenue and Second Street–** the structure should replace the current City Parking lot; Ground-floor commercial storefronts should be located along the Spokane Avenue frontage
- **The Railway District–** a parking structure should be constructed within the full block surrounded by First and Railway Streets and Baker and Lupfer Avenues. A retail anchor or other uses at the ground floor and/or over the structure is recommended for this site
- **BNSF Depot Site–**provides a parking reserve for a combination of uses including, retail establishments, the O'Shaughnessy Center, Depot Park, and downtown employees

Potential Public Parking Lots

Parking lots provide additional parking where there is a lower retail parking demand that can be met by a lot rather than a structure. A secondary function is to provide dedicated employee parking facilities in outlying areas. All parking lots should be constructed with adequate landscape screening from streets and sidewalks. The parking lot locations include:

- **City Parking Replacement–**Two optional sites include: 1) along the alley between Central and Baker Avenues and Second and Third Streets, the lot would serve retail uses impacted by the redevelopment of the current municipal lot. Removal and redevelopment of the current lot should only occur after the construction of this facility and adequate replacement of warehousing buildings for the hardware store or other uses impacted by its construction. 2) The half block along the east side of Baker Avenue between Third and Fourth Streets. Implementation would require acquisition of Third Street fronting commercial sites
- **Snow Storage Lot–**parking during summer seasons for school and downtown activities
- **O'Brien Lot–**parking serving retail and commercial uses in the Railway District
- **Block 46–**large reserve for employee parking and school event parking. Should this be redeveloped, parking at this site may be within a structure and may have limited public use

Parking Elements



LEGEND

- Potential Public Parking Structures
- Potential Public Surface Parking

CIVIC

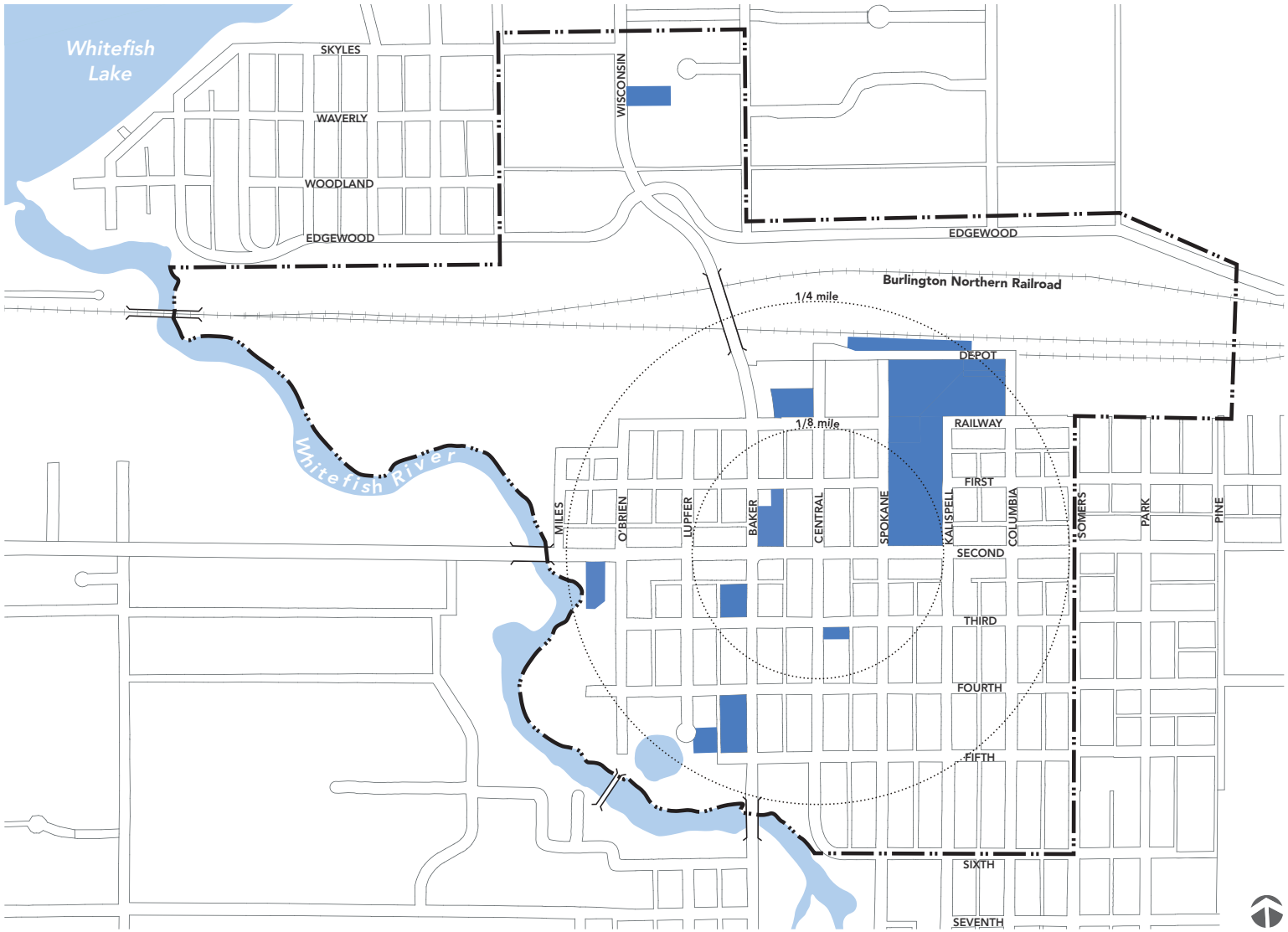
Locations for government services, school, visual and performance arts facilities, and places of worship are identified. The Plan envisions that civic, institutional, or cultural uses will be a permanent part of Downtown thereby signaling to the community that Downtown is both the City's economic center and the community's destination for civic assembly.

An economic benefit of providing these community services in the downtown is that civic use employees, clients and visitors are potential customers for downtown businesses.

City Hall—The City of Whitefish's 2013 Parking Structure Feasibility and Concept Design Study includes recommendations for the construction of a new City Hall as part of the Second and Baker parking structure site. The Civic Element is supportive of the Parking Study recommendations.

City Hall Baker Street Elevation Options (From Feasibility Study)

Civic Elements



COMMERCIAL

Recent development within the Railway District and along the Spokane Avenue corridor has included a mix of service and office uses. The Commercial Element envisions additional similar development throughout the downtown as a complementary use to the Retail and Civic Elements.

Permitted Uses

Amendments to current permitted use regulations may be required to meet this vision. Permitted uses at ground floors and upper floors of all indicated parcels should foster business activities. Permitted commercial uses are defined as and limited to:

- Establishments that offer the sale of 'services'- Dry cleaners, banks, insurance agencies, yoga studios, child day-care centers, etc.
- Businesses that offer employment- professional offices, medical clinics, etc.
- Establishments that offer the sale of 'goods'- clothing, shoes, groceries, etc.

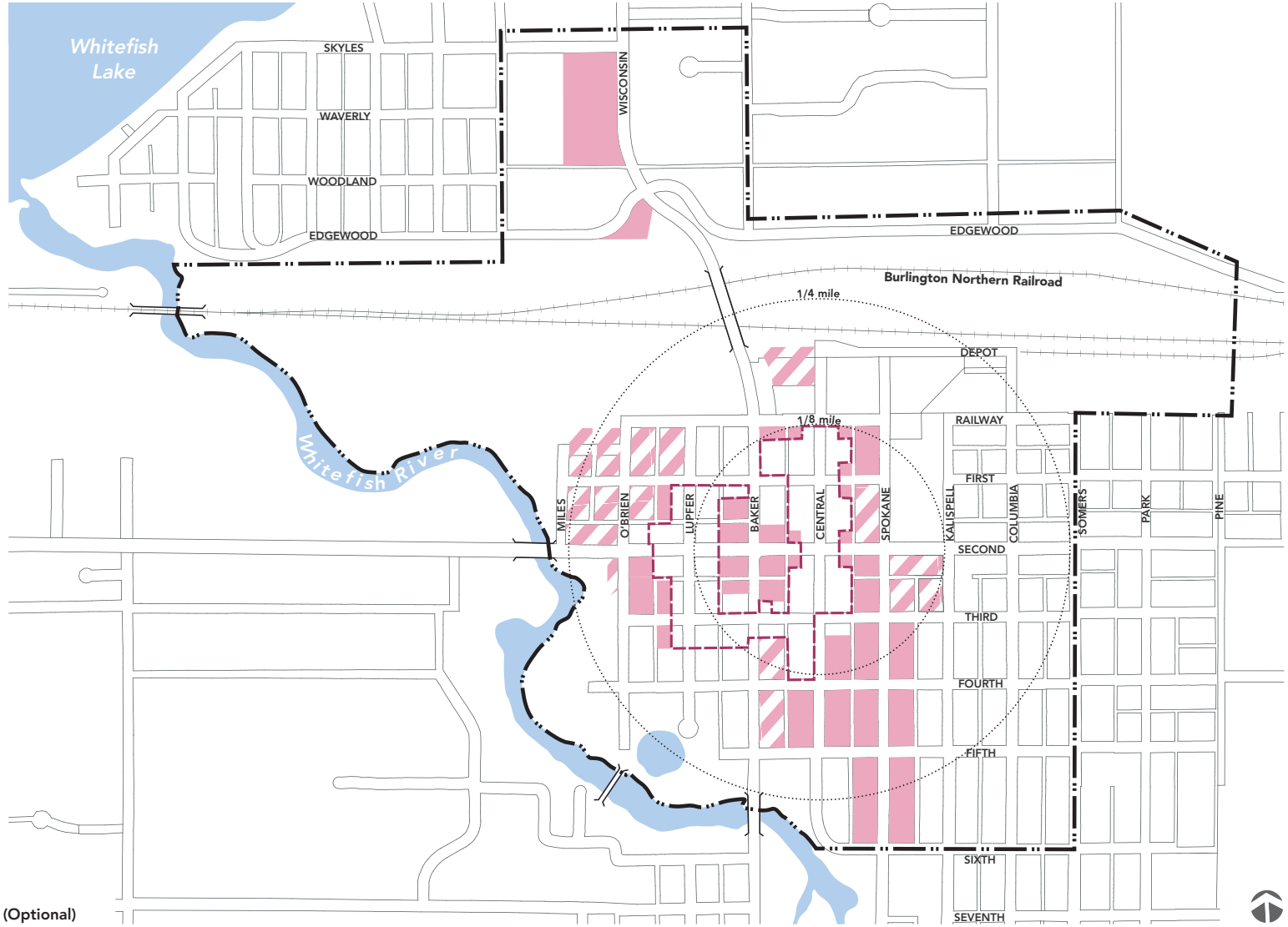
Development Standards

Amendments to current site development regulations may be required to meet the vision. Currently, many of the existing commercial uses are auto-oriented, which conflicts with the long term desire to create a pedestrian-friendly downtown.

Pedestrian-friendly—New development standards should be developed to prohibit or limit auto-oriented design elements along pedestrian priority street frontages. Exempt from this pedestrian-friendly orientation requirement may be parcels with unique existing site conditions or existing buildings where redevelopment may be economically infeasible. Where these conditions exist, auto-oriented uses should be buffered by landscaping, low walls, earthen berms or other means to mitigate their impact.

Active—Where commercial uses occur at ground floors of buildings, business shopfronts should foster an animated pedestrian environment by including transparent openings (windows and doors) to lobbies and other public accessible areas of the businesses; blank walls should be discouraged. Where privacy is necessary, window and door coverings, or blinds are suggested.

Commercial Elements



LEGEND

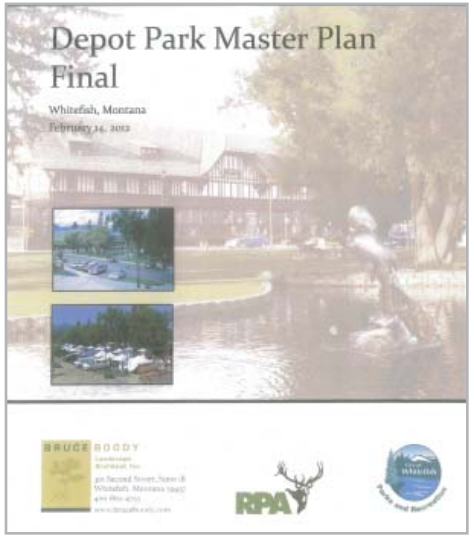
- Commercial
- Commercial (Optional)
- Commercial Upper-Floor (Optional)

PARKS

Downtown will be more vibrant and beautiful when it consists of a variety of active and passive open spaces. Currently there are limited green space opportunities to kick a ball with a child, quietly sit in a park setting with a loved one or actively participate in holiday activities set in an urban plaza. To attract new development and improve the quality of life for existing residents, employees and visitors, it is essential to construct new parks within the downtown, improve existing green spaces and link these areas to recreation attractions outside of the Downtown such as the Whitefish Lake.

Enhanced Depot Park

Improvements to the existing park space should be constructed as described in the adopted Depot Park Master Plan. However, consideration should be given to providing a permanent multi-use, all-weather paved surface (approximately 20,000 square feet) at the southwest corner of the park. Located strategically at the crossroads of the existing Central Avenue retail corridor and proposed new retail corridor that stretches westward into the Railway District along Railway Street, this space would serve as a hub for annual programmed uses such farmers markets and art-and-craft fairs that currently use streets, parking lots and sidewalk areas. For larger events, spill-over areas would include green areas of the park along with adjacent streets and parking lots. Design refinement of the Park Master Plan should include inclusion of all necessary utilities for programmed events.



New Railway District Park Space

Currently, the Railway District is lacking in a green area for recreation activities. A series of new green 'park blocks' are envisioned north of Railway Street within the boundary of the BNSF rail yard. The new park space:

- Would need to be acquired by the City through direct purchase from BNSF or as part of a joint development with a future housing development that may occur adjacent to the parks.
- May require assessment and mitigation of possible environmental contaminants of the site.
- Should include lawn areas appropriate for informal recreation activities and playground structures. A small covered area and public restrooms should be considered for these parks.
- Should route recreation trail facilities through these park open spaces.

Parks Elements

LEGEND

- Potential Park
- Existing Parks

LODGING

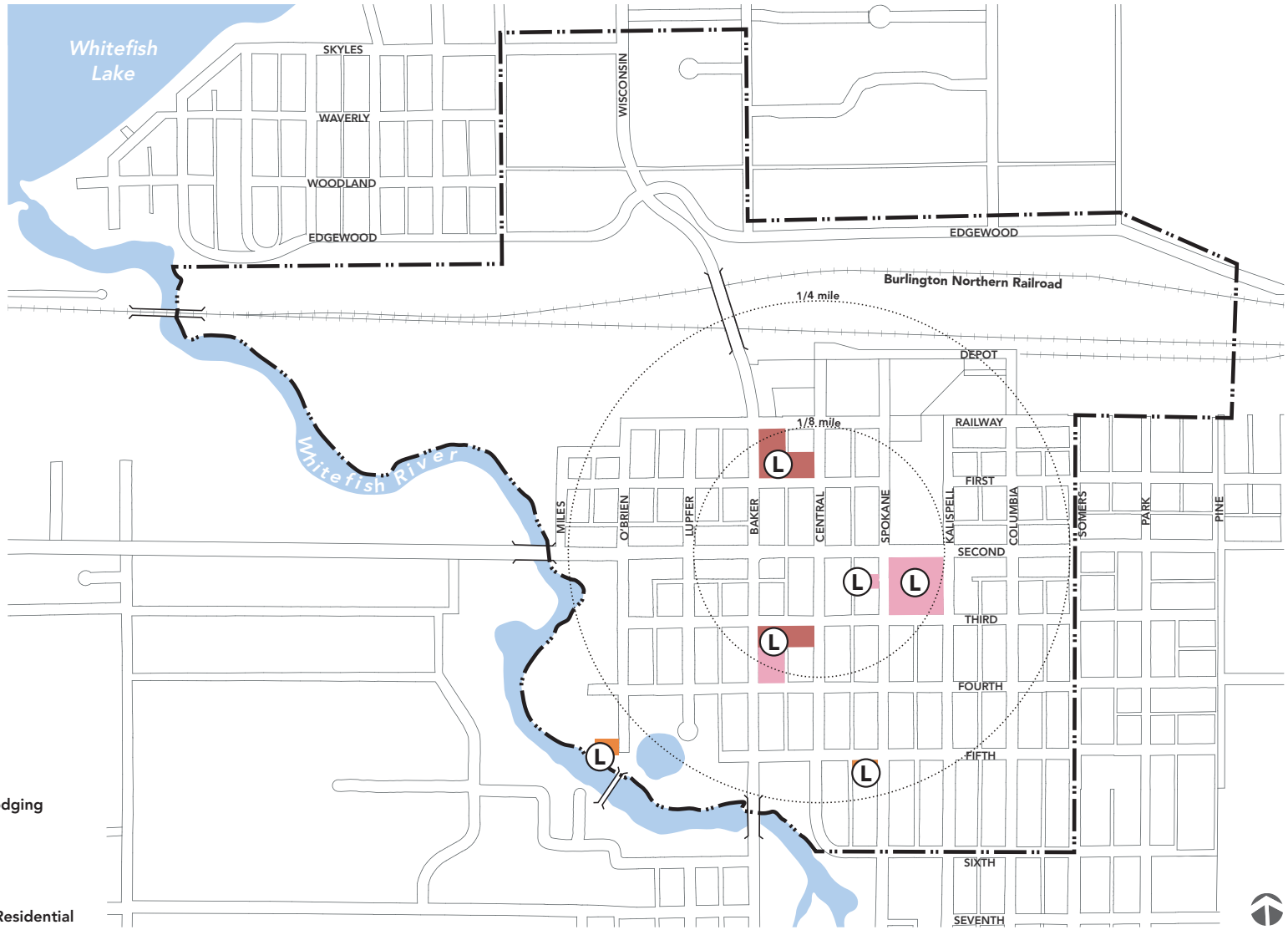
Whitefish has a strong tourist economy and thousands of visitors spend numerous nights in hotels and bed-and-breakfast establishments surrounding the downtown. The lodging element offers sites for urban lodging experiences within the retail and commercial core for those who desire easy access to shopping, civic activities, or businesses rather than a bucolic rural or highway commercial corridor experience.

