



**CITY COUNCIL SPECIAL SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, DECEMBER 2, 2013, 5:00 TO 7:00 PM**

1. Call to Order

2. Interviews

- 5:00 Joe Malletta – Lake and Lakeshore Protection Committee (Phone Interview)
- 5:10 David Spangler – Lake and Lakeshore Protection Committee
- 5:20 Bill Mulcahy – Whitefish Housing Authority
- 5:30 Camisha Sawtelle – City-County Planning Board
- 5:40 Ken Stein – City -County Planning Board (Phone Interview)
- 5:50 William (Rett) Parker – City -County Planning Board
- 6:00 Cindy McGlenn – City-County Planning Board
- 6:10 Michelle (Shelby) Handlin – City-County Planning Board
- 6:20 Monte Gilman – City-County Planning Board
- 6:30 Greg Gunderson – City-County Planning Board
- 6:40 Mary Vail – City-County Planning Board

Not available for interview tonight – John Ellis, Jr., - City-County Planning Board

Positions were also advertised for (1) Impact Fee Advisory Committee for a person from the development community, and (2) Mountain Trails Park Master Plan Ad Hoc Steering Committee for two members at large not affiliated or associated with present users of the Mountain Trails Park. No applications were received by the advertised deadline for either of these committees.

3. Public Comment

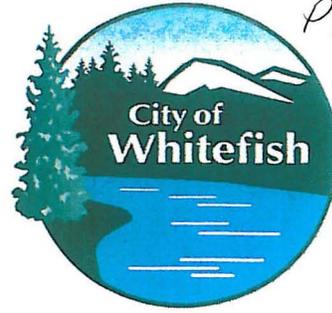
4. Appointments

- a. Lake and Lakeshore Protection Committee – 1 Position – Council appointment
- b. Whitefish Housing Authority –3 Positions – Mayoral Appointments
 - One position to fill a vacancy for a term than expires 12-31-14
 - One position is for the full 5-year term to expire 12-31-18
 - Mountain Manor resident Ralph Ammondson has re-applied for another 2-year term
- c. City-County Planning Board – 2 Positions – 1 Mayoral appointment, 1 Council appointment

Note - If time runs out before the appointments are made, they can be made during the Regular Council Session – Agenda #9 C

5. Adjourn

5:00 pm
Phone Call



City of Whitefish, City Clerk's Office
418 E. 2nd Street, PO Box 158
Whitefish, Mt 59937
406-863-2400
nlorang@cityofwhitefish.org

October 24, 2013

Dear Joe:

Your term on the Whitefish Lake & Lakeshore Protection Committee
expires this year on December 31, 2013.

As a matter of course, the City will also be advertising this position along with others also expiring at this time. The deadline to receive letters of application, and to receive your letter of interest if you want to reapply to serve another term, is November 22, 2013. Interviews with the Council will be scheduled for December 2nd; I will call you to set up your specific interview time if you are re-applying. If you wish, you can complete the blank lines below and return this notice to me in place of a new letter of interest.

I have enclosed a copy of the ad we will be running.

If you are not planning to 're-up' for your position again, please let me know.

Thank you, and thank you for your service to the community of Whitefish!

Necile Lorang

Necile Lorang, CMC
Whitefish City Clerk

To Whitefish City Council:

I am interested in serving another term on the Whitefish Lake &
Lakeshore Protection Committee

Joe D. Mallett 406-270-8269
Signature Daytime Phone #

5:10 pm
received
11/22/13

David L. Spangler
270 Glenwood Rd.
Whitefish, Montana 59937
406-862-2538 (h)
406-249-2407 (c)

To the members of Whitefish City Council:

I would like to be considered for membership to the Whitefish Lakeshore Protection Committee. My wife and I have resided in Whitefish for a total of twelve years. Some of my experiences include the following:

- Coordinator of the Whitefish Performing Arts Center since its opening in 2007 until June 2013
- Master's prepared art educator with twenty-two years experience

Thank you for your consideration.

Sincerely,


David L. Spangler

WHITEFISH LAKE & LAKESHORE PROTECTION COMMITTEE –WCC 13-4-1 - 3 YEAR TERMS

(2nd Wednesday; Planning & Building Department Conference Room)

*****City appointees – 2 minimum who own or reside on lakefront property*****

			TERM EXPIRATION DATE	
*Joe Malletta	1240 Birch Hill Dr.	862-6343	12/31/2013	City Lakefront owner
*Herb Peschel	1404 W. Lakeshore Dr.	862-4503 (H)	12/31/2015	City Lakefront owner
Scott Ringer	940 Dakota Ave	863-2001, 871-0393	12/31/2014	City
Ron Hauf	2834 Rest Haven Dr	862-1452 (C-270-7302)	12/31/2014	County Lakefront owner
Sharon Morrison	PO Box 1090	862-9600	12/31/2015	County Lakefront owner
Dennis Konopatzke	2194 Houston Drive	261-1174	12/31/2013	County Lakefront owner
Jeff Jensen	320 Blanchard Hollow	253-6854	12/31/2015	County Blanchard Lake
Greg Gunderson	PO Box 1043	863-9947 (W)	12/31/2014	Planning Board or other -2yr term

LAKE AND LAKESHORE PROTECTION REGULATIONS

13-4-1: WHITEFISH CITY/COUNTY LAKE AND LAKESHORE PROTECTION COMMITTEE:

A. Creation, Composition And Compensation Of Members:

1. The Whitefish city/county lake and lakeshore protection committee is hereby created as a special planning board in compliance with section 75-7-211 Montana Code Annotated empowered to review and comment on all activities within the jurisdiction of the Whitefish lake and lakeshore protection regulations and shall be known as the lakeshore protection committee.

2. The committee shall consist of eight (8) voting members. Four (4) members shall constitute a quorum to conduct business.

a. The Whitefish city council shall appoint three (3) members. All members shall be residents of Whitefish and at least two (2) shall be lakefront property owners or residents.

b. The Flathead County board of commissioners shall appoint four (4) members. All members shall be residents of rural Flathead County and at least three (3) shall be lakefront property owners or residents. Of those three (3), at least one shall be a lakefront property owner or resident on Blanchard Lake.

c. The eighth member shall be appointed by the Whitefish city/county planning board. He/she shall serve for a two (2) year term unless he/she requests removal or is removed by a majority vote of the planning board. The eighth member may be a member of the planning board or may be a member at large, but in any event shall be a resident of Whitefish.

3. City appointees and county appointees shall each initially be appointed to a staggered term of one, two (2) and three (3) years. Thereafter, each succeeding term shall be three (3) years. Vacancies during the term shall be filled by the appropriate governing body for the duration of the unexpired term.

4. The committee members shall serve without compensation.

B. Duties: The committee shall:

1. Advise and work with potential applicants.

2. Review and give recommendations on projects requiring a lakeshore permit.

3. Review and offer amendments to the lake and lakeshore regulations, to keep them current, to improve efficiency and to address problems.

4. Report violations to the proper authorities.

C. Organization: The committee shall organize and adopt bylaws pursuant to these regulations establishing the operating policies and procedures of the committee. (Ord. 09-08, 7-20-2009)

5:20 pm

received
11/14/13

Nov. 14, 2013

To Whom it may Concern,

I submit this letter as my intention to volunteer as a member of the Housing Authority.

I am presently retired from a career as a public employee in the fields of education and municipal government.

I am a Montana native residing permanently in Whitefish who feels strongly that this community is in need of affordable housing.

I would be available at any time for an interview and am looking forward to hearing from you.

Sincerely,
 Bill Mulcahy
 2 Granite Spgs Trail
 Whitefish
 Residence phone 730-2701 Cell phone -1-928-386-1002



City of Whitefish, City Clerk's Office
418 E. 2nd Street, PO Box 158
Whitefish, Mt 59937
406-863-2400
nlorang@cityofwhitefish.org

October 24, 2013

Dear Mr. Ammondson:

Your term on the Whitefish Housing Authority Board expires this year on December 31, 2013.

The deadline to receive letters of application, and to receive your letter of interest if you want to reapply to serve another term, is November 22, 2013. If you would like to use this form as your notice to the City that you are interested in serving another term, you can sign at the bottom and mail it back to the City Clerk's Office, PO Box 158, Whitefish, MT 59937.

If you are not planning to 're-up' for your position again, please let me know.

Thank you, and thank you for your service to the community of Whitefish!

Necile Lorang, CMC
Whitefish City Clerk

To Whitefish City Council:

I am interested in serving another term on the Whitefish
Housing Authority Board

Ralph Ammondson 270-5390
Signature Daytime Phone #

HOUSING AUTHORITY – MCA 7-15-4431 - City Resident or Within a 10 mile radius – 5 YEAR TERMS – MAYORAL APPOINTMENTS

			TERM EXPIRATION DATE	
Ralph Ammondson Vice-Chairman	Apt 222 – Mountain View Manor (Resident) 100 E. 4 th Street	862-8160	12/31/2013	2 yr. Term
Laura E. Rutherford	PO Box 483, Whitefish Apt 107 - Mountain View Manor (Resident)	862-2401 100 E. 4 th Street	12/31/2014	2 yr. Term
Myrna Fleming	104 Railway Street	862-3568	12/31/2016	
John Middleton	6475 Hwy 93 S, Ste 17	406-862-7200	12/31/2015	
VACANCY			12/31/2014	
Spencer Weimar, Chairman	24 Iowa Avenue, WF	862-3687 (W)	12/31/2013	
Sandra McDonald	PO Box 4722	862-9182	12/31/2017	

MONTANA CODE ANNOTATED 2011

7-15-4431. Appointment of commissioners. (1) An authority consists of seven commissioners appointed by the mayor. The mayor shall designate the first presiding officer. A commissioner may not be a city official.

(2) Two of the commissioners must be directly assisted by the housing authority and are known as resident commissioners. The staff of the housing authority may not involve itself in the nomination or appointment of resident commissioners, except that the housing authority shall notify all of the households directly assisted by the housing authority when a resident commissioner position is vacant.

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the proper appointment of the commissioner.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 2, Ch. 514, L. 1989; amd. Sec. 5, Ch. 472, L. 1997; amd. Sec. 1, Ch. 197, L. 2001.

7-15-4432. Term of office. (1) Subject to subsection (2), the commissioners who are first appointed must be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 5 years.

(2) The resident commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 2 years.

(3) A commissioner shall hold office until the commissioner's successor has been appointed and qualified.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 3, Ch. 514, L. 1989; amd. Sec. 2, Ch. 197, L. 2001.

7-15-4433. Compensation of commissioners. A commissioner may not receive compensation for services, but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of authority duties.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 621, Ch. 61, L. 2007.

7-15-4434. Vacancies. Vacancies shall be filled for the unexpired term.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

5:30 pm
received
11/22/13

November 22, 2013

City of Whitefish
City-County Planning Board
418 E. 2nd Street
Whitefish, MT 59937

Hello Whitefish Planning Board,

I am writing with interest in a vacancy on the Whitefish City County Planning Board. I was excited to hear about an opening on this important board.

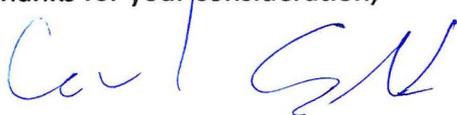
My husband and I have lived and worked in Whitefish for over 10 years. A few years ago we made the decision to sell our home in Happy Valley to relocate in town with the plan to raise our kids as "town kids". Thus far we are convinced the decision was a good one. We spend much more time walking and biking to all of the wonderful places in Whitefish and are proud to be a part of this community.

The planning board plays a critical role in keeping this community the type of place I will be happy to spend the next thirty years in. As an attorney with 10 years of experience as a biologist prior to law school I have a unique understanding of zoning and land use statutes, ordinances and regulations.

My interest in working on the planning board comes from the realization that it is time for me to re-engage with my community. In the 10 years I have been in the Flathead I have been busy playing hard, working as a biologist, getting married, going to law school, having two kids and working as an attorney. I am now at the point that I need to give back to the community that I often feel so lucky to live in.

Selfishly I am interested in working on the planning board because it will help me be a better lawyer as I explain the nuances of planning ordinances to clients. I am always looking for opportunities to continue learning. I hope that a position on the planning board will allow me to learn while contributing to a board that shapes the community I live in.

Thanks for your consideration,



Camisha Sawtelle
239 Somers Avenue
Whitefish, MT 59937
406 871-5983
camisha.sawtelle@gmail.com

5:40 pm
Phone Call

Necile Lorang

From: "Ken Stein" <ken@kenstein.us>
To: "Necile Lorang" <nlorang@cityofwhitefish.org>
Sent: Tuesday, October 08, 2013 9:36 PM
Subject: RE: PLANNING BOARD UPCOMING VACANCY

Necille,

I was informed that a little more info would be good for those councilors not too familiar with my love for Whitefish.

I moved here in 1977, worked on big mountain before finishing my B.S. in Forest Management from U of Montana in 1982.

Worked for the Forest Service and the DNRC for 3-5 years before finding a job that allowed me to stay in the valley, Real Estate.

I've been an Agent/Broker since 1984.

Owned my own Company for 15 years before merging with Re/Max.

Was on the local and state Board of Realtors for 16 years, including President of the local Board in 1997.

One of the many advantages of this is that I am familiar with the protocol and Roberts rules during meetings.

I have served on the Planning Board for 5+ years before I had to move out of the city, temporarily, and am now back in the city!! (44 Fairway View). I was also the designated Planning member on the Lakeshore Committee for 4-5 years.

This is a short 'resume' to give a little info to the council members.

I do have an issue with Dec 2nd ,, I will be out of town for Thanksgiving holiday from Monday to Monday, so if we can schedule before, I'll make EVERY effort to make a different time work! I am gone from 25th through Dec. 2nd (not available that day, arrive 11:30 P.M.)

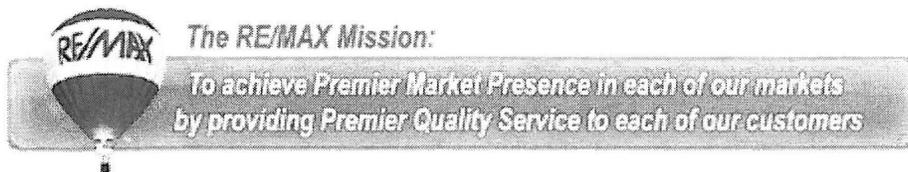
Please let me know how we can work this minor scheduling conflict out.

Thank you very much!!

Ken Stein, CRS, GRI



RE/MAX Of Whitefish
509 E. 6th ST.
Whitefish, Mt 59937
"Big Sky Country"
406.250.0599 (Cell)
www.kenandcindystein.com
ken@kenstein.us
team@kenandcindystein.com



10/12/2013

Necile Lorang

From: "Chuck Stearns" <cstearns@cityofwhitefish.org>
To: "'Necile Lorang'" <nlorang@cityofwhitefish.org>
Sent: Monday, October 07, 2013 8:11 AM
Subject: FW: PLANNING BOARD UPCOMING VACANCY

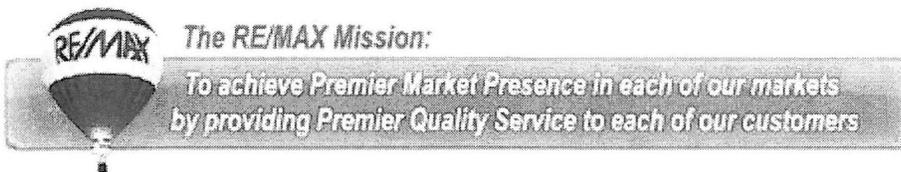
From: Ken Stein [mailto:ken@kenstein.us]
Sent: Saturday, October 05, 2013 7:43 AM
To: 'Chuck Stearns'
Subject: PLANNING BOARD UPCOMING VACANCY

Chuck,
Can this be my letter of interest?
If so, I will be living at 44 Fairway Vw, n(in the city) as of Oct.23, 2013.
This will be my permanent address for the foreseeable future.
Let me know if I need to send it via post office. Thank You,
Ken

Ken Stein, CRS, GRI



RE/MAX Of Whitefish
509 E. 6th ST.
Whitefish, Mt 59937
"Big Sky Country"
406.250.0599 (Cell)
www.kenandcindystein.com
ken@kenstein.us
team@kenandcindystein.com



From: Chuck Stearns [mailto:cstearns@cityofwhitefish.org]
Sent: Friday, October 04, 2013 3:36 PM
To: Chuck Stearns
Subject: Current Vacancies for Committees and Boards

Whitefish Folks:

Attached is the current advertisement for upcoming vacancies on City Boards, Committees, and Commissions. There are instructions on how to apply in the advertisement.

5:50 pm
received
11-18-13

William M. (Rett) Parker
192 Woodland Star Circle
Whitefish, MT 59937
406.862.6080

November 14, 2013

Dear Whitefish City Council:

This letter of interest serves as my request for appointment to the Whitefish City-County Planning Board, specifically the City of Whitefish position becoming available soon. My wife and I moved to Missoula, Montana in 1978 as newlyweds, and have owned property in Montana since 1979. We raised our children in the Seeley-Swan Valley and relocated to the Flathead Valley in January, ²⁰⁰³ 2013. We have been permanent residents of Whitefish for about 10 years. I graduated from the University of Montana with a B.S. in Forest Resource Management. Additionally, I earned an M.B.A. from the University of Phoenix.

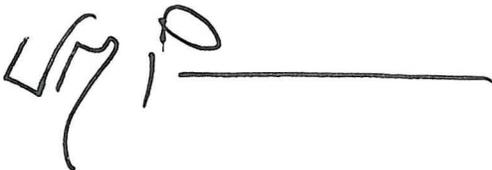
My career has been dedicated to responsible land management, first as a forester with BN Timberlands, and then their successor, Plum Creek Timber Company managing 45,000 acres in the upper and middle Blackfoot River drainage. More recently, I have assumed responsibility for managing the real estate interests of the firm in Montana, and have served in this role since 2003. I maintain my office in Columbia Falls at our regional headquarters. I have designed and/or managed a handful of development projects for the company.

Involvement in land use planning includes an on-going volunteer position with a group located in Bigfork, MT. This group of concerned citizens has worked for several years to develop land use and zoning regulations for the north Lake County area near the community of Bigfork. I was invited to join the group and help develop an appropriate community review process and zoning documents based on the interests of the community members and landowners. This project continues as a work in progress.

Additionally, I attended numerous meetings in Lakeside for a similar purpose. However, the group had a specific agenda which was not collaborative or respectful of divergent opinions. Ultimately, this effort failed for lack of transparency and questionable open-meeting practices.

My personal philosophy relative to land use planning and zoning is quite simple. I support zoning provided the regulations treat landowners equitably, and residents have an opportunity to collaborate in the discussions and process. I look forward to serving the Whitefish community, and becoming a valued and effective member of the planning board.

Thank you for your consideration,



6:00 pm

received
11-21-13

Cindy McGlenn

862-7054 dyson@montanasky.net 519 Central Ave. Whitefish, MT 59937

Whitefish City Clerk
418 E. Second St
Whitefish, MT 59937

Nov. 12, 2013

Dear City Councilors:

I writing to offer myself for one of the opening board positions on the Whitefish City County Planning Board.

As a 17-year resident Whitefish, I've been thinking that it's high time I give back to the community that's given me so much. I adore Whitefish and wish to champion the wonderful quality of life and the amenities I appreciate here.

I am on the board of Literacy Volunteers of the Flathead. I currently volunteer with that organization's outreach to county-wide food banks. I am the secretary for Authors of the Flathead as well as the VP of membership for Whitefish's Toastmasters group.

I've been a freelance writer and novelist for the last decade and a half. My husband and I have owned a home in the city center for fourteen years.

I would be happy to answer any further questions.

Sincerely,



Cindy McGlenn
519 Central Ave., Whitefish, MT 59937
862-7054

6:10 pm
received
11-22-13

11/21/2013

Michelle (Shelby) Handlin
243 O'Brien Ave, Apt 2
Whitefish, MT 59937
269.312.6163
michellehandlin@gmail.com

Dear Members of the Whitefish City Planning Committee,

My name is Michelle (Shelby) Handlin and I am interested in one of the two positions on the City Planning Committee. Visiting my parents for 10 years first brought me to Whitefish. After building my career, a small business and relationships, Whitefish has become my home. Like others, I have found Whitefish to be a place unlike the rest, with people who work hard to call this little town their home. My interest as a board member is to help make decisions that keep Whitefish "sustainably unique" for this and future generations.

Similar a lot of Whitefish residents, the path that led me here was full of twists and turns. After studying Environmental and Political Studies at the University of Minnesota, Morris, I worked as a community organizer for a environmental non-profit, Clean Water Action, in Minneapolis, MN. While there, I worked hard to rallying community support for local and national health and environmental issues. Looking to cool down from all the politics, Antarctica became the destination of choice as I was deployed to work at the South Pole Station in the maintenance and waste departments. After two years and a need to thaw out, working with troubled teenagers at Montana Academy was the perfect match to get the blood flowing. And to test out a dream, this last summer my business partner and I started a small business in Apgar, West Glacier- Paddlefish West Glacier.

What's important to know is that all these twists and turns led to one thing, perspective. Perspective can go a long way and being a late 20's, business owner, globe-adventure seeking, independent women, I believe I have a perspective that could be a value to the board.

If you would like to discuss my qualifications further, please don't hesitate to call me at (269) 312-6163. I can also be reached by email at michellehandlin@gmail.com. Feel free to check out my social networks as well.

Sincerely,

Michelle (Shelby) Handlin



RE/MAX
Of Whitefish
Monte Gilman
 Broker / Owner
 509 E. Sixth Street
 Whitefish, MT 59937
 Office: (406) 863-3400
 Direct: (406) 863-3408
 Cellular: (406) 253- 7221
 www.montegilman.com
 monte@montegilman.com
Each Office Independently Owned and Operated

6:20pm

received
 11-8-13

November 8th 2013

Monte Gilman



435 West 3rd

Whitefish MT 59937

RE: Letter of interest in vacancy on City-County Planning Board

Dear City Staff, Planning Board and City Clerk,

First of all thank you for your service to date including your efforts to work for and on the City of Whitefish's future. I would like to apply for a position on the City-County planning board. I have lived in Whitefish for almost 21 years and am raising my two sons here, I feel lucky to live here and to get to raise my 10 and 12 year old sons in this great town of ours.

I am currently a local business owner; I have co-owned RE/MAX of Whitefish since 2006. I have had extensive experience in working with planners and the city council and planning board back when developers were developing. I have worked on PUD's that encompass hundreds of acres in the Whitefish planning jurisdiction; I have been a developer myself and have been working in real estate for over 13 years. All that said I would not be 100% pro development like some people may think. I feel that I possess a logical, centered outlook on development and would have valuable input on issues put before the planning board. I am at a point in my life and business where I want to increase my community involvement in this way. I am interested in proper planning for the future of Whitefish and would appreciate the opportunity to work on that in this manner. In the past I have enjoyed all my volunteer experiences like, 2 days a winter for the Special Olympics, bell ringing for the Salvation Army and this winter I will volunteer for the Big Mountain Ski Club teaching lessons on Sundays. Prior to being a realtor I taught skiing at WMR and other resorts around the NW.

In summary I enjoy the thought of working on the City-County planning board and appreciate the opportunity to apply for the position. If anyone has any questions I can be reached on my cell at 253 7221 or my email is monte@montegilman.com

Kind regards,

Monte Gilman

6:30 pm

received
11/4/13



City of Whitefish, City Clerk's Office
418 E. 2nd Street, PO Box 158
Whitefish, Mt 59937
406-863-2400
nlorang@cityofwhitefish.org

October 24, 2013

Dear Greg:

Your term on the whitefish City-County Planning Board
expires this year on December 31, 2013.

As a matter of course, the City will also be advertising this position along with others also expiring at this time. The deadline to receive letters of application, and to receive your letter of interest if you want to reapply to serve another term, is November 22, 2013. Interviews with the Council will be scheduled for December 2nd; I will call you to set up your specific interview time if you are re-applying. If you wish, you can complete the blank lines below and return this notice to me in place of a new letter of interest.

I have enclosed a copy of the ad we will be running.

If you are not planning to 're-up' for your position again, please let me know.

Thank you, and thank you for your service to the community of Whitefish!

Necile Lorang

Necile Lorang, CMC
Whitefish City Clerk

To Whitefish City Council:

I am interested in serving another term on the Whitefish City-
County Planning Board

[Signature]
Signature

261-8407
Daytime Phone #

6:40 pm



City of Whitefish, City Clerk's Office
418 E. 2nd Street, PO Box 158
Whitefish, Mt 59937
406-863-2400
nlorang@cityofwhitefish.org

October 24, 2013

Dear Mary:

Your term on the Whitefish City-County Planning Board
expires this year on December 31, 2013.

As a matter of course, the City will also be advertising this position along with others also expiring at this time. The deadline to receive letters of application, and to receive your letter of interest if you want to reapply to serve another term, is November 22, 2013. Interviews with the Council will be scheduled for December 2nd; I will call you to set up your specific interview time if you are re-applying. If you wish, you can complete the blank lines below and return this notice to me in place of a new letter of interest.

I have enclosed a copy of the ad we will be running.

If you are not planning to 're-up' for your position again, please let me know.

Thank you, and thank you for your service to the community of Whitefish!

Necile Lorang

Necile Lorang, CMC
Whitefish City Clerk

To Whitefish City Council:

I am interested in serving another term on the Whitefish
City County Planning Board

Mary Kil 867-3562
Signature Daytime Phone #

Not in town for interviews on 12/2

received
11 | 8 | 13

JOHN OLIVER ELLIS, JR.

*630 Somers Avenue
Whitefish, MT 59937
(406) 862-3798
November 5, 2013*

Clerk
City of Whitefish
418 East Second Street
Whitefish, MT 59937

Re: Whitefish City-County Planning Board

Dear Sir or Madam,

I am writing to express my interest in serving on the Whitefish City-County Planning Board. It is my understanding that there are currently two vacancies. I am a full-time resident of the City and reside at the above listed address. Attached is a resume.

I look forward to hearing from you on this matter.

Sincerely yours,



John Oliver Ellis, Jr.

JOHN OLIVER ELLIS, JR.

630 Somers Avenue

Whitefish, MT 59937

(406) 862-3798

Personal History

Born	April 2, 1949 Atlanta, Georgia
Marital Status	Married Wife - Carol Lee Ellis
	Children John Connor Ellis Sophomore, University of Virginia
	Courtney Sloan Ellis Senior, Whitefish High School

Education

High School	The Westminster School graduated - June, 1967
College	Washington & Lee University BA in History and Spanish June, 1971
Law School	Emory University JD June, 1974

Employment

Barber & Hooper	Real Estate Practice Summers & holidays during law school
United States Army	September, 1974 to September, 1978 Captain, Judge Advocate Generals Corp
	Basic Airborne Course June, 1973 (while still in college) Student

Infantry Officer Basic Course
September, 1974 to February, 1975
Fort Benning, Georgia
Student

2nd Infantry Division
February, 1975 to March, 1976
Tong Du Chong, Republic of Korea
Prosecutor for 6 months & Defense Counsel
for 7 months

9th Infantry Division
March, 1976 to September, 1978
Fort Lewis, Washington
Defense Counsel for 2 years
Legal Assistance Officer for 6 months

Sole Practioner

October, 1978 to October, 1979
Atlanta, Georgia
Criminal trial and appellate practice in State
and Federal Courts

Stroup, Goldstein & Jenkins

October, 1979 to November, 1982
Atlanta, Georgia
Criminal trial and appellate practice in State
and Federal Courts

Office of the DeKalb County Public
Defender

November, 1982 to October, 1983
Decatur, Georgia
Assistant Public Defender
Represented Defendants in the Superior
Court of DeKalb County and in the Georgia
appellate courts.

Federal Defender Program, Inc.

October, 1983 to November, 1986
Atlanta, Georgia
Staff Attorney
Represented Defendants in the United States
District Court for the Northern District of
Georgia, the United States Court of Appeals
for the Eleventh Circuit and The United
States Supreme Court

Office of the DeKalb County Public
Defender

November, 1986 to June, 2007
Decatur, Georgia

Assistant Pubic Defender
November, 1986 to April, 1995

Chief Technology Officer
November, 1986 to June, 2007

Chief Assistant Public Defender
April, 1995 to June, 2007

Represented Defendants in the Superior
Court of DeKalb County, the appellate
courts in the State of Georgia and the
Federal Courts

Designed, installed and maintained the office
information technology systems.

Administration and Personnel Supervision of
a law office with 50 attorney and 30
investigative and staff personnel

Retired June, 2007

Other Interests

Hiking, climbing, playing the guitar, photography, skiing

WHITEFISH CITY-COUNTY PLANNING BOARD – WCC 11-7-4 - 2 YEAR TERMS – MEET 3RD THURSDAY

			TERM EXPIRATION DATE	
Chad Phillips	307 Wisconsin Ave	407-02478	12/31/2014	City Mayoral Appt
Greg Gunderson	PO Box 1043	863-9947 (W)	12/31/2013	City Mayoral Appt
Zak Anderson	122 Dakota Ave	250-5256	12/31/2014	City Council Appt
Mary Vail	1017 Creekview Dr	862-3562	12/31/2013	City Council Appt
Rick Blake	PO Box 700, WF	863-2201	12/31/2013	County Member
Dennis Konopatzke	2194 Houston Dr	261-1174	12/31/2013	County Member
Ole Netteberg (V-Chr)	5491 Hwy 93 S	862-3035, Cell # 261-8757	12/31/2014	County Member
Diane Smith	2060 Houston Dr	250-4328	12/31/2014	County Member
Member-At-Large – One Year Term, appointed by CCPB				
Ken Meckel, Flathead Conservation District Rep.	1129 W. 7 th St,	862-5682	12/31/2013	Member at Large

Montana Code Annotated 2009

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board consists of no fewer than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).

(2) Subsection (1)(e) does not apply if there is no member or associate member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In that case, the ninth member of the city-county planning board must be selected by the eight officers and citizen members pursuant to subsections (1)(a) through (1)(d), with the consent and approval of the board of county commissioners and the city council.

11-7-4: ZONING COMMISSION, Whitefish Municipal Code

A. Creation, Composition And Compensation:

1. The zoning commission for the city shall be the Whitefish city/county planning board, which shall then be referred to as the planning board.

2. The membership of the planning board shall consist of nine (9) members representative of areas, both within and without the incorporated limits of the city whose terms, etc., are set forth in state law, and the rules of procedure adopted by the Whitefish city/county planning board.