Lodging Characteristics

Sites identified can accommodate a variety of lodging types ranging from boutique hotels to extended-stay time shares. New lodging should:

- Be designed to be in scale and character with surrounding architecture
- Consider surrounding uses as part of the visitor experience, especially existing night life activities that can be viewed as either a benefit or detraction depending on the lodging type
- Offer street-oriented lobbies and restaurants where applicable.
- Not impact the supply of retail and commercial parking. New lodging establishments should include some parking on-site for services and guests. Valet-serviced parking may be offered off-site
- Not include auto-oriented characteristics such as lobby-serving auto pull-out driveways or motel-styled porte-cochere covered driveways along pedestrian priority streets

Lodging Elements



LEGEND

L Potential and Existing Lodging

Colors Indicate Primary Land Use

- Retail
- Commercial
- Multi-Family (Attached) Residential

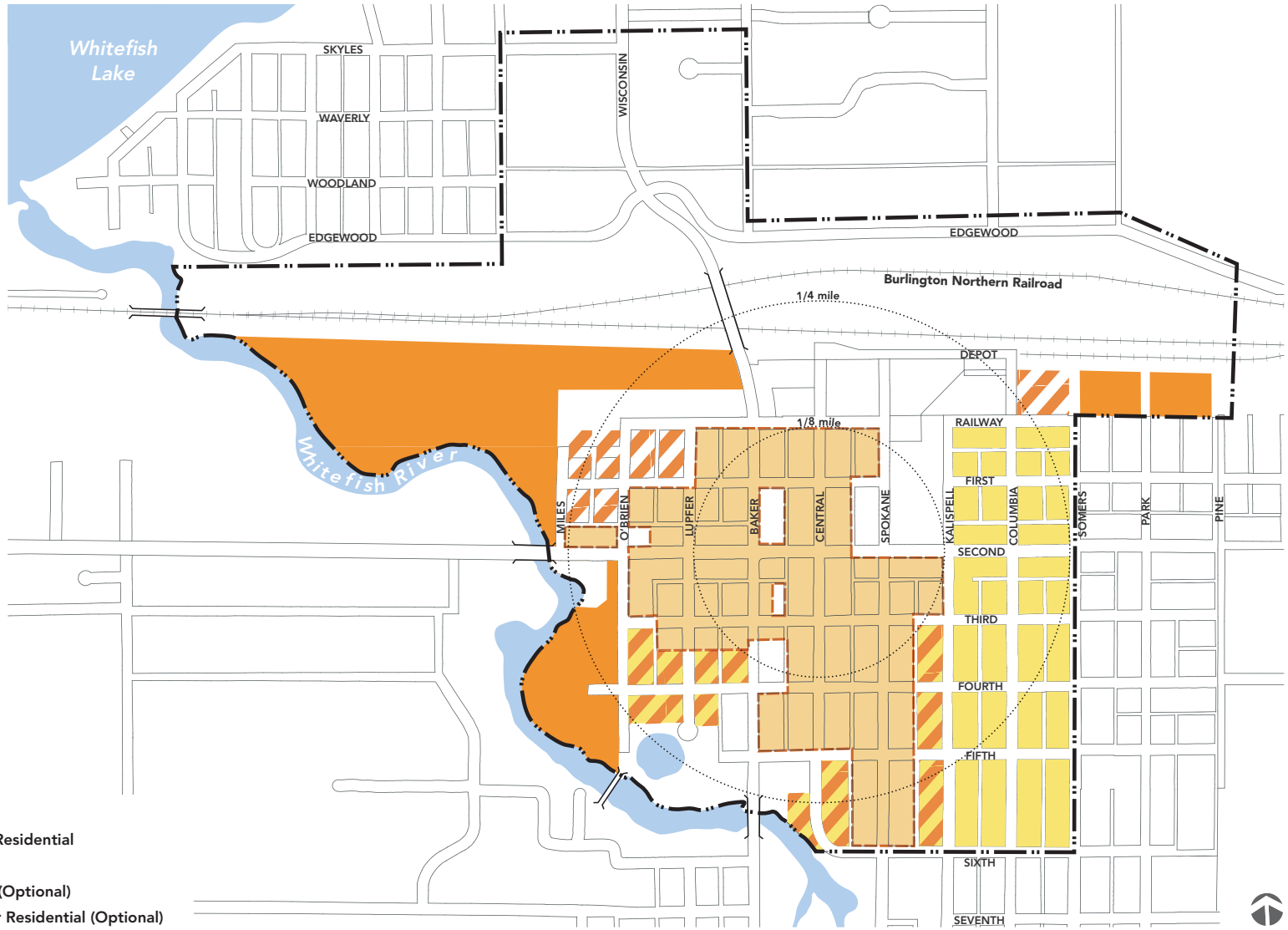
RESIDENTIAL

Downtown housing is an essential component to a healthy downtown and there is considerable growing demand for urban housing in Whitefish. Housing provides a pool of residents that help support downtown businesses and help animate and increase safety of the downtown environment by providing a 24-hour presence. Furthermore, downtown residents can access jobs, retail establishments and services by foot or bicycle thereby lessening auto congestion and reducing the parking demand.

The Residential Element envisions:

- Attached multi-family apartments, condominiums, duplexes or townhouses where high density housing is indicated
- Single family detached housing appropriate only where identified
- Multi-Family residential is optional over new or renovated retail, commercial or structured parking development, where identified
- Multi-Family residential is optional where hatching is identified
- Buildings constructed to a maximum height of three stories
- Pedestrian-friendly design. Residential development surrounded by suburban-styled parking lots or townhomes with street-oriented garage doors should be prohibited
- Providing a range of housing opportunities for a variety of incomes and ages
- Providing both for-rent apartments and for-sale options
- Fostering development of housing that is oriented toward families by providing larger units with two or more bedrooms
- Adequate parking. All new development should provide at least one space per unit on-site parking. Where this is not physically possible, off-site parking for residents should be identified

Residential Elements



LEGEND

- Multi-Family (Attached) Residential
- Single Family Residential
- Multi-Family Residential (Optional)
- Multi-Family Upper-Floor Residential (Optional)

IMPLEMENTATION FRAMEWORK

NEXT STEPS

Three steps are necessary to transform the Whitefish Downtown Business District Master Plan from an aspiration to a development reality: 1) Adoption and distribution of the Plan; 2) Regulatory updates; and 3) Construction of High Priority Projects.

Adoption and Distribution of the Plan

A widespread understanding and agreement of the concepts and implementing strategies of the Plan is necessary. The plan must be:

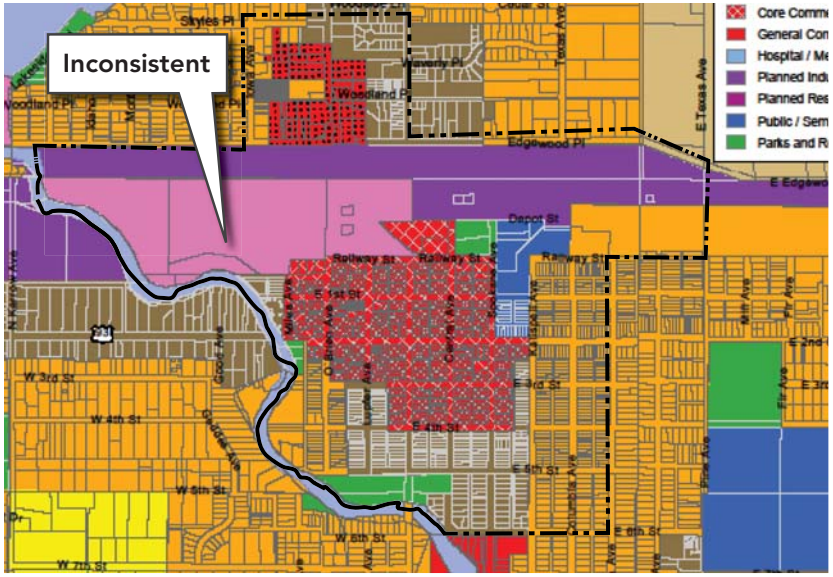
- **Formally Adopted–**Approval by elected officials ensures that the Plan is recognized as the official 'road map' for future development. Adoption ensures that the Plan is considered in all future land use, transportation and economic development planning efforts. In particular, adoption of the plan provides a formal directive for regulatory updates and expenditure of City financial resources for revitalization projects in the downtown study area.
- **Wide Plan Distribution–**The Plan should be available online and in print. The plan should serve as a 'marketing tool' for those who are interested in seeking new investors in the downtown. It should be easily available to elected officials, city staff, the general public, the Heart of Whitefish, developers, builders and their design consultants.

Policy and Regulatory Updates

The Downtown Master Plan Update framework elements generally comply with existing policies and regulations. However, where inconsistencies exist, updates should be made to existing City documents. These updates should address:

- Existing zoning including permitted uses and development standards. Regulatory changes should apply to all new or redevelopment projects. Where current uses are inconsistent with the future vision, 'Grandfather' existing uses to allow current uses to remain until renovated.
- Building and site development standards that emphasize compatibility with existing historic design characteristics and a pedestrian orientation. Creation of new discretionary review design guidelines to supplement regulations should be developed.
- If required, an amendment to the Parks Master Plan should be made to allow Depot Park adjustments.

The City of Whitefish staff will be responsible for carrying out any relevant changes to policies and regulations.



Policy Updates– Growth Policy Land Uses

Elements of the existing Whitefish City-County Growth Policy that are inconsistent with the Framework Elements include:

- Designation of the former Whitefish Landing to 'Urban' from 'Resort Residential'

Regulatory Updates– Zoning Ordinance

Existing Zoning Ordinance Districts that are inconsistent with the Framework Elements include:

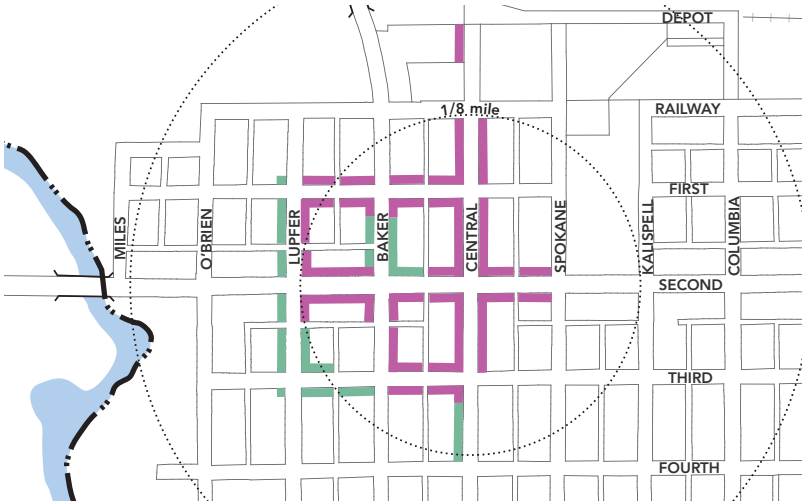
- WI (Industrial and Warehousing District) north of Railway Avenue west of Viaduct and east of Columbia Avenue

Regulatory Updates– Permitted Use

Required Ground-Floor Retail

Amendments to current permitted use regulations may be required to meet the Master Plan vision. Permitted uses at ground floors of all indicated parcel frontages (20 foot minimum depth) should be limited to retail uses exclusively. Permitted retail uses are defined as and limited to:

- Establishments that offer the sale of 'goods'- clothing, shoes, groceries, etc.
- Establishments that offer the sale of food and drink- restaurants, cafes, bars, etc.
- Establishments that offer the sale of entertainment- cinemas, night clubs, etc



Regulatory Updates– Development Standards

Required Build to Lines

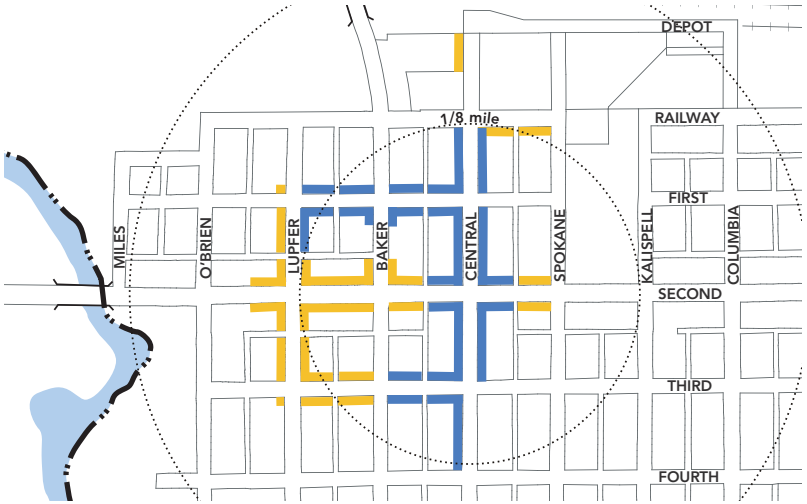
Amendments to current site and building development standards may be required to meet the Master Plan vision.

Building siting, and massing as indicated in pink frontages should:

- Require built to fronting property lines (zero setback)
- Permit setback exceptions for windows and walls that are recessed up to eighteen inches from the property line to accommodate columns or other architectural elements

Building sitting, and massing as indicated in green frontages should:

- Permit setbacks up to 15 feet (maximum) from property lines
- Not permit loading or service areas between the building and property line



Regulatory Updates– Development Standards

Required Active Edges

Amendments to current site and building development standards may be required to meet the Master Plan vision.

Building siting and massing as indicated in blue frontages should:

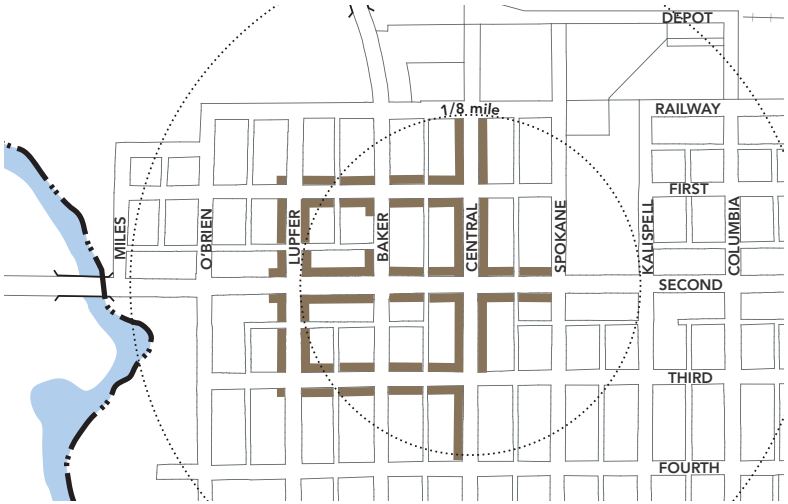
- Require a minimum of 70% transparent glass along ground-floor facades—as measured horizontally 5 ft. above the sidewalk

Building siting, and massing as indicated in yellow frontages should:

- Require a minimum of 50% transparent glass along ground-floor facades—as measured horizontally 5 ft. above the first finished-floor height

For both frontage conditions:

- Frosted, tinted, reflective glass or other types of glass that diminish transparency should not be permitted
- Require primary ground-floor entries that are oriented to the public right-of-way



Regulatory Updates– Development Standards

Required Parking Access Restricted Frontages

Amendments to current site and building development standards may be required to meet the Master Plan vision.

For frontages identified in brown (with the exception of public parking structures) do not permit access curb cuts to off-street parking, service bays, drive-through windows, or drop-off and loading zones.

Projects– High Priority

Strategic public investments are identified to stimulate private investment or meet critical public facility needs.

1) City Hall and Second and Baker Parking Structure—The design should be consistent with the 2013 Parking Structure Feasibility Study and City Hall Concept Design recommendations.

2) Spokane and Second Parking Structure—The structure should meet the parking needs of retail uses by replacing the current city parking lot with a multi-level parking garage. It should also provide ground floor commercial storefronts along the Spokane Avenue and E. First Street frontages.

3) Baker Avenue Streetscape and Roadway Improvements—Located between Railway and Second Street, the improvements should enhance the pedestrian environment while maintaining acceptable auto and truck mobility. It should create a welcoming environment for the proposed City Hall, retail and commercial ground floor uses. The Second and Baker intersection should be designed and constructed first and foremost as a safe and comfortable connection to the Railway District for pedestrians.

4) Depot Park—The park, as described in the adopted Depot Park Master Plan, should be implemented with possible refinements to include a plaza multi-purpose paved area (approximately 20,000 square feet) at the southwest corner of the open space.

Projects– Priority

These projects should be initiated only after the completion of or concurrently with the High Priority Projects:

A) Railway District Pedestrian Priority Street Improvements—Design and construction of Railway District Street Improvements along First, Lupfer, Second, Third ,and Baker streets should be consistent with the existing Central Avenue streetscape character. Consideration of unique conditions and uses within the Railway District should be taken.

B) Central Avenue Pedestrian Priority Street Improvements—Design and construction of Central Avenue north of Railway and south of Third to the Fourth Street intersection should be consistent with the existing street design. However, consideration of non-retail land uses, unique adjacent site conditions, and a lack of a covered walkways in these areas may warrant design adjustments.

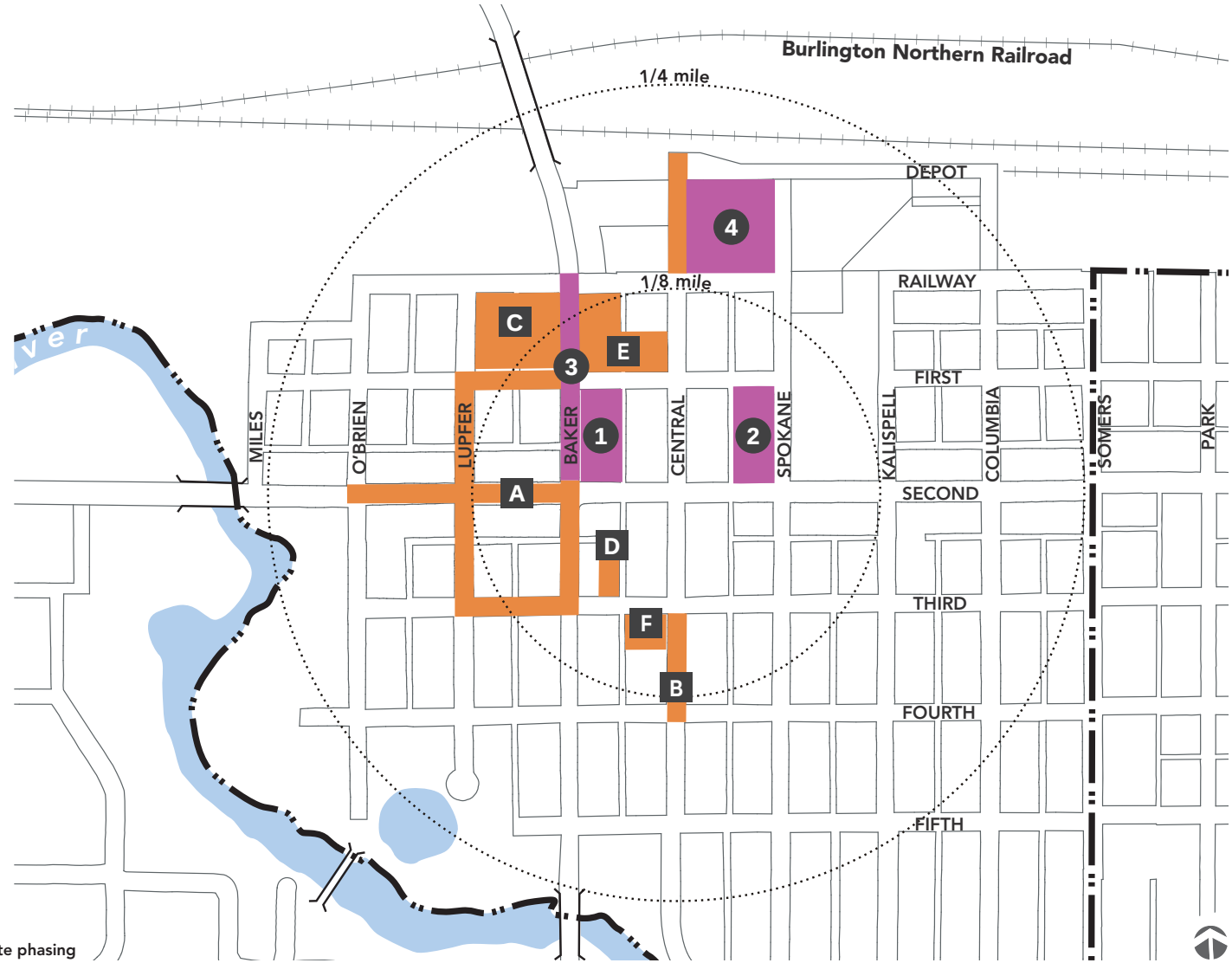
C) Railway District Anchor Site—Develop a design concept and construct a local-serving large floor plate retail use. Consider a mixed-use development that includes a parking structure that serves the Railway District with high-density residential uses.

D) Retail Replacement Parking—Acquire parcel, design and construct an alley accessed parking lot to replace the current City parking lot at the intersection of Third and Central.

E) Lodging Mixed-Use Development—Joint development or acquire, design and construct a hotel and retail development at an 'L' shaped site north of First Street.

F) Retail Anchor Site Development—Replace the current City parking lot at Third Street and Central Avenue with a retail use. Consider additional commercial, office or lodging uses on upper floors only.

Projects Diagram



LEGEND

- High Priority Projects
- Priority Projects

Note: Numbering does not indicate phasing

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RESOLUTION NO. 13-___

A Resolution of the City Council of the City of Whitefish, Montana, authorizing the process to develop an amended Mountain Trail Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee.

WHEREAS, in 1984 the City of Whitefish acquired a 4.48 acre parcel, now known as the Mountain Trails Park, a gift from the Mountain Trails Saddle Club; and

WHEREAS, since its acquisition the Mountain Trails Park has been a popular community recreation area, with an ice rink facility, and miscellaneous buildings completed in 2003 and the Mountain Trails Master Plan was completed in 2004 and approved by the City Council on July 6, 2004; and

WHEREAS, at the September 10, 2013 City Park Board Meeting, due to its popularity and usage, the City Park Board and the City Parks and Recreation Department identified a need for an amended Master Plan for the use and future development of the Mountain Trails Park; and

WHEREAS, at the October 1, 2013 City Park Board meeting, the Park Board approved recommending the City Council establish a Mountain Trails Park Master Plan ah hoc Steering Committee (the "Committee") with the purpose to serve as the primary sounding board to work through the planning process with the current groups using the Mountain Trails Park and members of the public for an overall plan for the Mountain Trails Park and to report their findings to the City Park Board and City Council; and

WHEREAS, upon receipt of the Committee's findings, the City Park Board will conduct a public hearing, at which time the Committee will report its findings and recommendations and following public comment the Park Board will report its recommendations to the City Council for its consideration and action; and

WHEREAS, at the October 7, 2013 City Council Meeting, the City Council received an oral report from Parks and Recreation staff, and approved the establishment of an eleven-member Mountain Trails Park Master Plan ad hoc Steering Committee with Committee members from the City Council, Park Board, Ice Rink Committee representing different interest groups using the Ice Rink, Flathead Valley Ski Education Foundation and members from the general public; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to authorize the creation of the Mountain Trails Park Master Plan Steering Committee for the development of an overall plan for the Mountain Trails Park.

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

Section 1: There is hereby established the Mountain Trails Park ad hoc Master Plan Steering Committee.

Section 2: The general purpose of the Committee will be to serve as the primary sounding committee to work through the planning process with members of the public concerning the overall plan for the Mountain Trails Park, as depicted on Exhibit "A", and present the Committee's findings and report to the Whitefish Park Board, who will propose an overall plan for the Mountain Trails Park, and report their findings and recommendations to the Whitefish Park Board. The Whitefish Park Board will prepare a report for the City Council's consideration and approval.

Section 3: The Committee will prepare its findings and recommendations to the Whitefish Park Board, who will report its recommendations to the City Council for its consideration and action.

Section 4: The Committee will consist of eleven (11) individuals with representation as follows: Two City Councilors, two Park Board members, two Ice Rink Committee members representing different interest groups using the Ice Rink, two representatives from the Flathead Valley Ski Education Foundation, two "at large" community members without affiliation or association with present users of the Mountain Trails Park appointed by Mayor with City Council approval, and the Director of Parks, Recreation and Community Services or designee. The Committee members shall select a Chair from the members of the Committee. The Committee shall appoint one member as Secretary of the Committee, who shall keep minutes of all meetings and submit them to the City Clerk. Six (6) members shall constitute a quorum. The Committee shall meet as often as necessary to accomplish its general purpose, as described above. The Committee shall cease to exist as provided in Section 5.

Section 5: The Committee will begin its deliberations as soon as practical after creation of the Committee. The Committee shall be disbanded as of May 31, 2014, or earlier if the City Council completes its consideration of the Committee's report prior to that date.

Section 6: A member of the Committee may be removed by the City Council, after a hearing for misconduct or nonperformance of duty. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. The circumstances of the absences shall be considered by the City Council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the Chairperson of the Committee at least twenty-four (24) hours prior to any scheduled meeting.

Section 7: Any vacancy occurring on the Committee will be filled in the same manner that the initial position was filled.

Section 8: The Committee will not have authority to make any expenditure on behalf of the City or disburse any funds provided by the City or to obligate the City for any funds.

Section 9: The Committee will have no authority to direct City staff with respect to any matter, but may request information and assistance from City staff.

Section 10: This Resolution will take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT A

PARKS AND RECREATION DEPARTMENT
PO Box 158 Whitefish, MT 59937
(406) 863-2470 Fax (406) 863-2409

October 7, 2013

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

Mayor Muhlfeld and City Councilors,

Recommendation on Resolution No. 13____ forming Ad Hoc Steering Committee to amend the current Mountain Trails Park Master Plan

Introduction/History

The City of Whitefish acquired the Mountain Trails Park property in 1984. The property at that time included the building that is commonly referred to as the Saddle Club, and the remainder of the property had served as area for equestrian activities for our community. Over the course of time since the acquisition of the property an outdoor ice rink facility was developed with a supporting facility known as the Warming Hut, and in 2003 the outdoor rink was converted to the current indoor facility known as the Stumptown Ice Den. It was at this time that the existing Mountain Trails Park Master Plan was revised in such a manner as to accommodate the necessary space for support amenities for the indoor rink that included driveways and parking areas. In addition to amenities related to the ice rink, the park also has one outdoor volleyball and one outdoor bar-b-que grill. General activities that would occur at Mountain Trails Park, besides those involving the ice rink, would include the rental of the Saddle Club for a number of small group activities that would include the utilization of the remaining open space at Mountain Trails Park. Typically over the past 10 years the operation of the ice rink would be 6-7 months of year depending upon demand and financial support.

Current Report

The need to review and revise the Mountain Trails Park Master Plan is a direct result of a number varied interests in the future development of this park site. First, the operation of the Stumptown Ice Den as an indoor ice rink has resulted in an expanded number of program activities for both youth and adults, including youth and adult hockey, figure skating, and curling, thus creating a potential need for expanding current facilities. Second, the desire of the Flathead Valley Ski Education Foundation to utilize the existing Saddle Club, along with planned expansions into Mountain Trails Park, as the home for the Flathead Valley Ski Museum and Hall of Fame. Each of these elements carries merit to the enhancement of recreation opportunities for the Mountain Trails Park and our community. The challenge facing the Parks and Recreation Department is the ability to facilitate such goals within the current boundaries of the Mountain Trails

Park site. In an effort to objectively assess the opportunity to develop any and all expansion of services at Mountain Trails Park and give voice to all parties of concern, we would request that the city council establish an Ad Hoc Steering Committee to revise the current Mountain Trails Park Master Plan as per described within the proposed resolution presented to you this evening.

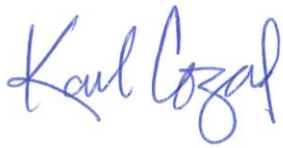
Financial Requirement

The financial requirement necessary to facilitate this request should not exceed $750.00 with those expenses covering the development of site maps.

Recommendation

I respectfully recommend that the City Council adopt Resolution No. 13___ authorizing the process to develop an amended Mountain Trails Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee.

Sincerely,



Karl Cozad, Parks and Recreation Director

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

October 1, 2013

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Request for Authorization to Proceed with Construction Bidding for the East 2nd Street Reconstruction Project

Introduction/History
The Public Works Department and our engineering design consultant, Robert Peccia and Associates (RPA), are wrapping up the design phase and requesting authorization to move forward with construction bidding for the East 2nd Street Reconstruction Project. Drawings showing the project overview and traffic control plan are attached.

Current Report
Karin Hilding and representatives from RPA will conduct an Open House in the City Council Chambers on October 7th from 5:30 to 7:00 p.m. to present the project drawings and visit with the public. RPA will present this information to the Council at the start of the regular meeting and members of the public who wish to comment may do so, as well.

Consideration of this request to move forward with bidding will occur under the agenda section for Communications from Public Works. RPA will provide complete information and be ready to answer any additional questions at that time. The construction period is scheduled to run from March 2nd to the end of September. The limited road network in this neighborhood will present unique challenges for maintaining access for residents and emergency vehicles during construction. One of the attached drawings shows a comprehensive traffic control plan, which RPA will review in detail.

Financial Requirement

The engineer's pre-bid construction cost estimate of $2,433,000 includes the clearing of brush and trees; road work with new curb and gutter; water, sewer and storm drainage facilities; a new bicycle/pedestrian path along the south edge of the right of way and new street lighting. Fees for private utility relocation work are included, as well.

Up to $450,000 worth of construction is expected to occur in FY 14 (ending June 30, 2014) and the remainder will take place in FY 15. Most of the cost associated with the new bicycle and pedestrian path will be paid using CTEP funds from the State. All other costs will be paid out of the Resort Tax Fund, as anticipated in the FY 14 budget.

Recommendation

Staff respectfully requests Council authorization to move forward with construction bidding for all phases of the East 2nd Street Reconstruction Project.

Sincerely,

John C. Wilson
Public Works Director

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SHEET	SHEET TITLE	PROJECT TITLE			
1	**PROJECT OVERVIEW**	**EAST SECOND STREET RECONSTRUCTION PROJECT** *Whitefish, Montana*	B.THEIS DESIGNED BY	SEPTEMBER 2013 DATE	
			M.ROGERS DRAWN BY	12103.000 PROJECT NO.	
			R. MITCHELL CHECKED BY	Project Overview_ESS FILE	

SYM	REVISION	BY	APPR.	DATE
	PRELIMINARY NOT FOR CONSTRUCTION			

Copyright 2013© Robert Peccia & Associates

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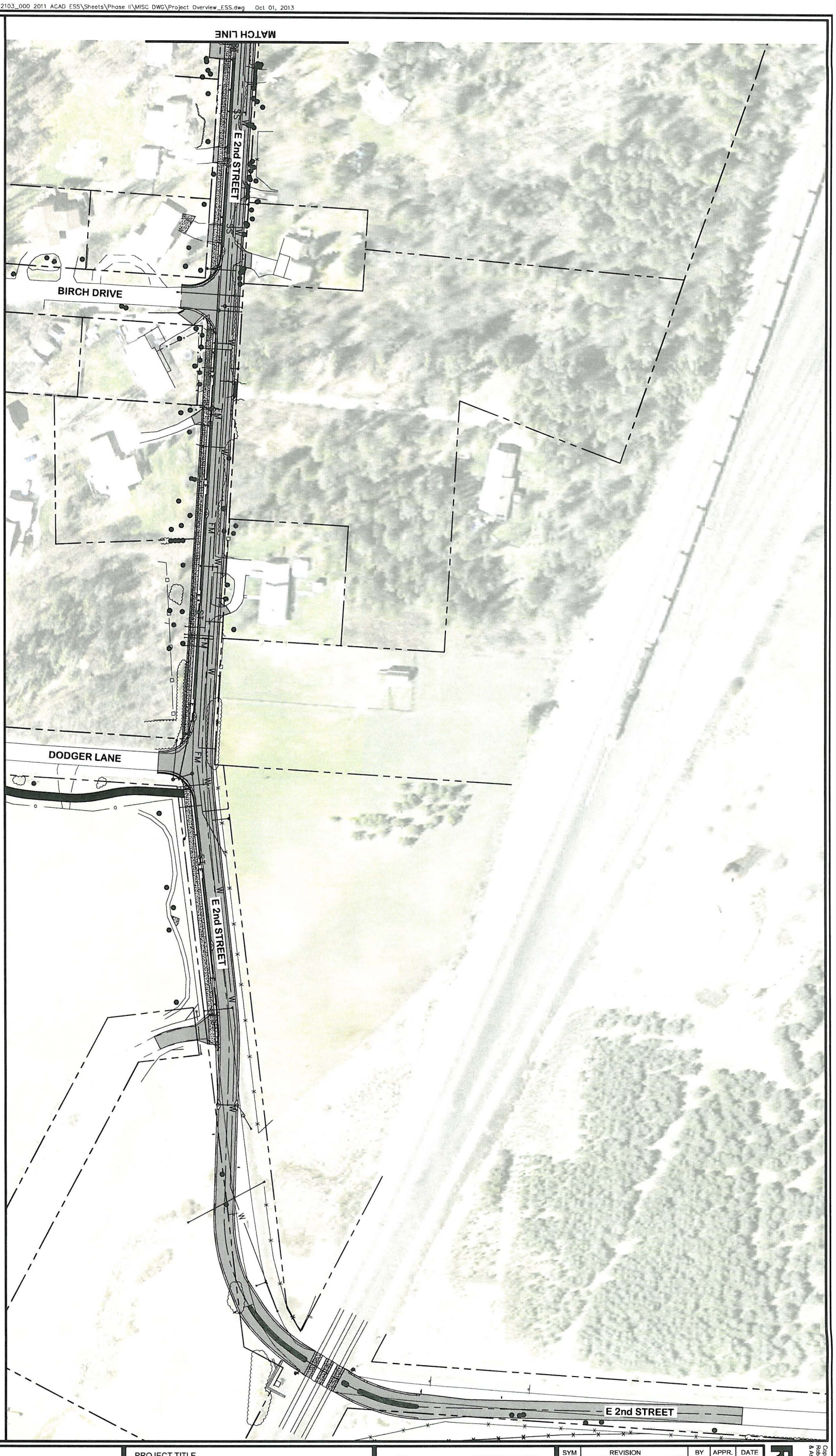

SHEET	SHEET TITLE	PROJECT TITLE		
2	**PROJECT OVERVIEW**	**EAST SECOND STREET RECONSTRUCTION PROJECT** *Whitefish, Montana*	B.THEIS DESIGNED BY M.ROGERS DRAWN BY R. MITCHELL CHECKED BY	SEPTEMBER 2013 DATE 12103.000 PROJECT NO. Project Overview_ESS FILE