3. The members of the planning board shall serve without compensation, other than reimbursement for approved budgeted expenditures incurred in carrying out the functions of the zoning commission. (Ord. A-407, 3-15-1982)

4. It is hereby established as city policy that the city council shall not appoint to the city/county planning board or to the board of adjustment on a permanent basis any member of the Whitefish city council; provided, however, that members of the city council may be appointed to such boards on a temporary basis (not exceeding 3 consecutive months) in order to fill in for an absent board member or to fill a vacant position. (Ord. 02-02, 2-4-2002)

B. Powers And Duties: It shall be the duty of the planning board to hold public hearings where necessary and make recommendations to the city council on all matters concerning or relating to the creation of zoning districts, the boundaries thereof, the appropriate regulations to be enforced therein, the amendments of these regulations and any other matter within the scope of the zoning power. The planning board shall give to the city council, not less than biennially, a brief report of the state of the zoning ordinance and map. The planning board is also authorized to confer and advise with other city, county, regional or state planning or zoning commissions. (Ord. A-407, 3-15-1982)



PUBLIC NOTICE VACANCIES ON CITY BOARDS



WHITEFISH CITY-COUNTY PLANNING BOARD – 2-Year terms. Two Positions -
Applicants must reside within the Whitefish City Limits.

WHITEFISH LAKE & LAKESHORE PROTECTION COMMITTEE – 3-Year term. One
Position - Applicants must reside on, or own, lakefront property within the Whitefish City Limits.

HOUSING AUTHORITY - 5-Year terms - Two Positions - Open to city residents or residents
within a 10-mile radius of the City of Whitefish. (One position is to fill the remainder of a term
expiring 12-31-14; One position is for the full five-year term).

IMPACT FEE ADVISORY COMMITTEE – 2-Year term – One Position – The open position
is for a person from the Development Community. Committee specifications require the applicant
either lives or works within the Whitefish zoning jurisdiction. The Committee meets once a year.

MOUNTAIN TRAILS PARK MASTER PLAN AD HOC STEERING COMMITTEE - An ad
hoc committee consisting of different interest groups to work through a planning process with the
public concerning the overall plan for the Mountain Trails Park located at 705 Wisconsin Avenue.
The City is seeking applicants to fill 2 positions as Members at Large from the public who do not
have any affiliation or association with present users of the Mountain Trails Park.

Interested citizens – Please submit a letter of interest to serve on the above committees to the
Whitefish City Clerk's Office at 418 E. 2nd Street or mail to P.O. Box 158, Whitefish, MT 59937,
by **Friday, November 22, 2013**. Interviews will be held December 2nd. Thereafter, if vacancies
still exist, letters of interest will be accepted until the positions are filled. If you have any questions
please call the City Clerk's Office at 863-2400. This is also posted on the City's website: www.cityofwhitefish.org.

*****THANK YOU FOR YOUR INTEREST!*****

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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, December 2, 2013, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 13-11. Resolution numbers start with 13-38.

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) PRESENTATIONS - Arbor Day 2014 Proclamation (p. 40)
- 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 November 18, 2013 Council regular session (p. 42)
 - b) Ordinance No. 13-10; An Ordinance granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (Second Reading) (p. 57)
- 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) Consideration of an application from Jeff Lyman on behalf of Richard & Roberta Bennett for a Conditional Use Permit to construct an accessory apartment at 325 Lupfer Street on Lots 18 and 19 of Block 54 of Whitefish Subdivision (p. 62)
 - b) Ordinance No. 13-___; An Ordinance approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots (First Reading) (p. 92)
 - c) Ordinance No. 13-___; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (First Reading) (p. 189)

8) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 251)
- b) Other items arising between November 27th and December 2nd
- c) Resolution No. 13-___; A Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish (p. 257)

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item
- b) Email from Chris Erler requesting that he not be required to submit a petition to annex his property in Rest Haven and sign a waiver of protest of annexation as a condition of being allowed to connect to the sewer system (p. 281)
- c) Appointments to committees not made during the special session preceding the meeting.

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



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

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

Adopted by Resolution 07-09
February 20, 2007

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November 27, 2013

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

Mayor Muhlfeld and City Councilors:

Monday, December 2, 2013 City Council Agenda Report

There will be a work session at 5:00 p.m. for interviews for committee appointments. We will provide food.

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

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

- a) Minutes from the November 18, 2013 Council regular session (p. 42)
- b) Ordinance No. 13-10; An Ordinance granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (Second Reading) (p. 57)

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

Item a is an administrative matter; item b is a legislative matter.

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

- a) Consideration of an application from Jeff Lyman on behalf of Richard & Roberta Bennett for a Conditional Use Permit to construct an accessory apartment at 325 Lupfer Street on Lots 18 and 19 of Block 54 of Whitefish Subdivision (p. 62)

From Planner II Bailey Minnich's transmittal memo:

Summary of Requested Action: Jeff Lyman with Aspen Ridge Design on behalf of Richard and Roberta Bennett is requesting approval of a Conditional Use Permit to allow for an accessory apartment above a new garage at 325 Lupfer Avenue. The property is currently developed with a single family home and an existing garage which will be removed. The property is zoned WR-4 (High Density Multi-Family Residential District). The Whitefish Growth Policy designates this property as “High Density Residential”.

Planning Board Action: The Whitefish City-County Planning Board met on November 21, 2013 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with seven (7) conditions. (Anderson and Vail were absent)

Planning & Building Department Recommendation: Staff recommended approval of the above referenced conditional use permit with seven (7) conditions set forth in the attached staff report.

Planning Board Public Hearing: No members of the public wished to speak at the hearing. The draft minutes for this item are attached as part of this packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve the Conditional Use Permit to construct an accessory apartment at 325 Lupfer Street on Lots 18 and 19 of Block 54 of Whitefish Subdivision with 7 conditions.

This item is a quasi-judicial matter.

- b) Ordinance No. 13-___; An Ordinance approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots (First Reading) (p. 92)

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

Summary of Requested Action: This is a request by Sands Surveying on behalf of Hilltop Partners for a 24-lot preliminary plat called Great Northern Heights, phase 3. The property is located to the west of the Great Northern Heights neighborhood between Great Northern Drive and Brimstone Drive and is 6.125 acres.

Background: On March 6, 2006, Hilltop Partners received preliminary plat approval for Great Northern Heights, Phase 3 for 21 single family homes. The applicant received an extension in 2008, but in 2010, the preliminary plat expired.

In July of this year, the applicant was scheduled for a public hearing before the Planning Board, but withdrew their application for 42 lots (21 townhouses) in order to provide a revised plan. The revised plan was reviewed by the Planning Board in September, which consisted of 32-lots (20 single family lots and 12 townhouse lots). The Planning Board recommended denial on the project. This matter was scheduled before the City Council in October; however, the applicant pulled the request in order to revise the project and bring it back to the Planning Board.

Planning Board Action: The Whitefish City-County Planning Board met on November 21, 2013 and considered the requested preliminary plat. Following the public hearing, the Planning Board voted unanimously and recommended approval of the above referenced planned unit development/preliminary plat and adopted the staff report as findings of fact (Anderson and Vail were absent, Phillips recused himself).

The Planning Board made two changes to the conditions. They deleted condition number 6 requiring an extension of a public right-of-way to the west and added the following condition:

20. The number of lots on the west side of Brimstone Drive shall not exceed twelve.

Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Planning Board Public Hearing: Neighbors to the project spoke at the public hearing. Comments included: unacceptable lot sizes, confusion about how this phase and its HOA will interface with the existing HOA, change in the character of the neighborhood, loss in value of their homes, safety, traffic, concerned with the quality of the proposed homes, impacts to the conservation district to the west, and maintenance of the wetland buffer. The draft minutes for this item are attached as part of this packet.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve an Ordinance approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots at First Reading.

This item is a quasi-judicial matter.

- c) Ordinance No. 13-___; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (First Reading) (p. 189)

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 the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses.

City Staff Recommendation: Staff recommended approval of the attached referenced text amendments.

Planning Board Public Hearing: At the public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The draft minutes of the Planning Board hearing that include the entirety of the comments are included.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve an Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping at First Reading.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 251)
- b) Other items arising between November 27th and December 2nd
- c) Resolution No. 13-___; A Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish (p. 257)

We were recently contacted by a realtor who is representing the owners of a property at 1 Lakeside Blvd (Jacqueline Creon et al) which is at the corner of Lakeside Blvd and Oregon Avenue, right by City Beach. The legal description is Lots 7, 8, and 9

of Block 16 of the Original Whitefish Townsite. Two pictures are below and more property information is in the attachment in the packet.



When I first arrived at the City five years ago, I was told by several Department Directors that this property was our most desired piece of property around City Beach and that we should pursue it when it becomes available. Well it now appears that it might be available.

As you can see in the attachment, the realtor representing Ms Creon's conservator believes that a price of \$450,000.00 is a fair price for this piece of land (17,705 sq. ft. or .407 acres) which equals \$25.35 per sq. ft. The realtor points to Rob Pero's recent purchase of the lakefront property next to City Beach as indicative of pricing, but that really is a different type of property with beachfront. However, for another piece of property in the vicinity, I asked Joe Basirico to do a CMA (Comparative Market Appraisal? – a realtor's valuation) and he said that property was probably worth \$175,000 to \$200,000 for 6,500 sq. ft. which is \$26.92 to \$30.77 per sq. ft. The houses on both properties are pretty much tear downs. Ms. Creon's property is a better property (closer to the lake with undisturbed views), but it also is subject to more City Beach traffic, noise etc. However, I do believe that the \$450,000.00 or \$25.35 per sq. ft. is a very good price.

The likely use is for parking as adding parking in the City Beach area has been a priority from before my arrival. Gary Mark's standing direction to Joe Basirico was to inform Gary whenever any property in the City Beach area became available. Joe has continued to inform me, but not many properties have gone up for sale.

If we were to develop the lot as parking, we would also incur demolition costs (unless the Fire Dept did a test burn, but even then there are some costs) and construction costs. Based on getting about 36 spaces in the lot we leased from Mr. Goguen which was 16,250 sq. ft., we could likely get 40-45 spaces on Ms. Creon's lot. The cost per space at the 2nd and Spokane parking lot in 2009 was \$5,717 per space which included grading, concrete, asphalt and landscaping. However, the costs on Ms. Creon's site might be less per space because of smaller sidewalks and other reasons.

If we were to assume 40 spaces at \$5,000 per space, that would be construction costs of \$200,000 and engineering costs of \$30,000 on top of the purchase and demolition costs. These costs are just estimates for decision making purposes and we wouldn't know better costs until we hired an engineering firm to design a parking lot. During my site inspection, I did notice that there is about a ten foot grade difference from the north end of the lot to the south end, so there may be a need for some retaining walls, which the costs above do not include. There may be uses other than a parking lot, but parking has seemed to be the biggest problem at City Beach.

I did discuss with Karl Cozad that we want to be careful with the carrying capacity of City Beach as I believe the parking situation there is somewhat like building additional highway lanes to ease congestion in urban areas – the more you build, the more you attract new use to the area and you often don't alleviate congestion because you attracted new users. Similarly, I think that if we added 40 parking spaces, I doubt that would really alleviate much of the current parking congestion in the area and more people might just come and create the same parking congestion. However, Karl does feel that City Beach can accommodate more people without degrading the experience, so that may not be as much of a concern. I still think parking congestion problems in the area will remain to some degree.

The funding for the \$450,000 plus \$200,000 plus \$30,000 to buy and build this parking lot would really have to be out of the Tax Increment Fund as no other fund would have the money without a tax increase. The Park's allocation of the Resort Tax might be able to build the parking lot however. City Beach was and remains a priority project in the 1987 Urban Renewal Plan as amended, so it would qualify. I am attaching to this report the most recent TIF forecast for the remaining years. The beginning cash balance in July, 2013 was about \$1,000,000 higher than earlier forecasted because we have not spent money on a lot of projects yet, most notably City Hall, Depot Park, and Skye Bridge. So I think it would be possible to purchase and construct the parking from the TIF, but that would come at the expense of other alternative uses. So this purchase would come down to a matter of priorities.

The Real Estate Committee of Mayor Muhlfeld, Frank Sweeney, and I believe we should go forward with this purchase out of the Tax Increment Fund. A buy-sell agreement is included in the packet that I have signed, but it is contingent upon the City Council approval at the December 2nd meeting. Mary VanBuskirk reviewed the buy-sell and advised me on some provisions of it.

The acquisition cost of \$450,000 plus \$9,000 for splitting the commission plus some closing costs would come from the Tax Increment Fund. If and when the City Council wanted to pursue construction of a parking lot, that money could come from the Tax Increment Fund or the allocation of Resort Tax for Park capital improvements.

RECOMMENDATION: Staff respectfully recommends the City Council adopt a Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside

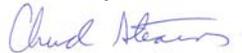
Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish for \$450,000 plus ½ of the realtor commission plus closing costs.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Standing budget item
- b) Email from Chris Erler requesting that he not be required to submit a petition to annex his property in Rest Haven and sign a waiver of protest of annexation as a condition of being allowed to connect to the sewer system (p. 281)
- c) Appointments to committees not made during the special session preceding the meeting.

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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ARBOR DAY

PROCLAMATION

WHEREAS, natural areas, trees and landscapes provide not only community beautification but also economic and environmental benefits; and

WHEREAS, trees provide many benefits to the community, including air purification, windbreaks, noise reduction, shade and energy savings; and

WHEREAS, planting trees and maintaining older trees provides an opportunity for community interaction, volunteerism, economic development, and environmental conservation; and

WHEREAS, our efforts to improve the environment benefit present and future generation; and

WHEREAS, Arbor Day in Montana is officially the last Friday in April:

BE IT THEREFORE RESOLVED,

I, John Muhlfeld, Mayor of Whitefish, Montana, do hereby proclaim Friday, April 25, 2014 as Arbor Day, and encourage citizens to participate in appropriate activities and to take advantage of the benefits of the parks and other natural areas in our community.

IN WITNESS THEREOF,

I have hereunto set my hand and caused the Seal of the City/Town/Community of

Whitefish, Montana to be affixed on December 2, 2013

Mayor

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WHITEFISH CITY COUNCIL MINUTES

November 18, 2013

7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Mitchell, Sweeney, Anderson, Hildner, Kahle and Hyatt. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Planning and Building Director Taylor, Senior Planner Compton-Ring, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 20 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Jen Frandsen 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)

Cheryl Sausen, 310 W. 6th Street, addressed the parking on 6th Street. She said she lives on 6th Street and appreciates the new sidewalk and boulevard. She said she agrees with the idea of no parking on the area that is narrow and curved, but the rest is a straight-way and there is plenty of space for parking. She said this proposal would make a 3-block span where no one would have a place to park. She said the southern side of this could be left open for parking.

Bonnie Hannigan, 341 W. 6th Street, addressed the 6th Street parking. She said she lives at the base of Flint where it meets W. 6th Street. She also opposes this parking restriction. She said the sidewalks were a nice addition, but the City actually lowered the street, so it gave her a driveway with a greater slope. If she parks two cars in front of her home the 2nd one rolls out into the street. She can't park two vehicles because of the change in the street height. The asphalt is 21 feet wide in front of her house. She said Railway Street is 28 feet wide and with parking on both sides it leaves a 14-foot travel lane. If they allowed parking on one side of W. 6th Street it would allow them the same 14 feet of travel space. She said the O'Brien corner is tight and she suggested that W. 6th could be a one way to allow more room for parking.

3. COMMUNICATIONS FROM VOLUNTEER BOARDS

Mayor Muhlfeld reported on the aquatic invasive species plan the City participated in this summer; the total was about \$40,000 to the AIS effort this summer. (\$15,000 to the Whitefish Lake Institute (WLI) and \$25,000 to Flathead Basin Commission).

Beaver Lake Monitoring and Control

In October 2011, EWM was discovered in Beaver Lake. A control/eradication effort began in 2012 via a multiple agency workgroup which the City of Whitefish and WLI participated. Bottom barriers were installed near the boat ramp and a SCUBA dredge operation removed 26 lbs of EWM from the lake. In 2013, this contact removed 6 lbs of EWM in June and 1 lb in August. In addition, fragrant

water lily, introduced as an ornamental, was removed from the dock area where it was introduced to prevent spread. In addition, WLI staff deployed a Flathead Lakers turbidity curtain to prevent EWM fragments for exiting the lake via Beaver Creek. The turbidity curtain will be removed in early November and re-deployed next spring. Additional surveys and eradication efforts are recommended. The project provides cautious optimism that EWM can be eradicated in a small lake provided early detection and mitigation, coupled with continued monitoring and dredging of individual plants.

Early AIS Plant Detection Monitoring

WLI conducted a 395 point aquatic plant survey along the Whitefish Lake shoreline. The survey consisted of determining the composition and relative abundance of plant species at each location, along with characterizing the lake substrate to determine areas suitable for plant colonization. No exotic species were found. The survey was randomly predetermined by gps coordinates and can be easily repeated in the future. Between 2012 and 2013 the NWMTLVMN and FBC AIS consultant surveyed over 30 local lakes. Flowering rush was found in both Flathead Lake and Hungry Horse Reservoir, Curley Leaf Pondweed was found in Flathead Lake, and fragrant waterlily was found in Echo Lake.

eDNA Analysis

33 eDNA samples from 25 local lakes in the NWMTLVMN were sampled and are in the process of being screened for EWM and zebra/quagga mussels by the University of Montana. The contract period with U of M ends November 30. The survey included five samples from Whitefish Lake from three locations and two samples from Blanchard Lake. In addition, 40 plankton tow samples were sent to FWP from the NWMTLVMN for zebra mussel veliger microscopy. No positive findings were found.

Data Summary – Highway 2 at Coram Watercraft Inspection Station

The Flathead Basin Commission worked with City of Whitefish, United States Bureau of Reclamation, Trout Unlimited and DRNC to operate a watercraft inspection station on MT Highway 2 near Coram from May 24 to September 3, 2013. Generally, the station operated from 9:00 a.m. to 7:00 p.m. on weekdays and weekends. Hours were changed from noon to 10:00 p.m. on some weekends to gather data on evening boating habits. In addition to inspecting and cleaning boats, staff collected data on boat movement, fishing, and fees associated with an ongoing aquatic invasive species program in Montana.

Findings: A total of 2096 boats were inspected at the station. Boats from Montana, Idaho, Washington, Oregon, Wyoming, Alberta, and British Columbia were considered “Low Risk” and receive normal inspections. All other states were considered “High Risk” and underwent thorough, longer inspections. 77% of boats were from Montana, 16% were from other low-risk states, and 7% were from high risk states. Native vegetation was found on 6 boats. No invasive species were found. All vegetation was removed on-site and disposed of after alerting the boaters of the dangers posed by transport of aquatic vegetation transported on boats. As is the case with inspection stations throughout Montana, the station experienced drive-bys. Most drive-bys were non-motorized watercraft; however, 811 motorized watercraft drove by the inspection station. The Montana Department of Transportation placed a variable message sign on east of the site on June 26th. Drive-bys decreased by over 10% during the month that the sign was in place. With proper signage and site improvements to increase visibility, it is anticipated that we can dramatically reduce the number of drive-bys, especially if coupled with a modest law enforcement presence.

Boater Survey Results. 1637 surveys were conducted over the summer. This number is less than number of boats inspected because several boaters had multiple boats. The survey indicated that three inspected boats were last launched in lakes with zebra or quagga mussels. One was a small motorized boat and two were non-motorized (kayaks). The motorized watercraft had been out of the water for several years which was apparent during the inspection. The kayaks were thoroughly inspected and determined to be clean before leaving the inspection station. Boaters were asked if watercraft was used for fishing or recreation. About a quarter (28%) indicated that boats were used for fishing.

The final survey question gauged support of a potential AIS sticker in Montana. An AIS sticker is a decal purchased before launching in state waters. Several western states including Idaho, Oregon, Wyoming and Nevada utilize an AIS sticker to raise funds to assist with costs associated with running inspection stations and educational materials. This question was not on the survey during the first week of operation, so 1596 interviews included the questions. The AIS decal concept was greatly supported; 93% indicated support, 5% did not support it; and 2% were unsure. Unsure boaters were predominantly concerned with increased costs associated with multiple boats. Those that were definitely against a decal were opposed for the following reasons: they already pay a guide fee (if boater is a fishing guide); an AIS sticker sounds like another tax; and boating is already expensive.

Administration: The Coram inspection station was supported through the following contributions:

City of Whitefish: \$20,000 for personnel costs

Flathead Basin Consultant Fund: \$675 est. for inspector training

Trout Unlimited: \$2,500 for personnel costs

Flathead Basin Commission: \$2,500 est. for personnel costs, equipment, supplies, plus in-kind for management

DNRC: \$13,000 est. for personnel costs

U.S. BOR: \$15,000 (funds to be carried over to 2014 was funding was not available until September)

Total: \$53,675

Councilor Kahle asked and Mayor Muhlfeld said that another 10 pounds of Eurasian milfoil were found in Beaver Lake this year and it will take a multi-year effort to eradicate. Councilor Kahle said if it went down the creek it could contaminate Whitefish Lake. Councilor Kahle said he hopes the curtain at the base of the creek will protect Whitefish Lake, but he wonders what else they can do. Mayor Muhlfeld said they need to make sure the Whitefish Lake Institute continues to receive funding so they can monitor this. Councilor Mitchell asked if the boat check station was voluntary and Mayor Muhlfeld said it was voluntary as it was not on a FWP mandatory list. Councilor Mitchell asked if Flathead County participated and Mayor Muhlfeld said they were asked, but he isn't sure why they didn't participate. Councilor Mitchell said he thought this was valuable.

Police Chief Dial said the 9-1-1 Board met and had discussion regarding funding of operations. Manager Stearns said the funding sub-committee met this afternoon and there is fairly wide support for creating a special district assessment like the landfill has. County Commissioner Holmquist was in favor of a flat fee per property regardless of size. He said the goal is to avoid double contributions for those who live in the City. Councilor Sweeney asked if a lot in town paid the same price as a larger landowner and Manager Stearns said yes. Manager Stearns said it is a common good for the community so everyone would pay the same.

4a. Consideration of a request from Whitefish Housing Authority for Tax Increment Fund assistance for renovation of two houses donated by BNSF in the Railway District (p. 23)

Lori Collins, the Whitefish Housing Authority (WHA) Director, said there are two proposals. She said when they met for a work session with the Council in September they discussed the needs for assistance with rehabilitation of two homes as rental units in the Railway District which were donated by BNSF. This will help insure the effort to cure blight and create affordable housing assisting low income and moderate income people to stay in the community. They are asking for TIF funds to improve, clear or prepare the property for redevelopment. They received bids for 126 E. 1st Street, 130 E. 1st Street and some off-street parking. The third home from BNSF has a garage. The total is \$86,695; the builder has said he feels the total project might come in under that amount.

Councilor Hyatt reminded the Councilors that line 54 of the TIF is earmarked for \$50,000 for the WHA. Manager Stearns said they have a healthy contingency in the budget, so that if they want to fund the whole amount they can. Councilor Kahle asked if this is a not-too-exceed number and Lori Collins said it is.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve \$86,695 from TIF funds to rehabilitate two homes and parking in the Railway District donated by BNSF.

Councilor Mitchell asked and Lori Collins said the builder proposes to re-grade and gravel the third lot for off-street parking. Councilor Mitchell asked and Director Taylor said this lot would likely need to be paved. Councilor Mitchell asked and Lori Collins said this amount will allow both homes to be renovated and rented. Councilor Anderson asked and Lori Collins said they cannot be rented for more than \$650/month and they will probably rent them in the high \$500's. Councilor Anderson asked and Lori Collins said they are approximately 600-650 square feet in size. Councilor Mitchell asked and Lori Collins said the rent goes into the Homeownership and Development budget to pay operating costs of the affordable housing programs.

Councilor Sweeney said the paved parking spot will add a higher cost and he wondered how they would deal with that. Lori Collins said per zoning they don't have to provide parking, they just thought it would be good for the neighborhood. Councilor Sweeney said City Standards require paved parking. She said if they get these funds they can work on getting donations for pavement. Manager Stearns said each of the bids have a high contingency in them (about 14% each) and he thinks the Council could move forward on the \$86,695 and WHA can try to get it done. Manager Stearns said the City has some millings and perhaps the City could help fill that lot in. Councilor Hyatt said the \$11,000 in the contingency fund and the fact that the WHA wants to provide off street parking, even when it isn't required, is valuable. Councilor Mitchell said all he is saying is that if they are going to create parking then it has to be paved. Director Taylor said it just has to be a dust-controlled surface, so milling is allowed. Manager Stearns said it is a small lot. He said a good pavement job looks better than millings, but it could help the WHA.

Councilor Hyatt offered an amendment, seconded by Councilor Kahle, to ask the City to donate the millings they have as a contribution to the project if WHA exceeds the \$86,695. The amendment passed unanimously.

The original motion, as amended, passed unanimously.

Lori said the contractor will apply for building permits and should get started in a couple weeks.

4b. Consideration of a request from Whitefish Housing Authority to return Payment In Lieu of Taxes (PILOT) payments to the Whitefish Housing Authority to help support their programs (p. 39)

Lori Collins said this proposal is to ask for redistribution of their payment in lieu of taxes. She said they aren't asking for direct subsidies, but they are looking for ways that they can support themselves without always asking for funds. She said they realize their obligation to pay their taxes, but they would like them to be placed into the General Fund Appropriations, so they could be earmarked and allocated back to the WHA towards sustainability of their mission and programs. They could use them for their other programs like rental, home ownerships and rehab opportunities in the City. That would give them a guaranteed fund that they could use for those allowable costs. WHA took on a large task in 2004 by providing opportunities for affordable housing. They have not had any direct funding from the City for operations. They would ask that the PILOT funds could be reallocated back to them for rental, rehab and home ownership expenses.

Mayor Muhlfeld asked and Manager Stearns reported that the WHA tax contribution was about \$6,900 per year and noted that there is some money that is owed in arrears. Manager Stearns said his first thought was that it didn't make sense for them to write a check to the City and then have the City write it back; and it could be handled with an agreement. Now he realizes if WHA pays the taxes and the City appropriates it back to WHA, it gives their Board more flexibility when it comes back to them. Lori Collins said funds aren't received from HUD; they are an allocation of the percentage of the rent of units at Mountain View Manor. Councilor Mitchell said it really means that they aren't paying taxes. Lori Collins said they have a rehabilitation fund they draw from in the City for approved costs. Councilor Mitchell asked and Lori Collins said they owe \$16,000 in arrears and Sue Ann Carlson worked out a payment plan with the City. Councilor Anderson asked and Lori Collins said the current fund is for rehabilitation and the funds come from homes that sell or from past grants. Councilor Anderson thanked her for the details on the first proposal. He said he is a little concerned with tying up the funds and the hands of future Councilors. Councilor Hildner said a future Council could rescind that action. Councilor Mitchell asked and Councilor Anderson said he would rather look at it each year as part of the budget process instead of making it an annual expectation for the City. Councilor Hildner said he doesn't see the tax base growing much for the WHA.

Councilor Hildner made a motion, seconded by Councilor Hyatt, to approve a request from Whitefish Housing Authority that Payments In Lieu of Taxes (PILOT) are collected by the City and allocated back to the Whitefish Housing Authority to help support their programs.

The motion passed 4-2 with Councilors Anderson and Mitchell voting in opposition.

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 November 4, 2013 Council regular session (p. 42)

5b. Consideration of a request to extend the preliminary plat for 93 LLC subdivision for 24 months (p. 65)

5c. Resolution No. 13-35; A Resolution adopting the Whitefish Parks and Recreation Master Plan September 2013 as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (p. 75)

Councilor Hildner offered an amendment to page 16, paragraph 2, which should read “lawn mower” not “lawn motor.” Councilor Anderson offered a motion, seconded by Councilor Hyatt, to approve the amended 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. Ordinance No. 13-10; An Ordinance of the City Council of the City of Whitefish, Montana, granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (First Reading) (p. 200)

Manager Stearns said City staff was contacted by Rick Burt of NorthWestern Energy in September of 2012 letting us know that a fifty (50) year franchise ordinance adopted in 1961 which NorthWestern Energy had inherited from the Montana Power Company expired in 2011. He was going around the state working with local governments to revise and renew many of those franchise ordinances. In two work sessions the Council reviewed various aspects of a proposed franchise ordinance, including a question of whether or not the City should use its Self-Government Powers and try to impose a franchise fee on NorthWestern Energy. Franchise fees are commonly imposed on utilities in other states in return for their use of the public right-of-way. The City Council asked City Attorney Mary VanBuskirk to do some legal research on imposing a franchise fee.

In the second worksession, City Attorney Mary VanBuskirk advised that she thought it was doubtful the City’s unilateral imposition of a franchise fee would be upheld by the Montana Supreme Court, based on an earlier case from the City of Billings’ attempt to enact a franchise fee. While the City’s fee would have been designed differently, City Attorney Mary VanBuskirk still felt that the chances of the City being successful if litigation were pursued were less than 50-50. The City Council directed staff at that work session to work on a franchise ordinance that would not impose franchise fees, but would leave open the door if Montana law changed or if another City successfully implemented a franchise fee with NorthWestern Energy.

Manager Stearns said he and Attorney VanBuskirk have worked with Rick Burt of NorthWestern Energy and their staff attorney on revised language. The staff of both parties has agreed to the language in the Ordinance attached in the packet. The Ordinance would have first reading on November 18th and second reading on December 2nd.

Councilor Mitchell asked and Manager Stearns said the last half of Section 12 addresses the ability to negotiate changes in the future. He said this is only a 10-year agreement, not a 50-year agreement. Councilor Mitchell said there is no agreement in Polson and there are no gas lines, so there is no choice. He thinks it benefits Whitefish to offer gas as an option.

Mayor Muhlfeld opened the public hearing.

Rick Burt with NorthWestern Energy, 2511 Raymond Place, Billings, MT, thanked the Council for considering the changes. He thanked the staff for all of their work with this project.

Mayor Muhlfeld closed the public hearing.

Councilor Kahle offered a motion, seconded by Councilor Anderson, to approve Ordinance No. 13-10; An Ordinance of the City Council of the City of Whitefish, Montana, granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (First Reading). The motion passed unanimously.

6b. Resolution No. 13-36; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning and Building Department (p. 207)

Planning and Building Director Taylor said several items on the current planning and zoning fee schedule need to be revised. The items staff is requesting fee changes for include a reduced fee for commercial building paint color review by the ARC, a new short term rental application review fee, a new fee for Planning Board and City Council projects that are voluntarily pulled off the agenda by the applicant before or during the public hearing, and a fee for new applications for an expired CUP. He said there are frequently major changes that take a lot of staff time because it is essentially a new project. When CUP permits expire it seems unfair to charge the whole fee, so they would like to reduce it by 50% if they come back again in 24 months. The City proposes to amend several fees required for various services provided by the Planning Department. If not listed, then the current fees remain the same. Proposed new fees are as follows:

Fee	Current	Proposed
Architectural Review		
Minor Façade Changes	\$265	\$200
Changing paint colors	\$265	\$75
Short Term Rental Application	n/a	\$25
Voluntary pulling of an agenda item to postpone to a later date when re-noticing is required	n/a	\$200
Voluntary pulling of an agenda to postpone to a later date when re-noticing is required and the project is undergoing major revision	n/a	\$500
Conditional Use Permit		
Renewal of expired permit	n/a	50% of original fee

Councilor Anderson asked about the definition of major changes and Director Taylor said it is mostly a judgment call by staff. He said it involves anything they have to re-do. Councilor Kahle said

he would like to see it defined. Director Taylor said they could define it to say any revision other than clerical errors or insignificant changes could trigger the fee. He said if they have to re-evaluate the whole project and re-notice the public then it becomes an issue of staff time. Councilor Anderson said he thinks folks ought to be able to know what a major revision is when they read the Code. Director Taylor said fees aren't listed in the Code, but they could make a definition that defines a major from a minor revision. Councilor Anderson said he would like the applicants to know what a major revision is. Councilor Mitchell agreed with Councilor Anderson. He also asked and Director Taylor said people are required to get paperwork for resort taxes with their short term rental applications. Councilor Hildner said if a commercial application was \$1900, then it goes beyond 18 months then it would require a 50% additional fee. Director Taylor said there is some allowance for the zoning administrator to extend it if the applicants are diligently working on the project.

Councilor Kahle asked and Director Taylor said staff has to re-notice if there are major changes so the neighbors know what is coming. Councilor Kahle said re-noticing could trigger the fee. Manager Stearns said the difference between the \$200 and \$500 fees is that the first is for re-noticing, the 2nd is if there are major changes. He said his concern on the voluntary pulling of items is that it should apply at the Planning Board level only. If they withdraw at the Council meeting then it goes back to the beginning of the process. He wouldn't want someone to withdraw for \$200 because they didn't like the line-up of the Council; the Agenda should be in the control of the City and not the applicant. Councilor Hyatt agreed. He asked and Director Taylor said he figured \$500 to cover staff time to review the new application and to take it to the other departments. Councilor Hyatt said the 2nd nomenclature should say, "the project is undergoing revision" (omitting "major.")

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

Councilor Hildner wondered if this belonged at the Planning Board level as Manager Stearns said. He thought maybe they should wait and discuss this more. Councilor Sweeney said any time a project is pulled and it costs money for the City to re-publish then they should be able to recoup that money from the developer. Manager Stearns said when a protested application requires four votes then an applicant might want to pick and choose which Council meeting they attend, when they know which Councilors will be there. Manager Stearns said the Council always has the option to continue an application, but that is also in the authority of the Council, not the applicant. Councilor Anderson said that also encourages the vetting process at the Planning Board level. That means that applications have been well vetted by the time they come to the Council. He thinks it is a point well taken. He also said it might be appropriate to wait on this. Manager Stearns said they could say the voluntary pulling was allowed at the Planning Board level only and Director Taylor said that was the original intent of this proposal. Councilor Hildner asked and Manager Stearns said that if an item has to be re-noticed then it is \$200, but if there is a revision then it is a \$500 fee, but it is not the same as starting over.

Councilor Sweeney offered a motion, seconded by Councilor Kahle, to approve Resolution No. 13-36; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning and Building Department, amending the fees charged for voluntary pulling at the Planning Board level and not at the Council level. (p. 207)

Councilor Hildner offered an amendment, seconded by Councilor Sweeney, to state that the 2nd item under voluntary pulling will say "revision" instead of "major revision."

Councilor Sweeney said “revision” means anything that requires a major review by staff, not just a simple or clerical revision.

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

The original motion, as amended, passed 4-2 with Councilors Mitchell and Hyatt voting in opposition.

7. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

7a. 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. 213)

Senior Planner Compton-Ring reported that 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. They are looking for the remainder of their extension. (Council granted a partial extension of 6 months at their June 17, 2013 meeting).

Councilor Anderson said the attorney for Lookout Ridge contacted him and he didn’t listen to the phone message, but he wanted to disclose that he received the call.

Sean Frampton, an attorney representing the Whitefish Credit Union (WCU), said this is a significant issue because of the amount of money at stake (about \$10 million) and there is a huge difference in the property if it is an entitled property.

He said he doesn’t think it is proper to impose any new conditions on this application. He said he has read the minutes, talked with staff and he still doesn’t know what the Council wants to know. He said Taylor Horst, WCU, Brad Bennett, Applied Water Consultants, and Bruce Boody were all here to answer their questions as well.

He updated the status of the case and their due diligence. It started out as a foreclosure lien and then there were lien priority claims. The court ruled that the construction lien claimants had priority. The Credit Union then cross-claimed to foreclose against Lookout Ridge. This led to a second deposition of Brian Fimian. They did a settlement with the construction lien claims. They had a second settlement with the Fimians and Lookout Ridge who confessed judgment to the WCU saying they could foreclose and get the property back. The WCU cannot get a final judgment of foreclosure until all issues are closed. They have to go back to the beginning because Stoltze suddenly showed up as a lien holder but wasn’t included in the first part of the process. The WCU wears two hats; as a lien holder and a mortgage holder on two properties involved; one 196-acre parcel and a 30-acre parcel. Stoltze has a holding on the 30-acre parcel and on the trees on the 196-acre parcel. He said they have tried hard to settle, but now they have applied with the court to start all over again, because of Stoltze. He recently got an email from Stoltze saying they want to meet to settle.

He said through the whole process Lookout Ridge has been trying to find investors to continue the development. During this process, the WCU hired Roger Noble, Applied Water Consulting, to look at the landslide issue up there. And, WCU has secured the property against vandalism and trespassers.

He said the relationship between Lookout Ridge and Stoltze is that Lookout Ridge is a debtor and Stoltze is the creditor so they have a lien on 30 acres and a UCC agreement on the trees on the 196 acre parcel. The agreement between WCU and Lookout Ridge is in limbo. Lookout Ridge has consented to judgment to say the WCU wins. He said WCU can't do that because all of the properties have to be adjudicated and Stoltze still remains unresolved. He said they understand the Council's wish for information and have gone to Jim Cossett to ask the Fimians to assign the WCU as responsible for any actions on the property. He said the difference between Roger Noble and Tom Cowen's report on the slide can be answered by Brad Bennett who is in the audience. He said the area that slid was identified in the original plat as a wetland area with special conditions, and it is subject to the more stringent CAO standards.

Brad Bennett, 712 5th Avenue East, said he works for Roger Noble and the area of concern was the natural drainage. Saturated conditions during June with rain on snow caused instability in that area that caused the ground to slide.

Councilor Anderson asked and Taylor Horst, 555 Park Avenue, said this asset has not been charged off their books at WCU yet. Taylor Horst said they have done a partial charge-off as an in substance foreclosure because they are paying the taxes and maintaining the property. They don't officially own it because the title has not been transferred yet. Councilor Anderson asked and Mr. Horst said they have charged off \$3 million.

Sean Frampton said what is at stake is \$10 million; it doesn't affect the value of the property nor is it based on appraisal. Councilor Hildner said the requirement for a plat extension requires the developer to make an effort toward final plat. Sean Frampton said Lookout Ridge is the developer until the WCU gets the property. He said the developer can consent to the foreclosure then the WCU will sell it within 30 days. The value of the property is in its entitlement. Lookout Ridge has given it back to the WCU. Councilor Hyatt asked about the loss of value on the property without the plat. Horst said the cost would be about \$5 million without the development rights.

Councilor Anderson said folks below this property had water in their homes when the slide happened. He said he understands trying to recoup the investment. Sean Frampton said the slide happened when Fimians were the owners. Since WCU took over in December 2012 they have been responsible and that is why they are waiting for a note from Fimians. Councilor Anderson asked how enforceable it is. He has a hard time thinking about what would happen if they had another big event on this property. He asked if the WCU would be responsible for that event. Sean Frampton said that question is too broad, but WCU has addressed every problem the Council has raised with the property. Councilor Anderson asked if WCU would be willing to bind themselves as the developers tonight. Sean Frampton said the WCU has offered to do but he hasn't heard back from Cossett or Fimian. Councilor Anderson said he is having a problem knowing who is in the chair when an event occurs again. He realizes their willingness, but if it becomes several million dollars, then will they be responsible. Sean Frampton said the WCU wants to be noticed for actions that need to happen. Councilor Anderson said if there is another slide and it is caused by a road cut and it wipes out a home is WCU willing to take responsibility. Sean Frampton said he isn't willing to say they are liable, but they would be the person the homeowner would talk to about their concerns. He said they are the equitable holders of this property. Councilor Anderson said there is still no answer for the folks who live below this property. The WCU is not willing to step into the shoes of the developer and that doesn't look equitable to him. Taylor Horst said the WCU is a co-op and he has to make a risk assessment for his members. If it was a \$10 million fix he would probably walk away from it because he has to decide if it would break the

WCU. Councilor Hildner said if they get Stoltze to agree, then they would have 30 days to sell it. If they don't sell it then the WCU would buy it and then they would become the developer. Councilor Hildner said they would then have to make good faith efforts toward final plat. Taylor Horst said they have considered finishing the road and selling the lots.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve the application from Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, for the remainder of a two year extension of the Lookout Ridge Preliminary Plat for an additional 18-months until June 21, 2015.

Councilor Mitchell said the WCU is doing everything to protect the property and are showing due diligence even though the owner is not cooperating. He thinks the WCU wants to make something good out of this. Councilor Anderson said he would be interested in a 6-month extension. He agrees that the WCU has made a good faith effort. He said they aren't willing to step into it to the degree that a developer would. Councilor Hyatt asked and Planner Compton-Ring said the Council has extended 10 to 15 requests like this in the past four years. He said this falls into everything they have been doing for other applicants and Planner Compton-Ring agreed. Councilor Hildner said they are close to working with Stoltze, which is good, but he is hung up on the language that the developer has to be making a good faith effort.

Councilor Hildner offered an amendment, seconded by Councilor Anderson, to extend the preliminary plat for an additional 6 months.

Councilor Kahle said everyone has the same goal to make sure Lookout Ridge is safe, whether or not it is the WCU or a third party owner. He said they can facilitate that sale or free them up to work. He thinks requiring them to come back every six months for an extension would be counter productive.

The amendment failed 4-2 with only Councilors Hildner and Anderson voting for the amendment.

Councilor Sweeney asked and Sean Frampton said this is not in bankruptcy court. Councilor Sweeney said all of the lien holders except Stoltze have been dealt with and Mr. Frampton agreed. Sean Frampton said they have been dealing with this over a year. Councilor Sweeney said their concern is about what happens if there are problems on Lookout Ridge. If they don't approve the extension then they do nothing that gives them any reassurance that someone will be there to act appropriately if there is a problem. He said he wants the right thing to happen and he wants the project to go forward in a safe manner. He said denying the extension doesn't gain them anything. He said a six month extension isn't good enough, but 18 months is fair and the minimum they should do. Mayor Muhlfeld agreed. He said six months ago when this came to the Council they wanted to address concerns about the prior landslide. The Council wanted Iron Horse, the City and Lookout Ridge to deal with this problem but it isn't resolved. He said the conditions of approval for preliminary plat have not been met, but to sell this property will put them in a better position to handle the situation. He said Tom Cowan's report provides specific recommendations to handle best management practices for folks down slope. He encouraged them to look strongly at this issue from the City's perspective on liability.

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

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR**8a. Resolution No. 13-37; A Resolution establishing "No Parking" Zones on portions of West Sixth Street, O'Brien Avenue and Flint Street (6th and Geddes reconstruction project) (p. 251)**

Public Works Director Wilson said he worked with the Lookout Ridge developer quite a bit and Brian Fimian is a good man and it bothers to hear him insulted. Director Wilson said he would like to hear the Council's concerns or recommendations for modifications on the no parking zones.

Councilor Mitchell said the major concern he heard from the neighbors is their loss of parking. Director Wilson said Bonnie Hannigan made a comment on Railway Street, which is also a narrow street. Councilor Mitchell said from O'Brien east on W. 6th they should allow parking on both sides and on Flint they could take out one side. That would address the neighbors' issues. Councilor Sweeney said he agrees that the streets are narrow. He said on Railway he knows the streets are narrow and yet there is parking on both sides. He asked and Director Wilson said W. 6th is 21 feet and Railway is 28 feet according to Bonnie Hannigan's measurements. Councilor Sweeney said if they allowed parking on one side then they would have the same driving width they have on Railway Street. Councilor Hildner said Chief Kennelley talked about access for fire apparatus. Chief Kennelley said they can't make the narrow turn with the fire equipment so any parking in the turn area prevents the emergency vehicle from turning. Snow adds to the concern. He said they wouldn't have an issue if there was parking on the south side as long as it was back from the intersection at the bottom of the hill. Director Wilson said if the Council wants to change things he has some suggestions. He said the resolution is written with 3 restrictions. If they change the 2nd one regarding the south side it could read, "Staff recommends no parking on the south side of West 6th Street within 50 feet of the intersection at O'Brien and Flint and 185 feet from the intersection at Lupfer Avenue." Councilor Mitchell asked and Director Wilson said 185 feet would be required on Lupfer Avenue because of the steep hill, especially during winter conditions. Councilor Sweeney said he has a hard time visualizing the need for 185 feet. Director Wilson said allowing parking on one side on the narrow hill would be dangerous.

Cheryl Sausen, 310 W. 6th Street, said there is a steep hill down W. 6th from Lupfer, but no one parks there. She said the changes would make sense.

Julia Olivares, 333 W. 6th Street, said plowing has been a problem on their road. She is concerned about parking because the plow leaves a big berm as they come off Flint Street. She said they are going to have more problems with just snow this year because of the narrowed street. She said the plow needs to get all of the snow out so it doesn't narrow the road more.

Director Wilson said he could minimize the impact to the neighborhood and allow more parking except near the intersections, and he drew a map to show the Councilors. He said the snowplow crews will need to take more care here since the road is narrow. Manager Stearns said they can pass the resolution modified to the map that was presented by Director Wilson tonight.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve Resolution No. 13-37; A Resolution establishing "No Parking" Zones on portions of West Sixth Street, O'Brien Avenue and Flint Street (6th and Geddes reconstruction project) with the resolution modified to the map that was presented by Director Wilson tonight so there is no parking on the

south side of West 6th Street within 50 feet of the intersection at O'Brien and Flint and 185 feet from the intersection at Lupfer Avenue.”

The motion passed unanimously.

8b. Consideration of Amendment #3 to engineering consulting and design contract with Anderson-Montgomery Consulting Engineers for the Wastewater System Improvements Project (p. 260)

Director Wilson said the City entered in to a consultant contract with Anderson-Montgomery Consulting Engineers in October 2012 for the Wastewater System Improvements Project. This long term contract will involve several amendments over the coming years as staff works through optimization of existing facilities, application and negotiation for a new wastewater discharge permit, long range planning and ultimately design and construction of major wastewater treatment plant upgrades to comply with new nutrient removal standards.

They need to address an influent issue and recommend an amendment to that consultant contract in the amount of \$62,499 for survey, engineering design and construction phase services, as necessary to extend the sewer force main serving the JP Road lift station.

The sewer force main in question is the discharge line for the JP Road sewer pump station, which serves all properties within the City limits south of the Pizza Hut. The JP Road force main discharges directly into Cell No. 1 near the southwest corner of the wastewater lagoon system, while all other sewage enters the plant by means of the River Interceptor and flows through the screening facility at the northwest corner of the plant.

The City has experienced significant maintenance problems in our current operations due to rags, hair and debris entering the lagoons from the JP Road force main. This project will redirect flow from the JP Road sewer force main to the headworks and screening facility, where they can capture rags and debris before they enter the lagoons and also set the stage for continuing improvements. Staff proposes to design the force main extension over the winter months, advertise for bids in June and construct the project in the summer of 2014.

The proposed amendment will increase the amount of the consultant contract for the Wastewater System Improvements Project by \$62,499, for a total contract amount of \$428,210. Funds for this amendment are included in the adopted FY14 Wastewater Budget.

Councilor Hildner asked and Director Wilson said rags come through and clog up the system and there are several businesses that could cause it including the senior living area, the hospital and every business south of Pizza Hut. They will talk to the businesses out there to see if they can help with this issue, too.

Councilor Kahle offered a motion, seconded by Councilor Anderson, to approve Amendment #3 to the engineering consulting and design contract with Anderson-Montgomery Consulting Engineers for the Wastewater System Improvements Project in the amount of \$62,499.

Councilor Mitchell asked if it would be cheaper to do a screening facility down by the sewer ponds. Director Wilson said it wouldn't be much cheaper because the screens are significant mechanical

devices. It is best to have one screening facility to maintain. He said they went through an alternatives analysis and felt this was the best option.

The motion passed unanimously.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 264)

Councilor Sweeney asked why resort tax collections were off and Manager Stearns said it ebbs and flows. He doesn't think a 5% decrease is a significant issue. He said lodging had the major difference, but noted that he didn't think there are any large delinquencies.

9b. Other items arising between November 13th and November 18th

Manager Stearns said the City Hall Steering Committee met and addressed questions from the four architectural firms before they begin their design competition. There will be more information coming out in the next week, but he wanted the Councilors and the public to know there will be a day-long architectural competition where each of the four firms will bring in their concepts. The Committee will interview the four in a meeting open to the public on Wednesday December 11th in the Council Chambers. Each applicant will have a half hour to present their concept followed by the interviews. The firms will leave visual boards so the public can view the design concepts.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Standing budget item - None.

10b. Letter from John Goodrich regarding parking tickets and the placement of them on windshields (p. 268)

Councilor Mitchell said he didn't know how else they could handle tickets without putting them under wipers on windshields. He said they can't do anything if a ticket gets lost. He thinks Judge Johnson handled it well. Councilor Sweeney wondered if there was a procedure that wouldn't allow it to lag for 2 years. Manager Stearns said that is in the court's hands. Councilor Sweeney said they could send direction to the Court to follow up within a 3-month time frame. Manager Stearns said he didn't know that they could direct the court. Chief Dial said parking tickets are a low priority to the courts. He said the Police Department is going to talk to them about the unserved warrants and issues with lack of room in the county jail. He said Judge Johnson's staff is burdened with cases that can't be heard because there is no place to put people because the jail is full. Councilor Sweeney said the City doesn't control the process in the courts so if there is an issue they need to know about it.

Councilor Kahle said Friday will be the first induction into the Ski Museum's Hall of Fame at The Lodge at Whitefish Lake on Friday night. It is the Show Case for the Chefs and the induction will happen at 7 p.m. Councilor Anderson echoed what Director Wilson said about people who come before the Council. He said Whitefish deserves a higher standard in terms of decorum, and insults weren't appropriate. Councilor Hyatt said the Daily Interlake ran a wonderful story today on the Ski Heritage Museum. Councilor Hildner said there is a football game on Saturday and he is wearing maroon. Mayor Muhlfeld said the Salvation Army Kettle Drive is December 19th and the Councilors and staff are on board.

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

Mayor Muhlfeld adjourned the meeting at 9:52 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk

ORDINANCE NO. 13-10

An Ordinance of the City Council of the City of Whitefish, Montana, granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas.

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

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

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

Section 3: Franchisee shall extend its natural gas delivery facilities to such parts of the City as the provision of Franchisee's natural gas services shall justify.

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

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

Section 6: All work done in, under, upon, over, and across the present and future streets, avenues, alleys, highways, bridges, easements, and other public places in the City by Franchisee for the purposes of carrying out the provisions of this Franchise shall be done and performed in a professional manner. When any street, alley, or other public place in said City is excavated or damaged by Franchisee by reason of such work, Franchisee shall restore such street, alley, or public place to its former condition as early as practicable. Franchisee agrees to follow the Whitefish Air Quality District regulations for construction and repair.

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

Franchisee agrees to submit applications for Excavation Permits to the City's Public Works Department and be billed for and pay the applicable Excavation Permit Fees and any street or sidewalk cutting fees. If an emergency situation arises, Franchisee may make the necessary repairs and turn in an application and pay the necessary fees during or after the repairs are made.

Section 7: To the fullest extent permitted by law, Franchisee shall fully indemnify, defend, and hold harmless City, its employees, and officers from and against any and all claims, demands, causes of action, judgments, costs, fees, losses, liabilities, damages or expense, including reasonable attorneys' fees, incurred or required to be paid by reason of personal injury or death or on account of damage to property of whatever kind or nature arising from or related to Franchisee's performance of work in the public right-of-way under this franchise agreement.

Section 8: Franchisee shall maintain throughout the term of this Franchise liability insurance, in the minimum amount of one million five hundred thousand dollars (\$1,500,000.00), with primary and non-contributory coverage, to insure and/or protect the City with respect to the installation, operation and maintenance of the natural gas delivery facilities together with the necessary and desirable appurtenances authorized herein to occupy the public rights-of-way or public utility easements. Such insurance will provide protection for bodily injury and property damage including, without limitation, contractual liability and legal liability arising from collapse and underground incidents. Franchisee shall name the City as an additional insured on the liability policy that requires the insurance company to send a notice of cancellation or non-renewal. Franchisee shall file with the City, within thirty (30) days following the effective date of this Franchise, a Certificate of insurance evidencing proof of said insurance required pursuant to this Section and annually thereafter.

Section 9: Franchisee is hereby given the right and authority to make assignments of this Franchise, and its rights hereunder, provided all assignees agree to be bound to the same extent as the original Franchisee.

Section 10: Except as provided in this paragraph, failure on the part of Franchisee to comply in any substantial respect with any provision of this Franchise shall be grounds for forfeiture thereof. No forfeiture shall take effect unless either (1) Franchisee agrees to the forfeiture, or (2) a court of competent jurisdiction (with a right of appeal in either party) has ruled that Franchisee failed to comply in a substantial respect with any provision of this Franchise and Franchisee has not cured the failure found by the court within six (6) months after the court's final order. The City Council, in its discretion, may grant additional time to Franchisee to cure the failure as it deems reasonable.

Section 11: This ordinance shall take effect and be in force from and after thirty (30) days after the final passage and approval hereof, provided Franchisee shall file with the City Clerk a written acceptance of this ordinance within said thirty (30) day period, but if such acceptance is not so filed, this ordinance shall be void.

Section 12: This Franchise shall be hereby granted for an initial term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Franchisee. Thereafter, this Franchise will automatically renew every ten (10) years for an additional term of ten (10) years, unless cancelled by either party by written notice to the other party, no less than one (1) year prior to the end of the then current term. During the term of this franchise, if Montana law should change with respect to franchise fees or if Franchisee agrees to pay Franchise Fees to a Montana municipality pursuant to a franchise agreement, either party may open negotiations specific to that future change in Montana law or other franchise agreement. Those negotiations, which at this point are hypothetical, shall be done separately and apart from the current franchise and shall not change any terms of this franchise agreement.

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

I hereby certify that the within and foregoing is a full, true, correct and complete copy of Ordinance No. 13-10, passed at the regular meeting of the City Council of the City of Whitefish, Montana, on the _____ day of _____, 2013.

Necile Lorang, City Clerk

Subscribed and sworn to before me this _____ day of _____,
2013.

Notary Public for the State of Montana
Residing at _____
My Commission expires _____

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



November 25, 2013

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

RE: Bennett Accessory Apartment at 325 Lupfer Avenue; (WCUP 13-14)

Honorable Mayor and Council:

Summary of Requested Action: Jeff Lyman with Aspen Ridge Design on behalf of Richard and Roberta Bennett is requesting approval of a Conditional Use Permit to allow for an accessory apartment above a new garage at 325 Lupfer Avenue. The property is currently developed with a single family home and an existing garage which will be removed. The property is zoned WR-4 (High Density Multi-Family Residential District). The Whitefish Growth Policy designates this property as "High Density Residential".

Planning Board Action: The Whitefish City-County Planning Board met on November 21, 2013 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with seven (7) conditions. (Anderson and Vail were absent)

Planning & Building Department Recommendation: Staff recommended approval of the above referenced conditional use permit with seven (7) conditions set forth in the attached staff report.

Public Hearing: No members of the public wished to speak at the hearing. The draft minutes for this item are attached as part of this packet.

This item has been placed on the agenda for your regularly scheduled meeting on December 2, 2013. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

A handwritten signature in black ink that reads "Bailey Minnich". The signature is written in a cursive, flowing style.

Bailey Minnich, CFM
Planner II

Att: Exhibit A: Recommended Conditions of Approval
Draft Minutes of 11-21-13 Planning Board Meeting

Exhibits from 11-14-13 Staff Packet

1. Staff Report – WCUP 13-14, 11-14-13
2. Adjacent Landowner Notice, 10-25-13
3. Advisory Agency Notice, 10-25-13

The following were submitted by the applicant:

4. Application for Conditional Use Permit, 9-26-13

c: w/att Necile Lorang, City Clerk

c: w/o att Jeff Lyman, 105A Wisconsin Avenue, Whitefish, MT 59937

**Exhibit A
BENNETT
WCUP 13-14
Whitefish City-County Planning Board
Recommended Conditions of Approval
November 25, 2013**

1. The project shall be constructed in compliance with the plans submitted on September 30, 2013, except as amended by these conditions. Any significant deviation from the plans shall require approval.
2. All storm water generated by the proposal shall be retained on-site.
3. The applicant shall be required to obtain a building permit from the City of Whitefish for the proposed accessory apartment.
4. Per Section 11-2-3(B)(3) of the Whitefish Zoning Regulations, the interior lot line located between lots 18 and 19 shall be abandoned prior to issuance of the building permit, as the existing residence and proposed accessory structure will be located across both lots.
5. One off-street parking space shall be designated for the accessory apartment and two off-street parking spaces shall be designated for the primary residence.
6. Prior to building permit issuance, the property owner shall provide the City a recorded copy of either a deed restriction or a restrictive covenant that the accessory apartment may only be rented if the owners maintain permanent residence in the primary structure.
7. The conditional use permit is valid for 18 months and shall terminate unless commencement of the authorized activity has begun.

**WHITEFISH CITY PLANNING BOARD
MINUTES OF MEETING
NOVEMBER 21, 2013**

**CALL TO ORDER AND
ROLL CALL**

The regular meeting of the Whitefish City-County Planning Board was called to order at 6:00 p.m. Board members present were Dennis Konopatzke, Rick Blake, Greg Gunderson, Ken Meckel, Diane Smith, Chad Phillips. Zak Anderson and Mary Vail were absent. Planning Director Taylor, Senior Planner Compton-Ring and Planner Minnich represented the Whitefish Planning & Building Department. Approximately 10 people were in the audience.

APPROVAL OF MINUTES

Phillips moved and Gunderson seconded to approve the City minutes of the Whitefish Planning Board as submitted. On a vote by acclamation the motion passed unanimously.

**PUBLIC ITEMS NOT ON
AGENDA**

No one wished to speak.

OLD BUSINESS

None.

**BENNETT CONDITIONAL
USE PERMIT REQUEST**

A proposal for a Conditional Use Permit by Jeff Lyman on behalf of Richard & Roberta Bennett to construct an accessory apartment. The proposed garage where the accessory apartment will be located will be approximately 31 feet 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. The property is located at 325 Lupfer Avenue.

**STAFF REPORT WCUP 13-
14**

Planner Minnich reported that WCUP 13-14 is a conditional use permit to construct an accessory apartment above a new proposed garage. The existing garage will be removed. The site currently has an existing single family home, and the proposed accessory apartment will be located in the southeast corner of the property. The new structure will be approximately 31 feet, 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total of 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. There are no proposed changes to the existing home. The subject property is 6,500 square feet. It is located at 325 Lupfer Avenue and although the property fronts Lupfer Avenue, access to the property is off of the alley located behind the subject property, between Baker Avenue and Lupfer Avenue.

This was originally approved in 2007, but the CUP expired. The Growth Policy designation for this area is 'High Density Residential' which corresponds to the WR-4. A notice was mailed

to adjacent land owners and advisory agencies and no comments have been received. Section 11-3-1 describes the requirements for an accessory apartment and this project meets all the requirements. The proposed use is accessory to a single family home and adequate parking will be provided. Additionally, the zoning setbacks for accessory structures less than 600 square feet will be met.

The accessory apartment is located on two lots that when combined meet both the minimum lot size and lot width requirements. Per Section 11-2-3(B)(3) of the zoning regulations, where several contiguous lots are developed as a single property, the exterior lot lines are used for determining compliance. However, the section specifically states that *“prior to or as a condition of issuance of any building permit, all interior lot lines affected by the structure(s) shall be abandoned.”* Therefore, a condition will be added that prior to building permit approval, the interior lot line must be abandoned.

The maximum permitted lot coverage in this zoning district is 40%. The existing residence and the proposed garage will have a lot coverage of approximately 26%. The proposed lot provides adequate space to accommodate all parking needs on site. The proposed parking garage could be used for one space. There is plenty of room for additional parking in the back.

The subject property appears to have adequate availability of public services because the property is currently served by sewer and water, is within the jurisdiction of the Whitefish Fire Department and the City of Whitefish Police Department, is located directly adjacent to a paved city street, and is accessed from a paved alley located behind the subject property.

The proposed accessory apartment’s bulk and massing will be less than 600 square feet. This allows for a reduced setback on the side and rear to 6 feet. The proposed structure will be similar to existing adjacent residential uses in the neighborhood, and will not exceed the maximum height of 24-feet for an accessory structure.

The existing neighborhood is predominantly single family residential, with the exception of the Whitefish Credit Union located directly behind the subject property along Baker Avenue. The proposed use is not expected to impact or change the character of the existing neighborhood. The proposed use is consistent with the existing zoning and the structures already constructed within the neighborhood.

Staff recommends approval subject to 7 conditions.

Blake asked about storm water and wondered how it could be retained on site. Planner Minnich said Public Works will look at

that when the applicants come in for their building permit review. Phillips asked how a 6 foot setback was determined and Planner Minnich said the 6 foot setback is in the zoning regulations and is allowed if the accessory apartment is less than 600 square feet. Phillips said sometimes people have to pull over when they meet another vehicle on the alley and he was concerned that this wouldn't allow that to happen.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

PUBLIC HEARING

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

MOTION

Gunderson moved and Phillips seconded to adopt the findings of fact within staff report WCUP 13-14 and recommend that the City Council approve the Bennett conditional use permit subject to 7 conditions, as recommended by staff.

BOARD DISCUSSION

Gunderson said he also wonders how storm water can be held on site. It is a boiler plate recommendation. Gunderson asked if they ever determined if the accessory apartment applications could be an administrative decision. Planner Compton-Ring said it is on their to-do list. It would require a zoning regulation change. She said they will bring something to the board in the future.

VOTE

The motion passed unanimously on a vote by acclamation. (Scheduled for City Council on December 2, 2013.)

**HILLTOP PARTNERS
PRELIMINARY PLAT AND
PLANNED UNIT
DEVELOPMENT REQUEST**

Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots. The request also includes a Planned Unit Development overlay in order to have smaller single family lots. The property is undeveloped and is zoned WR-1 (One-Family Residential District). The property is located between Great Northern and Brimstone Drives.

**STAFF REPORT WPP 13-
01/WPUD 13-03**

Chad Phillips recused himself.

Planner Compton-Ring reported on a request by Hilltop Partners llc for a Preliminary Plat and a Planned Unit Development for 24 single family lots on 6.125 acres located to the west of the Great Northern Heights neighborhood off Great Northern Drive and Brimstone Drive. This is the third version of this subdivision the board has seen.