SYM	REVISION	BY	APPR.	DATE
	PRELIMINARY NOT FOR CONSTRUCTION			

RPA

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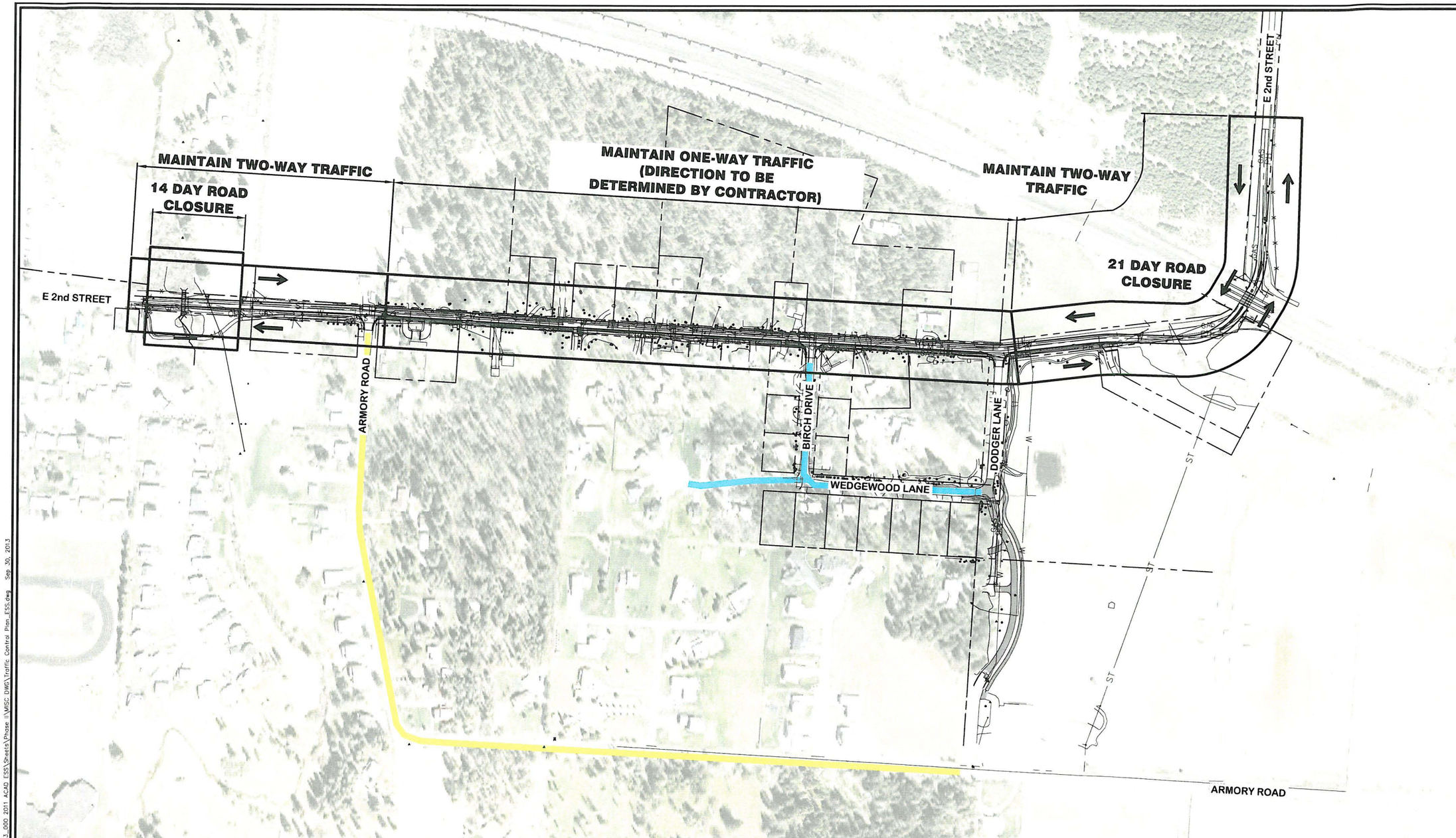

NOTES:

DURING UTILITY COMPANY INSTALLATIONS OF SERVICES THAT CROSS THE ROADWAY, TWO-WAY TRAFFIC WILL BE MAINTAINED EAST AND WEST OF THE CROSSING.

AT LOCATION OF CROSSINGS (ROADWAY CROSSINGS) THE ROAD SHALL BE CLOSED A MAXIMUM OF ONE DAY CLOSURE PER LOCATION.

ONLY ONE ROADWAY CLOSURE TO BE ALLOWED AT ANY TIME.

ROADS THAT CONSTRUCTION RELATED TRAFFIC IS NOT ALLOWED

ROADS THAT CONTRACTOR MAY USE FOR UNLOADED TRUCK TRAFFIC

N

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Copyright 2013©
Robert Peccia & Associates

RPA

SYM	REVISION	BY	APPR.	DATE
	PRELIMINARY NOT FOR CONSTRUCTION			

B.THEIS DESIGNED BY
M.ROGERS DRAWN BY
R. MITCHELL CHECKED BY
SEPTEMBER 2013 DATE
12103.000 PROJECT NO.
Traffic Control Plan_ESS FILE

PROJECT TITLE
EAST SECOND STREET RECONSTRUCTION PROJECT
Whitefish, Montana

SHEET TITLE
TRAFFIC CONTROL PLAN

SHEET
1

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MANAGER REPORT

October 2, 2013

COPS GRANT

We were notified last Friday by Senator Jon Tester's office staff that we were awarded a US Department of Justice COPS grant (Community Oriented Policing Services) of $125,000 to restore placing a police officer as a School Resource Officer in the Whitefish School District. The $125,000 pays for most of the salary and benefits of an officer for three years after which we have to commit to keep the officer on staff and not reduce other officers. The School District has agreed to pay the matching costs for the three years. After the grant expires, we will split the cost of the officer with the School District.

Jo Ann Dial wrote the grant for the Police Department. Attached in the packet is the official announcement from the DOJ website, the scoring of all Montana applications showing that we were the highest scoring Montana application, and a fact sheet. Only 15% of the 1,781 applications were funded, so we were one of the 263 of applications which were funded.

HYDRO PROJECT – ONE YEAR OF OPERATION

Public Works Director John Wilson recently sent me a graph of the one year summary of operating results from our Hydro-electric generator at the Water Treatment Plant. The graph is attached to this report in the packet. Our actual production of electricity in the first year exceeded our projections by 14%. If the higher production continues, we should pay off our pre-purchase agreement loan from Flathead Electric Coop sooner than the 8 year projection.

UPDATE STATUS REPORT ON BNSF DIESEL PLUME STATE SUPERFUND SITE FROM DEQ

The following update from Jessica Gutting of the Montana Department of Environmental Quality (DEQ) was sent to me last week:

> *BNSF completed the Whitefish River cleanup as required by EPA under the Oil Pollution Act this summer, and DEQ required some final confirmation sampling in July to be incorporated into the Human Health Risk Assessment for the Whitefish River. Assuming the confirmation sampling confirms cleanup is complete and BNSF incorporates all DEQ comments on the risk assessment, DEQ anticipates approving the document this fall. This would essentially be DEQ's approval of the cleanup that BNSF did on the river.*

An interim action work plan is underway to collect some further data to adequately define a trichloroethene (solvent) plume underneath the roundhouse. This work plan has already been reviewed once by DEQ, and is awaiting BNSF's incorporation of comments and re-submission. The collection of this data is slated for Fall 2013. This data will be used to determine the best way to cleanup this plume.

The Supplemental Remedial Investigation Report has been reviewed by DEQ and comments are currently being incorporated into the document by BNSF. Assuming BNSF adequately incorporates DEQ's comments, DEQ expects this document to be approved by November 2013. Once this is completed, then the site can move on to the next phase, which would be the Human Health Risk Assessment for the Facility. DEQ and BNSF have already been meeting to determine the most effective and efficient way to approach this phase. Once the risk assessment is complete, BNSF will complete the Feasibility Study which looks at all of the identified areas of contamination at the facility along with all the interim actions that have been completed and evaluates the best cleanup options to address remaining contamination. Once that is complete, DEQ will identify its preferred cleanup option in the Proposed Plan and solicit public comment. After evaluation and incorporation of public comment, DEQ will issue its decision identifying the final remedy for the facility, which BNSF will implement.

If you have any other questions or need further clarification, please let me know.

Sincerely,

Jessica Gutting

More information and documents related to the site are at
http://deq.mt.gov/StateSuperfund/Whitefish.mcpx

FIRE DEPARTMENT OPEN HOUSE

The annual Fire Department open house will be on Saturday, October 12th. A flyer about the event is included in the packet with this report.

MEETINGS

Cemetery Committee (9/18) – I attended the monthly Cemetery Committee meeting. The committee reviewed a couple of new properties that are located out side of Whitefish in Haskill Basin and on East Edgewood Road near Half Moon Road. The general feeling is that those two properties are too far out, but committee members were going to go look at

them. The committee may focus on the land south of the Wastewater Treatment Plan or DNRC land for additional groundwater testing next spring.

Future City Hall Location Steering Committee (9/24) – The committee met to brainstorm and set priorities among aspects of a future City Hall. The consensus and priority aspects will be given to the four remaining architecture firms for when we meet with them in a joint meeting to discuss aspects of a future City Hall and to answer their questions. This joint meeting will be a prelude to the design competition among the four firms.

UPCOMING SPECIAL EVENTS

Fire Department Open House – Saturday, October 12th

REMINDERS

City Hall is closed on Monday, October 14th for the Columbus Day state holiday

Respectfully submitted,

Chuck Stearns
City Manager

2013 CHP School Resource Officers List by State

141 Agencies, 356 Officers
Total Funding $44,747,629

State	Legal Name	School Resource Officers Awarded	Federal Share Awarded
AK	Kotzebue, City of	1	$125,000
AL	Etowah County Sheriff's Department	3	$261,734
AL	Heflin Police Department	1	$107,300
AL	Jasper Police Department	2	$218,420
AL	Pell City	2	$223,626
AL	Talladega Police Department	2	$188,759
AR	Fayetteville, City of	3	$375,000
AR	Jacksonville Police Department	1	$118,975
AR	Jonesboro Police Department	4	$500,000
AZ	City of Maricopa	3	$375,000
AZ	City of Phoenix	15	$1,875,000
AZ	Clarkdale Police Department	1	$125,000
AZ	Tohono O'Odham Nation Police Department	3	$375,000
AZ	Yuma, City of	8	$1,000,000
CA	Alturas, City of	1	$125,000
CA	Brawley, City of	2	$425,235
CA	Burbank, City of	3	$375,000
CA	California City	1	$125,000
CA	Chula Vista, City of	4	$500,000
CA	City of Desert Hot Springs Police Department	1	$125,000
CA	Colton, City of	2	$250,000
CA	Delano, City of	2	$250,000
CA	Dos Palos, City of	1	$123,368
CA	Galt, City of	2	$250,000
CA	Greenfield Police Department	1	$215,873
CA	Gustine, City of	1	$202,489
CA	Hayward, City of	2	$250,000
CA	Indio Police Department	1	$125,000
CA	Kings County Sheriff's Department	4	$500,000
CA	Modesto, City of	8	$1,000,000
CA	Parlier Police Department	1	$125,000
CA	Ridgecrest, City of	1	$125,000
CA	Signal Hill Police Department	1	$125,000
CA	Tehachapi Police Department	1	$125,000
CA	Visalia Police Department	3	$375,000
CA	Woodlake Police Department	1	$227,362
CO	Commerce City	1	$125,000

MT	Stevensville, Town of	1	$112,335
MT	Whitefish, City of	1	$125,000
NB	City of Crete	1	$122,405
NB	Douglas County Sheriff's Department	1	$125,000
NB	Kimball Police Department	1	$125,000
NC	Bladen County	2	$204,404
NC	Buncombe County Sheriff's Department	7	$875,000
NC	Duplin County Sheriff's Office	4	$422,022
NC	Lumberton, City of	2	$227,724
NC	Statesville Police Department	2	$250,000
NC	Swain County Sheriff's Department	1	$101,083
ND	Bismarck Police Department	2	$250,000
ND	Grand Forks County Sheriff's Department	1	$125,000
ND	Oakes, City of	1	$125,000
NH	Claremont, City of	1	$125,000
NH	Epping Police Department	1	$125,000
NH	Farmington, Town of	1	$125,000
NH	Hinsdale, Town of	1	$125,000
NJ	Westampton, Township of	1	$125,000
NM	Raton Police Department	1	$125,000
NY	Troy, City of	3	$375,000
OH	Austintown, Township of	2	$250,000
OH	Lima Police Department	1	$125,000
OH	Warren, City of	2	$250,000
OK	Oklahoma County Sheriff's Department	6	$750,000
OK	Weleetka Police Department	1	$57,293
OR	Junction City	1	$125,000
PA	Bethlehem, City of	5	$625,000
PA	Lewistown Police Department	1	$125,000
PA	New Sewickley, Township of	1	$125,000
PR	Fajardo, Municipality of	1	$64,377
PR	Yauco, Municipality of	7	$530,531
RI	Central Falls, City of	1	$136,207
RI	Middletown Police Department	2	$250,000
RI	West Greenwich Police Department	1	$125,000
SC	Richland, County of	4	$500,000
SC	Spartanburg County Sheriff's Department	10	$1,021,950
SC	Spartanburg Department of Public Safety	1	$109,286
SD	Aberdeen Police Department	1	$118,268
SD	Oglala Sioux Tribal Department of Public Safety	1	$143,283
TN	Clinton, City of	1	$112,282
TN	Hamilton County Sheriff's Department	8	$1,000,000

MS	MS02402	Gulfport Police Department	102.591012
MS	MS02300	Hancock County Sheriff's Department	99.851356
MS	MS02510	Jackson State University	98.679149
MS	MS01803	University of Southern Mississippi	90.065075
MS	MS05403	Crenshaw Police Department	86.770089
MS	MS06302	Anguilla Police Department	85.698254
MS	MS05001	Philadelphia, City of	82.119539
MS	MS070ZZ	Webb Police Department	76.866078
MS	MS01703	Hernando Police Department	60.889276
MT	MT01502	Whitefish, City of	134.631507
MT	MT04102	Stevensville, Town of	120.692575
MT	MT01802	Cut Bank, City of	118.704042
MT	MT02500	Lewis and Clark County Sheriff's Department	109.931211
MT	MT043ZZ	Town of Brockton Police Department	106.7388
MT	MT02701	Libby Police Department	101.849137
NB	NB02800	Douglas County Sheriff's Department	126.419843
NB	NE001ZZ	Kimball Police Department	119.566933
NB	NB07602	City of Crete	118.301383
NB	NB04001	Grand Island, City of	114.433218
NB	NB07704	La Vista, City of	107.216277
NB	NB00701	Alliance Police Department	106.439284
NC	NC02601	Fayetteville Police Department	144.284835
NC	NC01100	Buncombe County Sheriff's Department	127.623615
NC	NC02800	Dare County Sheriff's Department	108.865809
NC	NC04902	Statesville Police Department	144.59808
NC	NC08700	Swain County Sheriff's Department	138.802795
NC	NC00900	Bladen County	136.13805
NC	NC07801	Lumberton, City of	133.125255
NC	NC03100	Duplin County Sheriff's Office	131.73244
NC	NC07905	Reidsville Police Department	130.353836
NC	NC09206	Knightdale Police Department	128.986917
NC	NC01000	Brunswick County Sheriff's Department	128.810546
NC	NC02603	Spring Lake, Town of	127.196818
NC	NC05700	Macon County Sheriff's Department	123.519636
NC	NC07702	Hamlet Police Department	122.799681
NC	NC09217	Holly Springs, Town of	122.353019
NC	NC09202	Apex Police Department	122.111443
NC	NC02400	Columbus County Sheriff's Department	122.021018
NC	NC05601	Marion, City of	120.928684
NC	NC04901	Mooresville Police Department	120.394688
NC	NC07901	Eden Police Department	120.119415
NC	NC02804	Southern Shores Police Department	119.851509
NC	NC05102	Benson Police Department	119.779543
NC	NC04501	Hendersonville Police Department	118.969378
NC	NC07301	Roxboro Police Department	118.357589
NC	NC05400	Lenoir County Sheriff's Department	117.804315
NC	NC054ZZ	Lee County Government	117.717955

COPS AND THE HIRING PROGRAM – BY THE NUMBERS

The FY 2013 appropriations act provided $125,491,037 for the COPS Hiring Program (CHP). The funds will be used to:

- Hire new officers, including filling existing officer vacancies that are no longer funded in an agency's budget.
- Rehire officers laid off by any jurisdiction as a result of state, local, or Bureau of Indian Affairs (BIA) budget reductions unrelated to the receipt of grant funding.
- Rehire officers scheduled to be laid off (at the time of application) from the applicant's department on a specific future date as a result of state, local, or BIA budget reductions unrelated to the receipt of grant funding.

CHP awardees may receive funding in one or more of the above-referenced hiring categories.

SOME QUICK FACTS ABOUT THE COPS HIRING PROGRAM	
Total Amount of Awards *(This amount will pay for salaries and benefits for three years.)*	$125,374,113
Number of law enforcement agencies receiving grants	263
Total number of law enforcement officers hired	937
New law enforcement officers hired	874
Number of rehired law enforcement officers (already laid off)	6
Number of rehired law enforcement officers (future scheduled lay-offs)	57
For all applicants:	
Avg. yearly salary and benefits for law enforcement officers in jurisdictions over 150,000	$78,261
Avg. yearly salary and benefits for law enforcement officers in jurisdictions equal to or less than 150,000	$71,837
Number of agencies that applied*	1,718
Number of positions requested*	4,427
Total amount requested*	$974,007,306
Number of officers that would have been requested had there been no cap	12,121
Total amount that would have been requested had there been no cap or local match	$2,907,674,049

YOU ARE INVITED TO THE

WHITEFISH FIRE DEPARTMENT

OPEN HOUSE

SATURDAY, OCTOBER 12, 2013

11:00 AM TO 2 PM

(rain, snow, or shine!)

275 Flathead Avenue, Whitefish

Firehouse hot dogs, police and fire station tours, fire & rescue apparatus, specialty rescue teams, live music & more! Meet YOUR Whitefish firefighters, paramedics, and police officers!!

Fun for adults and kids of ALL AGES!!!

For more information, call 406-863-2483

See you there!!!

RESOLUTION NO. 13-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank.