On March 6, 2006, Hilltop Partners received preliminary plat approval for Great Northern Heights, Phase 3 for 21 single family homes. The applicant received an extension in 2008, but in 2010, the preliminary plat expired.

**BENNETT
WCUP 13-14
EXHIBIT LIST
NOVEMBER 14, 2013**

1. Staff Report – WCUP 13-14, 11-14-13
2. Adjacent Landowner Notice, 10-25-13
3. Advisory Agency Notice, 10-25-13

The following were submitted by the applicant:

4. Application for Conditional Use Permit, 9-26-13

**BENNETT
CONDITIONAL USE PERMIT
WCUP 13-14
NOVEMBER 14, 2013**

This is a report to the Whitefish City-County Planning Board and the Whitefish City Council regarding a request for a conditional use permit to allow an accessory apartment in a WR-4 zone. This application has been scheduled before the Whitefish City-County Planning Board for a public hearing on Thursday, November 21, 2013. A recommendation will be forwarded to the City Council for a subsequent public hearing and final action on Monday, December 2, 2013.

PROJECT SCOPE

The applicant is requesting a conditional use permit to construct an accessory apartment above a new proposed garage. The site currently has an existing single family home, and the proposed accessory apartment will be located in the southeast corner of the property. The new structure will be approximately 31 feet, 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. There are no proposed changes to the existing home. Although the property fronts Lupfer Avenue, access to the property is off of the alley located behind the subject property, between Baker Avenue and Lupfer Avenue.

A. OWNER:

Richard & Roberta Bennett
2442 NW Market Street, #25
Seattle, WA 98107
(206) 730-7011

Technical Representative:

Jeff Lyman
105A Wisconsin Ave
Whitefish, MT 59937
(406) 260-0069

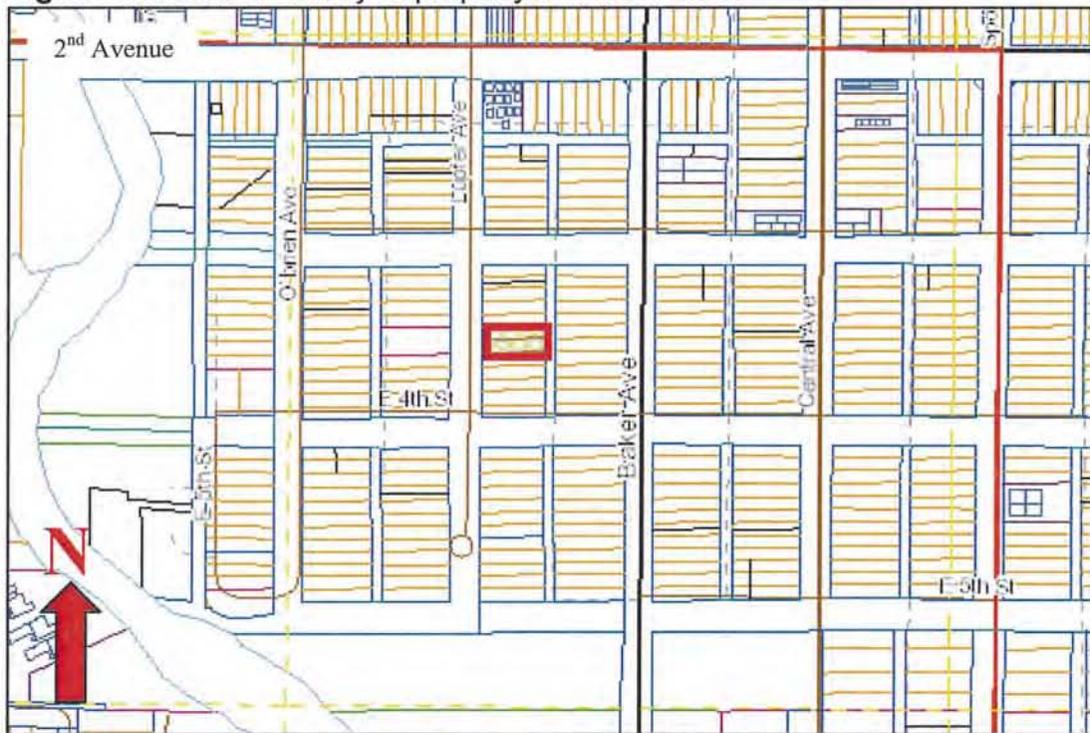
B. SIZE AND LOCATION OF PROPERTY:

The subject property is 6,500 square feet. It is located at 325 Lupfer Avenue, and can be described as Lots 18 & 19 in Block 54 of Whitefish Subdivision in Section 36, Township 31N, Range 22W, P.M.M., Flathead County, Montana.

EXHIBIT

1

Figure 1: Location of subject property outlined in red.



C. EXISTING LAND USE AND ZONING:

The subject property is currently developed with a single family residence. The property is zoned WR-4, High Density Multi-Family Residential District. The purpose of this district is intended for higher density residential purposes and for limited nonresidential uses that are compatible with such a residential setting connected to municipal utilities and services.

D. ADJACENT LAND USES AND ZONING:

North:	Residential	WR-4
West:	Residential	WR-4
South:	Residential	WR-4
East:	Commercial	WB-3

E. ZONING DISTRICT:

WR-4 (High Density Multi-Family Residential District)

F. WHITEFISH CITY-COUNTY GROWTH POLICY DESIGNATION:

The Growth Policy designation for this area is 'High Density Residential' which corresponds to the WR-4. "Multi-family residential, mostly in the form of apartments, condominiums, and townhomes, are accounted for by this designation. Areas designated for High Density Residential development are

mostly near the downtown and along major transportation routes. The applicable zones are WR-3 and WR-4, but WR-2 with a PUD option also allows for high densities."

G. UTILITIES:

Sewer:	City of Whitefish
Water:	City of Whitefish
Solid Waste:	North Valley Refuse
Electric:	Flathead Electric Co-op
Phone:	CenturyLink
Police:	City of Whitefish
Fire:	Whitefish Fire Department

H. PUBLIC COMMENTS:

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on October 25, 2013. A notice was emailed to advisory agencies on October 25, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on October 30, 2013. As of the writing of this staff report, no comments have been received.

REVIEW AND FINDINGS OF FACT

This application is evaluated based on the "criteria required for consideration of a Conditional Use Permit," per Section 11-7-8(J) of the Whitefish Zoning Regulations.

1. Growth Policy Compliance:

Finding 1: The proposed use complies with Growth Policy Designation of High Density Residential because the proposal is for an accessory apartment.

2. Compliance with regulations. The proposal is consistent with the purpose, intent, and applicable provisions of these regulations.

The property is zoned WR-4, High Density Multi-Family Residential District. The purpose of this district is intended for single family, duplex, triplex, fourplex and larger multi-family dwellings in an urban setting connected to all municipal utilities and services.

The development proposal is consistent with the purpose and intent of the applicable regulations. Section 11-3-1 describes the requirements for an accessory apartment and this project meets all the requirements. The proposed use is accessory to a single family home and adequate parking will be provided. Additionally, the zoning setbacks for accessory structures less than 600 square feet will be met. The accessory apartment is located on two lots that when combined

meet both the minimum lot size and lot width requirements. Per Section 11-2-3(B)(3) of the zoning regulations, where several contiguous lots are developed as a single property, the exterior lot lines are used for determining compliance. However, the section specifically states that *“prior to or as a condition of issuance of any building permit, all interior lot lines affected by the structure(s) shall be abandoned.”* Therefore, a condition will be added that prior to building permit approval, the interior lot line must be abandoned.

Finding 2: The proposed use complies with the WR-4 zoning district because it conforms to the development standards outlined in the zoning and Section 11-3-1 of the Whitefish Zoning Regulations regarding accessory apartments, and a condition will be added that the interior lot line be abandoned per Section 11-2-3(B)(3) of the zoning regulations prior to issuance of the building permit.

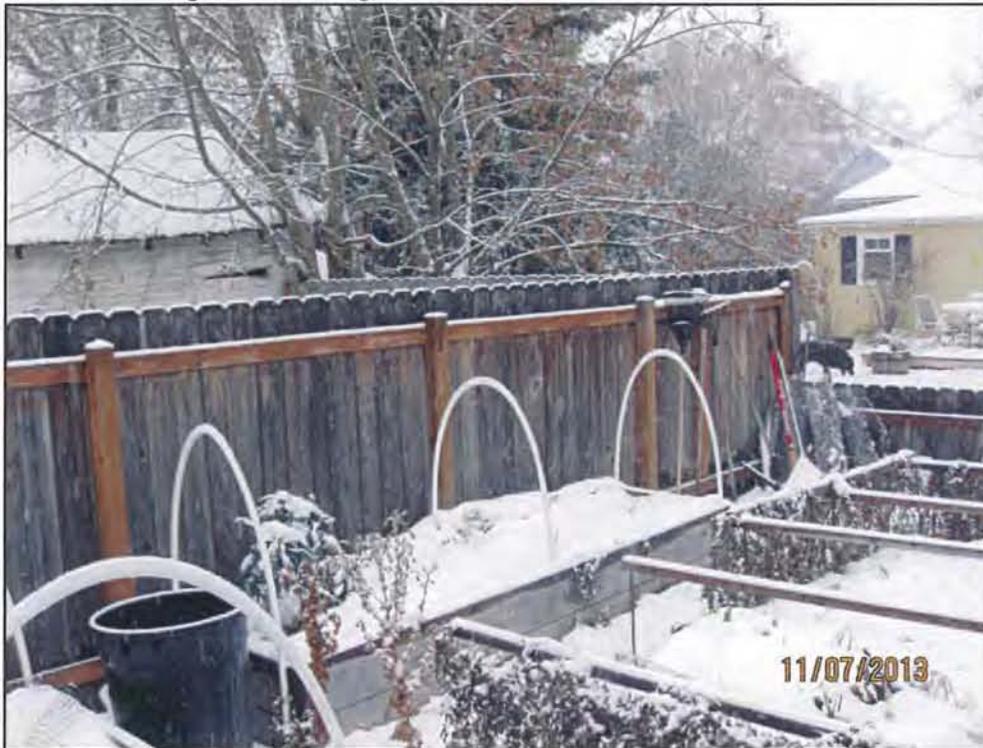
3. Site Suitability. The site must be suitable for the proposed use or development, including:

Adequate usable land area: The subject parcel is 6,500 square feet in size. Since the proposed garage which will contain the accessory apartment will be less than 600 square feet, it is permitted to have reduced side and rear setbacks of 6 feet. There is adequate space on the subject property for the proposed structure to meet all required setbacks. The maximum permitted lot coverage in this zoning district is 40%. The existing residence and the proposed garage will have a lot coverage of approximately 26%.

Figure 2: Location of proposed garage with accessory apartment. (Existing garage to be removed.)



Figure 3: Location of proposed garage, with existing garage to be removed as well as the existing fence and garden.



Access that meets the standards set forth in these regulations, including emergency access: The subject property is located directly off Lupfer Avenue. However, there is no existing access driveway from this street. The new garage will be accessed from the alley which is located behind the existing residence, between Baker Avenue and Lupfer Avenue. This alley, along with Lupfer Avenue, should provide adequate emergency access.

Absence of environmental constraints that would render the site inappropriate for the proposed use or development, including, but not necessarily limited to floodplains, slope, wetlands, riparian buffers/setbacks, or geological hazards: The proposed development is not located within the 100-year floodplain. Additionally, there are no wetlands, riparian zones, or geological hazards on or near the subject property.

Finding 3: The subject property is suitable for the proposed accessory apartment because the proposal complies with the minimum lot size, minimum lot coverage, and required setbacks; access to the proposed garage will be from the existing alley or Lupfer Avenue; and there are no environmental constraints on the property to limit development.

4. Quality and Functionality. The site plan for the proposed use or development has effectively dealt with the following design issues as applicable.

Parking locations and layout: Section 11-6-2(A) of the Whitefish Zoning Regulations requires two (2) parking spaces per single family dwelling unit and Section 11-3-1(D) requires one (1) off-street space must be provided for the accessory apartment. The proposed lot provides adequate space to accommodate all parking needs on site.

Traffic Circulation: The proposed use should not impact traffic circulation on the existing road or alley.

Open space: The submitted site plan appears to have adequate open space.

Fencing/Screening: Fencing and screening are not required by the zoning regulations. The applicant currently has an existing wooden fence around the subject property.

Landscaping: Section 11-4-1 of the Whitefish Zoning Regulations exempts single family dwellings and accessory apartments from the landscaping requirements; therefore, no landscape plan is required.

Signage: No signage is proposed for the accessory apartment.

Undergrounding of new and existing utilities: The subject property currently has existing utilities located on-site which service the single family residence. Any new utilities will be required to be installed underground.

Finding 4: The quality and functionality of the proposed development is adequate because the applicant can meet the required number of parking spaces, the proposed use will not impact existing traffic circulation, no signage is proposed for the accessory apartment, and all new utilities will be undergrounded.

5. Availability and Adequacy of Public Services and Facilities.

Sewer and water: The subject property is currently serviced by municipal services to the existing single family residence. Separate water and sewer service is required for the accessory apartment.

Storm Water Drainage: Storm water created by the proposed accessory apartment is not anticipated to impact adjacent properties because all storm water is required to be maintained on-site.

Fire Protection: The Whitefish Fire Department serves the site and response times and access are adequate. The proposed use is not expected to have significant impacts upon fire services.

Police: The City of Whitefish serves the site and response times and access are adequate. The proposed use is not expected to have significant impacts upon police services.

Streets: The subject property is located directly off Lupfer Avenue, and is accessed from an existing alley located behind the property, between Baker Avenue and Lupfer Avenue. Both Lupfer Avenue and the alley are paved surfaces.

Finding 5: The subject property appears to have adequate availability of public services because the property is currently served by sewer and water, is within the jurisdiction of the Whitefish Fire Department and the City of Whitefish Police Department, is located directly adjacent to a paved city street, and is accessed from a paved alley located behind the subject property.

6. **Neighborhood/Community Impact:**

Traffic Generation: Traffic impacts are anticipated to be minimal as the subject property has an existing single family residence, and the proposed accessory apartment should not result in a significant impact to traffic on Lupfer Avenue or surrounding roadways.

Noise or Vibration: No additional noise or vibration is anticipated to be generated from the proposed use. Any additional noises or vibrations would be associated with construction and are not anticipated to be permanent impacts.

Dust, Smoke, Glare, or Heat: No impact is anticipated beyond what would be expected from the residential use currently onsite.

Smoke, Fumes, Gas, and Odor: No impact is anticipated with regard to smoke, fumes, gas or odors.

Hours of Operation: There are no hours of operation anticipated with this use beyond those that would be typical for a residential property.

Finding 6: The proposed development is not anticipated to have a negative neighborhood impact because the proposed accessory apartment will not increase traffic generation on surrounding streets, there will be no noise or vibration beyond associated construction disturbance, no fumes or other odors are anticipated, and there will be no hours of operation for the residential use.

7. **Neighborhood/Community Compatibility:**

Structural Bulk and Massing: The proposed accessory apartment's bulk and massing will be less than 600 square feet. This allows for a reduced setback on the side and rear to 6 feet. The proposed structure will be similar to existing adjacent

residential uses in the neighborhood, and will not exceed the maximum height of 24-feet for an accessory structure.

Scale: The proposed accessory apartment appears to be adequately scaled to the subject property. It will be substantially smaller than the existing single family residence and will be located approximately 30 feet away from the existing residential structure. This will allow for adequate open space within the subject property to maintain the character of the neighborhood.

Context of Existing Neighborhood: The existing neighborhood is predominantly single family residential, with the exception of the Whitefish Credit Union located directly behind the subject property along Baker Avenue. The proposed use is not expected to impact or change the character of the existing neighborhood. The proposed use is consistent with the existing zoning and the structures already constructed within the neighborhood.

Density: The design of the proposed structure is similar to other buildings in the area. The density is not out of character with the area.

Community Character: The proposed accessory apartment will not be detrimental to the immediate neighborhood integrity as the accessory apartment reflects the housing standards established in the area and will be utilized as an accessory use to the existing primary residence.

Finding 7: The proposed accessory apartment is compatible with the surrounding neighborhood because the use is similar to existing uses in the neighborhood, it will be consistent with the design, size and density of the immediate area, and it will be utilized as an accessory use to the existing primary residence.

RECOMMENDATION

It is recommended that the Whitefish City-County Planning Board adopt the findings of fact within staff report WCUP 13-14 and that this conditional use permit be recommended for **approval** to the Whitefish City Council subject to the following conditions:

1. The project shall be constructed in compliance with the plans submitted on September 30, 2013, except as amended by these conditions. Any significant deviation from the plans shall require approval.
2. All storm water generated by the proposal shall be retained on-site.
3. The applicant shall be required to obtain a building permit from the City of Whitefish for the proposed accessory apartment.

4. Per Section 11-2-3(B)(3) of the Whitefish Zoning Regulations, the interior lot line located between lots 18 and 19 shall be abandoned prior to issuance of the building permit, as the existing residence and proposed accessory structure will be located across both lots.
5. One off-street parking space shall be designated for the accessory apartment and two off-street parking spaces shall be designated for the primary residence.
6. Prior to building permit issuance, the property owner shall provide the City a recorded copy of either a deed restriction or a restrictive covenant that the accessory apartment may only be rented if the owners maintain permanent residence in the primary structure.
7. The conditional use permit is valid for 18 months and shall terminate unless commencement of the authorized activity has begun.



Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Jeff Lyman on behalf of Richard & Roberta Bennett has applied for a Conditional Use Permit to construct an accessory apartment in a new proposed garage. The property is developed with a single family home and is zoned WR-4 (High Density Multi-Family Residential District). The proposed garage where the accessory apartment will be located will be approximately 31 feet 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. The property is located at 325 Lupfer Avenue and can legally be described as Lots 18 and 19 of Block 54 of Whitefish Subdivision in Section 36 Township 31N Range 22W, P.M.M., Flathead County, Montana.

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

Thursday, November 21, 2013

6:00 p.m.

**Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937**

The City-County Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, December 2, 2013 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at bminnich@cityofwhitefish.org. Comments received by the close of business on Wednesday, November 13, 2013, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.

EXHIBIT

2

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

BENNETT GARAGE ADDITION

325 LUPFER AVENUE - WHITEFISH, MONTANA



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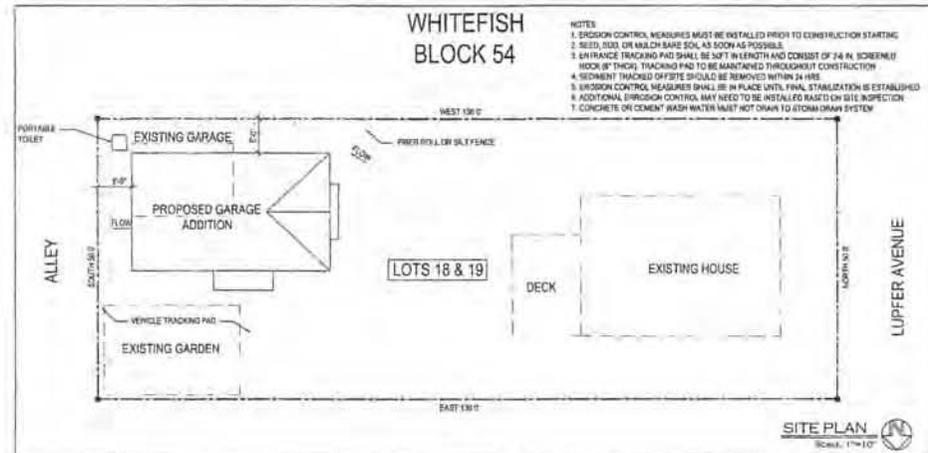
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UPPER FLOOR FRAMING PLAN,
& ROOF FRAMING PLAN



BENNETT
GARAGE ADDITION
325 LUPFER AVENUE - WHITEFISH, MT

GENERAL SPECIFICATIONS

1. CONTRACTOR TO VERIFY ALL DIMENSIONS & CONDITIONS PRIOR TO THE START OF CONSTRUCTION.
2. COMPLY WITH ALL APPLICABLE CODES, ORDINANCES & INSPECTIONS WHETHER THESE REQUIREMENTS ARE SPECIFICALLY NOTED ON PLANS OR NOT.
3. CONTRACTOR TO PROVIDE ALL NECESSARY SHORING, BRACING, OR BRACING NECESSARY TO HOLD STRUCTURAL ELEMENTS IN PLACE IN ORDER TO AVOID ANY UNSAFE STRESSING DURING CONSTRUCTION.
4. ALL GLAZE-WHAZARDOUS AREA & ALL GLAZE WITHIN 10' OF FLOOR OR 40' OF AWARS SHALL BE TEMPERED LAMINATED OR SAFETY GLASS.
5. SHOWER ENCLOSURES TO BE SHOWER ROD TEMPERED GLASS (OR AN APPROVED EQUAL).
6. WINDOW HEADS EQUAL TO 7/16" OF FLOOR AREA.
7. PROVIDE OPERABLE WINDOW OR DOOR AREA EQUAL TO 5% OF FLOOR AREA.
8. IN ALL SLEEPING AREAS PROVIDE OPERABLE WINDOW OR DOOR AREA EQUAL TO 5.7 SQUARE FEET DIRECTLY TO THE EXTERIOR OF ROOMS (3.0 SQ. FT. @ CHAMBER FLOOR).
9. WINDOW NET DRAPABLE AREA OF LINED WINDOWS SHALL BE WITHIN 30" HEIGHT OF 40" (CONTACT 7 FROM NORMAL).
10. ADDRESS MARKING
11. HOUSE NUMBER SHALL BE DISPLAYED IN A PROMINENT MANNER SO THAT IT IS REASONABLY VISIBLE TO EMERGENCY VEHICLES TO LOCATE THE RESIDENCE.



- NOTE:
1. EROSION CONTROL MEASURES MUST BE INSTALLED PRIOR TO CONSTRUCTION STARTING
 2. SEED, MULCH OR MULCH BARS SOL AS SOON AS POSSIBLE
 3. ENTRANCE TRACKING PAD SHALL BE 5FT IN LENGTH AND CONSIST OF 24 IN. SCREENED HOOD (8" THICK) TRACKING PAD TO BE MAINTAINED THROUGHOUT CONSTRUCTION
 4. SEDIMENT TRACKED OFF SITE SHOULD BE REMOVED WITHIN 24 HRS
 5. EROSION CONTROL MEASURES SHALL BE IN PLACE UNTIL FINAL STABILIZATION IS ESTABLISHED
 6. ADDITIONAL EROSION CONTROL MAY NEED TO BE INSTALLED BASED ON SITE INSPECTION
 7. CONCRETE OR CEMENT WASH WATER MUST NOT DRAIN TO STORM DRAIN SYSTEM

SHEET TITLE:
TITLE SHEET
& SITE PLAN

DRAWN BY: ZPS
CHECKED BY: MDW
DATE: SEPT. 10, 2013

SHEET #:
T
1.0
FOR CONSTRUCTION

Bailey Minnich

From: Wendy Compton-Ring [wcompton-ring@cityofwhitefish.org]
Sent: Friday, October 25, 2013 11:17 AM
To: 'Anne Moran'; Ashley Keltner; 'Ben DeVall'; Bill Dial; 'BJ Grieve'; Cal Scott; Christina L Schroeder; 'Chuck Curry'; Columbia Falls Fire Department; 'Dave Lawrence'; Dennis Oliver; 'Doug Schuch'; 'Eric Smith'; Gary Engman; Gary Krueger; Ginger Kauffman; 'James Freyholtz'; 'Joe Page'; 'John Wilson'; 'Judy Williams'; Karen Reeves; 'Kate Cassidy'; Kate Orozco; 'Kuennen, Norman'; 'Lisa Timchak'; 'Lorch, Steve'; 'Lynn Zanto'; 'Marcia Sheffels'; 'Mark Baumler'; 'Mark Deleray'; North Valley Refuse; 'Pamela Holmquist'; 'Patti V'; 'Pris, Jeremy'; 'Rita Hanson (for Whitefish Water & Sewer District)'; 'Steve Kilbreath'; 'Steve Kvapil'; 'Stickney, Nicole'; SueAnn Grogan; Tara Fugina; 'Tom Kennelly'; Tony.Hirsch@Centurylink.com; 'Traci Sears'; 'Virgil Bench'; 'Whitefish Parks and Recreation'
Cc: David Taylor; bminnich@cityofwhitefish.org
Subject: November City-County Planning Board
Attachments: 11-2013_PB meeting.pdf

Attached please find the Planning Board notice for the November meeting.

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

EXHIBIT

3

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



Date: October 25, 2013
To: Advisory Agencies & Interested Parties
From: Whitefish Planning & Building Department

The regular meeting of the Whitefish City-County Planning Board will be held on Thursday, November 21, 2013 at 6:00 pm. During the meeting, the Board will hold public hearings on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing for the items on Monday, December 2, 2013. City Council meetings start at 7:10 pm. Planning Board and City Council meetings are held in the Whitefish City Council Chambers, Whitefish, Montana.

1. A proposal for a Conditional Use Permit by Jeff Lyman on behalf of Richard & Roberta Bennett to construct an accessory apartment. The proposed garage where the accessory apartment will be located will be approximately 31 feet 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. The property is located at 325 Lupfer Avenue and can legally be described as Lots 18 and 19 of Block 54 of Whitefish Subdivision in Section 36 Township 31N Range 22W, P.M.M., Flathead County, Montana. (WCUP 13-14) Minnich
2. Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots. The request also include a Planned Unit Development overlay in order to have smaller single family lots. The property is undeveloped and is zoned WR-1 (One-Family Residential District). The property is located between Great Northern and Brimstone Drives and can be legally described as a portion of Lot 2, Askew Subdivision in Section 12 Township 30N Range 22W. (WPP 13-01/WPUD 13-03) Compton-Ring
3. A proposal by the City of Whitefish to amend Title 11 of the Whitefish Zoning Code to create a new zoning district, Whitefish Planned Resort (WPR), as called for in the 2007 Whitefish City-County Growth Policy (WZTA 13-02) Taylor

Documents pertaining to this agenda item is available for review at the Whitefish Planning & Building Department, 510 Railway Street during regular business hours. Inquiries are welcomed. Interested parties are invited to attend the hearing and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address

prior to the hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding this proposal, phone 406-863-2410.

PWhitefish Planning & Building
PO Box 158
510 Railway Street
Whitefish, MT 59937
Phone: (406) 863-2410 Fax: (406) 863-2409

APPLICATION FOR CONDITIONAL USE PERMIT
CITY OF WHITEFISH

WCUP 13-14

FEE ATTACHED \$ 990 (See current fee schedule)

OWNER(S) OF RECORD:

Name: Richard & Roberta Bennett

Mailing Address: 2442 NW Market St. #25

City/State/Zip: Seattle, WA, 98107 Phone: 206 730-7011

PERSON(S) AUTHORIZED TO REPRESENT THE OWNER(S) AND TO WHOM ALL CORRESPONDENCE IS TO BE SENT:

Name: Jeff Lynman

Mailing Address: 105A Wisconsin Ave

City/State/Zip: WF, 59937 Phone: (406) 260-0069

LEGAL DESCRIPTION OF PROPERTY (Refer to Property Records):

Street Address: 325 Lupfer Ave Sec. 36 Town-ship 31 Range 22

Subdivision Name: _____ Tract No(s). _____ Lot No(s). _____ Block No. _____

DESCRIBE PROPOSED USE: Accessory Apartment

ZONING DISTRICT: WR-4

CHAPTER 7 OF TITLE 11 WHITEFISH ZONING REGULATIONS REQUIRES THE FOLLOWING:

A. **FINDINGS** - The following criteria form the basis for approval or denial of the Conditional Use Permit. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and, on a separate sheet of paper, discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Describe how the proposal conforms to the applicable goals and policies of the Whitefish City-County Growth Policy.
2. Describe how the proposal is consistent with the purpose, intent and applicable provisions of the regulations.

EXHIBIT

3. How is the property location suitable for the proposed use? Is there adequate usable land area? Does the access, including emergency vehicle access, meet the current standards? Are environmentally sensitive areas present on the property that would render the site inappropriate for the proposed use?
4. How are the following design issues addressed on the site plan?
 - a. Parking locations and layout
 - b. Traffic circulation
 - c. Open space
 - d. Fencing/screening
 - e. Landscaping
 - f. Signage
 - g. Undergrounding of new utilities
 - h. Undergrounding of existing utilities
5. Are all necessary public services and facilities available and adequate? If not, how will public services and facilities be upgraded?
 - a. Sewer
 - b. Water
 - c. Stormwater
 - d. Fire Protection
 - e. Police Protection
 - f. Street (public or private)
 - g. Parks (residential only)
 - h. Sidewalks
 - i. Bike/pedestrian ways – including connectivity to existing and proposed developments
6. How will your project impact on adjacent properties, the nearby neighborhoods and the community in general? Describe any adverse impacts under the following categories.
 - a. Excessive traffic generation and/or infiltration of traffic into neighborhoods
 - b. Noise, vibration, dust, glare, heat, smoke, fumes, odors
7. What are the proposed hours of operation?
8. How is the proposal compatible with the surrounding neighborhood and community in general in terms of the following:
 - a. Structural bulk and massing
 - b. Scale
 - c. Context of existing neighborhood
 - d. Density
 - e. Community Character

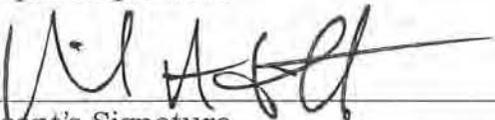
B. PROPERTY OWNER LIST

Submit a list of names with mailing addresses of property owners within **150 feet** of the proposed use (**public street right-of-ways are not counted as part of the 150 feet**). The owner of record must appear exactly as on the official records of Flathead County. This list is obtained from the Flathead County GIS Department using the 'Adjacent Landowner Request' form.

C. SITE PLAN

Submit a site plan, either drawn to scale or with dimensions added, which shows in detail your proposed use, your property lines, existing and proposed buildings, traffic circulation, driveways, parking, landscaping, fencing, signage, and any unusual topographic features such as slopes, drainage, ridges, etc. Where new buildings or additions are proposed, building sketches and elevations shall be submitted.

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 Whitefish Planning & Building staff to be present on the property for routine monitoring and inspection during the approval and development process.



Applicant's Signature

9/17/13

Date

Richard H. Bennett

Print Name

1. Is the property location suitable? (A "no" answer requires explanation.)
 - a. Is there adequate space on the lot/in the building? YLS
 - b. Is there adequate access from adjacent streets? YLS
 - c. Is the site free of environmental constraints (floodplain, steep slopes, etc.)? YLS

2. Is the site plan well designed? (A "no" answer requires explanation".)
 - a. Suitable parking scheme. YLS
 - b. Adequate vehicle and pedestrian traffic circulation. YLS
 - c. Is there adequate open space? YLS
 - d. Is there adequate fencing, screening and landscaping? YLS
 - e. Is the signage coordinated and appropriate? YLS

3. Are all necessary public services available? (A "no" answer requires explanation.)

a. Sewer <input checked="" type="checkbox"/>	c. Streets <input checked="" type="checkbox"/>	e. Fire protection <input checked="" type="checkbox"/>
b. Water <input checked="" type="checkbox"/>	d. Stormwater <input checked="" type="checkbox"/>	f. Police protection <input checked="" type="checkbox"/>

4. Will your project impact the neighborhood? (A "yes" answer requires explanation.)
 - a. Will it generate excessive traffic? No
 - b. Will it create noise, vibration, dust, glare, heat, smoke, fumes, or odors? No
 - c. Will it operate during unusual or inappropriate hours? No

5. Will your project differ greatly from other uses in the neighborhood? (A "yes" answer requires explanation.) No

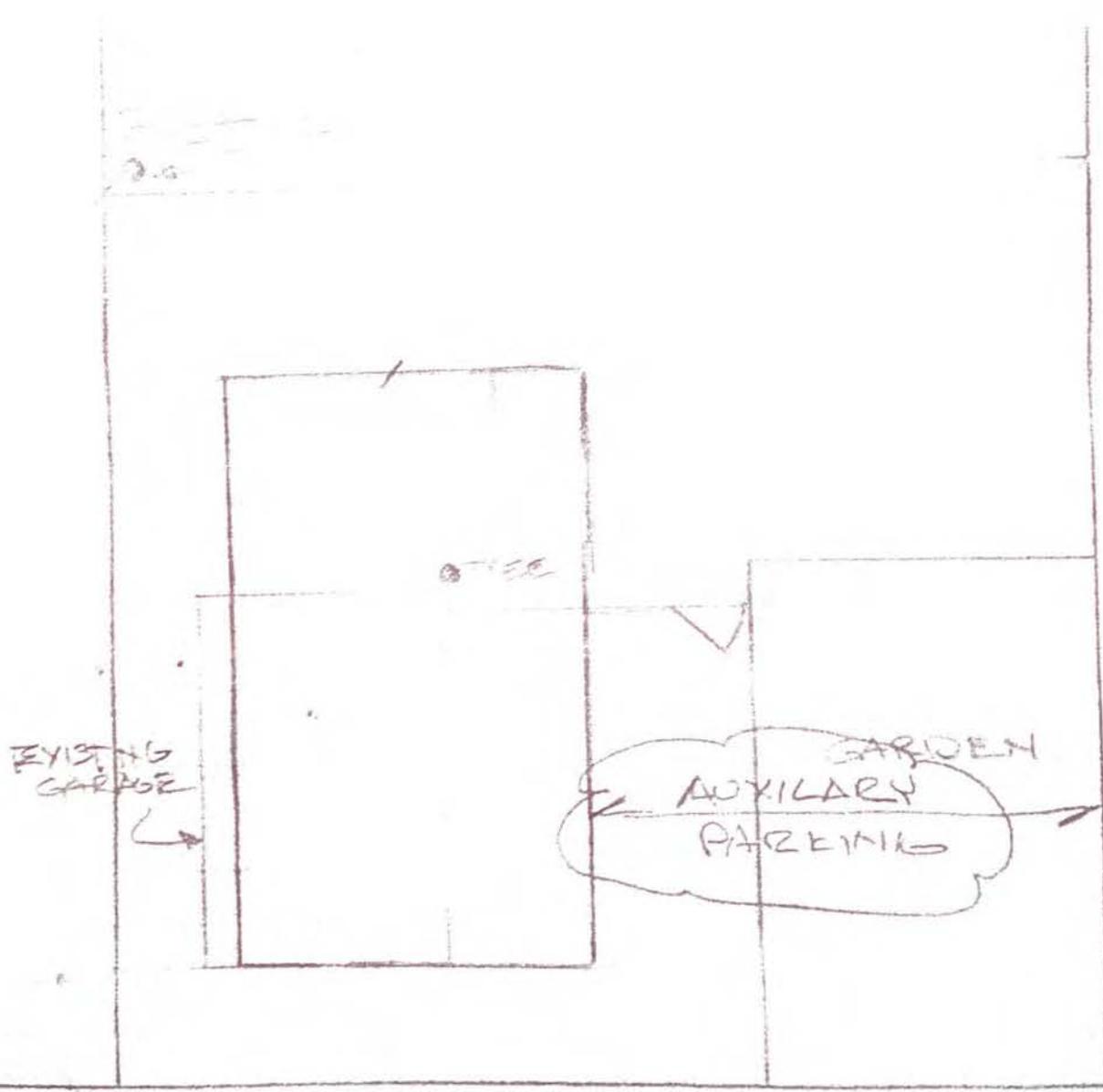
6. Will your project contribute to a decline in neighboring property values? (A "yes" answer requires explanation.) No

B. PROPERTY OWNER LIST

Submit a list of names with mailing addresses of property owners within **150 feet** of the proposed use (**public street right-of-ways are not counted as part of the 150 feet**). The owner of record must appear exactly as on the official records of Flathead County. This list is obtained from the Flathead County GIS Department.

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Submit a site plan, either drawn to scale or with dimensions added, which shows in detail your proposed use, your property lines, existing and proposed buildings, traffic circulation, driveways, parking, landscaping, fencing, signage, and any unusual topographic features such as slopes, drainage, ridges, etc. Where new buildings or additions are proposed, building sketches and elevations shall be submitted.



BENNETT GARAGE ADDITION

325 LUPFER AVENUE - WHITEFISH, MONTANA

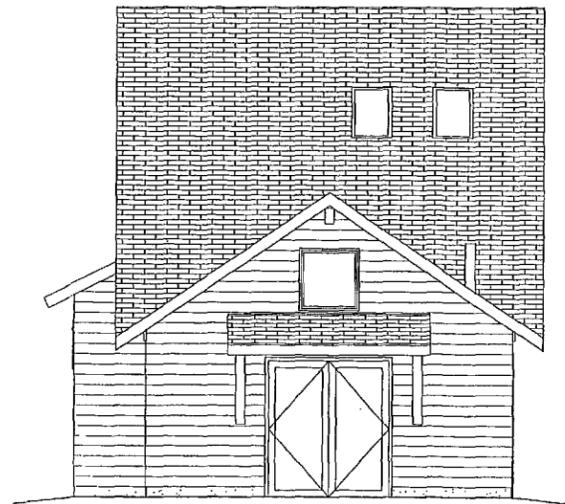
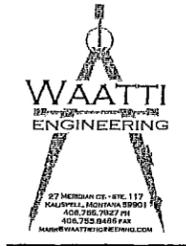


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- A2.0 - EXTERIOR ELEVATIONS
- S0.1 - GENERAL STRUCTURAL NOTES
- S0.2 - STRUCTURAL DETAILS
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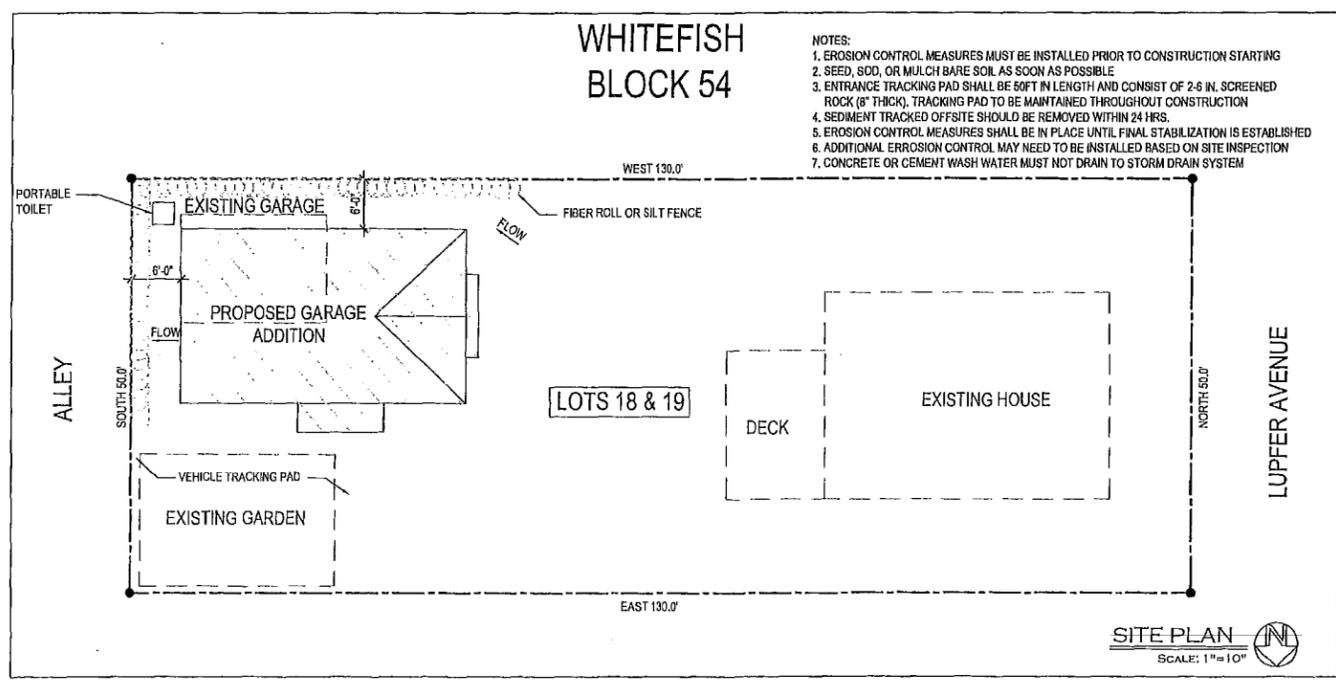
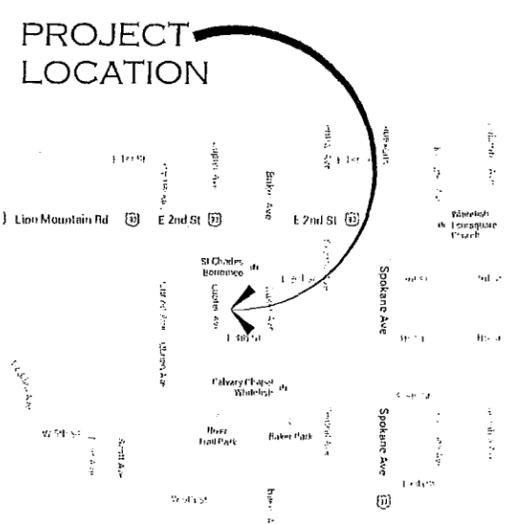
BENNETT GARAGE ADDITION
 325 LUPFER AVENUE - WHITEFISH, MT

SHEET TITLE:
 TITLE SHEET
 & SITE PLAN

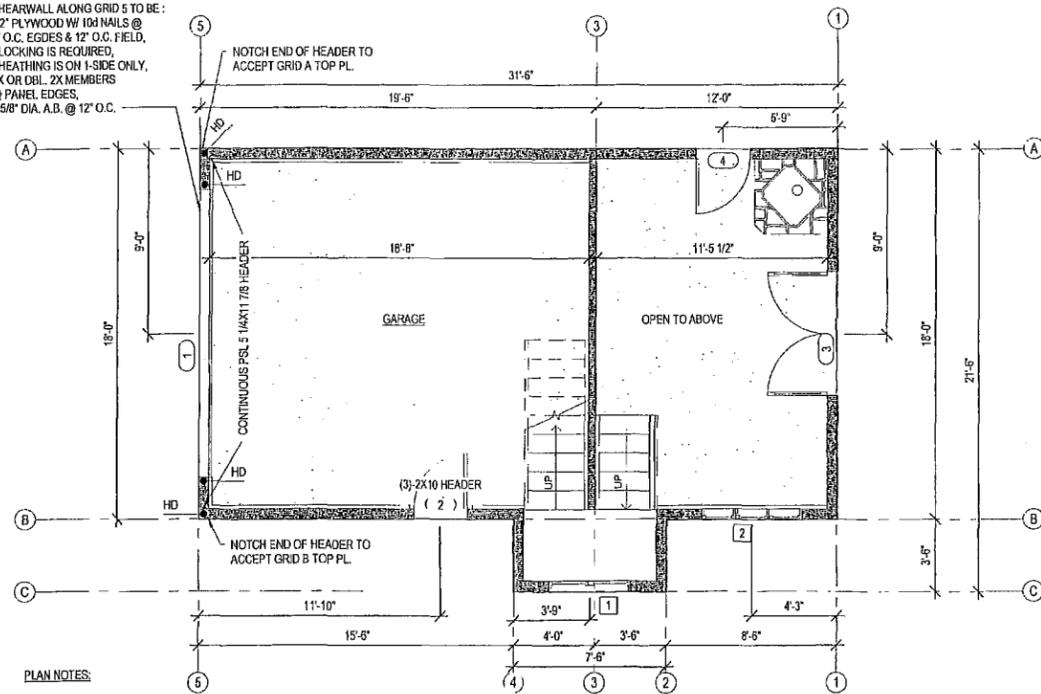
DRAWN BY: ZPS
 CHECKED BY: MDW
 DATE: SEPT. 10, 2013

SHEET #:
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1.0
 FOR CONSTRUCTION

- GENERAL SPECIFICATIONS**
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 2. COMPLY WITH ALL APPLICABLE CODES, ORDINANCES & INSPECTIONS WHETHER THESE REQUIREMENTS ARE SPECIFICALLY NOTED ON PLANS OR NOT.
 3. CONTRACTOR TO PROVIDE ALL NECESSARY SHORING, GUYING, OR BRACING NECESSARY TO HOLD STRUCTURAL ELEMENTS IN PLACE IN ORDER TO AVOID ANY UNDUE STRESSES DURING CONSTRUCTION.
 4. ALL GLASS IN HAZARDOUS AREA & ALL GLASS WITHIN 18" OF FLOOR OR 40" OF JAMBS SHALL BE TEMPERED, LAMINATED, OR SAFETY GLASS.
 5. SHOWER ENCLOSURES TO BE SHOWER ROD, TEMPERED GLASS, OR AN APPROVED EQUAL.
 6. PROVIDE WINDOW AREAS EQUAL TO 1/8TH OF FLOOR AREA
 7. PROVIDE OPERABLE WINDOW OR DOOR AREA EQUAL TO 1/8TH OF FLOOR AREA.
 8. IN ALL SLEEPING AREAS PROVIDE OPERABLE WINDOW OR DOOR AREA EQUAL TO 5.7 SQUARE FEET DIRECTLY TO THE EXTERIOR OF BUILDING. (5.0 Sq. Ft. @ GROUND FLOOR)
 9. MINIMUM NET OPERABLE AREA OF EGRESS WINDOWS SHALL BE: WIDTH-20" HEIGHT-24" (DEDUCT 2" FROM NOMINAL)
 10. ADDRESS MARKING
A HOUSE NUMBER SHALL BE DISPLAYED IN A PROMINENT MANNER SO THAT IT IS REASONABLY VISIBLE TO ENABLE EMERGENCY VEHICLES TO LOCATE THE RESIDENCE.



SHEARWALL ALONG GRID 5 TO BE:
 1/2" PLYWOOD W/ 10d NAILS @
 2" O.C. EDGES & 12" O.C. FIELD.
 BLOCKING IS REQUIRED.
 SHEATHING IS ON 1-SIDE ONLY.
 3X OR DBL. 2X MEMBERS
 @ PANEL EDGES,
 & 5/8" DIA. A.B. @ 12" O.C.



PLAN NOTES:

1. INTERIOR DIMENSIONS ARE FROM SHEET ROCK TO SHEET ROCK UNLESS OTHERWISE INDICATED. INTERIOR BEARING & NON-BEARING WALLS ARE MEASURED AT 4 1/2". EXTERIOR BEARING WALLS ARE MEASURED AT 6 1/2".
2. ALL HEADERS TO BE (2)-2X10, U.N.O.
3. MAIN FLOOR SQ. FOOTAGE: 694 SQ. FT.

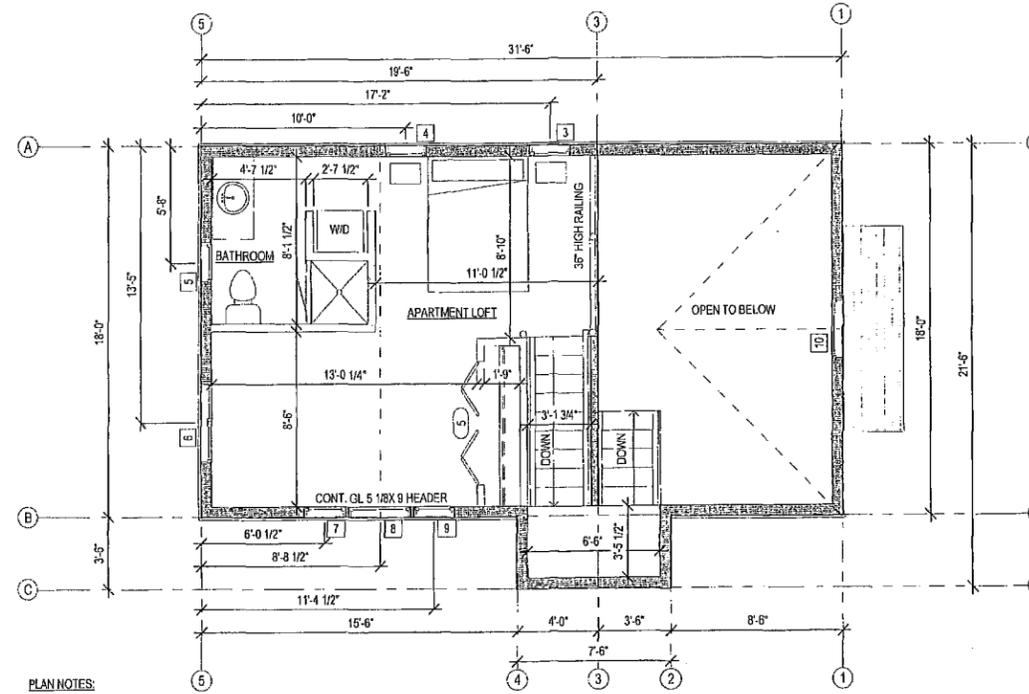
INDICATES SHEARWALL TO BE: 1/2" PLYWOOD W/ 8d NAILS @ 6" O.C. EDGES & 12" O.C. FIELD. BLOCKING IS REQUIRED. SHEATHING IS ON 1-SIDE ONLY, 2X MEMBERS @ PANEL EDGES, & 5/8" DIA. A.B. @ 32" O.C., U.N.O.

INDICATES SIMPSON "HDUB" HOLDOWN W/ (20)-SDS 1/4"X2 1/2" SCREWS, 7/8" DIA. CAST-IN-PLACE A.B. 24" EMBED, & 3" MIN. FASTENING MEMBER WIDTH

1 MAIN FLOOR PLAN
 1/4" = 1'-0"

Window Schedule			
Mark	Comments	Width	Height
1	CASEMENT	4'-0"	2'-0"
2	CASEMENT	5'-0"	1'-8"
3	CASEMENT	2'-0"	3'-8"
4	CASEMENT	2'-0"	3'-8"
5	CASEMENT	2'-0"	4'-0"
6	CASEMENT	4'-0"	4'-0"
7	CASEMENT	2'-0"	4'-0"
8	CASEMENT	3'-0"	4'-0"
9	CASEMENT	2'-0"	4'-0"
10	FIXED	3'-0"	3'-0"

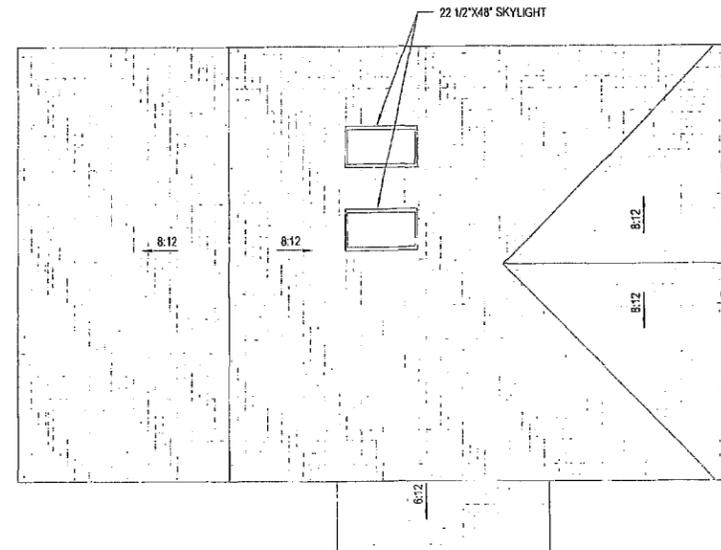
Door Schedule			
Mark	Width	Height	Comments
1	14'-0"	7'-0"	OVERHEAD
2	2'-8"	6'-8"	EXTERIOR RIGHT-HAND SWING-IN
3	6'-0"	6'-8"	DBL. EXTERIOR GLASS SWING-IN
4	2'-8"	6'-8"	EXTERIOR RIGHT-HAND HALF-LIGHT SWING-IN
5	6'-0"	6'-8"	BIFOLD



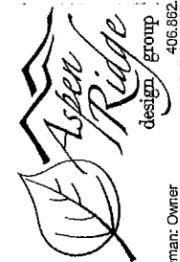
PLAN NOTES:

1. SEE A1.0 PLAN NOTES
2. ALL HEADERS TO BE (2)-2X10, U.N.O.
3. UPPER FLOOR SQ. FOOTAGE: 351 SQ. FT.

2 UPPER FLOOR PLAN
 1/4" = 1'-0"



3 ROOF DRAINAGE PLAN
 1/4" = 1'-0"



BENNETT
 GARAGE-ADDITION

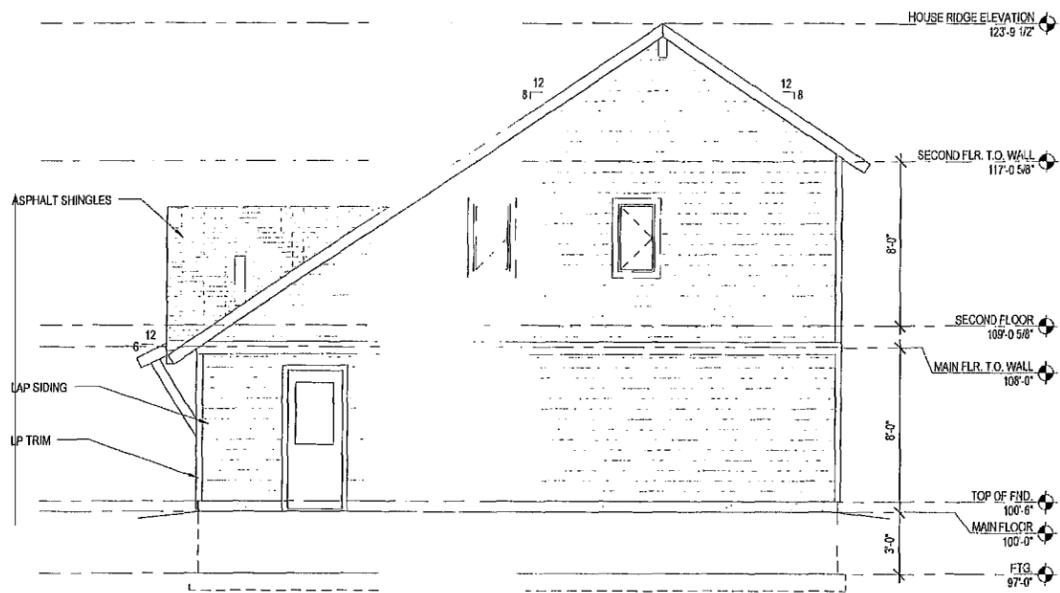
325 LUPPER AVENUE - WHITEFISH, MT

SHEET TITLE:
 MAIN FLR. PLAN,
 UPPER FLR. PLAN,
 & ROOF DRAINAGE
 PLAN

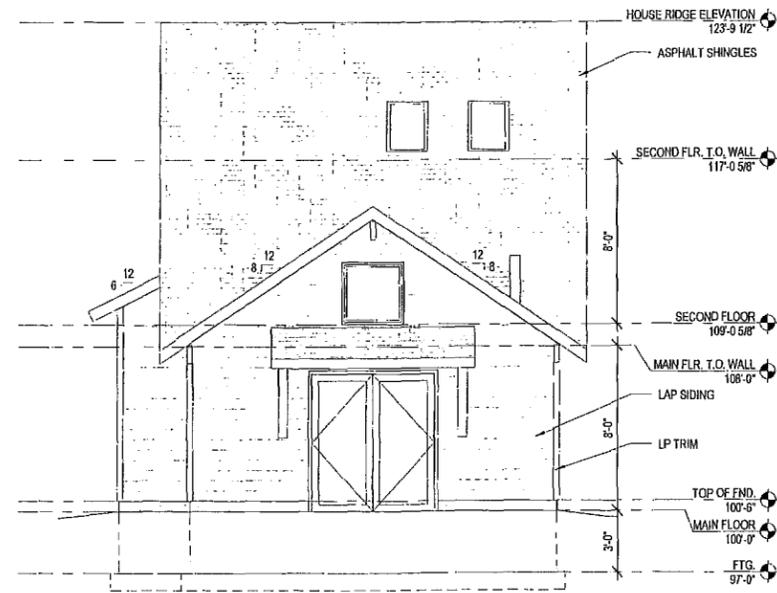
DRAWN BY: ZPS
 CHECKED BY: MDW
 DATE: SEPT. 10, 2013

SHEET #:

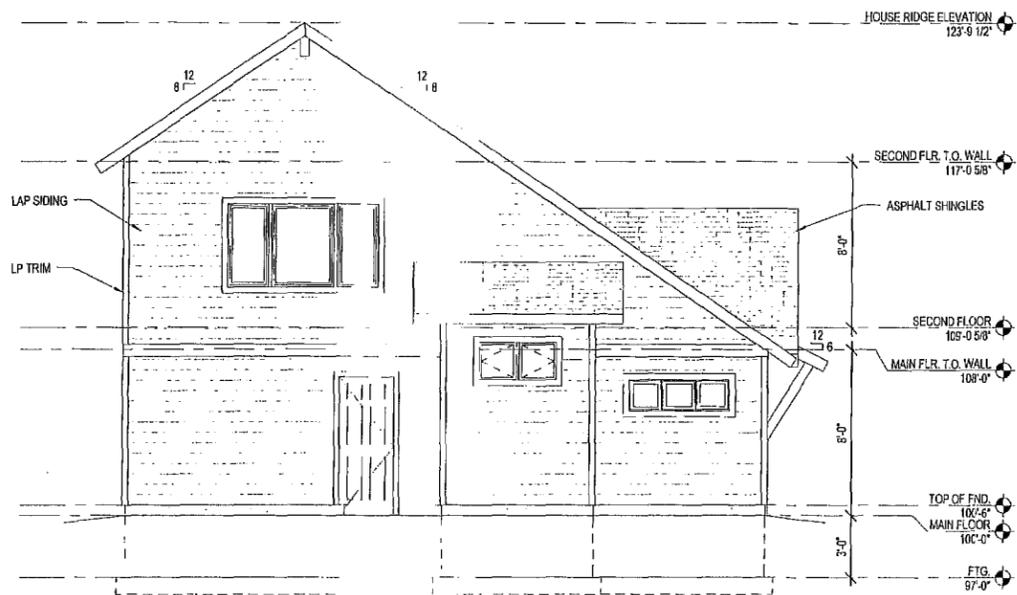
A
 1.0
 FOR CONSTRUCTION



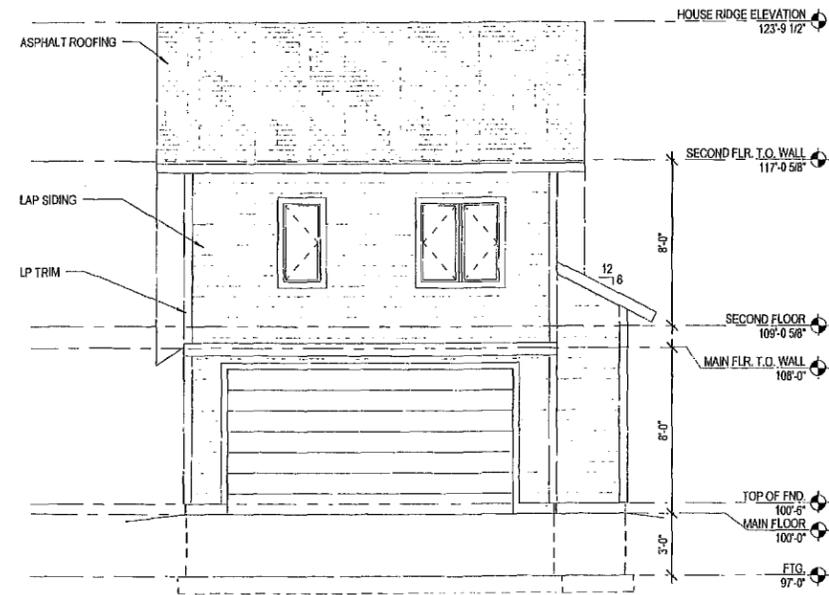
1 SOUTH ELEVATION
1/4" = 1'-0"



3 WEST ELEVATION
1/4" = 1'-0"



2 NORTH ELEVATION
1/4" = 1'-0"



4 EAST ELEVATION
1/4" = 1'-0"



Jeff Lyman, Owner
jeff@aspenridge.com
406.862.3755
406.260.0069
105A Wisconsin Ave. - Whitefish, MT 59937



BENNETT
GARAGE-ADDITION

325 LUPFER AVENUE - WHITEFISH, MT

SHEET TITLE:
EXTERIOR
ELEVATIONS

DRAWN BY: ZPS
CHECKED BY: MDW
DATE: SEPT. 10, 2013

SHEET #:

A
2.0
FOR CONSTRUCTION

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ORDINANCE NO. 13-___

An Ordinance of the City Council of the City of Whitefish, Montana, for a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision.