WHEREAS, the City of Whitefish acquired title to 1250 Baker Avenue, the land where the Whitefish Community Aquatic and Health Center (WAVE) is located; and

WHEREAS, the WAVE is a non-profit 501(c)(3) corporation, governed by a seven-member board of directors, with one director position filled by the City Manager, which operates the WAVE as a public facility in cooperation with the City; and

WHEREAS, since 2004, through a series of agreements between the City and the WAVE, upon completion of construction, the WAVE has transferred ownership of the building, related improvements and equipment to the City and the City has permitted the WAVE to use City land, building and related improvements as collateral for a loan; and

WHEREAS, over the past year, the WAVE has planned for its second major expansion and refinancing of existing debt with an approximate cost of $3.5 million and has requested the City pledge its interest in the land, building and personal property located at 1250 Baker Avenue as collateral for the loan with Glacier Bank; and

WHEREAS, on August 19, 2013, the City Council considered the landlord's assignment of lease for the WAVE expansion financing, reviewed the staff report and WAVE agreements and approved the execution of the requested landlord's Release and Covenant for Assignment of Lease for the WAVE expansion financing; and

WHEREAS, on October 7, 2013, the City Council considered the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank, reviewed the staff report and approved the City Manager's execution of the loan documents for expansion financing by Glacier Bank; and

WHEREAS, the City has no financial obligation in this transaction unless, in the future, it would choose to assume financial responsibility in a foreclosure to prevent the loss of a $10 million facility for a loan balance of a lesser amount; and

WHEREAS, it would be in the best interest of the City of Whitefish, and its inhabitants, for the City Council to authorize the pledge of WAVE real and personal property located at 1250 Baker Avenue as collateral for the WAVE loan with Glacier Bank and authorize Charles C. Stearns, City Manager, to negotiate and execute bank loan documents for the City to assist the WAVE in obtaining its loan for the WAVE expansion, on behalf of the City of Whitefish.

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

Section 1: The City Manager is authorized to negotiate and execute bank loan documents to assist the WAVE in providing collateral to secure the $3.5 million loan with Glacier Bank.

Section 2: The City Manager is authorized to execute all necessary documents required by Glacier Bank to secure the loan.

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

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

MEMORANDUM

#2013-041

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Consideration of approving documents for a WAVE Loan for expansion and refinancing of existing debt

Date: August 12, 2013

Introduction/History

On October 20, 2003, the Whitefish City Council approved using the WAVE property as collateral for the first WAVE loan which allowed the construction of the WAVE. That loan was paid down to a current balance of $797,674. On August 19, 2013, the City Council approved a Landlord's Release and Consent for assignment of lease for the current WAVE expansion financing.

Current Report

In tonight's packet are the remaining documents for the WAVE financing. The current financing is for $3,424,266.46 because it includes refinancing of the $797,674 plus new financing of $2,600,000 for the current expansion underway. Because the City owns the land, Glacier Bank is requiring that we sign the deed of trust and other documents, just as we did in 2003 at the inception of the WAVE.

Mary VanBuskirk and I have both reviewed all of the documents and Glacier Bank has agreed to revisions in the documents that we have requested. The City bears no liability for making payments on the loan; if the loan went into default, we might want to cure the default because we might not want to lose an $8,000,000 to $10,000,000 asset for a loan under $3,000,000. However, that would be a choice of a future City Council at that point in time and that City Council could choose to let the property go into foreclosure. However, given the historic success of the WAVE, no one sees foreclosure as being remotely possible.

Financial Requirement

The City has no requirements for any funding and no financial risk. If the property went into default, a future City Council could choose to step in and cure the default or they could let the property go into foreclosure, in which case the WAVE and the City would lose a valuable asset.

Recommendation

Staff respectfully recommends the City Council approve all of the documents required of the City of Whitefish for the WAVE expansion loan and authorize the City Manager to sign and execute the documents.

WHEN RECORDED MAIL TO:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

RECORDATION REQUESTED BY:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

SEND TAX NOTICES TO:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

FOR RECORDER'S USE ONLY

DEED OF TRUST

MAXIMUM LIEN. The total principal indebtedness that may be outstanding at any given time which is secured by this Deed of Trust is $3,424,520.46.

THIS DEED OF TRUST is dated August 7, 2013, among CITY OF WHITEFISH, A MUNICIPAL CORPORATION, whose address is 418 EAST SECOND STREET, WHITEFISH, MT 59937 ("Grantor"); Glacier Bank, whose address is Whitefish Office, 319 Second St East, PO Box 220, Whitefish, MT 59937 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and WHITEFISH TITLE SERVICES INC., whose address is 903 SPOKANE AVENUE SUITE 1, WHITEFISH, MT 59937 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **(the "Real Property") located in FLATHEAD County, State of Montana:**

Lot 1 of the amended plat of THE WAVE, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Real Property or its address is commonly known as 1250 BAKER AVENUE, WHITEFISH, MT 59937.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) BORROWER'S PAYMENT OF THE INDEBTEDNESS AND (B) THE BORROWER'S PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE AND THE RELATED DOCUMENTS, AND (C) GRANTOR'S PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF BORROWER'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor

and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall perform all of its obligations under this Deed of Trust. Additionally, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Borrower shall perform all of its obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. The Real Property does not exceed forty (40) acres, and this instrument is a Trust Indenture executed in conformity with the Small Tract Financing Act of Montana.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) To the best knowledge of Grantor's current officers and employees, except as previously disclosed to and acknowledged by Lender in writing, (a) ~~any~~ there has been no breach or violation of any Environmental Laws with respect to the Property, (b) ~~any~~there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) there are no actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, except for cleanup or other costs under any Environmental Laws which were caused by Lender; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from Grantor's breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring during~~prior to~~ Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise, and shall end at the time of Lender's conveyance, transfer, or sale of Lender's interest in the Property.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to

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Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Montana law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds $500.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain or cause any lessees or occupants of the Real Property to procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain or cause any lessees or occupants of the Real Property to procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain or cause any lessees or occupants of the Real Property to procure and maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender or cause any lessees or occupants of the Real Property to deliver from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds $500.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or

restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES. The following provisions relating to further assurances are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such, deeds of trust, security agreements, financing statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under this Deed of Trust, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses caused by Grantor in connection with the matters referred to in this paragraph.

FULL PERFORMANCE. If Borrower and Grantor pay all the Indebtedness when due, and Grantor otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply

with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's ability to repay the Indebtedness or Borrower's or Grantor's ability to perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution or termination of Borrower's or Grantor's existence as a going business, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower or Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's or Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower or Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, paralegal fees, and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to

the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of FLATHEAD County, State of Montana. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Montana without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Montana.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Flathead County, State of Montana.

Joint and Several Liability of Borrower. The Borrower shall be jointly and severally liable for all obligations of Grantor under this Deed of Trust. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Deed of Trust.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law,

the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Montana as to all Indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Glacier Bank, and its successors and assigns.

Borrower. The word "Borrower" means WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents. This Deed of Trust is intended to be a trust indenture as provided for in the Small Tract Financing Act of Montana.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means CITY OF WHITEFISH, A MUNICIPAL CORPORATION.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. However, "Indebtedness" shall not include any liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, unless otherwise agreed in writing by Grantor and Lender.

Lender. The word "Lender" means Glacier Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated August 7, 2013, **in the original principal amount of $3,424,520.46** from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of

personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means WHITEFISH TITLE SERVICES INC., whose address is 903 SPOKANE AVENUE SUITE 1, WHITEFISH, MT 59937 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

CITY OF WHITEFISH, A MUNICIPAL CORPORATION

By: _____
CHUCK STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION

GOVERNMENT ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20_____ by **CHUCK STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION.**

_____
_____
[Type or Print Name]
Notary Public for the State of Montana
Residing at
_____
(Seal)
My commission expires
_____

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

_____.

Date: _____ **Beneficiary:**
_____
By: _____
Its: _____

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COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$3,424,520.46	08-07-2013	08-01-2028	0171275000130	1E1 / 543	WC05655	617	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "***" has been omitted due to text length limitations.

Borrower: **WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER**
1250 BAKER AVENUE
WHITEFISH, MT 59937-2952

Lender: **Glacier Bank**
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

Grantor: **CITY OF WHITEFISH, A MUNICIPAL CORPORATION**
P. O. BOX 158
WHITEFISH, MT 59937

THIS COMMERCIAL SECURITY AGREEMENT dated August 7, 2013, is made and executed among CITY OF WHITEFISH, A MUNICIPAL CORPORATION ("Grantor"); WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER ("Borrower"); and Glacier Bank ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, which is located on the real property located at 1250 Baker Ave., Whitefish, MT, commonly referred to as the Wave aquatic and health center, or which is or was purchased for or used in the operation of or arises from the operation of the Wave aquatic and health center, in which Grantor is giving to Lender a security interest for the Borrower's payment of the Indebtedness and performance of all other obligations under the Note and the Borrower's and Grantor's performance of all obligations under this Agreement:

Commercial Blanket Lien including but not limited to all weight equipment, computers, telephones, televisions, sound systems; all inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.
All above described collateral will be located on real property located at 1250 Baker Avenue, Whitefish, Flathead County, State of Montana.

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and which is located on the real property located at 1250 Baker Ave., Whitefish, MT, commonly referred to as the Wave aquatic and health center, or which is or was purchased for or used in the operation of or arises from the operation of the Wave aquatic and health center:

(A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

The tangible property which is included in the Collateral is located on the following described real estate:

Lot 1 of the amended plat of THE WAVE, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Real property located at 1250 Baker Avenue, Whitefish, Flathead County, State of Montana.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Except as otherwise required under this Agreement or by applicable law, (A) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agreement; (B) Borrower assumes the responsibility for being and keeping informed about the Collateral; and (C) Borrower waives any defenses that may arise because of any action or inaction of Lender, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral; and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this Agreement.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (A) this Agreement is executed at Borrower's request and not at the request of Lender; (B) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collateral to Lender; (C) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (D) Lender has made no representation to Grantor about Borrower or Borrower's creditworthiness.

GRANTOR'S WAIVERS. Grantor waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Borrower or Grantor, or any other party to the Indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (A) grant any extension of time for any payment, (B) grant any renewal, (C) permit any modification of payment terms or other terms, or (D) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor, Borrower, or the Collateral.

BORROWER AND GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor and Borrower represents and promises to Lender that:

Perfection of Security Interest. Borrower ~~Grantor~~ agree~~s~~s to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Borrower~~Grantor~~ will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Borrower~~Grantor~~ will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender.

Notices to Lender. ~~Grantor~~Borrower will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in ~~Grantor~~Borrower's name; (2) change in ~~Grantor~~Borrower's assumed business name(s); (3) change in the structure of the entity Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's principal residence; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Borrower~~Grantor~~ with or for the account debtor. So long as this Agreement remains in effect, Borrower~~Grantor~~ shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Borrower's~~Grantor's~~ business, Borrower ~~Grantor~~ agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Borrower~~Grantor~~'s address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Borrower~~Grantor~~ will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Borrower ~~Grantor~~'s operations, including without limitation the following: (1) all real property Borrower~~Grantor~~ owns or is purchasing; (2) all real property Borrower~~Grantor~~ is renting or leasing; (3) all storage facilities Borower~~Grantor~~ owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of ~~Grantor~~Borrower's business, including the sales of inventory, ~~Grantor~~Borrower shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, ~~Grantor~~Borrower shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Montana, without Lender's prior written consent. ~~Grantor~~Borrower shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of ~~Grantor~~Borrower's business, or as otherwise provided for in this Agreement, ~~Grantor~~Borrower shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While ~~Grantor~~Borrower is not in default under this Agreement, ~~Grantor~~Borrower may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of ~~Grantor~~Borrower's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. ~~Grantor~~Borrower shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, ~~Grantor~~Borrower shall immediately deliver any such proceeds to Lender.

Title. Grantor and Borrower represent~~s~~ and warrant~~s~~ to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Borrower and Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. ~~Grantor~~Borrower agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Borrower~~Grantor~~ further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. ~~Grantor~~Borrower will pay when due all taxes, assessments and liens upon the Collateral or its use or operation, ~~Grantor~~Borrower may withhold any such payment or may elect to contest any lien if ~~Grantor~~Borrower is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, ~~Grantor~~Borrower shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor and Borrower shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. ~~Grantor~~Borrower shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. ~~Grantor~~Borrower further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. ~~Grantor~~Borrower may withhold any such payment or may elect to contest any lien if ~~Grantor~~Borrower is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor and Borrower shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, including without limitation all environmental laws, ordinances, rules and regulations, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor and Borrower may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances during its ownership only. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup of Collateral or other costs of Collateral under any Environmental Laws, as limited in the hazardous substances certificate and indemnity agreement and deed of trust, ~~-~~ except for cleanup or other costs under any Environmental Laws which were caused by Lender, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from Grantor's breach of this provision of this Agreement concerning the Collateral. ~~The provisions of this section, including the obligation to indemnify and defend, shall survive Lender's acquisition of any interest in the Collateral, whether by foreclosure or otherwise, and shall terminate at the time of Lender's conveyance, transfer, or sale of Lender's interest in the Collateral.~~

Maintenance of Casualty Insurance. Grantor may obtain insurance or may require any tenant, lessee, or operator of the above-identified Collateral to ~~shall~~ procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Borrower and Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. ~~Grantor~~Borrower shall promptly notify Lender of any loss or damage to the Collateral if the estimated cost of repair or replacement exceeds $500.00, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to

do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse ~~Grantor~~Borrower from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to ~~Grantor~~Borrower. Any proceeds which have not been disbursed within six (6) months after their receipt and which ~~Grantor~~Borrower has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

Insurance Reserves. Lender may require ~~Grantor~~Borrower to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from ~~Grantor~~Borrower of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, ~~Grantor~~Borrower shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by ~~Grantor~~Borrower as they become due. Lender does not hold the reserve funds in trust for ~~Grantor~~Borrower, and Lender is not the agent of ~~Grantor~~Borrower for payment of the insurance premiums required to be paid by ~~Grantor~~Borrower. The responsibility for the payment of premiums shall remain ~~Grantor~~Borrower's sole responsibility.

Insurance Reports. ~~Grantor~~Borrower, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, ~~Grantor~~Borrower shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. ~~Grantor~~Borrower authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, ~~Grantor~~Borrower and Grantor additionally agree~~s~~ to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. This includes making sure Lender is shown as the first and only security interest holder on the title covering the Property. ~~Grantor~~Borrower will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. ~~Grantor~~Borrower irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

~~GRANTOR~~BORROWER'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS. Until default and except as otherwise provided below with respect to accounts, ~~Grantor~~Borrower may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that ~~Grantor~~Borrower's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, ~~Grantor~~Borrower may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the Indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as ~~Grantor~~Borrower shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by ~~Grantor~~Borrower shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if ~~Grantor~~Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to ~~Grantor~~Borrower's failure to discharge or pay when due any amounts ~~Grantor~~Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on ~~Grantor~~Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by ~~Grantor~~Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any Indebtedness.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Default in Favor of Third Parties. Borrower ~~or Grantor~~ defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or Grantor's property or ability to perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Borrower's ~~or Grantor's~~ existence as a going business, the insolvency of Borrower ~~or Grantor~~, the appointment of a receiver for any part of Borrower's ~~or Grantor's~~ property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower ~~or Grantor~~ or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Borrower's or ~~Grantor~~Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower ~~or~~ ~~Grantor~~Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower ~~or Grantor~~ gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's ~~or Grantor's~~ financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Agreement within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Borrower and Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a

secured party under the Montana Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Borrower would be required to pay, immediately due and payable, without notice of any kind to Borrower. ~~or Grantor~~.

Assemble Collateral. Lender may require ~~Grantor~~Borrower to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require ~~Grantor~~Borrower to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of ~~Grantor~~Borrower to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, ~~Grantor~~Borrower agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to ~~Grantor~~Borrower after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor and Borrower, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of ~~Grantor~~Borrower, receive, open and dispose of mail addressed to ~~Grantor~~Borrower; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Borrower for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Borrower shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor or Borrower under this Agreement, after Grantor or Borrower's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Limitation of Rights against Grantor. Notwithstanding anything to the contrary in this Agreement, Lender's sole recourse against Grantor for a default by Borrower under this Agreement or a default by Borrower under the Related Documents shall be against the Collateral identified in this Agreement and the Real Property identified in the Deed of Trust dated the same date as this Agreement by and between the Lender and the City of Whitefish. The foregoing shall not limit any rights Lender has against Grantor pursuant to the Hazardous Substances section of this Agreement, the Compliance with Environmental Laws section of the Deed of Trust or the Hazardous Substances Certificate and Indemnity Agreement dated the same date as this Agreement by and between the Lender and the City of Whitefish.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. ~~Grantor~~Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and ~~Grantor~~Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees, paralegal fees, and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. ~~Grantor~~Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Montana without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Montana.

Choice of Venue. If there is a lawsuit, Grantor and Borrower agree~~s~~ upon Lender's request to submit to the jurisdiction of the courts of Flathead County, State of Montana.

Joint and Several Liability. The Borrower shall be jointly and severally liable for all obligations of Grantor under this Agreement. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor or Borrower agree~~s~~ to keep Lender informed at all times of ~~Grantor~~Borrower's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor ~~will~~ or Borrower will make, execute and deliver, or will cause to be made, executed or delivered any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor or Borrower from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor or Borrower in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

Borrower. The word "Borrower" means WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor or Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means CITY OF WHITEFISH, A MUNICIPAL CORPORATION.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents. However, "Indebtedness" shall not include any liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, unless otherwise agreed in writing by ~~Grantor~~Borrower and Lender.

Lender. The word "Lender" means Glacier Bank, its successors and assigns.

Note. The word "Note" means the Note dated August 7, 2013 and executed by WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER in the principal amount of $3,424,520.46, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor or Borrower's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

BORROWER AND GRANTOR HAVE READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED AUGUST 7, 2013.

GRANTOR:

CITY OF WHITEFISH, A MUNICIPAL CORPORATION

By: _____
CHARLES C. STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION

BORROWER:

WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER

By: _____
VICKI HILL, President of WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER

By: _____
DANIEL WEINBERG, Treasurer of WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER

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WHEN RECORDED MAIL TO:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

RECORDATION REQUESTED BY:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

SEND TAX NOTICES TO:
Glacier Bank
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

FOR RECORDER'S USE ONLY

HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES AGREEMENT dated August 7, 2013, is made and executed among CITY OF WHITEFISH, A MUNICIPAL CORPORATION, whose address is P. O. BOX 158, WHITEFISH, MT 59937 (sometimes referred to below as "Grantor" and sometimes as "Indemnitor"); and Glacier Bank, Whitefish Office, 319 Second St East, PO Box 220, Whitefish, MT 59937 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a loan to Whitefish Community Aquatic & Health Center (referred to below as "Borrower"), each party executing this Agreement hereby represents and agrees with Lender as follows:

PROPERTY DESCRIPTION. The word "Property" as used in this Agreement means the following Real Property located in FLATHEAD County, State of Montana:

Lot 1 of the amended plat of THE WAVE, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The Real Property or its address is commonly known as 1250 BAKER AVENUE, WHITEFISH, MT 59937.