WHEREAS, in 2006, the Whitefish City Council approved the preliminary plat for Phase 3 of the Great Northern Heights Subdivision, for 21 single-family homes. The applicant, Hilltop Partners, LLC received an extension in 2008, but in 2010 the preliminary plat expired; and

WHEREAS, Phase 3 is located within the larger Great Northern Heights neighborhood that includes 49 single-family lots and 22 townhouse sublots (planned unit development overlay); and

WHEREAS, an overall park master plan was adopted by the Whitefish City Council on November 1, 2004, for the required parkland dedication for all phases of Great Northern Heights neighborhood; and

WHEREAS, in 2012, the Whitefish City Council approved an amendment to the 2004 PUD for Phase 1B for the townhouse lots to allow for 50% lot coverage for single-story buildings on Lots T-1 through T-8, but limited two-story buildings to the standard 35% lot coverage, subject to the original conditions with three additional conditions of approval; and

WHEREAS, the Whitefish Planning and Building Department received an application from Hilltop Partners, LLC for a preliminary plat and a planned unit development for 42 lots (21 townhouses) on 6.125 acres located to the west of the Great Northern Heights neighborhood off Great Northern Drive and Brimstone Drive, but that application was withdrawn in July 2013 in order to provide a revised plan; and

WHEREAS, Hilltop Partners LLC revised its proposal from 42 lots (21 townhouses) to 32 lots (20 single-family lots and 12 townhouse lots), and the Whitefish Planning staff prepared Staff Report WPP 13-01/WPUD 13-03 dated September 12, 2013; and

WHEREAS, at a lawfully noticed public hearing held on September 19, 2013, the Whitefish City-County Planning Board received Staff Report WPP 13-01/WPUD 13-03, reviewed the applicant's revised proposal for 32 lots (20 single-family lots and 12 townhouse lots), considered public input, and thereafter recommended denial of the project; and

WHEREAS, the applicant's revised proposal for 32 lots was scheduled before the Whitefish City Council on October 21, 2013. The applicant pulled its proposal from the meeting agenda to further revise the project for resubmission to the Whitefish City-County Planning Board; and

WHEREAS, following receipt of the applicant's revised proposal for a 24-lot subdivision (single-family), with a PUD overlay to accommodate the design of the project due to the wetland buffer under the Water Quality Protection Regulations, WCC §11-3-29B(9), Planning Staff revised their analysis to include the revised proposal in Staff Report WPP 13-01/WPUD 13-03, now dated November 14, 2013; and

WHEREAS, at a lawfully noticed public hearing on November 21, 2012, the Whitefish City-County Planning Board considered the applicant's request, the revised

November 14, 2013 Staff Report WPP 13-01/WPUD 13-03, invited public input, and thereafter recommended approval of the preliminary plat and planned unit development for Phase 3 of the Great Northern Heights Subdivision, and deviation from the zoning standards as requested by Hilltop Partners LLC, subject to the conditions as shown on Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, at a lawfully noticed public hearing on December 2, 2013, the Whitefish City Council received an oral report and the written Staff Report WPP 13-01/ WPUD 13-03, considered public input, discussed the requested preliminary plat approval, planned unit development overlay, subject to the conditions of approval, Exhibit "A", and proposed zoning standards deviation; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the preliminary plat and planned unit development, subject to the conditions of approval, Exhibit "A", and approve the deviation from the zoning standards; and

WHEREAS, the proposed PUD amendment, subject to the conditions of approval, will be compatible with and conform to the City-County Growth Policy and the City zoning regulations contained in Title 11 of the Whitefish City Code and will not adversely affect the appropriate development of the community.

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: The City Council hereby approves and adopts as Findings of Fact Staff Report WPP 13-01/WPUD 13-03.

Section 3: The City Council hereby approves the preliminary plat and planned unit development, for Phase 3 of the Great Northern Heights Subdivision, subject to the conditions of approval as shown on Exhibit "A," attached hereto and incorporated herein by reference, and deviation from the zoning standards.

Section 4: The Zoning Administrator is authorized and directed to amend the official zoning map to carry out the terms of this Ordinance.

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, ON THIS _____ DAY OF _____, 2013.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

Exhibit "A"
Conditions of Approval

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, 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, 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 design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)
4. Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)
5. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees.
 - Construction office siting, staging areas for material and vehicles, and employee parking.

- Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
- Detours of vehicular, pedestrian, and bicycle traffic as necessary.
- Notation of any street closures or need to work in public right-of-way. (City Engineering Standards, 2009)

~~6. A road extension of Great Northern Drive shall be fully constructed to western edge of the property and shall be signed 'Future Street Connection'. (Finding 4; Subdivision Regulations, §12-4-15H)~~

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

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

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

~~10.9.~~ The design of the stormpond shall be such that it is an integral part of the open space for the subdivision. This shall include a landscaping plan to be reviewed and approved by the Planning Department. (Staff Report, Finding 3)

~~11.10.~~ A report shall be submitted with the final buffer averaging details. This report shall indicate the overall area required, the amount being reduce and a 'to scale' drawing showing the minimum width of no less than 50-feet. (Staff Report, Finding 3; Zoning Regulations §11-3-29C)

~~12.11.~~ The final wetland buffer restoration plan shall be submitted to Planning and Public Works Departments for review and approval. A financial guarantee of 125% of the restoration plant materials and installation to be held for the 5-year monitoring period and shall be held by the city. (Staff Report, Findings 3; Zoning Regulations §11-7-10E)

~~13.12.~~ A split rail fence or some other delineation, with the exception of chain link, along the restored wetland buffer shall be installed and maintained for the life of the project. The proposed delineation shall be reviewed and approved by the Planning Department prior to its installation. (Staff Report, Finding 3)

~~14.13.~~ A uniform fencing system, no chain link, is required on the west boundary of Phase 3. This fence shall be reviewed and approved by the Planning Department prior to its installation. (Staff Report, Finding 5)

~~15.14.~~ All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds,

as described by Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association. (Subdivision Regulations §12-4-30)

~~16-15.~~ The following notes shall be placed on the face of the plat:

- House numbers shall be located in a clearly visible location.
- The neighboring agricultural use pre-dates the Great Northern Heights development and these agricultural uses are completely lawful. Trespassing without landowner consent, harassing livestock and destruction of property such as fences are illegal and can be enforced by the appropriate law enforcement agencies.

(Subdivision Regulations §12-4-6; Staff Report Finding 5; City Engineering Standards, 2009)

~~17-16.~~ A 10-foot utility easement shall be located along the front of the lots. (Subdivision Regulations §12-4-29)

~~18-17.~~ A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)

~~19-18.~~ Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for Great Northern Heights, Phase 3 Subdivision Homeowners' Association (HOA) providing for:

- Long-term maintenance of the open spaces;
- Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
- Long-term maintenance plan for drainage and storm water management facilities.

(Subdivision Regulations §12-4-30; Staff Report Finding 3; City Engineering Standards, 2009)

19. The Great Northern Heights Phase 3 preliminary plat and planned unit development is approved for three years from Council action. (Subdivision Regulations, §12-3-8)

20. The number of lots on the west side of Brimstone Drive shall not exceed 12.

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



November 26, 2013

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

RE: Great Northern Heights, Phase 3 Preliminary Plat/Planned Unit Development:
WPP 13-01/WPUD 13-03

Honorable Mayor and Council:

Summary of Requested Action: This is a request by Sands Surveying on behalf of Hilltop Partners for a 24-lot preliminary plat called Great Northern Heights, phase 3. The property is located to the west of the Great Northern Heights neighborhood between Great Northern Drive and Brimstone Drive and is 6.125 acres.

Background: On March 6, 2006, Hilltop Partners received preliminary plat approval for Great Northern Heights, Phase 3 for 21 single family homes. The applicant received an extension in 2008, but in 2010, the preliminary plat expired.

In July of this year, the applicant was scheduled for a public hearing before the Planning Board, but withdrew their application for 42 lots (21 townhouses) in order to provide a revised plan. The revised plan was reviewed by the Planning Board in September, which consisted of 32-lots (20 single family lots and 12 townhouse lots). The Planning Board recommended denial on the project. This matter was scheduled before the City Council in October; however, the applicant pulled the request in order to revise the project and bring it back to the Planning Board.

Planning Board Action: The Whitefish City-County Planning Board met on November 21, 2013 and considered the requested preliminary plat. Following the public hearing, the Planning Board voted unanimously and recommended approval of the above referenced planned unit development/preliminary plat and adopted the staff report as findings of fact (Anderson and Vail were absent, Phillips recused himself).

The Planning Board made two changes to the conditions. They deleted condition number 6 requiring an extension of a public right-of-way to the west and added the following condition:

20. The number of lots on the west side of Brimstone Drive shall not exceed twelve.

Planning & Building Department Recommendation: Staff recommended approval of the above referenced rezone.

Public Hearing: Neighbors to the project spoke at the public hearing. Comments included: unacceptable lot sizes, confusion about how this phase and its HOA will interface with the existing HOA, change in the character of the neighborhood, loss in value of their homes, safety, traffic, concerned with the quality of the proposed homes, impacts to the conservation district to the west, and maintenance of the wetland buffer. The draft minutes for this item are attached as part of this packet.

This item has been placed on the agenda for your regularly scheduled meeting on December 2, 2013. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,



Wendy Compton-Ring, AICP
Senior Planner

Att: Exhibit A, Planning Board Recommended Conditions of Approval, 11-21-13
Draft Minutes of 11-21-13 Planning Board Meeting
July Proposal – withdrawn by applicant
September Proposal – denied by Planning Board on 9/19/13

Exhibits from 11-21-13 Staff Packet

1. Staff Report – WPP 13-01/WPUD 13-03, 11-14-13
2. Element Review, 6-10-13
3. Sufficiency Review, 6-20-13
4. Adjacent Landowner Notice, 10-25-13
5. Advisory Agency Notice, 10-25-13
6. Public Comment, Cheryl Watkins, 10-28-13
7. Public Comment, Craig Sanford, 10-28-13
8. Public Comment, John & Nancy Gerbozy, 10-28-13
9. Public Comment, Stewart Cardon, 10-29-13
10. Public Comment, Roger & Susan Sherman, 11-1-13
11. Public Comment, Craig Sanford, 11-3-13
12. Public Comment, John & Nancy Gerbozy, 11-3-13
13. Public Comment, Tim Salt, 11-7-13
14. Public Comment, Chad Phillips, 11-8-13
15. Public Comment, Sue Robison, 11-11-13

The following were submitted by the applicant:

16. Application for Preliminary Plat and Planned Unit Development, 10-30-13

The following were submitted after Planning Board Packets went out:

17. Letter, applicant, 11-20-13

18. Public Comment, Bruce McEvoy, 11-20-13

19. Public Comment, Toni and Kimberly Hale, 11-21-13

c: w/att Necile Lorang, City Clerk

c: w/o att Sands Surveying, 2 Village Loop Kalispell, MT 59901
Hilltop Partners llc Rob Pero 1290 Birch Point Dr Whitefish, MT 59937

Exhibit A
Great Northern Heights, Phase 3
WPP 13-01/WPUD 13-04
Whitefish City-County Planning Board
Recommended Conditions of Approval
November 21, 2013

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(Subdivision Regulations §12-4-30; Staff Report Finding 3; City Engineering Standards, 2009)

19. The Great Northern Heights Phase 3 preliminary plat and planned unit development is approved for three years from Council action (Subdivision Regulations, §12-3-8)

| 20. The number of lots on the west wide of Brimstone Drive shall not exceed twelve.

that when the applicants come in for their building permit review. Phillips asked how a 6 foot setback was determined and Planner Minnich said the 6 foot setback is in the zoning regulations and is allowed if the accessory apartment is less than 600 square feet. Phillips said sometimes people have to pull over when they meet another vehicle on the alley and he was concerned that this wouldn't allow that to happen.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

PUBLIC HEARING

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

MOTION

Gunderson moved and Phillips seconded to adopt the findings of fact within staff report WCUP 13-14 and recommend that the City Council approve the Bennett conditional use permit subject to 7 conditions, as recommended by staff.

BOARD DISCUSSION

Gunderson said he also wonders how storm water can be held on site. It is a boiler plate recommendation. Gunderson asked if they ever determined if the accessory apartment applications could be an administrative decision. Planner Compton-Ring said it is on their to-do list. It would require a zoning regulation change. She said they will bring something to the board in the future.

VOTE

The motion passed unanimously on a vote by acclamation. (Scheduled for City Council on December 2, 2013.)

**HILLTOP PARTNERS
PRELIMINARY PLAT AND
PLANNED UNIT
DEVELOPMENT REQUEST**

Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots. The request also includes a Planned Unit Development overlay in order to have smaller single family lots. The property is undeveloped and is zoned WR-1 (One-Family Residential District). The property is located between Great Northern and Brimstone Drives.

**STAFF REPORT WPP 13-
01/WPUD 13-03**

Planner Compton-Ring reported on a request by Hilltop Partners llc for a Preliminary Plat and a Planned Unit Development for 24-single family lots on 6.125 acres located to the west of the Great Northern Heights neighborhood off Great Northern Drive and Brimstone Drive. This is the third version of this subdivision the board has reviewed.

In July, the applicant was scheduled for a public hearing before the Planning Board, but withdrew their application for 42 lots (21 townhouses) in order to provide a revised plan. The revised plan was reviewed by the Planning Board in September, which consisted of 32-lots (20 single family lots and 12 townhouse lots). The Planning Board recommended denial on the project. This matter was scheduled before the City Council in October; however, the

applicant pulled the request in order to revise the project and bring it back to the Planning Board.

Phase 3 is located within the larger Great Northern Heights neighborhood that includes 49 single family lots and 22 townhouse sublots (PUD overlay). An overall park master plan was approved by the Whitefish City Council in 2004 for the required parkland dedication for all the phases of this neighborhood. In 2012, the Council amended the PUD overlay for the townhouse lots (Phase 1B – along the south boundary) to allow increased lot coverage from 35% to 50%.

The applicant is proposing a 24-lot subdivision (single family) on a total of 6.125 acres. Gross density of the subdivision is 3.92 dwelling units per acre. This phase no longer contains townhouses. The street within the project is a standard public street within a 60-foot right-of-way with sidewalks, street trees and boulevards on both sides. This phase of Great Northern Heights will be independent of the other phases and have its own Homeowners' Association. Phase 3 will be responsible for maintaining the open space areas and storm water facilities within Phase 3.

The applicant is no longer proposing a 60-foot public right-of-way to the west in this phase. This future right-of-way was intended to facilitate a future roadway connection to the west and onto Karrow Avenue. This proposed right-of-way was originally proposed in the vicinity of Lot 1.

This particular Phase is also proposing open space in the form of the wetland buffer and storm water facilities. The wetland buffer/open space is 1.458 acres.

The site is undeveloped and is bounded by pasture land to the west and the drainage/wetland area to the north and west.

In addition to the subdivision, the applicant is proposing a Planned Unit Development (PUD) to overlay all of Phase 3. The PUD is no longer needed for a density bonus with the revised plan, but rather to accommodate the design of the project due to the wetland buffer. The Water Quality Protection regulations permit one to transfer 100% of the density to upland areas, and the lot size, setbacks and lot coverage may be modified to accommodate the density transfer.

No subdivision variances are being requested. A zoning deviation is being requested through the Planned Unit Development and Water Quality Protection regulations to reduce the lot sizes and widths

Staff noticed adjacent land owners, advisory agencies and the Whitefish Pilot and posted a sign on the property. Twelve letters were

received and staff summarized the concerns.

The applicant is proposing to reduce the buffer in exchange for a 25% reduction and they are proposing to do buffer averaging.

The previous plans provided an extension of Great Northern Drive to the western property line to provide a future extension of the road to Karrow Avenue. The City would still like to see with this proposal. The applicant has proposed to eliminate this connection and identifies other connections to the south of this phase and an extension of JP Road to the west. The applicant also points out that the property to the west is currently held within a conservation easement and development of this lot is unlikely; therefore, a road connection is unnecessary. Staff has included a condition of approval requiring this connection. This would result in the loss of a lot or two in order to accommodate a 60-foot right-of-way.

The applicant is proposing to set aside 23.8% of the site (1.458 acres) in open space. The existing parkland within the neighborhood was approved by the Council in 2004 to serve the entire neighborhood.

The subdivision has WR-1 zoning. The zoning permits up to 4 dwelling units per acre (DUA) and the applicant is proposing an overall density of 3.92 DUA well within the acceptable density range for the zoning district. This is a reduction from the original plan of 6.86 DUA. The proposed subdivision is within the acceptable density range for the zoning district.

The Water Quality Protection Regulations permit one to transfer 100% of the density out of the required water quality protection area to the upland areas and modify lot size, setbacks and lot coverage provided the following four standards can be met:

- a. The increased density does not significantly harm the water quality protection areas on site or on adjacent properties;

The project is meeting all the required buffer standards and buffer reduction option available to property owners. The buffer enhancement plan will further protect water quality as the project is developed. In addition, all city storm water standards will continue to be required, as they are for all subdivision projects.

- b. The increased density does not significantly harm wildlife habitat, including migration corridors;

As described above, the area is not mapped as important winter range for big game nor is the area mapped by the Montana Natural Heritage Program as an area containing plant or animal species of

concern. However, it is likely that deer and other animals use the site. The project is preserving the wetland area, which has grown since the earlier preliminary plat application in 2004, and they are enhancing the wetland buffer area creating a larger area for animals to use and move through the neighborhood.

- c. The increased density does not significantly harm the character and qualities of the existing neighborhood; and

This has been the most significant concern from the neighbors as it has gone through its previous iterations, including this most current proposal. The June version was 42 townhouse lots (21 townhouses), the September version was 20 single family lots and 12 townhouse lots (6 townhouses) and this most recent version is 24 single family lots. While the neighbors point to the 2006 preliminary plat of 21-lots as the appropriate density (3.43 dwelling units per acre) versus the current proposal of 24-lots (3.92 dwelling units per acre), conditions and standards have changed in this neighborhood. In 2006, there were no Water Quality buffers and setbacks and the storm water standards were less rigorous than they are currently. The gross density of the project meets the zoning regulations, but due to the requirement for a Water Quality buffer and setback, it necessitates smaller lot sizes.

The density of Phase 3A (the townhouse area to the south) is 5.12 dwelling units per acre and the density of Phases 1 is 3.28 dwelling units per acre and Phase 2 is 2.2 dwelling units per acre. Therefore the proposed density of 3.92 dwelling units per acre is a good transition from higher density townhouses to single family detached.

Concerns have also been raised regarding the small lot widths that may result in a 'garage-forward design'. The City doesn't permit this design for multi-family buildings through the Architectural Review Standards, but the city does not regulate this design for detached single family homes. The City doesn't regulate the design of any single family homes. Some subdivisions have proposed to place detached garages to the rear of lots and have either individual or shared driveways – such as Cougar Ridge and Woodside Meadows. Some subdivisions, such as Creekwood, require the garage to be setback from the front of the home. Attached to the application are photos of previously constructed homes that the developer intends to construct to maintain a pleasing streetscape and both options have been included. The Planning Board could condition the project to employ a combination of these options to reduce/eliminate the garage dominate development and create a pedestrian friendly streetscape.

- d. Where applicable, the increased density makes efficient use of infill property.

The project is nearly surrounded by urban-scale development and is served by public sewer and water. While on the edge of town, the property is, for all intent and purpose, an infill project. Infill is a priority for the city's Growth Policy.

With the imposition of conditions, the subdivision complies with the Whitefish Subdivision Regulations. Staff has reviewed the proposal for compliance with the Montana Subdivision and Platting Act and found that the requirements have been met. In analyzing the zoning deviation, as described above, the lots sizes have been reduced in order to place the density on the upland portion of the project, as permitted by the Water Quality Protection regulations. Staff finds that all the criteria in the WQP are met to allow for the reduction of the lot sizes/widths. The developer has provided samples of how the homes will be constructed in order to present a pleasing streetscape and not result in a garage forward designed neighborhood. Staff is satisfied with this approach.

Planner Compton-Ring reviewed the conditions for approval and noted condition #6, "A road extension of Great Northern Drive shall be fully constructed to western edge of the property and shall be signed 'Future Street Connection'."

Staff recommends approval subject to 20 conditions.

Chad Phillips recused himself.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

Eric Mulcahy, Sands Surveying, said he was representing the applicant. He said Michael Morton, one of the Hilltop partners, was also here. He thanked staff for their review and allowing them to bring this back to the Planning Board. He said he and Rob Pero got together and revised the design to meet the intent of what was originally approved with the single family residential intention. Because of the Water Quality Protection (WQP) regulations and revised regulations they have had to re-design the project around the wetland and its buffer. The original plan of the WQP regulations was not to penalize the development community with the buffer, so they were allowed to shift density from the wetland area up into other areas of the property. He brought the map of the approval of Phase 3 so they could see what was originally proposed. There were 21 homes and then a row of townhomes to the south in another phase. He said in 2008 the market disappeared and instead of coming in for final plat Hilltop Partners let the preliminary plat expire. He said the road connection to Karrow Avenue was not part of the original approval. He said there is a big conservation

easement and they would prefer not to make an extension to the west.

The new plan is all single family and the roads are now City standard public streets with 28-foot cross sections just like Phases 1 and 2 of Great Northern Heights. They have had to change their density to work with the increased buffer setbacks required by the WQP. He said the neighbors had questions about the HOA and maintenance of the open space. He said these neighbors will have architectural requirements just like the previous subdivision. These 24 lots will contribute their share to the CC&R's for HOA maintenance of the open space.

Meckel asked about the conservation easement to the west. Mulcahy said he was on staff when that conservation easement was created, but he doesn't know if the documentation carried through. The courts have ruled that conservation easements are intended to be forever, but realistically they can be re-visited in 30-40 years and perhaps the City street could be extended.

Michael Morton, 101 Lakeside Boulevard, said he is a partner in Hilltop Partners. He wishes they could have the 21 lots they originally were approved for, but he said they've had to compromise because of the new WQP regulations. He said 24 lots will give them enough to defer the cost of the land and infrastructure, but there is no way they could build 10,000 square foot lots and have a viable project.

John Gerbozy, 150 Granite Drive, said they own lots 19 and 39 in Phases 1 and 2. He said they have all been impacted by the economy. He said the proposed lot sizes are not acceptable. He would prefer to lose the road extension as a trade off for larger lots. He is pleased that Hilltop Partners has changed this back to a single family home design. He prefers larger lot sizes. He asked the Board to keep the requirement of the WR-1 zoning in place, which matches what they purchased. He asked that Phase 3 be under its own HOA. He thought it would be a nightmare to combine them. He said the staff report says the applicant reduced the lot size, but he thinks it should require a variance so the public would have proof of the Planning Board and the Council's approval or denial. He asked them to establish a requirement for parking on one side of the street so vehicles could pass and have good visibility.

Roger Sherman, 280 Brimstone, Great Northern Heights, said he has submitted a letter. He said he doesn't understand the logic of making the lots smaller. He thought they could have an equal profit for larger lots. He is in favor of them making a profit. He said the average lot size will be 5,300 square feet and it would probably have to have a two-story home. He is on the existing HOA Board for

Phase 1 and 2 and doesn't understand how they think they could combine with Phase 3. He said on the south side of the development Mr. Pero has an existing PUD for 14 townhouses and that is going to add a lot more traffic density onto Highway 93 S.

Tyler Frank, 215 Vista Drive in Great Northern Heights, said he has concerns about the value of his property with the proposed density of Phase 3. He is concerned about the traffic and safety for his children. He asked them to reduce the density for Phase 3. He said 10,000 square foot lots are ideal, in his opinion. He said when they invested in Phase 1 and Phase 2 they knew what Phase 3 was supposed to be. To change that causes them great concern. He said they want to see the same quality of homes in this subdivision as they have in Phases 1 and 2.

Susan Garca, 101 Eagle Ridge Circle, said she owns in Phase 1 and bought as an investment with an understanding of what Phase 3 would look like. She said she has tried to sell her property for 5 years and is taking a large loss. She isn't sure how many lots are still for sale in Phase 1 and 2. She wondered about the price of lots in Phase 3. She said taxes go up, but the property value has gone down considerably. She asked them to consider all of the property owners in this area.

Chad Phillips, 199 Vista Drive, an owner in Phase 1, asked Tom Cowan about the wetland area. He also wanted to know how much more run-off the neighbors to the west will receive on the conservation easement.

Tom Cowan, Carver Engineering, said they have worked on this project since the early 1990's. He said the increase to the wetland area is due to storm water runoff from the highway when they built the intersection through the neighbor's property to the south. That is why they are putting in extra culverts to the south. He said this is a flat wetland area and the expansion occurred prior to the major development of Phases 1 and 2. Increased vegetation has also decreased the flow. He said originally there was a 30-foot buffer along the wetland area and that is where they put rocks and a silt fence. That entire area has now been delineated as a wetland. He doesn't think any of the water flows to the west. It is higher on the westerly side and flows toward the east to the roads and the wetland area. He said the northwest portion of the property is now almost exclusively in the wetland area.

Chad Phillips said he raised that question because it was his understanding that this water situation has been caused by the development. He said he is used to working with wetland areas. He saw this growing with Phases 1 and 2 and it will affect the property to the east. He said there will be a concern with that neighbor as

Phase 1 and 2 develop out. He said one of the designs that Mr. Pero showed were from homes on Cedar Street and they are cute, but those lots are 60 feet wide by 132 feet deep, so those homes can't be built on the Hilltop lots. He said that house designs with windows on the main floor decrease vandalism and crime. He protested the finding in the staff report that said there is no impact on the neighbors. He said the lot sizes would be half the size of the neighbors' lots. He said the buffer area will require a lot of maintenance to keep the noxious weeds out. He said that becomes a policing effort, so he doesn't think it is practical or realistic. He suggested that Hilltop Partners could go through a variance process.

Susan Robison said she owns lot 45, but currently lives at 320 Minnesota Avenue. She agrees with her neighbors. She thinks this will devalue the property if they change the zoning. She thinks there are safety issues with more density and she has concerns about the conservation easement to the west. She said all of the townhomes have already been approved and will increase traffic.

PUBLIC HEARING

No one else wished to speak and the public hearing was closed.

BOARD DISCUSSION

Blake asked about the HOA issue and Planner Compton-Ring said they need an arrangement to maintain the open space and storm water. She said when she visited with the applicant he thought they should have their own HOA because the other phases have requirements for minimum home size that won't work for Phase 3.

Eric Mulcahy said they do want a separate HOA because they have to maintain the wetlands buffer and have long-term maintenance that shouldn't be burdened on the previous phases. He said he has worked on a lot of projects in the Flathead and in Whitefish Hills there are different HOA groups for different phases. Different covenants manage the two HOA groups, but there are commonalities that they both need to share for common features. He said Woodside subdivision is a beautiful streetscape on narrow lots with garages in the back. All of the traditional lots in town are 50 foot lots with 10 foot setbacks. There are ways to create cute, attractive smaller homes. Blake asked about the maintenance of the wetland area and Mulcahy said it would all be handled by Phase 3.

Meckel recognized John Gerbozy who said this was conceived as 3 phases of one development. It is not the downtown area City. It should continue as one cohesive area. He said it doesn't make sense to have two HOA groups. He didn't see how they could share costs.

MOTION

Smith moved and Konopatzke seconded to adopt the findings of fact within staff report WPP 13-01 and WPUD 13-03 and recommend that the City Council approve the preliminary plat for the Great Northern Heights, Phase 3 Subdivision and the deviation from the

zoning standards as requested by the applicant, subject to 20 conditions, as recommended by staff.

BOARD DISCUSSION

Smith said when Whitefish approved Tamarack Ridge it did so with many of these same objections. There were problems with citizens who purchased their land with certain zoning; there were concerns about wetland and run-off. She said the City approved it, but she opposed it, because of those very reasons. She said she doesn't think they can approve Tamarack Ridge and not approve this. It would make it seem like it was more about the applicants than the project. She is concerned that Whitefish changes zoning, but she thinks Whitefish has boxed itself in.

Gunderson said the last time this came before them he was concerned about wanting sidewalks on both sides and addressing pedestrian safety. He said if it isn't feasible due to the wetland, he would be comfortable to give up the connection road and increase the lot sizes on the west side of the road. He questioned why they couldn't go back to the original 21 lots. Konopatzke asked if the applicant would have to re-submit again. Planner Compton-Ring said they could condition it to 12 lots instead of 15 on the west side of the road. Gunderson asked and Mulcahy said design is always about economics. He said it didn't pencil 3 years ago when the plat expired. He said they came up with a design with 10,000 square foot lots and there were only 16 lots and it didn't cover the cost. They tried to increase the density to make this project work better. At 24 lots they are on the razor's edge. Maybe it will make sense if lot prices increase in the next few years. He said he tries to stick with the planning and not the economics.

John Gerbozy said Phase 1 and Phase 2 sold at a time of high values and the developers made their money on those two phases. He said the folks in Phase 1 and 2 shouldn't be impacted because the applicant needs more lots to make more money.

Michael Morton said there is not the same potential for revenue if they decrease the number of lots. He thinks it is interesting that Mr. Gerbozy thinks he understands their profit or loss on the last phase. He said they are only asking for 3 additional lots from the original plan. Gunderson said if the applicant gives up land for the road extension then the lots get even smaller.

AMENDMENT

Gunderson offered an amendment, seconded by Blake to remove condition #6 (the road extension) and reduce the number of lots to the west of Brimstone Drive to 12 lots.

Meckel asked why 12 and not 13 and Gunderson said it takes them back to the original request for 21 lots. Meckel said he appreciates what they are trying to do, but he is hesitant to re-design projects.

He leans toward approving or disapproving within certain limits.

Blake said he is glad to see this proposal come back as single family. He said the WQP really messed them up and he appreciates that they've come back with the single family design and he wanted to applaud them for that.

**VOTE ON THE
AMENDMENT**

The amendment passed 3-2 with Konopatzke and Meckel voting in opposition.

VOTE

The original motion, as amended, passed unanimously. (Scheduled for City Council on December 2, 2013.)

**CITY OF WHITEFISH
ZONING CODE
AMENDMENT REQUEST**

A proposal by the City of Whitefish to amend Title 11 of the Whitefish Zoning Code to create a new zoning district, Whitefish Planned Resort (WPR), as called for in the 2007 Whitefish City-County Growth Policy.

**STAFF REPORT WZTA 13-
02**

Director Wilson reported that the Growth Policy calls for this zoning district, but it just hasn't been implemented yet, so that is why they are recommending it. Blake asked what "extraordinary" means in relation to the requirement for 'extraordinary public benefit' and Director Taylor said maybe significant is a better word. They provided a list, under C.2, of what would be provided under the neighborhood plan that would be considered an extraordinary public benefit. Blake asked about affordable housing and noted cash-in-lieu wasn't mentioned. Taylor said cash-in-lieu is tied to development which is residential where the applicant can get a density increase with a PUD. In this case they don't have to build the affordable housing but its one of the benefits they can provide, but there is no density bonus as an incentive. Gunderson asked if the affordable housing was work force housing and Director Taylor said if it is all commercial development then it wouldn't be residential affordable housing, but they would be required to look at how they would provide employee housing somewhere. He said this is not a PUD, so they can't require it, but the applicant could want to show it as a community benefit.

Blake asked how the neighborhood plan comes together. Director Taylor said in the C section under the neighborhood plan it explains how it is set up. He said it is like any neighborhood plan, the people are notified and then there is an opportunity to go through the public process to develop a plan for the neighborhood. Blake asked and Director Taylor said they generally have 150 feet from the development for notifying the neighbors, but they could expand notification range to 1,000 feet. He said that is a valid concern.

Blake asked about #25 under permitted units. He said if the restaurant has a bar, then what happens. Director Taylor said a

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

JOB NO: 242908 (163101.DWG)
 DRAWING DATE: MARCH 6, 2013
 REVISED: MAY 21, 2013
 FOR: ROB PERO
 OWNERS: HILLTOP PARTNERS, LLC
 ROBERT W. PERO REVOCABLE TRUST
 ROBERT W. PERO

Preliminary Plat of Great Northern Heights, Phase 3

A P.U.D. Of
 A Portion of Lot 2, Askew Subdivision
 In the W1/2NE1/4 SEC. 12, T.30N., R.22W., P.M.,M.,
 Flathead County, Montana

SCALE: 1" = 50'
 50' 25' 0 50' 100'

Basis of Bearings per plat of Great Northern Heights, Phase 1

NOTES:

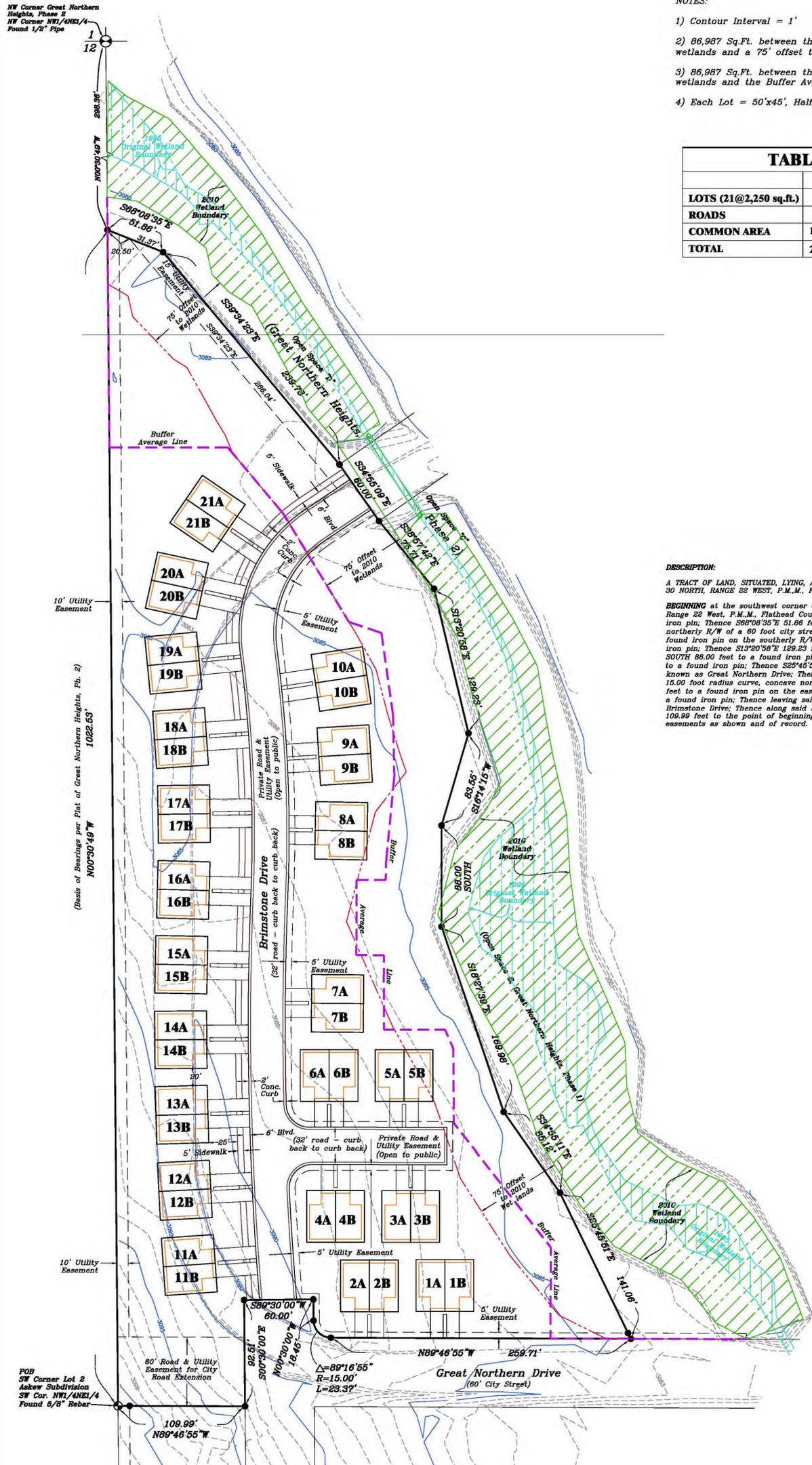
- 1) Contour Interval = 1'
- 2) 86,987 Sq.Ft. between the west edge of the 2010 wetlands and a 75' offset to this wetland edge.
- 3) 86,987 Sq.Ft. between the west edge of the 2010 wetlands and the Buffer Average Line.
- 4) Each Lot = 50'x45'; Half Lot = 25'x45'

TABLE		
	Sq.Ft.	Acres
LOTS (21@2,250 sq.ft.)	47,250	1.085
ROADS	28,220	0.648
COMMON AREA	191,347	4.393
TOTAL	266,817	6.125

DESCRIPTION:

A TRACT OF LAND, SITUATED, LYING, AND BEING IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING at the southwest corner of the Northwest Quarter of the Northeast Quarter of Section 12, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, which is a found iron pin; Thence N00°30'49"W 1022.53 feet to a found iron pin; Thence S86°08'35"E 51.86 feet to a found iron pin; Thence S9°34'33"E 238.73 feet to a found iron pin on the northerly R/W of a 60 foot city street known as Brimstone Drive; Thence leaving said R/W S34°55'09"E 60.00 feet to a found iron pin on the southerly R/W of said Brimstone Drive; Thence leaving said R/W S38°57'42"E 75.71 feet to a found iron pin; Thence S13°20'58"E 129.23 feet to a found iron pin; Thence S16°14'15"W 83.55 feet to a found iron pin; Thence SOUTH 88.00 feet to a found iron pin; Thence S19°27'39"E 169.98 feet to a found iron pin; Thence S34°55'11"E 65.12 feet to a found iron pin; Thence S25°45'51"E 141.06 feet to a found iron pin on the northerly R/W of a 60 foot city street known as Great Northern Drive; Thence along said R/W N89°46'55"W 259.71 feet to a found iron pin and the P.C. of a 15.00 foot radius curve, concave northeasterly, having a central angle of 89°16'55"; Thence along an arc length of 23.37 feet to a found iron pin on the easterly R/W of said Brimstone Drive; Thence along said R/W N00°30'00"W 16.45 feet to a found iron pin; Thence leaving said R/W S39°30'00"W 60.00 feet to a found iron pin on the westerly R/W of said Brimstone Drive; Thence along said R/W S00°30'00"E 82.51 feet to a found iron pin; Thence leaving said R/W N89°46'55"W 109.99 feet to the point of beginning and containing 6.125 ACRES; Subject to and together with all appurtenant easements as shown and of record.



LEGEND:

- 1/4 Corner (as noted)
- 1/16 Corner (as noted)
- Found 1/2" Rebar & Cap (7975S)
- Buffer Average Line
- 75' Offset to 2010 Wetlands
- 2010 Wetland Boundary
- 1995 Original Wetland Boundary

By: SANDS SURVEYING, Inc.
 2 Village Loop
 Kallispeil, MT 59801
 (406) 755-6461

JOB NO: 242908 (163101.DWG)
 DRAWING DATE: MARCH 6, 2013
 REVISED: AUGUST 14, 2013
 FOR: ROB PERO
 OWNERS: HILLTOP PARTNERS, LLC
 ROBERT W. PERO REVOCABLE TRUST
 ROBERT W. PERO

Preliminary Plat of Great Northern Heights, Phase 3

A P.U.D. Of
 A Portion of Lot 2, Askew Subdivision
 In the W1/2NE1/4 SEC. 12, T.30N., R.22W., P.M.,M.,
 Flathead County, Montana

SCALE: 1" = 60'
 60' 30' 0 60' 100'

Base of Bearings per plat of Great Northern Heights, Phase 1



NOTES:

- 1) Contour Interval = 1'
- 2) 66,087 Sq.Ft. between the west edge of the 2010 wetlands and a 75' offset to this wetland edge.
- 3) 66,087 Sq.Ft. between the west edge of the 2010 wetlands and the Buffer Average Line.

LIT	SQ.FT.	ACRES
1	5475.2	0.125
2	5379.2	0.123
3	2524.8	0.121
4	5173.7	0.119
5	5435.5	0.118
6	5148.2	0.118
7	5187.9	0.119
8	5178.3	0.118
9	5387.5	0.123
10	5363.3	0.123
11	2535.5	0.121
12	5837.8	0.116
13	4858.4	0.114
14	4571.4	0.105
15	8015.3	0.193
16A	4875.9	0.094
16B	2461.6	0.056
17A	2466.2	0.057
17B	5096.7	0.118
18A	2509.6	0.058
18B	2541.9	0.058
19A	2581.5	0.059
19B	2764.3	0.063
20A	2394.7	0.055
20B	2789.9	0.063
21A	2492.6	0.062
21B	2527.8	0.058
22	5095.1	0.118
23	4939.7	0.114
24	4422.5	0.102
25	4715.7	0.108
26	4869.6	0.112
TOTAL	141802.8	3.237

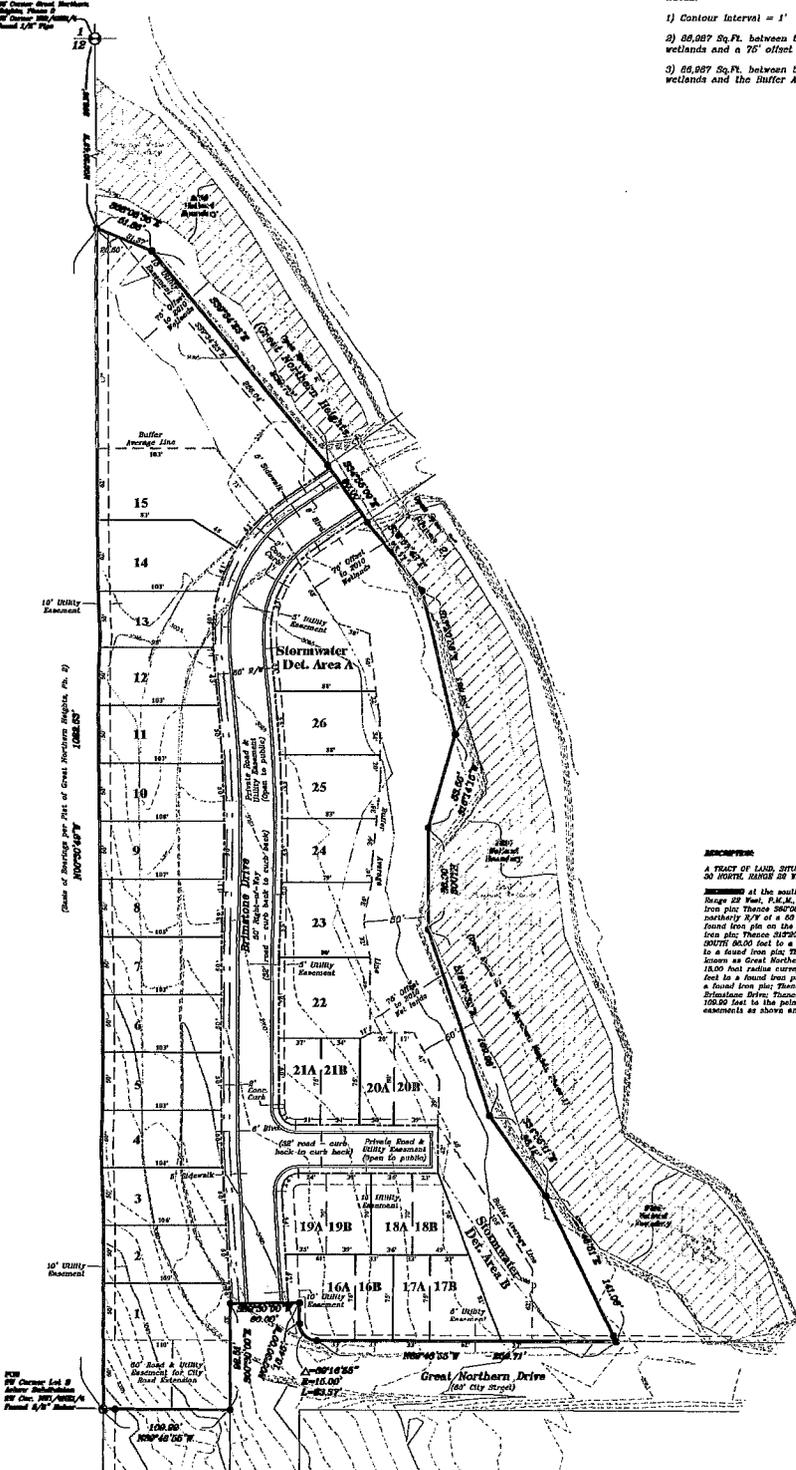
ROADS	ACRES
Road	0.987
City Road Extension	0.153
Stormwater Area C	0.157
Stormwater Area B	0.146
Common Area	1.446
TOTAL	6.125

ABSTRACT:

A TRACT OF LAND, SITUATED, LYING, AND BEING IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
 Commence at the southwest corner of the Northeast Quarter of Section 18, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, which is a found iron pin; Thence N00°20'45"W 1025.00 feet to a found iron pin; Thence S00°00'00"W 51.84 feet to a found iron pin; Thence S03°44'32"W 236.70 feet to a found iron pin on the northerly 1/2 of a 60 foot city street known as Brimstone Drive; Thence bearing said S/W 33°27'42"W 76.71 feet to a found iron pin on the southerly 1/2 of said Brimstone Drive; Thence bearing said S/W 33°27'42"W 76.71 feet to a found iron pin; Thence S10°00'00"W 189.00 feet to a found iron pin; Thence S17°14'15"W 315.00 feet to a found iron pin; Thence SOUTH 06.00 feet to a found iron pin; Thence S10°00'00"W 189.00 feet to a found iron pin; Thence S10°00'00"W 18.45 feet to a found iron pin; Thence along said S/W ANP-49-55-W 202.71 feet to a found iron pin and the P.C. of a 150.00 foot radius curve, convex northwesterly, having a central angle of 89°14'51"; Thence along an arc length of 222.27 feet to a found iron pin on the easterly 1/2 of said Brimstone Drive; Thence along said S/W S10°00'00"W 18.45 feet to a found iron pin; Thence bearing said S/W S00°00'00"W 82.21 feet to a found iron pin on the westerly 1/2 of said Brimstone Drive; Thence along said S/W S00°00'00"W 82.21 feet to a found iron pin; Thence bearing said S/W S00°44'32"W 150.00 feet to the point of beginning and containing 6.125 ACRES, subject to and together with its appurtenant easements as above and of record.

LEGEND:

- ⊕ 1/4 Corner (as noted)
- ⊙ 1/16 Corner (as noted)
- Found 1/2" Rebar & Cap (70755)
- Buffer Average Line
- - - 75' Offset to 2010 Wetlands
- ▨ 2010 Wetland Boundary
- ▧ 1995 Original Wetland Boundary



**GREAT NORTHERN HEIGHTS, PHASE 3
STAFF REPORT
PRELIMINARY PLAT AND PLANNED UNIT DEVELOPMENT
WPP 13-01/WPUD 13-03
November 14, 2013**

A report to the Whitefish City-County Planning Board and the Whitefish City Council regarding a request by Hilltop Partners llc for a Preliminary Plat and a Planned Unit Development for 24 single family lots on 6.125 acres located to the west of the Great Northern Heights neighborhood off Great Northern Drive and Brimstone Drive. A public hearing is scheduled before the Whitefish City-County Planning Board on November 21, 2013 and a subsequent hearing is set before the City Council on December 2, 2013.

BACKGROUND

On March 6, 2006, Hilltop Partners received preliminary plat approval for Great Northern Heights, Phase 3 for 21 single family homes. The applicant received an extension in 2008, but in 2010, the preliminary plat expired.

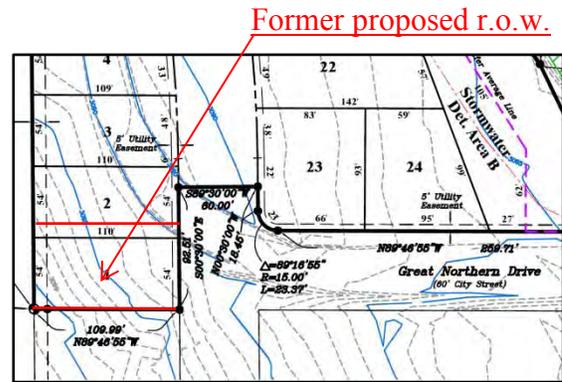
Phase 3 is located within the larger Great Northern Heights neighborhood that includes 49 single family lots and 22 townhouse sublots (PUD overlay). An overall park master plan was approved by the Whitefish City Council in 2004 for the required parkland dedication for all the phases of this neighborhood. In 2012, the Council amended the PUD overlay for the townhouse lots (Phase 1B – along the south boundary) to allow increased lot coverage from 35% to 50%.

In July, the applicant was scheduled for a public hearing before the Planning Board, but withdrew their application for 42 lots (21 townhouses) in order to provide a revised plan. The revised plan was reviewed by the Planning Board in September, which consisted of 32-lots (20 single family lots and 12 townhouse lots). The Planning Board recommended denial on the project. This matter was scheduled before the City Council in October; however, the applicant pulled the request in order to revise the project and bring it back to the Planning Board.

I. PROJECT SCOPE

The applicant is proposing a 24-lot subdivision (single family) on a total of 6.125 acres. Gross density of the subdivision is 3.92 dwelling units per acre. This phase no longer contains townhouses. The street within the project is a standard public street within a 60-foot right-of-way with sidewalks, street trees and boulevards on both sides. This phase of Great Northern Heights will be independent of the other phases and have its own Homeowners' Association. Phase 3 will be responsible for maintaining the open space areas and stormwater facilities within Phase 3.

The applicant is no longer proposing a 60-foot public right-of-way to the west in this phase. This future right-of-way was intended to facilitate a future roadway connection to the west and onto Karrow Avenue. This proposed right-of-way was originally proposed in the vicinity of Lot 1 (see drawing).



A master park plan was adopted by the City Council as part of the overall neighborhood planning process in 2004 to provide the open space and recreational needs of the entire neighborhood. The central drainage/wetland area along with the open common areas surrounding the wetland/drainage area constitutes the open space for Great Northern Heights. In addition there is some open space/common area surrounding the townhouses to the south of the single family area. This particular Phase is also proposing open space in the form of the wetland buffer and stormwater facilities. The wetland buffer/open space is 1.458 acres.

The site is undeveloped and is bounded by pasture land to the west and the drainage/wetland area to the north and west.

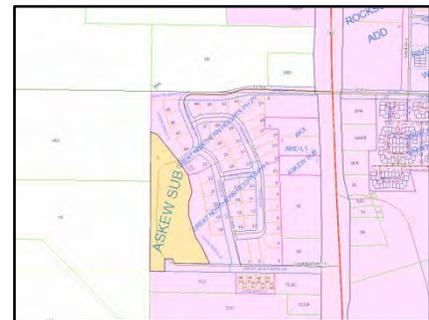
In addition to the subdivision, the applicant is proposing a Planned Unit Development (PUD) to overlay all of Phase 3. The PUD is no longer needed for a density bonus with the revised plan, but rather to accommodate the design of the project due to the wetland buffer. The Water Quality Protection regulations permit one to transfer 100% of the density to upland areas, and the lot size, setbacks and lot coverage may be modified to accommodate the density transfer (§11-3-29B(9)).

No subdivision variances are being requested.

The following zoning deviation is being requested through the Planned Unit Development and Water Quality Protection regulations:

- **Lot sizes/width** reduced from the 10,000 square feet standard with a 60-foot width to those depicted on the preliminary plat map. They range in size from 5,285 square feet to 9,651 square feet with the most common lot size being approximately 5,300 square feet, as well as lot widths from 40-feet at the smallest, but averaging of 54-feet.

A. Petitioner:
 Hilltop Partners llc
 Rob Pero
 1290 Birch Point Dr
 Whitefish, MT 59937



Technical Assistance:

Sands Surveying
Eric Mulcahy
2 Village Loop
Kalispell, MT 59901

B. Location:

The subject property is located on Highway 93 South behind the Western Building Center and Midway Rental. It is described as a Portion of Lot 2 of the Askew Subdivision in Section 12, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

C. Existing Land Use and Zoning:

The property is undeveloped and the current zoning is WR-1.

D. Adjacent Land Uses and Zoning:

North:	Phase 2, Great Northern Heights	WR-1
West:	Large tract residential/pasture land	WA
South:	Phase 3A, Great Northern Heights	WR-1/PUD
East:	Phase 1, Great Northern Heights	WR-1

E. Utilities:

Sewer:	City of Whitefish
Water:	City of Whitefish
Solid Waste:	North Valley Refuse
Gas:	Northwestern Energy
Electric:	Flathead Electric Co-op
Phone:	

CenturyLink

Police: City of Whitefish

Fire: Whitefish Fire Department

Schools: Whitefish School District #44



F. Public Notice:

A notice with the revised plan was mailed to adjacent land owners within 300-feet of the

subject parcel on October 25, 2013. A sign was posted on the property on October 26, 2013. Advisory agencies were noticed on October 25, 2013. A notice was published in the Whitefish Pilot on October 30, 2013. As of the writing of this report, 10 letters have been received and have identified the following concerns:

- Proposed small lot sizes
- Loss in value for existing lots/homes
- Traffic congestion
- Not compatible with existing neighborhood and detrimental to the residential character
- Too dense
- Concerns with the future design of the homes – narrow lots could force a garage forward design
- Draw for more transient people
- Relationship between Phase 3 and the existing homeowners association
- Lots too narrow
- Too much impervious surface and not enough green space
- Preference for the 2006 21-lot proposal over this current plan
- Design of homes wouldn't be cohesive with existing neighborhood
- Concerns with the lack of backyards for family use
- Single car garage design causes parking problems
- Safety
- Density will have a detrimental effect on the wetland and wildlife

II. REVIEW AND FINDINGS OF FACT

This request is reviewed in accordance with statutory criteria and the Whitefish Zoning and Subdivision Regulations.

A. Effects of Health and Safety:

Fire: The Whitefish Fire Marshal reviewed the project. The Fire Marshal will approve the placement and design of all fire hydrants prior to their installation and emergency access for the proposed private streets.

Wildland Urban Interface: The property is fairly devoid of wooded vegetation with the exception of the trees within the wetland area. The property is within the city limits and within the city's fire district.

Flooding: The site slopes toward a drainage area that bisects the neighborhood. Pursuant to the FEMA flood insurance rate map, community panel 30029C1090G, the property is outside the 100-year floodplain.

Access: The subdivision is proposed to access off Great Northern Drive (south) and Brimstone Drive (north). Both of these public



Staff: WCR

WPP 13-01/WPUD 13-03
Great Northern Heights, phase 3

4

streets connect to Highway 93 S. The road is proposed to be designed within a 60-foot public right-of-way with sidewalks on both sides.

Traffic Impacts: According to the Environmental Assessment, the project will generate 240 trips. No traffic impact study was included, but it would be expected that a majority of the trips would be directed to the intersection of JP Road and Highway 93 S where a traffic light is located. JP Road was developed and designed to accommodate the traffic from this development and traffic from the future Baker Avenue extension. The developer of the Great Northern Heights neighborhood paid its proportionate share of the stop light at JP Road in anticipation of this neighborhood's build-out.

Finding 1: The proposed subdivision will not have a negative effect on public health and safety. The Fire Department has reviewed the proposal for conformance with the fire code; the property is not located within a mapped floodplain; access is off an existing public road; each lot will have physical access from a public road; and the amount of traffic generated will not have an adverse effect on the local streets.

B. Effects on Wildlife and Wildlife Habitat: The area is not mapped by the Montana Department of Fish, Wildlife and Parks as important winter range for big game. Nor is the area mapped by the Montana Natural Heritage Program as an area containing plant or animal species of concern. However, it is likely that deer and other animals use the site.

Finding 2: The subdivision should not have a negative effect on wildlife and wildlife habitat.

C. Effects on the Natural Environment:

Surface and groundwater: The developer will extend Municipal water and sewer to the subdivision thereby minimizing any potential impacts to the groundwater.

Slopes: The site is fairly flat with a slight slope toward the wetland/drainage area.

Wetlands: There is a wetland/drainage area along the east side of the project that bisects the Great Northern Heights neighborhood. The wetland/drainage area was set aside as open space for the neighborhood and a trail was installed along the east side of the wetland.

As part of the request, the applicant is proposing to reduce the buffer through restoration and buffer averaging. These buffer options are available to property owners through the Water Quality Protection regulations and are described below.

Buffer Reduction - §11-3-29C(3). The required buffer adjacent to a wetland is 100-feet for single family. A buffer can be reduced by 25% with a restoration plan which would allow a 75-foot buffer. The applicant has submitted a restoration plan along with the application. The restoration plan provides a selection of plant materials, includes a requirement to eradicate the weeds and a 5-year monitoring program to make sure the

restoration is successful. Staff will also recommend a condition of approval to obtain a financial guarantee for the 5-year monitoring period. Due to the small lots, staff is concerned these restored buffer areas could be degraded by adjacent homeowners looking to expand their actual yard areas. In order to protect the restoration area, staff will recommend some sort of permanent delineation be installed along the length of the buffer. This could be landscaping, a split rail fence or some other method.

Buffer Averaging - §11-3-29C(4). The total buffer area can be adjusted provided the overall area (square footage) remains the same, the decreases are generally where the riparian functions may be less sensitive to adjacent land uses and the averaged buffer is no less than 50% of the standard width – in this case it would be 50-feet. It appears these standards are generally being met, but the detailed information will be provided as a condition of approval.

Storm Water Conveyance: There is a mapped storm water conveyance to the south and west of this project, but outside of the project boundaries.

Drainage: The applicant is proposing to install curb and gutter along the streets in order to direct run-off to two detention storm water ponds. All drainage plans are required to meet the current storm water standards and will be reviewed by the city's engineering staff. The stormwater facilities, as proposed, are located adjacent to the reduced buffer. These facilities may not be located with the reduced buffer. While the stormwater areas and sizes are shown on the preliminary plat, the final size/location may change once the engineering plans are submitted for review to the city. A standard condition of approval included notes that the preliminary plat may be changed, including density, based on the city's review of the drainage plans.

Finding 3: The subdivision should not have a negative impact on the natural environment; the western buffer of the wetland will be enhanced and restored; a monitoring program, along with a financial guarantee, will be implemented to guarantee success of the restoration; wetland buffer is being set aside as open space and the requirements are being met; City staff will review the storm water plan with the final engineering plans.

D. Effects on Local Services:

Water: The project proposes to utilize the City water system. The extensions from the main will be designed and constructed to City specifications.

Sewer: The project proposes to utilize the City sewer system. The sewer facilities will be designed and constructed to City specifications.

Streets: The streets will be privately constructed, but open to the public. See discussion above regarding traffic impacts.

The previous plans provided an extension of Great Northern Drive to the western property line to provide a future extension of the road to Karrow Avenue. This road

extension was also part of the requirements for the 2006 Preliminary Plat approval and is an extension the City would still like to see with this proposal. The applicant has proposed to eliminate this connection and points to the connection to the south of this phase and an extension of JP Road to the west. The applicant also points out that the property to the west is currently held within a conservation easement and development of this lot is unlikely; therefore, a road connection is unnecessary.

However, the city is always looking for opportunities to better connect neighborhoods to each other. Having a grid system reduces traffic 'choke points' and provides better opportunities for non-motorized transportation. In addition, the City's Growth Policy and Subdivision regulations also supports the connection of roads. Staff has included a condition of approval requiring this connection. This would result in the loss of a lot or two in order to accommodate a 60-foot right-of-way.

Schools: The site is within the Whitefish School District #44. At completion, using 2011 census information for Flathead County student generation rate of 0.31 students per single family unit, this subdivision would generate no more than seven school-age children.

Parks and Open Space: According to the Subdivision Regulations §12-4-11C.4., Planned Unit Developments that propose to permanently set aside park needs for the neighborhood are exempt from the parkland dedication requirements. The applicant is proposing to set aside 23.8% of the site (1.458 acres) in open space. Under the subdivision regulations, the parkland dedication required for this subdivision would be 0.72 acres. In addition, the existing parkland within the neighborhood was approved by the Council in 2004 to serve the entire neighborhood.

Police: The project is in the City of Whitefish and will be served by the City Police Department. The proposed development will have some impact on the Whitefish Police Department; however, this subdivision is not anticipated to impact current levels of service.

Fire Protection: The Whitefish Fire Department serves the property. The proposed development will have some impact on the Whitefish Fire Department; however, this subdivision is not anticipated to impact current levels of service.

Solid Waste: North Valley Refuse is under contract with the City of Whitefish to handle solid waste for the city. Solid waste is taken to the Flathead County Landfill. There is sufficient capacity within the landfill to accommodate the additional solid waste generated from this subdivision.

Medical Services: Ambulance service is available from the fire department and ALERT helicopter service. North Valley Hospital is less than a mile from the site across the highway to the east.

Finding 4: The proposed subdivision does not pose any negative effects on local services. City staff has preliminarily reviewed the project for water, sewer and stormwater; the fire department has preliminarily reviewed the proposal for conformance with the fire code; additional services, such as police, fire and schools, are not anticipated to be affected. Adequate park and open space is being set aside for the neighborhood. The Growth Policy supports through and continuous streets; as such, the city recommends a condition to require a 60-foot public right-of-way extension of a street to the west in the vicinity of Lot 1.

E. Effects on Agriculture and Agricultural Water User Facilities:

This property has not been used for any agricultural purpose in the recent past. The property in question is in the city limits and has been the subject of potential development for over a decade. This land is no longer viable agricultural land.

The lands directly to the west are used for grazing purposes and are subject to a conservation easement. Although no stock was present on staff's last site visit, it was apparent that stock frequently use this area. As with previous phases of this neighborhood, staff will recommend a condition that will appear on the face of the plat alerting future homeowners that the neighboring agricultural use pre-dates their subdivision and is lawful. The neighbors of this property are concerned with the lack of weed abatement on the subject property; therefore, staff will recommend a condition of approval.

Finding 5: The proposed subdivision does not pose any negative effects on agriculture or agricultural water users. Weeds on the property have the possibility of effecting adjacent neighboring agriculture uses and need to be abated.

F. Compliance with Growth Policy:

The Whitefish Growth Policy designates this area as Suburban Residential which generally corresponds to WCR, WSR and WER zoning. The underlying zone of WR-1 generally corresponds to the Urban Residential Growth Policy. This property was rezoned from WA to WR-1 in 2004 along with the Preliminary Plat of Phase I for Great Northern Heights.