REPRESENTATIONS. The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

Use of Property. After due inquiry and investigation, Grantor's current officers and employees have no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any Hazardous Substances by any person on, under, or about the Property.

Hazardous Substances. After due inquiry and investigation, Grantor's current officers and employees have no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCBs, lead paints or other Hazardous Substances, whether used in construction or stored on the Property.

No Notices. Grantor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters, ambient air or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

AFFIRMATIVE COVENANTS. Indemnitor covenants with Lender as follows:

Use of Property. Indemnitor will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, PCBs, lead paint or asbestos.

Compliance with Environmental Laws. Indemnitor shall cause the Property and the operations conducted on it to comply with any and all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to such Property or

operations. Indemnitor shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals of them and shall notify Lender of any expiration or revocation of such permits or authorizations.

Preventive, Investigatory and Remedial Action. Indemnitor shall exercise extreme care in handling Hazardous Substances if Indemnitor uses or encounters any. Indemnitor, at Indemnitor's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the event Indemnitor fails to perform any of Indemnitor's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Indemnitor's expense. ~~All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Indemnitor to Lender upon demand with interest at the Note default rate, or in the absence of a default rate, at the Note interest rate. Lender and Indemnitor intend that Lender shall have full recourse to Indemnitor for any sum at any time due to Lender under this Agreement. In performing any such obligations of Indemnitor, Lender shall at all times be deemed to be the agent of Indemnitor and shall not by reason of such performance be deemed to be assuming any responsibility of Indemnitor under any Environmental Law or to any third party.~~

Notices. Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

(1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.

(2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or the operations conducted on the Property.

(3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.

(4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.

(5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

Access to Records. Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

Inspections. Lender reserves the right to inspect and investigate the Property and operations on it at any time and from time to time, and Indemnitor shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Indemnitor or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Indemnitor to furnish Lender at Indemnitor's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to any Indemnitor or to any other person.

INDEMNITOR'S WAIVER AND INDEMNIFICATION. For the period of time of Indemnitor's ownership of the property, Indemnitor hereby agrees to and shall indemnify, defend, and hold harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents from and against any and all claims, demands, losses, liabilities, costs, fines, penalties and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review, consultants' fees, remedial action costs, natural resource damages and diminution in value) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property, or any other operations of Indemnitor or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, including without limitation any natural resource damages, or (b) arising out of or related to any noncompliance with or violation of Environmental Laws or any applicable permits or approvals, or (c) on account of injury to Lender or any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant, representation or warranty contained in this Agreement, (ii) the violation of any Environmental Laws, permits, authorizations or approvals, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property, or (iv) the contamination of any of the Property by, or the presence, release or

threatened release of, Hazardous Substances by any means whatsoever (explicitly exincluding without limitation any presently existing contamination of the Property, whether or not previously disclosed to Lender), or (d) pursuant to this Agreement. Indemnitor's obligations under this section shall survive Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise and shall end at the time of Lender's conveyance, transfer or sale of Lender's interest in the property, as set forth in the Survival section below. In addition to this indemnity, Indemnitor hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event Indemnitor becomes liable for cleanup or other costs under any Environmental Laws, which were incurred by Lender as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure or caused by Lender or by any of Lender's tenants, contractors, agents, or other authorized users of the property. The foregoing survival provisions are not intended to benefit a third-party holding any interest in the Property.except for cleanup or other costs under any Environmental Laws which were caused by Lender.

PAYMENT: FULL RECOURSE TO INDEMNITOR. Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Note default rate, or in the absence of a default rate, at the Note interest rate.

SURVIVAL. The covenants contained in this Agreement shall survive (A) any foreclosure, whether judicial or nonjudicial, of the Property, and (B) any delivery of a deed in lieu of foreclosure to Lender or any successor entity of Lender. The covenants contained in this Agreement shall terminate upon payment in full of the Indebtedness or upon Lender's conveyance, transfer or sale of Lender's interest in the Property, whichever is later. The covenants contained in this Agreement shall be for the benefit of Lender and any successor entity to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure. The foregoing survival provisions are not intended to benefit a third-party purchaser of the Property from Lender.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any applicable provisions of the Commercial Security Agreement and Deed of Trust, both dated the same date as this Agreement and both by and between Lender and Grantor, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, paralegal fees, and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law.. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Montana without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Montana.

Choice of Venue. If there is a lawsuit, Indemnitor agrees upon Lender's request to submit to the jurisdiction of the courts of Flathead County, State of Montana.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be

effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided or required by law, if there is more than one Indemnitor, any notice given by Lender to any Indemnitor is deemed to be notice given to all Indemnitors.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. ~~Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.~~

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Indemnitor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Indemnitor, Lender, without notice to Indemnitor, may deal with Indemnitor's successors with reference to this Agreement. ~~and the Indebtedness by way of forbearance or extension without releasing Indemnitor from the obligations of this Agreement or liability under the Indebtedness.~~

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Borrower~~Indemnitor~~'s obligations or expenses incurred by Lender to enforce Borrower~~Indemnitor~~'s obligations ~~under this Agreement~~, together with interest on such amounts as provided in this Agreement.

Lender. The word "Lender" means Glacier Bank, its successors and assigns.

Note. The word "Note" means the Note dated August 7, 2013 and executed by WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER in the principal amount of $3,424,520.46, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Occupant. The word "Occupant" means individually and collectively all persons or entities occupying or utilizing the Property, whether as owner, tenant, operator or other occupant.

Property. The word "Property" means all of Indemnitor's right, title and interest in and to all the Property as described in the "Property Description" section of this Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now

or hereafter existing, executed in connection with the Indebtedness.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED AUGUST 7, 2013.

GRANTOR:

CITY OF WHITEFISH, A MUNICIPAL CORPORATION

By: _____
CHARLES C. STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION

LENDER:

GLACIER BANK
X _____
Authorized Signer

_____

GOVERNMENT ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20_____ by **CHARLES C. STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION.**

_____
_____
[Type or Print Name]
Notary Public for the State of Montana
Residing at
_____
(Seal)
My commission expires
_____

_____

LENDER ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 20_____ by _____ as _____ of **Glacier Bank**.

_____
_____
[Type or Print Name]
Notary Public for the State of Montana
Residing at
_____
(Seal)
My commission expires
_____

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AGREEMENT TO PROVIDE INSURANCE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$3,424,520.46	08-07-2013	08-01-2028	0171275000130	1E1 / 543	WC05655	617	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "***" has been omitted due to text length limitations.

Borrower: **WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER**
1250 BAKER AVENUE
WHITEFISH, MT 59937-2952

Lender: **Glacier Bank**
Whitefish Office
319 Second St East
PO Box 220
Whitefish, MT 59937

Grantor: **CITY OF WHITEFISH, A MUNICIPAL CORPORATION**
P. O. BOX 158
WHITEFISH, MT 59937

INSURANCE REQUIREMENTS. Grantor, CITY OF WHITEFISH, A MUNICIPAL CORPORATION ("Grantor"), understands that insurance coverage is required in connection with the extending of a loan or the providing of other financial accommodations to WHITEFISH COMMUNITY AQUATIC & HEALTH CENTER ("Borrower") by Lender. These requirements are set forth in the security documents for the loan. The following minimum insurance coverages must be provided on the following described collateral (the "Collateral"):

Collateral: **1250 BAKER AVENUE, WHITEFISH, MT 59937.**
Type: Fire and extended coverage
Amount: Loan Amount.
Basis: Replacement value.
Endorsements: Standard mortgagee's clause with stipulation that coverage will not be cancelled or diminished without a minimum of 10 days prior written notice to Lender, and without disclaimer of the insurer's liability for failure to give such notice.
Comments: IN FILE.
Latest Delivery Date: By 10 days before the loan closing date.

Collateral: **All Inventory, Equipment, Fixtures, Timber and Minerals, Oil and Gas to include but not limited to all weight equipment, computers, telephones, televisions and sound systems at real property located at 1250 Baker Avenue, Whitefish, Flathead County, State of Montana..**
Type: All risks, including fire, theft and liability.
Amount: Full Insurable Value.
Basis: Replacement value.
Endorsements: Lender loss payable clause with stipulation that coverage will not be cancelled or diminished without a minimum of 10 days prior written notice to Lender.
Comments: IN FILE.
Latest Delivery Date: By the loan closing date.

INSURANCE COMPANY. Grantor may obtain insurance or may require any tenant, lessee or operator of the above-identified Collateral to obtain insurance from any insurance company Grantor may choose that is reasonably acceptable to Lender. Grantor understands that credit may not be denied solely because insurance was not purchased through Lender.

FLOOD INSURANCE. Flood Insurance for the Collateral securing this loan is described as follows:

Real Estate at 1250 BAKER AVENUE, WHITEFISH, MT 59937.
The Collateral securing this loan is not currently located in an area identified as having special flood hazards. Therefore, no special flood hazard insurance is necessary at this time. Should the Collateral at any time be deemed to be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Collateral is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Flood insurance may be purchased under the National Flood Insurance Program or from private insurers.

FAILURE TO PROVIDE INSURANCE. Grantor agrees to deliver to Lender, or to cause any tenant, lessee or operator of the above-identified Collateral to deliver to Lender, on the latest delivery date stated above, proof of the required insurance as provided above, with an effective date of August 7, 2013, or earlier. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at Grantor's expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. GRANTOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

AUTHORIZATION. For purposes of insurance coverage on the Collateral, Grantor authorizes Lender to provide to any person (including any insurance

agent or company) all information Lender deems appropriate, whether regarding the Collateral, the loan or other financial accommodations, or both.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AUGUST 7, 2013.

GRANTOR:

CITY OF WHITEFISH, A MUNICIPAL CORPORATION

By: _____
CHARLES C. STEARNS, CITY MANAGER of CITY OF WHITEFISH, A MUNICIPAL CORPORATION

FOR LENDER USE ONLY
INSURANCE VERIFICATION

DATE: _____ PHONE **(406) 443-0907**
AGENT'S NAME: _____
AGENCY: **MONTANA MUNICIPAL INTERLOCAL AUTHORITY**
ADDRESS: **P. O. BOX 6669, HELENA , MT 59604**
INSURANCE COMPANY: **MONTANA MUNICIPAL INTERLOCAL AUTHORITY**
POLICY NUMBER: _____
EFFECTIVE DATES: _____
COMMENTS: _____

FOR LENDER USE ONLY
INSURANCE VERIFICATION

DATE: _____ PHONE **(406) 443-0907**
AGENT'S NAME: _____
AGENCY: **MONTANA MUNICIPAL INTERLOCAL AUTHORITY**
ADDRESS: **P. O. BOX 6669, HELENA , MT 59604**
INSURANCE COMPANY: **MONTANA MUNICIPAL INTERLOCAL AUTHORITY**
POLICY NUMBER: _____
EFFECTIVE DATES: _____
COMMENTS: _____

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Chuck Stearns

From: Chuck Stearns [cstearns@cityofwhitefish.org]
Sent: Tuesday, October 01, 2013 3:22 PM
To: 'Chuck Stearns'
Subject: FW: October 7th City Council Agenda
Attachments: Impact fee opinion.pdf

Sept 30, 2013

Dear Mr. Stearns,
Once again, thank you for meeting with Mr. Dahlem, Mrs. Jarvi and me two weeks ago to discuss the Whitefish School District's request that the City waive/reimburse the impact fee. I believe I had asked that you go ahead and place our request on the October 7th agenda, and that I would get back with you to confirm that request.

I would ask you to leave the impact fee request on the agenda for the October 7th meeting. In addition to this letter, I would ask that you provide the City Council with Mr. Dahlem's legal opinion regarding the impact fee. If the Council is unwilling to refund the District's fee at this time, we would hope that the Council would authorize Mrs. VanBuskirk to request an Attorney General's opinion on this matter.

It is our continued hope, as school leaders committed to building a school that will have a positive and long-lasting impact on our community, that the City will consider reimbursing the school district for the impact fee for this project.

As I stated before, our school district trustees and leaders continue to express our gratitude for the City Council's support of the school project, and its generous donation of TIF funds, as well as feedback and advice to the project leaders. We once again thank you for taking this request under consideration.

Sincerely,

Kate Orozco
Superintendent, Whitefish School District

Whitefish School District 44
600 East Second Street, Whitefish, MT 59937
District Office • (406) 862-8640

received
8/28/13 CS

August 26, 2013

Chuck Stearns, City Manager
418 East Second Street
P.O. Box 158
Whitefish, Montana 59937

Dear Mr. Stearns,

We write this letter to make a formal request that the City of Whitefish consider waiving the impact fees assigned to the new high school building project.

As you know, the Building and Oversight Committee has worked vigorously in the last year to direct the project in such a way that the district is able diligently meet time lines and its budget. It has been a struggle. The $60,000 impact fee assessed by the city creates significant impact on the high school building project budget. The entire school board and the Budget and Oversight Committee, in their desire to be good stewards of this project, believe it is essential to bring our request to your attention.

We realize well the concerns shared by city council members about setting a worrisome precedent resulting in more frequent future requests of the city to waive impact fees, especially after having recently waived fees for the Food Bank and the Wave. We also certainly understand the important purpose of impact fees for the city and its citizens, although we are struggling to understand how the remodeled building will create any additional burden on city services.

It is our hope, as a non-profit organization, and as leaders who are committed to building a school that will have *positive* environmental and financial impact on the city, that the city will consider waiving the impact fee for this project.

We continue to express, Chuck, that we are deeply grateful for the city council's support of the school project, and its generous donation of TIF funds, feedback and advice to the project leaders. We thank you for taking this request under consideration.

Sincerely,

Kate Orozco

Kate Orozco
Superintendent, Whitefish School District

Pat Jarvi
Chair of Whitefish School District

Dave Fern, Shawn Tucker, Heather Vrentes, Shawn Watts, Nick Polumbus, Ruth Harrison
(Trustees of Whitefish School District)

MICHAEL DAHLEM
Attorney at Law

6005 St. Moritz Dr., Unit E
Whitefish, MT 59937
Phone: (406) 730-1515
E-mail: philo2500@yahoo.com

September 23, 2013

Kate Orozco, Superintendent
Whitefish Public Schools
600 East Second Street
Whitefish, MT 59937

Dear Kate:

You have asked for my legal opinion regarding the imposition of an impact fee by the City of Whitefish on the Whitefish High School construction project. As you know, pursuant to statutory authority conferred by Mont. Code Ann. §7-6-1601, *et seq.*, the City has adopted an ordinance imposing impact fees on "new growth and development, including, but not limited to, new residential, commercial, retail, and office development in the city of Whitefish. . . ." *City Code 10-2-1*.

The statute defines "development" as "construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities." It further defines "impact fee" as "any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected." The statute does not expressly authorize the imposition of an impact fee on a political subdivision and there is nothing in the committee minutes to suggest that the Legislature intended to authorize one political subdivision to impose an impact fee on another.

The fee charged by the City of Whitefish, which is apparently based on the square footage of the high school construction project, is used to support the following City services: "water, wastewater, stormwater, paved trails, park maintenance building, emergency services building and city hall." *City Code 10-2-1*. However, I am not aware that this construction project will create any additional demand for public facilities or require the City to create any additional service capacity.

While I do not question the City's right to collect impact fees from private developers, if charged in accordance with statutory requirements, the imposition of an impact fee on a political subdivision of the State of Montana is of questionable legality. It is my opinion that, pursuant to Article VIII, Section 5 of the Montana Constitution and Mont. Code Ann. § 15-6-201, an impact fee may be charged to a political subdivision only if the fee directly benefits the property upon which it is assessed. If there is no direct benefit, the charge will constitute an impermissible property tax.

Article VIII, Section 5 of the Montana Constitution states that:

Section 5. **PROPERTY TAX EXEMPTIONS.**

(1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, **school districts,** municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. **It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby**.

Pursuant to this grant of statutory authority, the Montana Legislature adopted Mont. Code Ann. § 15-6-201, which provides that:

(1) The following categories of property are exempt from taxation: . . .

(ii) the state, counties, cities, towns, and **school districts;** . . .

These provisions make it clear that any assessment made on school district property must confer some direct benefit on that property. It does not appear that the impact fee that has been charged to the Whitefish School District meets this requirement.

I would also note that the prohibition on taxing school district property predates the adoption of the 1972 Montana Constitution. In *Improvement Company v. Rosebud County,* 129 Mont. 412, 288 P.2d 657 (1955), the Montana Supreme Court held that a school building, owned by an improvement company and leased to a school district, was exempt from property taxation. In *Flathead Lake Methodist Camp v. Webb,* 144 Mont. 565, 399 P.2d 90 (1965), the Court interpreted the term "educational purposes"in Article VIII, Section 2, now Section 5 of the Montana Constitution, to provide property tax exemptions for organizations that promote the social, intellectual, physical, or religious welfare of non-public school children.

In *Vail v. Custer County,* 132 Mont. 205, 315 P.2d 993 (1957), the Montana Supreme Court offered an analysis of the distinction between a tax and an assessment that the Montana Attorney General has, on several occasions, cited in deciding whether a particular charge could be imposed on a political subdivision. In 46 Op. Att'y Gen. No. 7 (1995), for example, Attorney General Joe Mazurek concluded that the City of Helena could not assess a fire service fee on State property located in the City's fire service area because the fee constituted a tax used by the City for services provided for the public

good, rather than an assessment commensurate with a specific benefit conferred on the assessed property. In that opinion, the Attorney General wrote that:

> The City has adopted a charter form of government with self-government powers pursuant to article XI, section 5, of the Montana Constitution. The Montana Constitution allows local governments which have adopted a self-government charter to "exercise any power not prohibited by this constitution, law, or charter.". . . A self-governing local government may also provide "any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter." . . . The powers and authority of a self-governing local government are to be liberally construed and "every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority." . . .
>
> As explained in 43 Op. Att'y Gen. No. 53 at 184, 185 (1990) . . . Mont. Code Ann. §7-1-113 prohibits self-governing local governments from exercising "any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control." 43 Op. Att'y Gen. No. 53 at 186; 43 Op. Att'y Gen. No. 41 at 132. . . .
>
> With respect to consideration of constitutional ramifications, you maintain that the fees levied on the state property in the fire service area are in reality taxes and, therefore, these fire service fees charged by the City are in violation of the constitutional and statutory provisions which exempt state property from taxation. Mont. Const. art. VIII, § 5 provides, among other things, that the legislature may exempt state property from taxation. The legislature implemented the above constitutional provision by enacting Mont. Code Ann. § 15-6-201(1)(a)(ii), which specifically exempts state property from taxation. Conversely, the City claims that the fire service fees are not taxes but instead are "assessments," and therefore these fire service fees levied on state property are not prohibited by Mont. Code Ann. § 15-6-201(1)(a)(ii)
>
> In *Vail v. Custer County,* 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957), the Montana Supreme Court explained the differences between a property tax and an assessment:
>
> A tax is levied for the general public good. It creates a lien. An assessment is imposed against specific property to defray the cost of a specific benefit to the property, the benefit to be commensurate with the assessment. See 42 Op. Att'y Gen. No. 21 at 76, 82-83 (1987).
>
> The difference between a "tax" and an "assessment" is not determined by how it is referenced, but rather how it is calculated and whether it benefits the public generally or operates to benefit a specific piece of property. 42 Op. Att'y Gen. No. 73 at 289, 291-92 (1988), held that regular and special assessments levied by a conservation district were taxes and not "assessments" as the term was defined by the court in *Vail* and used in 42 Op. Att'y Gen. No. 21 (1987). The conservation district apportioned the amount of the assessments levied on the basis of the property's taxable valuation. 42

Op. Att'y Gen. No. 73 at 291. The opinion closely examined whether the conservation district assessments were intended "to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits." *Id.* at 291, quoting 42 Op. Att'y Gen. No. 21. The opinion concluded that the assessments on the property were a tax because the amount of the assessment levied could not be directly related to the value of the benefits conferred on the assessed property. *Id.*

Similarly, 43 Op. Att'y Gen. No. 46 (1989), relying on the rationale in 42 Op. Att'y Gen. No. 73 (1988), held a water and sewer assessment levy was a tax rather than an "assessment" as defined by the Court in *Vail.* The opinion explained that the water and sewer district levied the assessments to meet general federal loan obligations. 43 Op. Att'y Gen. No. 46 at 158, 159 (1989). The water and sewer assessment levy was "assessed on the basis of proportional land size or valuation and without reference to whether the amount taxed bears a direct relationship to the benefit specially conferred on the particular taxpayer's property." 43 Op. Att'y Gen. No. 46 at 160. The opinion concluded that there was no close relationship between the assessment levy amount and the actual benefit conferred on the assessed property. 43 Op. Att'y Gen. No. 46 at 160.

Here, I conclude that the fire service fees assessed by the City upon the property in the fire service area are taxes rather than assessments as defined by the Court in *Vail.* The fire service fees are similar to those assessments in 42 Op. Att'y Gen. No. 73 (1988) and 43 Op. Att'y Gen. No. 46 (1989). A direct correlation does not exist between the amount of fire service fees charged each piece of property in the fire service area and the value of the fire protection benefit conferred on the property. For instance, the City charges a flat rate of $2 for fire protection for each parcel of vacant property regardless of the size of the vacant property or the potential fire hazard that may be lurking on the property. An owner of a vacant gravel lot, which logically would not create a grave fire hazard, would be charged the same fire service fee as the owner of a wooded lot or an owner who stored flammable material on his or her lot. The $2 fire service fee does not accurately reflect the specific cost of providing fire protection to every vacant piece of property in the fire service area.

Similarly, structures are charged $.008 per square foot without any consideration of the unique potential fire hazards in each structure. Under the City's fire service fee a one-story building with the same square footage as a two-story building is charged the same fire service fee, even though the two-story building may present a more difficult fire-fighting situation because of its height. The charging of a fire service fee on a flat square-footage rate for every structure does not consider that different structures, based on their location, dimensions and building materials, may cost more to provide fire protection than other structures with the same square footage. The fire service fees charged for structures are clearly not always commensurate with the benefit to those structures. The fire service fees cannot be considered assessments because the fees are not necessarily based on the value of the fire protection rendered to a specific structure.

. . .

> Furthermore, the fire service fees simply cannot be traced to the cost of providing the specific benefit of fire protection to each specific piece of property or structure within the city limits. The revenue from the fire service fees covers not only the cost of providing fire suppression services to property and structures within the city limits but also the city fire department's entire budget. In addition to suppressing fires, the fire department also provides emergency medical response services, responds to hazardous waste spills, extricates accident victims from their automobiles, educates the public on fire safety, and conducts fire safety inspections of buildings open to the public. The general public, rather than a specific property owner, benefits from these worthy and necessary services, and clearly the cost of these benefits cannot be calculated on the basis of square footage of a structure. These services paid for by the fire service fees are provided for the general public good and not to any specific piece of property and, therefore, the fire service fees levied to pay for these services must be considered a tax. *Vail, supra.*

This Attorney General opinion contrasts with the conclusion reached in 48 Op. Att'y Gen. No. 21 (2000), in which Attorney General Mazurek concluded that assessments levied by the Sanders County Solid Waste Management District were not a tax and could be assessed against a school district because the district received a direct benefit from the services provide by the Solid Waste Management District. In that case, the Attorney General wrote that:

> The Thompson Falls School District and the Montana School Boards Association (hereinafter the "School Districts") contend that the public schools within the Sanders County Solid Waste Management District (hereinafter "SWMD") are exempt from payment of the SWMD's fees because such assessments are, in actuality, taxes. The School Districts contend that the assessments are levied for the public good, that they are not directly related to the value of the benefits conferred on the properties, and that they are not use-driven.
>
> In Sanders County a private contractor collects the garbage, which is then taken to roll-off sites or transfer stations operated by the SWMD, after which it is hauled to an approved landfill in Missoula County. The SWMD assesses property owners a fee to cover its costs, based upon an annual family residential unit charge of $75. A unit fee of the kind utilized by the SWMD is specifically authorized by statute. . . . The School Districts do not contend that the SWMD uses revenue generated from its fee assessments for purposes unrelated to the management of solid waste. . . .
>
> In June 1998, the SWMD adopted a formula for calculating the respective fees of the public schools in Sanders County. By calculating total revenue needed from all schools ($6375) and dividing that figure by the $75 unit fee, it was determined there were 85 units to be assessed against the schools. Then, dividing total enrollment (1671) by the 85 units, it was determined that there were 19.66 students per unit. After dividing the schools' enrollment figures by the 19.66 figure, the annual fees were allocated to the

schools. This formula resulted in fees ranging from $225 for the smallest school (Paradise) to $ 2625 for the largest school (Thompson Falls). The total annual fee assessed against the five public schools in Sanders County is $6375.

. . . .The object of the pertinent provision in Mont. Code Ann. § 15-6-201(1)(a)(ii) is to exempt school district properties from taxation. Thus, application of the exemption provision turns upon whether the SWMD's assessments are taxes. The United States Supreme Court has observed:

"Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.

"A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." . . .

However, it is well recognized that taxation does not include special assessments or user fees. See 46 Op. Att'y Gen. No. 7 at 3-4 (July 7, 1995). Thus, the exemption does not apply if the SWMD's charges are in the nature of special assessments or user fees.

The purpose and effect of taxation is to compel taxpayers to support a variety of public programs and services which they may never use and from which they may receive no direct or individual benefit. Accordingly, the issue raised by your opinion request is whether the SWMD's fee system has that purpose or effect. "The central inquiry will thus normally be whether the purpose of the levy or assessment is to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits; i.e., whether the levy is in the nature of a user fee." 42 Op. Att'y Gen. No. 21 at 83 (1987) (emphasis added). "An assessment is imposed against specific property to defray the cost of a specific benefit to that property, the benefit to be commensurate with the assessment." *Vail v. Custer County,* 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957).

The purpose of the SWMD's fee system is to recoup the costs of running its solid waste management program, not to raise general revenue or to fund other programs. In addition, a family residential unit fee is a recognized tool by which to apportion such costs. . . .

In 43 Op. Att'y Gen. No. 46 at 159-60 (1989), Attorney General Racicot held that water and sewer levies designed to satisfy expenses in connection with federal loan repayment obligations constituted property taxes, because the expenses associated with loan repayments could not be segregated on the basis of specific benefits conferred on particular properties. See also 46 Att'y Gen. No. 7 at 4-5 (July 7, 1995) (holding that

fire services fees were taxes rather than assessments); 42 Op. Att'y Gen. No. 73 at 289, 291-92 (1988) (holding that conservation district assessments to fund incidental expenses and loan programs were taxes). In contrast, the purpose of the SWMD's assessments here is to fund a specific, identifiable service. In addition, the amount of waste generated by users provides a basis for measuring the benefits received.

"If charges are primarily intended to raise money, they are taxes. If the charges are primarily tools of regulation, they are not taxes." *King County Fire Protection Dists. v. Housing Auth. of King County,* 872 P.2d 516, 523 (Wash. 1994). Regulatory fees can be considered taxes when excess revenues are used to fund other governmental programs. *See, e.g., Town of Eclectic v. Mays,* 547 So. 2d 96, 98, 105 (Ala. 1989) (discussing the illegal use of excess garbage service revenues). If fees are used "as a mere device to lessen the burden of taxation for general governmental purposes, such funds should, of course, be considered in the category of taxes." *Himebaugh v. City of Canton,* 61 N.E.2d 483, 485 (Ohio 1945). Here, the School Districts do not contend that the SWMD is operating at a surplus, nor do they contend that the SWMD's revenues are used to fund other programs, which is prohibited by statute. . . .

The absence of alternative solid waste services in Sanders County does, as a practical matter, render the SWMD's fee system mandatory. Thus, its charges are best characterized as special assessments rather than user fees. However, the fact that users cannot opt out of the system does not render such assessments taxes. "A property owner cannot opt out of a municipal solid waste disposal system by simply not requesting the service." *Ennis v. City of Ray,* 595 N.W.2d 305, 308 (N.D. 1999). . . .The solid wastes generated by the public schools in Sanders County are a cost to the SWMD. However, even if the school districts did not utilize the SWMD's services, their properties would still benefit by virtue of the availability of the service to the property. See 40 Op. Att'y Gen. No. 22 (1983).

Although the infrastructure needed to operate a solid waste system is not located on or appurtenant to the assessed properties, this is a function of the nature of the service, not an indication that waste management provides no direct benefit to the affected properties. The benefits from the disposal and containment of solid waste are comparable to the benefits provided by irrigation districts, which, because of the nature of the service provided (irrigation), requires the improvements to be located on or appurtenant to the affected properties. In Montana, irrigation district assessments are not considered taxes. *Vail,* 132 Mont. at 217, 315 P.2d at 1000. See also 42 Op. Att'y Gen. No. 21 at 82-83 (1987). Like irrigation services, the purpose of the SWMD's assessment is to recoup the costs of providing infrastructure and services which directly and tangibly benefit affected properties.

Having determined that the purpose of the SWMD's fee system is to recoup its service costs on the basis of use, I now consider whether the effect of the SWMD's fee system is to tax the public schools in Sanders County. In other words, do the SWMD's assessments operate like taxes? As one court has noted, the issue is not whether the

benefit conferred is different from the benefits to the community as a whole. Rather, the issue is whether a "logical relationship" exists between the benefit to individual properties and the services provided. *Lake County v. Water Oak Mgmt. Corp.*, 695 So. 2d 667, 669-70 (Fla. 1997). The SWMD's fee system, in particular the fees assessed against the schools, is reasonably related to the services provided, i.e., the fees are in direct (logical) proportion to the benefits conferred.

The Montana legislature has "deemed [it] necessary to provide for the creation of solid waste management districts to control storage, collection, and disposal of solid waste." . . . Accordingly, special assessments may be levied throughout the community as a whole. . . . Although a county-wide solid waste management program provides intangible and indirect benefits to the public as a whole, individual properties that use such services are also directly benefitted.

The School Districts' solid waste charges are based upon a $75 residential unit charge which, in the case of the schools, comprises 19.66 students. Although inequities may exist in the SWMD's fee system, the School Districts acknowledge that such inequities are not determinative of whether the assessments constitute taxes. In addition, the School Districts do not contend that the sizeable 19.66-student unit used to calculate the fees is resulting in their schools carrying an excessive cost burden in comparison to other property owners in Sanders County.

There are more precise ways to measure solid waste than the current residential unit fee system, e.g., measuring its volume or weight. . . . However, there is no indication this would lessen the schools' costs. . . . I cannot conclude, based on the factual record before me, that the effect of the SWMD's assessments is to tax the School Districts' properties.

Based on the foregoing Attorney General opinions, it is my legal opinion that the impact fee that has been charged to the Whitefish School District does not constitute a legally permissible assessment or user fee because the charge does not confer any direct benefit on the school district. Instead, I believe that the charge constitutes an impermissible property tax because fee revenues are used to support the general operation of City government.

I recommend that school district officials ask the City Council to refund the impact fee that has been paid by the district. If the Council is uncertain about the legal analysis offered in this opinion letter, I would suggest that the City Attorney request a formal opinion from the Attorney General to clarify the respective rights and obligations of the parties. Please let me know if you or the trustees have any questions about this matter.

Sincerely,

Michael Dahlem

Michael Dahlem

BUILDING INSPECTION AND IMPACT FEE SUMMARIES - STIMULUS AND OTHER PROJECTS
Prepared: 8/13/2013

Project Address	Permit #	Valuation	Type of Project	Building Permit Fees	Building Fees As a % of Valuation	Paved Trails	Park Maint Building	ESC Building	New City Hall Fee	Water	Sewer	Stormwater	5% Water Admin	5% Sewer Admin	5% City Admin	Total Impact Fees	Impact Fees As a % of Valuation	Latecomers Water	Latecomers Sewer	Refuse Container Fee	Water Meter	Water Meter Inspection	Other	Total Other Fees	Total City Fees
																$0.00								$0.00	$0.00
High School 2013 - First Permit	8372	$625,000	High School - Gymnasium Rehab	$7,043.00		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00				$0.00	$0.00	$0.00		$0.00	$7,043.00
High School 2013 - Second Permit	8376		High School - Excavation & utilities	$17,276.00		$0.00	$0.00	$0.00	$0.00	$2,138.04	$1,177.82	$0.00	$106.90	$58.89	$0.00	$3,481.65		$0.00	$0.00	$0.00	$3,513.38	$20.00		$3,533.38	$24,291.03
High School 2013 - Third Permit	8384		High School - Building	$77,554.00		$0.00	$0.00	$30,924.78	$29,297.16	$0.00	$0.00	$0.00	$0.00	$0.00	$3,011.10	$63,233.04		$0.00	$0.00	$0.00	$0.00	$0.00		$0.00	$140,787.04
High School Totals				$101,873.00		$0.00	$0.00	$30,924.78	$29,297.16	$2,138.04	$1,177.82	$0.00	$106.90	$58.89	$3,011.10	$66,714.69		$0.00	$0.00	$0.00	$3,513.38	$20.00		$3,533.38	$172,121.07

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INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into by and among the following Montana public agencies within the meaning of the Interlocal Cooperation Act:

Flathead County, hereinafter called "County";
The City of Columbia Falls, hereinafter called "Columbia Falls";
The City of Kalispell, hereinafter called "Kalispell";
The City of Whitefish, hereinafter called "Whitefish".

WHEREAS, Title 7, Chapter 11, Part 1, M.C.A., known as the "Interlocal Cooperation Act," permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;

WHEREAS, said Act provides that an interlocal agreement may be authorized and approved by the governing body of each party to said contract;

WHEREAS, the Flathead County Sheriff's Office and each of the Cities Police Departments, as well as many other emergency response agencies, are in need of dispatch services;

WHEREAS, currently within Flathead County there are separate dispatch operations within the County and the three Cities;

WHEREAS, the aforesaid local governmental units have determined it most desirable and efficient to consolidate the dispatch of law enforcement and emergency response personnel into one operation and one staff serving all of the governmental entities;

WHEREAS, the parties to this agreement agree that a central administrative body composed of representatives of the signatories of this agreement should be established for the

purpose of administering and setting the policies for such a staff as well as to coordinate its work in light of the priority of need;

WHEREAS, the parties to this agreement agree that the administration of the County's Office of Emergency Services and the Flathead County Fire Service Area should be coordinated with dispatching emergency services; and

WHEREAS, the citizens of Flathead County approved a bond issue for funding for an Emergency Communications Center.

NOW THEREFORE, it is agreed by and among the parties as follows:

I.

ESTABLISHMENT OF FLATHEAD EMERGENCY COMMUNICATIONS CENTER GOVERNING BOARD

There is hereby established a "Flathead Emergency Communications Center Board." Said body shall be referred to hereinafter as the "BOARD."

The BOARD is established as an administrative body for policy making and financial budget preparation and administration for the Flathead Emergency Communications Center (hereinafter, the Center). The BOARD shall be composed of six (6) members, as follows:

1. The Flathead County Sheriff;
2. A County Commissioner chosen by the Board of County Commissioners;
3. The County Attorney or other elected County officer; and
4. An elected official or designee from each of the cities of Kalispell, Whitefish and Columbia Falls.

Any expenses incurred by a member will be paid for by the governing body which said member represents.

The BOARD shall elect a Presiding Officer from its members, and shall conduct meetings on a quarterly basis. A special meeting of the BOARD may be called by the Presiding Officer or by two members upon two days' written notice to all members.

The BOARD shall adopt by-laws to govern its organization, internal affairs, meetings, and items of general administration in conformity with this agreement; such by-laws may be amended from time to time upon concurrence of four members of the BOARD. The BOARD shall follow the open meetings and public participation standards of a political subdivision of the state. Its financial statements shall be discrete and reasonably available for public scrutiny. The BOARD shall not act except at a meeting in which a quorum, consisting of a majority of the members, is present and upon the majority vote of those members present.

The BOARD shall appoint a committee within three months of the execution of this agreement to study funding issues and to search for funding mechanisms that are more appropriate and acceptable to the parties to this Agreement. The committee shall make its recommendations within two years of its formation.

II.

PURPOSE

The purpose of this agreement is to consolidate all dispatch services in Flathead County and the Cities in Flathead County into one operation and one staff in order to provide efficient service to all emergency responders and to coordinate the County's Office of Emergency Services and Flathead County Fire Service Area responsibilities with the dispatch center. The service will include receiving calls concerning governmental services outside of regular business hours which may not involve emergency response but do require timely governmental action, such as problems with governmental water and sewer facilities. The consolidated Center will result in better service for all emergency responders, thereby benefiting all citizens of the County and the Cities by facilitating more timely response of emergency responders for all citizens requiring such services.

III.

STAFF

The BOARD and the Board of Commissioners of Flathead County will jointly employ, by contract, a Director who shall work under the BOARD and work under the Board of Commissioners. Both the Board of Commissioners and the BOARD must agree to any termination of employment that might be initiated in regard to the Director during the term of the Director's contract. In the event that either the Board of Commissioners or the BOARD is not satisfied with the performance of the Director at the end of the contract term, the Director shall not be granted a new contract.

The Director shall hire and direct dispatch staff and technical staff (radio, IT and GIS) and shall be responsible for operation of the Center, under the supervision of the BOARD. The Director shall hire and direct staff to carry out the responsibilities of the County's Office of Emergency Services and the Flathead County Fire Service Area under the supervision of the Board of Commissioners.

The BOARD shall adopt administrative policies to govern its staff's rights, duties, salary schedules, fringe benefits, and such other matters as may be proper and necessary to the efficient and harmonious operation thereof. Dispatch and technical staff personnel shall be employees of the BOARD. The administrative policy adopted by the BOARD shall recognize and provide for all rights and duties as are provided by law for all public employees. In any mandatory matters relating to public employees, the laws applicable to the County shall govern. The County will contract with the BOARD to administer the personnel record-keeping functions and to allow the employees to join the County health insurance program. The BOARD will be responsible for all employer contributions and premiums for health insurance benefits provided to the employees.

The BOARD will also provide for Workers' Compensation coverage, Unemployment Insurance and general liability and errors and admissions insurance, retirement benefits, and all other benefits of the staff of the Emergency Dispatch Center.

The Director's responsibilities with regard to the staff hired to carry out the responsibilities of the County's Office of Emergency Services and the Flathead County Fire Service Area shall be carried out under County Personnel Policy. Those staff members will be County employees.

IV.

FINANCE

Prior to the 15th day of April of each year, the Director shall prepare an estimated overall budget for the Center for the following fiscal year; said budget shall include the income, costs and expenses of the Center and staff provided for herein.

The funds for all members received from the State pursuant to Section 10-4-302, M.C.A., will be budgeted by the BOARD and will be used for installing, operating, and improving the 9-1-1 emergency telephone system. The BOARD shall designate to each party served by the Center a proportionate share of the remainder of the funding for said budget based upon the population of each of the Cities and of the County outside of the Cities as determined in the latest United States census completed every ten years. In addition, the County will fund one-half of the salary of the Director and of an Office Assistant, including one-half of benefits, for provision of services in carrying out the County's responsibilities for the Office of Emergency Services and the Flathead County Fire Service Area.

The Flathead County Treasurer shall act as the Treasurer for the BOARD. Each party agrees to budget and to pay to the Flathead County Treasurer, under the provisions of the Local

Government Budget Act (Title 7, Chapter 6, Part 40, or successor legislation) the amount designated by the BOARD for Center operation.

V.

PROPERTY

The Center building will be owned by Flathead County. No rent will be charged to the other parties of this Agreement. Furniture and office equipment provided by the County with the Center will be owned by the County. All furniture, office equipment, automobiles, and major items of personal property purchased by the BOARD, and accumulated cash, shall remain the property of the BOARD as long as this agreement remains in effect.

The County shall be responsible for insuring the building and any personal property belonging to the County. The BOARD shall be responsible for insuring any personal property acquired by it under this Agreement.

The parties agree that staff hired to carry out the responsibilities of the County for the County's Office of Emergency Services and the Flathead County Fire Service Area may be housed in the Center. The BOARD and the County will share all maintenance costs for the building, including major maintenance items such as roof and furnace/boiler replacement, in the proportion of square footage allotted to staff carrying out dispatch functions and to staff carrying out the County's responsibilities for the Office of Emergency Services and the Flathead County Fire Service Area.

The withdrawal of a party from this agreement, pursuant to Paragraph IX, shall not result in any change of ownership of any property owned by the BOARD; any party, by withdrawing, shall waive any claim it might have to property owned by the BOARD. In the event that this agreement is terminated by mutual consent of the parties, any property then owned by the

BOARD shall either (i) be divided among the parties pursuant to an agreement reached by the parties at the time of termination, or in lieu of such agreement, (ii) be sold pursuant to the statutory provision then in effect with regard to the sale of County property. In the event of a sale, the proceeds shall be divided among the parties pursuant to an agreement reached by the parties at the time of termination or, in lieu of such agreement, by using the percentages used to determine the contributions of each party to the BOARD in its budget for its last year of operation.

VI.

COUNSEL

The Flathead County Attorney shall provide the BOARD with necessary legal advice and counsel as requested, at no extra cost to the BOARD or the City parties hereto.

VII.

PRIOR AGREEMENT

The parties hereto did, on March 15, 1999, file an Interlocal Services Agreement, and an Addendum thereto, establishing the "Enhanced 911 Emergency Coordination Center." Said agreement is by instant agreement terminated by the mutual consent of all parties.

VIII.

ESTABLISHMENT OF ADVISORY COMMITTEE

An advisory committee shall be formed and shall be composed of the following members:

1. one representative from Sheriff's Office;
2. one member from either police or fire from each participating city;
3. one rural fire representative to be appointed by the County Chiefs Association;
4. one appointee for the EMS community appointed by the City/County Health Board;
5. the dispatch supervisor;

6. up to 2 public at-large members to be appointed by the BOARD to serve two year terms.

The at-large positions shall be appointed by the BOARD from a list of applicants. The BOARD shall give notice of the availability of the positions by article in the newspaper, and seek applications therefore at least 30 days prior to filling the positions.

The Advisory Committee shall meet monthly and at such other times as the committee shall determine or when requested by the BOARD. The members shall elect a Chairperson who shall conduct the meetings and assume other functions as the committee shall determine.

The Advisory Committee shall adopt by-laws and shall provide advice and evaluation for the BOARD and the Director on the following:

1. Call-taking, selective call-transfer and dispatch procedures and policies.
2. Continuous quality improvement monitoring and review of Center performance.
3. Priorities, policies and procedures for E9-1-1 system enhancement, programming, implementation and equipment usage.
4. Administrative and operational policies and procedures of the Center.
5. New equipment proposals.
6. Any other matters on which the Director or the BOARD may request advice or evaluation.

IX.

TERM AND WITHDRAWAL OF A PARTY

After approval and appropriate filing, this agreement shall become effective and shall endure until terminated by law or by mutual agreement of the parties. A party may withdraw from this agreement only upon lawful resolution of the governing body of that party and service of written notice thereof on the remaining party or parties hereto at least 180 days prior to the first day of July of any year. This agreement will remain in full force and effect as to a

withdrawing party until the 30th day of June next following service of notice of the withdrawal of said party; the agreement shall remain in full force and effect as to all remaining parties until termination or withdrawal.

X.

TRANSITION PROVISION

The parties agree that the transition from the current dispatch operation to the consolidated operation will require substantial planning, including consultations with current staffs and their collective bargaining representatives. The parties therefore agree that the current operation will continue after the execution of this Agreement, under the Memorandum of Understanding executed by the 911 Administration Board, the Board of Commissioners, the Sheriff and the Interim Emergency Services Director.

The BOARD shall work closely with the Sheriff and the Interim Emergency Services Director to achieve a smooth transition. When the transition to the new building is complete, the BOARD will hire a Director under Section III of this Agreement.

IN WITNESS WHEREOF, the parties execute this agreement effective this 20 day of April, 2009.

FLATHEAD COUNTY

By: _____
Dale W. Lauman, Chairman

ATTEST:

By: _____
Diana Kile, Clerk

(seal)

SEAL OF FLATHEAD COUNTY STATE OF MT. CLERK & RECORDER

CITY OF COLUMBIA FALLS

By: _____
William F. Shaw, City Manager

ATTEST:

By: _____
Susan M. Nicosia, City Clerk

(seal)

CITY OF KALISPELL

By: _____
Myrt Webb, Interim City Manager

ATTEST:

By: _____
Theresa White, City Clerk

(seal)

CITY OF WHITEFISH

By: _____
Charles C. Stearns, City Manager

ATTEST:

By: _____
Neeile Lorang, Clerk

(seal)

* * * * * * * * *

STATE OF MONTANA)
:ss
County of Flathead)

On this 4 day of ~~April~~ May, 2009, before me, the undersigned Notary Public for the State of Montana, personally appeared DALE W. LAUMAN and DIANA KILE, known to me to be the Chairman of the Board of Commissioners and the Clerk of the Board, respectively, and acknowledged to me that the County executed the same.

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

(seal)

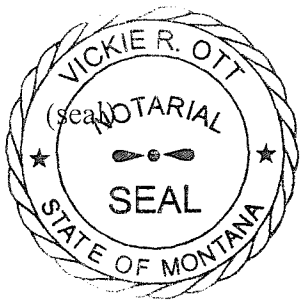
_____
Debbie L. Boreson
Notary Public for the State of Montana
Residing at Kalispell
My commission expires: July 16, 2009

* * * * * * * * *

STATE OF MONTANA)
:ss
County of Flathead)

On this 22nd day of April, 2009, before me, the undersigned Notary Public for the State of Montana, personally appeared WILLIAM F. SHAW and SUSAN M. NICOSIA, known to me to be the City Manager and City Clerk, respectively, and acknowledged to me that the City of Columbia Falls executed the same.

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



Vickie R. Ott
Printed Name: Vickie R. Ott
Notary Public for the State of Montana
Residing at Columbia Falls
My commission expires: 10-14-2011

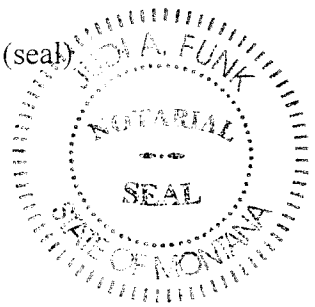
* * * * * * * * *

STATE OF MONTANA)
:ss
County of Flathead)

On this 21st day of April, 2009, before me, the undersigned Notary Public for the State of Montana, personally appeared MYRT WEBB and THERESA WHITE, known to me to be the Interim City Manager and City Clerk, respectively, and acknowledged to me that the City of Kalispell executed the same.

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

(seal)



Judi A Funk
Printed Name: Judi A Funk
Notary Public for the State of Montana
Residing at Kalispell
My commission expires: 2/25/2012

* * * * * * * * *

STATE OF MONTANA)
:ss
County of Flathead)

On this 27 day of April, 2009, before me, the undersigned Notary Public for the State of Montana, personally appeared CHARLES C. STEARNS and NECILE LORANG, known to me to be the City Manager and City Clerk, respectively, and acknowledged to me that the City of Whitefish executed the same.

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

Vanice Woodbeck
Printed Name: Vanice Woodbeck
(seal) Notary Public for the State of Montana
Residing at Whitefish
My commission expires: 2 23 2012

received
9/19/13

Whitefish City Council
City Hall Building
Whitefish, MT 59937

Chris Bernat
119 Wedgewood Ln.
Whitefish, MT 59937
(406) 863-2995
cbernat@cyberport.net

September 19, 2013

Dear City Council Members,

Attached please find a Letter to the Editor that I submitted to the Daily Interlake. I would like this letter added to the records for the City Council's decision on the direction of the new City Hall building and for the Whitefish Growth Master Plan.

Thanks,

Chris Bernat

Chris Bernat

Recently there has been a revised master plan for downtown Whitefish. With the recommendation that 3 parking garages be constructed, and that abundant high end retail be attracted and constructed, this will greatly alter the small-town historic quality of Whitefish. I understand the necessity of additional parking and growth, but all this seems like an overkill. I have two issues with the direction of Whitefish that I would like to address. First there seems to be a desire to bring more and more traffic into Whitefish. While they are building a road to bypass traffic around Kalispell, there seems to be no desire/possibility of diverting Hwy. 93 traffic around Whitefish. From what I've heard, the plan is to expand Spokane Ave and Baker Ave. in order to handle more traffic, including trucks.

And this brings up the second issue. To accommodate more trucks, the Whitefish City Council is planning on expanding the turn lane at the Whitefish City Hall site (2nd St. and Baker). The old City Hall building is going to be demolished to do this, and a new City Hall will be built in its place. When I inquired about the possibility of preserving the old City Hall building and possibly building onto it in a similar style, I was told that that option wasn't even explored. Additional traffic, three new parking structures, new buildings for high end retail, and a brand new City Hall will greatly alter the historic quality of Whitefish. I am asking the city council to at least consider the possibility of diverting truck traffic from downtown Whitefish and also to determine the cost of saving the old City Hall building (there is a historic brick building under the gray facade). A newer addition to the City Hall could be built onto it in the same style, and a parking structure could also be added and blended in as well. This was how the Central School building was done and it looks great.

In the quest to bring in more traffic and much high end retail, the historic small-town quality of Whitefish will be greatly altered. Don't shoot the goose that laid the golden egg. The very quality that makes shopping in Whitefish desirable is the charm of downtown Whitefish.

The original City Hall building constructed in 1918 (before a new façade was added in the 1950s).

DEPARTMENT OF ADMINISTRATION
STATE ACCOUNTING DIVISION

received
9-20-13

STEVE BULLOCK, GOVERNOR
JOHN E. WALSH, LIEUTENANT GOVERNOR

STATE OF MONTANA

Accounting Bureau
Rm. 255
PO Box 200102
(406) 444-3092

SABHRS Finance and Budget Bureau
Rm. 270
PO Box 200102
(406) 444-5700

Treasury Unit
Rm. 261
PO Box 200140
Helena, MT 59620-0140
(406) 444-2624

Local Government
Services Bureau
301 S. Park, Rm. 340
PO Box 200547
Helena, MT 59620-0547
(406) 841-2909

September 17, 2013

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

Re: Response to FY2012 Audit Report

Thank you for notifying us of the actions that have been or will be taken, regarding the findings and recommendations contained in the management letter and/or audit report, for the City of Whitefish for the fiscal year(s) ended June 30, 2012. Your auditor, Denning, Downey & Associates, PC, Certified Public Accountant, issued that report to you on June 11, 2013.

Pursuant to State law, we've reviewed your response to the findings and recommendations and are notifying you of our acceptance of this response and your corrective actions. Please note that our acceptance is based on our understanding of the audit findings and responses as written. You may wish to contact the auditor to ensure that your corrective actions address the auditor's findings satisfactorily and completely.

Please contact me at 406-841-2912 or briitano@mt.gov if you have any questions.

Sincerely,

Beth Riitano

BETH RIITANO, Accounting Tech.
Local Government Services Bureau

Kevin McCready • 50 Idaho Ave. #23 • Whitefish, MT 59937-2291
October 1, 2013

Attn: Mayor & City Council
P. O. Box 158
Whitefish, Montana 59937

RE: City Ordinances and Enforcement

For the past 10 years I have been engaged in a research project focusing on our local history. The current phase of this project will take me to the Whitefish library a minimum of three days per week for at least a year. Each visit will range from 2 - 6 hours.

Yesterday turned out to be a 5 hour day at the library. I was so absorbed in the work I forgot about the time. Upon leaving for the day I found a $20 parking ticket on my car. A well-marked commercial vehicle belonging to electricians who were working in the library, parked next to me, also had a citation on their vehicle.

I am told, by the person at the court office, that to avoid future tickets I will need to come out every 115 minutes, approximately, and move my vehicle to another parking space. I am over 55 and partially disabled. Just getting out to the library is no easy task. Having to get up, walk out to the parking lot and move my vehicle 4 feet, 1 - 3 times each day, is a bit ridiculous particularly considering my circumstance and the fact that that parking lot is usually half-empty. Another consideration, for me, is the waste of costly fuel and unnecessary wear and tear on the vehicle.

Maybe the city could restrict this lot to library patrons only during library business hours, with no time limit. Or, perhaps the city could designate a few spots for longer term parking to accommodate those of us who have a legitimate need to be there more than two hours. The only time I have seen this lot full is during an event at Depot park, which is usually after hours.

This incident raises a question that perhaps the city council can answer.

Several months ago a neighbor acquired 3 very loud dogs that bark incessantly at all hours of the day and night. I contacted the dog owners to alert them to the problem and also let them know they were violating a city ordinance. Not surprisingly I was ignored. Since that time I have called the police twice to try and resolve this problem. Twice the police have, so they say, contacted the dog owners. The dogs continue to bark throughout every day disturbing me and on several occasions preventing me from sleeping. The last responding officer stated that no citation had been issued. Why not?

I am a responsible citizen trying to accomplish something constructive and useful with my time. I lost track of time, exceeded the posted time limit in the library parking lot (half empty), and was immediately cited. My irresponsible neighbors have violated a city ordinance repeatedly and continuously over an extended period of time, disturbing the peace in the process, and nothing happens. Can the city explain this discriminatory enforcement policy? I am certainly curious why I am held accountable for a minor transgression while others, who continue to thumb their nose at me, the police and the city, are repeatedly let off with a hollow and ineffective warning.

I donated a fair amount of my time assisting the library in restoring and configuring a computer system which was not working properly. This is something I would normally have charged hundreds of dollars to do. In the future, because of the way I have been treated by the city, should I ever find myself in a position where I can assist the city, and should I decide to do so, which is highly unlikely, the bill will be at full price.

There are a few more comments I would like to make but, I hope you will excuse me, it is time to go move the car again.

Well done,

Kevin McCready

Kevin McCready

cc: Whitefish Pilot