Finding 6: The density falls within the guidelines for the WR-1 and is complimentary to the neighborhood to the east.

G. Compliance with Zoning:

The subdivision has **WR-1 zoning**. The zoning permits up to 4 dwelling units per acre (DUA) and the applicant is proposing an overall density of 3.92 DUA well within the acceptable density range for the zoning district. This is a reduction from the original plan of 6.86 DUA.

Finding 7: The proposed subdivision is within the acceptable density range for the zoning district.

The **Water Quality Protection Regulations** permit one to transfer 100% of the density out of the required water quality protection area to the upland areas and modify lot size, setbacks and lot coverage provided the following four standards can be met:

- a. The increased density does not significantly harm the water quality protection areas on site or on adjacent properties;

The project is meeting all the required buffer standards and buffer reduction option available to property owners. The buffer enhancement plan will further protect water quality as the project is developed. In addition, all city stormwater standards will continue to be required, as they are for all subdivision projects.

- b. The increased density does not significantly harm wildlife habitat, including migration corridors;

As described above, the area is not mapped as important winter range for big game nor is the area mapped by the Montana Natural Heritage Program as an area containing plant or animal species of concern. However, it is likely that deer and other animals use the site. The project is preserving the wetland area, which has grown since the earlier preliminary plat application in 2004, and they are enhancing the wetland buffer area creating a larger area for animals to use and move through the neighborhood.

- c. The increased density does not significantly harm the character and qualities of the existing neighborhood; and

This has been the most significant concern from the neighbors as it has gone through its previous iterations, including this most current proposal. The June version was 42 townhouse lots (21 townhouses), the September version was 20 single family lots and 12 townhouse lots (6 townhouses) and this most recent version is 24 single family lots. While the neighbors point to the 2006 preliminary plat of 21-lots as the appropriate density (3.43 dwelling units per acre) versus the current proposal of 24-lots (3.92 dwelling units per acre), conditions and standards have changed in this neighborhood. In 2006, there were no Water Quality buffers and setbacks and the stormwater standards were less rigorous than they are currently. The gross density of the project meets the zoning regulations, but due to the requirement for a Water Quality buffer and setback, it necessitates smaller lot sizes.

The density of Phase 3A (the townhouse area to the south) is 5.12 dwelling units per acre and the density of Phases 1 is 3.28 dwelling units per acre and Phase 2 is 2.2 dwelling units per acre. Therefore the proposed density of 3.92 dwelling units per acre is a good transition from higher density townhouses to single family detached.

Concerns have also been raised regarding the small lot widths that may result in a 'garage-forward design'. The city doesn't permit this design for multi-family buildings through the Architectural Review Standards, but the city does not regulate this design for detached single family homes. The city doesn't regulate the design of any single

family homes. Some subdivisions have proposed to place detached garages to the rear of lots and have either individual or shared driveways – such as Cougar Ridge and Woodside Meadows. Some subdivisions, such as Creekwood, require the garage to be setback from the front of the home. Attached to the application are photos of previously constructed homes that the developer intends to construct to maintain a pleasing streetscape and both options have been included. The Planning Board could condition the project to employ a combination of these options to reduce/eliminate the garage dominate development and create a pedestrian friendly streetscape.

d. Where applicable, the increased density makes efficient use of infill property.

The project is nearly surrounded by urban-scale development and is served by public sewer and water. While on the edge of town, the property is, for all intent and purpose, an infill project. Infill is a priority for the city’s Growth Policy.

Finding 8: Moving the density to the upland area will not significantly harm the water quality protection areas, the wildlife habitat nor the character and qualities of the existing neighborhood and it is making efficient use of infill property. The criteria are being met to allow 100% of the density to be transferred to the upland area of the project and reduce the lot sizes/widths.

The **Planned Unit Development** is intended to encourage flexible land use development by allowing development based upon a comprehensive, integrated and detailed plan rather than upon specific requirements applicable on a lot by lot basis. The project is using the standards in the Water Quality Protection regulations (11-3-29B(9)) to permit the smaller lot size and transfer the density to the upland area. The tool to request the minimum lot size/width is through the PUD; however, this is not a PUD in the traditional sense. As such, staff has only provided an analysis of the Water Quality Protection criteria, as described above.

Finding 9: The Planned Unit Development criteria are not applicable to this project, as the review criteria are within the Water Quality Protection regulations.

Amendments – Section 11-7-10D:

The following considerations from §11-7-10D are intended to guide both the Planning Board and the City Council when considering an amendment to the official zoning map.

Considerations from Section 11-7-10(E)	Staff Report Section Reference/Comments
Zoning Regulations Must Be:	
Made in Accordance with a Growth Policy	see Section II.F.
Designed to:	
Secure safety from fire and other dangers	see Section II.A.
Promote public health, public safety and	see Section II.A.

Considerations from Section 11-7-10(E)	Staff Report Section Reference/Comments
general welfare	
Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements	see Section II.D.
In the adoption of zoning regulations, the city shall consider:	
Reasonable provision of adequate light and air	The applicant will be required to meet all applicable Building Code requirements. The applicant has not applied for any variances to the Building Code that would affect "light and air."
The effect on motorized and nonmotorized transportation systems	see Section II.A. and D.
Promotion of compatible urban growth	see Section II.F., G.
The character of the district and its particular suitability of the property for the particular uses	see Section II.G.
Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and	<p>This criterion is subjective at best, but staff can identify no instances where "buildings" will be subject to a diminution in value because of the proposed development. However, it is permissible for the Board to consider testimony from nearby residents as prima facie evidence of adverse impact.</p> <p>This proposal only applies to the subject property, and sets no binding precedent for any other zone change or PUD proposal.</p>
That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.	The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the project.

H. Compliance with Whitefish Subdivision Regulations:

With the imposition of conditions, the subdivision complies with the Whitefish Subdivision Regulations.

Finding 10: The proposed subdivision complies with all the requirements of the subdivision regulations contained within Title 12 of the Whitefish City Code.

I. Compliance with the Montana Subdivision and Planning Act:

Staff has reviewed the proposal for compliance with the Montana Subdivision and Platting Act and found that the requirements have been met.

Finding 11: The proposed subdivision complies with the Montana Subdivision and Platting Act, MCA 76-3.

III. STAFF ANALYSIS OF ZONING DEVIATION.

Lot Size/Width. As described above, the lots sizes have been reduced in order to place the density on the upland portion of the project, as permitted by the Water Quality Protection regulations. Staff finds that all the criteria in the WQP are met to allow for the reduction of the lot sizes/widths. The developer has provided samples of how the homes will be constructed in order to present a pleasing streetscape and not result in a garage forward designed neighborhood. Staff is satisfied with this approach.

RECOMMENDATION

It is recommended that the Whitefish City-County Planning Board adopt the findings of fact within staff report WPP 13-21 and recommend to the Whitefish City Council the preliminary plat for the Great Northern Heights, Phase 3 Subdivision be **approved**, as submitted by the applicant, subject to the following conditions and the deviation from the zoning standards as requested by the applicant, be **approved**.

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, 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, 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 design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)
4. Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term

maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)

5. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees.
 - Construction office siting, staging areas for material and vehicles, and employee parking.
 - Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
 - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
 - Notation of any street closures or need to work in public right-of-way.(City Engineering Standards, 2009)
6. A road extension of Great Northern Drive shall be fully constructed to western edge of the property and shall be signed 'Future Street Connection'. (Finding 4, Subdivision Regulations, §12-4-15H)
7. Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance. (Zoning Regulations §11-3-25; City Engineering Standards, 2009)
8. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (UFC; Subdivision Regulations §12-4-18; Engineering Standards, 2009)
9. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision. (Subdivision Regulations, Appendix C)
10. The design of the stormpond shall be such that it is an integral part of the open space for the subdivision. This shall include a landscaping plan to be reviewed and approved by the Planning Department. (Staff Report, Finding 3)
11. A report shall be submitted with the final buffer averaging details. This report shall indicate the overall area required, the amount being reduced and a 'to scale' drawing

showing the minimum width of no less than 50-feet. (Staff Report, Finding 3; Zoning Regulations §11-3-29C)

12. The final wetland buffer restoration plan shall be submitted to Planning and Public Works Departments for review and approval. A financial guarantee of 125% of the restoration plant materials and installation to be held for the 5-year monitoring period and shall be held by the city. (Staff Report, Findings 3; Zoning Regulations §11-7-10E)
13. A split rail fence or some other delineation, with the exception of chain link, along the restored wetland buffer shall be installed and maintained for the life of the project. The proposed delineation shall be reviewed and approved by the Planning Department prior to its installation. (Staff Report, Finding 3)
14. A uniform fencing system, no chain link, is required on the west boundary of Phase 3. This fence shall be reviewed and approved by the Planning Department prior to its installation. (Staff Report, Finding 5)
15. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner or homeowners' association. (Subdivision Regulations §12-4-30)
16. The following notes shall be placed on the face of the plat:
 - House numbers shall be located in a clearly visible location.
 - The neighboring agricultural use pre-dates the Great Northern Heights development and these agricultural uses are completely lawful. Trespassing without landowner consent, harassing livestock and destruction of property such as fences are illegal and can be enforced by the appropriate law enforcement agencies.(Subdivision Regulations §12-4-6; Staff Report Finding 5; City Engineering Standards, 2009)
17. A 10-foot utility easement shall be located along the front of the lots. (Subdivision Regulations §12-4-29)
18. A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)
19. Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for Great Northern Heights, Phase 3 Subdivision Homeowners' Association (HOA) providing for:
 - Long-term maintenance of the open spaces;

- Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
- Long-term maintenance plan for drainage and storm water management facilities.

(Subdivision Regulations §12-4-30; Staff Report Finding 3; City Engineering Standards, 2009)

20. The Great Northern Heights Phase 3 preliminary plat and planned unit development is approved for three years from Council action (Subdivision Regulations, §12-3-8)



Element Review Preliminary Plat Application

RE: Element Review for: Great Northern Heights, Phase 3

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

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

Is missing the following Elements: _____

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

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

6-10-13
Date

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



June 20, 2013

Hilltop Partners llc
Rob Pero
1290 Birch Point Drive
Whitefish, MT 59937

RE: Sufficiency Review for Great Northern Heights, phase 3; (WPP 13-01)

Dear Mr. Pero:

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

- ✓ Contains sufficient detail to commence review of the application. Your application will be scheduled for Planning Board on July 18, 2013 and City Council on August 19, 2013.

Is lacking required detail in the following Elements:

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

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

Sincerely,

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

Wendy Compton-Ring, AICP
Senior Planner

C: Eric Mulcahy, Sands Surveying Inc 2 Village Loop Kalispell, MT 59901



Public Notice of Proposed Land Use Action

2ND REVISED PLAN

The City of Whitefish would like to inform you that Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots. The request also includes a Planned Unit Development overlay, as the proposed lots are smaller than the minimum lot size in the WR-1 zone. The property is undeveloped and is zoned WR-1 (One-Family Residential District). The property is located between Great Northern and Brimstone Drives and can be legally described as a portion of Lot 2, Askew Subdivision in Section 12 Township 30N Range 22W.

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

Thursday, November 21, 2013
6:00 p.m.
Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937

The City-County Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, December 2, 2013 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Tuesday, November 12, 2013, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

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



Date: October 25, 2013
To: Advisory Agencies & Interested Parties
From: Whitefish Planning & Building Department

The regular meeting of the Whitefish City-County Planning Board will be held on Thursday, November 21, 2013 at 6:00 pm. During the meeting, the Board will hold public hearings on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing for the items on Monday, December 2, 2013. City Council meetings start at 7:10 pm. Planning Board and City Council meetings are held in the Whitefish City Council Chambers, Whitefish, Montana.

1. A proposal for a Conditional Use Permit by Jeff Lyman on behalf of Richard & Roberta Bennett to construct an accessory apartment. The proposed garage where the accessory apartment will be located will be approximately 31 feet 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. The property is located at 325 Lupfer Avenue and can legally be described as Lots 18 and 19 of Block 54 of Whitefish Subdivision in Section 36 Township 31N Range 22W, P.M.M., Flathead County, Montana. (WCUP 13-14) Minnich
2. Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots. The request also include a Planned Unit Development overlay in order to have smaller single family lots. The property is undeveloped and is zoned WR-1 (One-Family Residential District). The property is located between Great Northern and Brimstone Drives and can be legally described as a portion of Lot 2, Askew Subdivision in Section 12 Township 30N Range 22W. (WPP 13-01/WPUD 13-03) Compton-Ring
3. A proposal by the City of Whitefish to amend Title 11 of the Whitefish Zoning Code to create a new zoning district, Whitefish Planned Resort (WPR), as called for in the 2007 Whitefish City-County Growth Policy (WZTA 13-02) Taylor

Documents pertaining to this agenda item is available for review at the Whitefish Planning & Building Department, 510 Railway Street during regular business hours. Inquiries are welcomed. Interested parties are invited to attend the hearing and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address

prior to the hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding this proposal, phone 406-863-2410.

Wendy Compton-Ring

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Friday, October 25, 2013 11:17 AM
To: 'Anne Moran (asmoran@mt.gov)'; Ashley Keltner (a.keltner@flathead.coop); 'Ben DeVall'; Bill Dial (bdialw1@bresnan.net); 'BJ Grieve'; Cal Scott (cscott@flathead.mt.gov); Christina L Schroeder (christina.l.schroeder@usace.army.mil); 'Chuck Curry (ccurry@flathead.mt.gov)'; Columbia Falls Fire Department (cffire@centurytel.net); 'Dave Lawrence (dlawrence@skiwhitefish.com)'; Dennis Oliver (doliver@mt.gov); 'Doug Schuch (douglas.schuch@bnsf.com)'; 'Eric Smith (eric.smith@northwestern.com)'; Gary Engman (gengman@mt.gov); Gary Krueger (gkrueger@flathead.mt.gov); Ginger Kauffman (gingerk@flatheadcd.org); 'James Freyholtz (jfreyholtz@mt.gov)'; 'Joe Page' (jpage@cityofwhitefish.org); 'John Wilson'; 'Judy Williams (juwilliams@mt.gov)'; Karen Reeves; 'Kate Cassidy (kcassidy@flathead.mt.gov)'; Kate Orozco (orozcok@wfps.k12.mt.us); 'Kuennen, Norman'; 'Lisa Timchak (latimchak@fs.fed.us)'; 'Lorch, Steve'; 'Lynn Zanto (lzanto@mt.gov)'; 'Marcia Sheffels (msheffels@flathead.mt.gov)'; 'Mark Baumler (mbaumler@mt.gov)'; 'Mark Deleray (mdeleray@mt.gov)'; North Valley Refuse (nvr@centurytel.net); 'Pamela Holmquist (pholmquist@flathead.mt.gov)'; 'Patti V (pattiv@flathead.mt.gov)'; 'Pris, Jeremy'; 'Rita Hanson (for Whitefish Water & Sewer District)'; 'Steve Kilbreath (skilbreath@mt.gov)'; 'Steve Kvapil (steve.j.kvapil@usps.gov)'; 'Stickney, Nicole'; SueAnn Grogan (sgrogan@cityofwhitefish.org); Tara Fugina (tfugina@flathead.mt.gov); 'Tom Kennelly'; Tony.Hirsch@Centurylink.com; 'Traci Sears'; Virgil Bench (vbench@cityofwhitefish.org); 'Whitefish Parks and Recreation'
Cc: David Taylor; bminnich@cityofwhitefish.org
Subject: November City-County Planning Board
Attachments: 11-2013_PB meeting.pdf

Attached please find the Planning Board notice for the November meeting.

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

Wendy Compton-Ring

From: Bookworks <bookworks@bresnan.net>
Sent: Monday, October 28, 2013 12:50 PM
To: 'Wendy Compton-Ring'
Subject: RE: Great Northern Heights, Phase 3 - 2nd Revision

Let's see – 24 divided by 6.12, still way too much. Another street doesn't matter – most trips will still involve trip through the main road to the light on JP.

Cheryl Watkins

From: Wendy Compton-Ring [<mailto:wcompton-ring@cityofwhitefish.org>]
Sent: Monday, October 28, 2013 9:02 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Great Northern Heights, Phase 3 - 2nd Revision

On Friday I sent out the adjacent landowner notice for the 2nd Revision to Great Northern Heights, phase 3 to all property owners within 300-feet of the project. I have also placed updated fliers in the sign within your neighborhood. As you provided comments via email, I'm also sending this notice to you.

The revised plan proposes 24 single family lots with a public street. There are no townhouses proposed. This matter will be reviewed by the Planning Board on November 21st and at the City Council on December 2nd.

If you have any questions, please let me know. Please share this update with your neighbors.

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

EXHIBIT

Wendy Compton-Ring

From: Craig Sanford <jsanford@mail.centric.net>
Sent: Monday, October 28, 2013 2:45 PM
To: Wendy Compton-Ring
Subject: Re: Great Northern Heights, Phase 3 - 2nd Revision

Thankyou Wendy.

My interest is that I own the house at 167 Granite. My daughter lives in the house.

So thanks for sending info to me. I may retire in this house someday.

I'm not sure why developers always seem to have to try to get away with not following the zoning. Doesn't seem to matter what the zoning, they have to try to get around them????

I've sent you my comments with each of the last two proposals. This plan seems to require single family units, which satisfies my main complaints with the other proposals. I want the area to remain quiet and safe for young families and older people who move slowly and wish to enjoy each other and things around them.

Thanks again.

Craig Sanford

406-721-9966

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

From: "Wendy Compton-Ring" <wcompton-ring@cityofwhitefish.org>

Sent: 10/28/2013 8:02:31 AM

To: wcompton-ring@cityofwhitefish.org

Subject: Great Northern Heights, Phase 3 - 2nd Revision

On Friday I sent out the adjacent landowner notice for the 2nd Revision to Great Northern Heights, phase 3 to all property owners within 300-feet of the project. I have also placed updated fliers in the sign within your neighborhood. As you provided comments via email, I'm also sending this notice to you.

The revised plan proposes 24 single family lots with a public street. There are no townhouses proposed. This matter will be reviewed by the Planning Board on November 21st and at the City Council on December 2nd.

If you have any questions, please let me know. Please share this update with your neighbors.

Wendy Compton-Ring, AICP

Senior Planner

City of Whitefish

EXHIBIT
7

Wendy Compton-Ring

From: John & Nancy Gerbozy <gerbozy@hotmail.com>
Sent: Monday, October 28, 2013 8:28 PM
To: Wendy Compton-Ring
Cc: sue@littlecreekfarm.com; chad@phillipsarchitecture.com; tyler@keimontana.com; sherman@montanasky.net
Subject: RE: Great Northern Heights, Phase 3 - 2nd Revision

Wendy;

Thank you for sending this information and it did come in Saturday's mail. The attached pdf is a much clearer copy of the plan to work with. While I do think this lot layout is a better arrangement, I still have some questions regarding this new planned subdivision.

The outlots A-D of Great Northern Heights show up in Flathead County Records as attached to the HOA. There was a Quit Claim Deed filed on May 23, 2013, and I'm presuming this is the transfer of title from the HOA controlled by Hilltop Partners to the new Great Northern Heights HOA. The CC& R's do allow our HOA to annex other residential property if we vote to do so. However, does the City of Whitefish control how adjoining HOAs use and control adjoining common areas? Are any of the Phase 3 applicant requirements somehow attached to the common space of GNH or the newly formed HOA that is made up of Phase 1 & 2 subdivisions? Are there expectations from the City which bind the HOA to accept this new Phase 3 development?

I also wanted to know what additional variances have been requested as part of this Phase besides the lot size variance you indicated in your letter. The 50 foot wide lots would make for a narrow two story house if all other City requirements were to be met. I am not in favor of detached garages, which I believe was proposed under the former plan; this arrangement cause more lot surface to be covered by pavement and minimizes green space.

Again, thanks for keeping us informed.

John Gerbozy

From: wcompton-ring@cityofwhitefish.org
To: wcompton-ring@cityofwhitefish.org
Subject: Great Northern Heights, Phase 3 - 2nd Revision
Date: Mon, 28 Oct 2013 09:02:11 -0600

On Friday I sent out the adjacent landowner notice for the 2nd Revision to Great Northern Heights, phase 3 to all property owners within 300-feet of the project. I have also placed updated fliers in the sign within your neighborhood. As you provided comments via email, I'm also sending this notice to you.

EXHIBIT

8

Wendy Compton-Ring

From: Stewart Cardon <stewartcardon@bisoncreekpllc.com>
Sent: Tuesday, October 29, 2013 10:50 AM
To: Wendy Compton-Ring
Subject: Re: Great Northern Heights, Phase 3 - 2nd Revision

Dear Planning Board,

This letter is in response to the proposed subdivision by Hilltop Partners for Great Northern Heights. They propose to reduce the required lot size in the WR-1 zone from 10,000 SF to less than 6000 SF for most lots. They have employed a PUD for this request.

Most of the proposed lots will have a 50 ft street front which, with 10 ft side yards, will leave 30 ft of buildable width. Resulting in a series of garages facing the street (typical two car garage is 24 ft wide). This creates a "storage unit" aesthetic which does not benefit the residential character of the neighborhood and is not the intended purpose of a PUD. PUD's are intended to create a more pleasing environment than would be achieved without it. In this instance, this is not the case.

Please deny this request based on the fact that it is a detriment to the residential character of the built environment.

Thank you.

Stewart Cardon
148 Vista Drive, Whitefish, MT
Architect
406-249-4049
www.bisoncreekpllc.com

On Oct 28, 2013, at 9:02 AM, Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org> wrote:

<adjacent land owners notice_102513.pdf>

EXHIBIT

9

November 1, 2013

Dear Whitefish Planning Board:

Re:Zone Revision for Hilltop Partners

We are now submitting our comments for the third time about the request of a zoning change for Hilltop Partners from the existing WR-1. ^{We are} I am still NOT in agreement with the developers proposal for a PUD overlay for the following reasons.

First, We are puzzled as to why Hilltop Partners wants to decrease the lot size when they could very well sell larger parcels for more money and still make a profit equal to what they are now proposing.

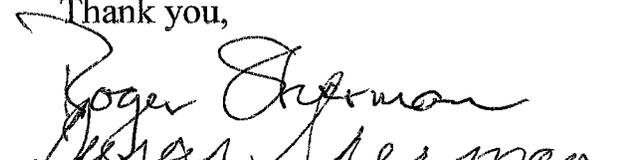
Second, We are residents of the existing development and were required to follow WR-1 set backs and frontage.

Third, the development of phase three with smaller lot size would be contrary to the existing two phases already in place and devalue those houses who have been built under the requirements of WR-1.

Fourth, the HIDDEN factor in this revision change is that Mr. Pero has an approved PUD on the southern end of phase three which in the future will add additional traffic problems to the high density of of his requested revision change. We think this will further increase traffic congestion exiting on to route 93.

In conclusion we are not denying Hilltop Partners the opportunity to develop the 6.125 acres, however we are strongly objecting to a proposal that changes the existing character and zoning requirements of the already established of the Great Northern Heights development. It just does not make a compatible neighborhood.

Thank you,


Roger and Susan Sherman
280 Brimstone Dr.

EXHIBIT

10

Wendy Compton-Ring

From: Craig Sanford <jsanford@mail.centric.net>
Sent: Sunday, November 03, 2013 7:42 AM
To: Wendy Compton-Ring
Subject: Re: Great Northern Heights, Phase 3 - 2nd Revision

Wendy,

I've put more thought to the developer's proposal. I believe we need to stay with the WR-1 zoning as the area is now zoned.

The proposal, as I understand, makes the new lots about 1/2 the size of the rest of the neighborhood. That makes the houses just like 1/2 of a duplex. This takes us back to my main objection that it would draw more transient people, people without kids, and would create a lot of extra traffic.

Before I bought this land and had my house built, we looked for a typical single family 3 bedroom, 2 bath, 2 car garage house in Whitefish area. There were none to be found. There were very old houses with very old plumbing and wiring and wet basements, and there were apartments, small houses designed for singles and couples without kids, and duplexes. Nothing to draw a typical family to the area. That is why we chose to build instead of buy a house in Whitefish.

We need to keep this area designed for families and retired people where the pace is slower and more kid friendly. An environment where the noise and activity level decreases at night so we can get our kids and us to sleep at a reasonable hour. A family area where our kids can ride their bikes and walk without fear. Please keep the zoning at WR-1.

Thank you for your consideration.

Sincerely
Craig Sanford
406-721-9966

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

From: "Wendy Compton-Ring" <wcompton-ring@cityofwhitefish.org>
Sent: 10/28/2013 8:02:31 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Great Northern Heights, Phase 3 - 2nd Revision

On Friday I sent out the adjacent landowner notice for the 2nd Revision to Great Northern Heights, phase 3 to all property owners within 300-feet of the project. I have also placed updated fliers in the sign within your neighborhood. As you provided comments via email, I'm also sending this notice to you.

The revised plan proposes 24 single family lots with a public street. There are no townhouses proposed. This matter will be reviewed by the Planning Board on November 21st and at the City Council on December 2nd.

EXHIBIT

Wendy Compton-Ring

From: John & Nancy Gerbozy <gerbozy@hotmail.com>
Sent: Sunday, November 03, 2013 3:11 PM
To: wcompton-ring@cityofwhitefish.org; dtaylor@cityofwhitefish.org
Cc: sue@littlecreekfarm.com; tyler@keimontana.com; lynpat@aboutmontana.net; chad@phillipsarchitecture.com; sherman@montanasky.net; morton@montana.com; rjpero@aboutmontana.net
Subject: Proposed Subdivision - Called Phase 3 of Great Northern Heights

City of Whitefish Planning Department;

I am writing to ask you to provide me and the Great Northern Heights HOA community with a better understanding of what the City is expecting Hilltop Partners to deliver in Phase 3 of the new proposed subdivision. As I understand, each past development was a stand-alone subdivision; however, Phase 1 and 2 share similar covenants and restrictions. I do not envision this new Phase 3 subdivision to become part of the GNH HOA without some negotiated arrangement for common space use and payment of dues. This is my reason to ask the City for your expectations of the development.

In general, I am thankful that Hilltop Partners has decided to go back to the original development strategy of a single family home community. The proposed layout is similar in design to that of the original property at the time when we purchased our lot. I understand that the storm-water retention area has expanded and has impacted the developers buildable area; is this area considered part of the platted common space or is this a new common space area?

The proposed subdivision must require several variances from the WR-1 zoning, I would like to receive that information prior to showing up for the Planning meeting. Is this information available by email or will I be required to come by the Planning office to review or get a copy? When I attended the earlier Planning meeting for this subdivision, I was surprised to hear the Planning Departments recommendation and wished I had time to review this rather than just read it before the request came up for review. Is there a new recommendation being prepared and will I have access to this prior to the Planning Board meeting?

I do think the proposed lot widths are too narrow. This will force houses to become very similar in design so they can meet the restrictions of Section 11-2F-4. This also may mean 3 story houses will be common in order to have enough square feet in each single family home to be attractive to buyers. Without a better understanding of what is proposed to be built and without common covenants and restrictions covering both GNH Phases 1 & 2 and this new development, it is hard to picture how our community will look.

Your help to understand the proposal and expectations of the City on the developers would be appreciated.

Thank you.

John Gerbozy

EXHIBIT

12

November 7, 2013

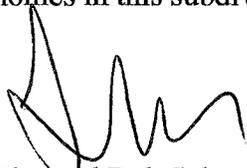
Members of the City-County Planning Board;

Thank you for the opportunity to comment on the Hilltop Partners proposed subdivision of property in the Great Northern Subdivision. My wife and I are property owners in the Great Northern Subdivision and wish to register our opposition to this proposal for largely the same reasons as stated in our letters in opposition to the two earlier proposals in July and September.

Phase 3 of the Great Northern Development was approved in March 2006 for 21 single family lots, consistent with the minimum lot requirements of WR-1, the designated zoning for the area. When the minimum lot size requirements of WR-1 zoning were established, they were established for a reason. When this area was zoned WR-1, it was zoned WR-1 for a reason. While an increase of three lots may seem insignificant, no legitimate reason has been provided for changing the proposal that justifies approval *inconsistent* with the established zoning. If three lots over that which would be allowed under current zoning is OK, what about 4, or 9 or whatever?

The developer has proposed three different subdivision scenarios in the last several months. The number of home sites in each of the last two proposal is less than the July proposal. However, the number of lots in all three proposals is an increase from that which was approved in 2006, in excess of the number allowed for under current zoning and in excess of the number land owners in each of the first two phases were led to believe would be developed. A proposal of 24 seems quite reasonable compared to the July proposal of 42 but it is still in excess of the number allowed by current zoning. If the July proposal had been for 100 lots, 42 would now, by comparison, seem reasonable. Any increase from the 2006 approved numbers, in excess of the zoning requirements will still have adverse effects on traffic, lot density, property values, quality of life and represent an erosion of the planning process as outlined in previous letters

After careful consideration, we urge you to stand by the original decision to limit this subdivision to 21 single family home sites and deny this request to increase the density of homes in this subdivision beyond that allowed by current land use plan decisions.



Tim and Deb Salt
Lot 1 Great Northern Heights
533 Texas Ave
Whitefish, MT 59937
862-5285
timsalt@edge-effect.net

EXHIBIT

13

11-08-13 P02:05 IN

Wendy Compton-Ring

From: Chad Phillips <chad@phillipsarchitecture.com>
Sent: Friday, November 08, 2013 5:11 PM
To: Wendy Compton-Ring
Subject: Phase 3 Great Northern Heights subdivision

Wendy, City Staff and City Planning board,

It is with concern I write this letter regarding the impact of the current Phase three plan in the Great Northern Heights subdivision proposed by Hill Top partners. The current zoning of the property is WR-1. I feel this to be an appropriate use of the land and supporting the values of the other surrounding WR-1 lots in Phase 1 and 2 of GNH.

WR-1 zoning minimum criteria is lot sizes of 10,000 square feet. Up to 35% of the lot is allowed to be built upon. With side set backs of 10,' front set back of 25' and a rear set back of 20'.

The current proposal has lot sizes ranging from 5,285 square feet to 5,850 square feet. The majority of lot widths are 54' wide. When considering side setbacks and two car garage widths the front of these homes would be 71% garage. It has been the interest of the City to not support Snout housing / garage dominant single family homes for many reasons. Most tend to feel they are unattractive and diminish property values. It is also clear they promote vandalism for there are no eyes on the street from within the home. Additionally Hill Top Partners is not applying for a density bonus.

Originally GNH phase three was approved with 21 lots in 2006. Today the proposal is asking for 24 lots. With the current critical areas ordinance coming into affect and more storm water runoff entering the wet land then previously engineered the amount of land to develop is less then in 2006. It is with caution I ask the board to remedy the plan to less lots then 2006 not more.

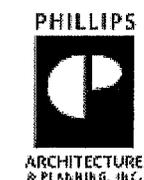
In addition Mr. Pero has asked for an increase in density for his town home development adjacent to the property being proposed. We the Planning board granted him that increase early 2013. With continuing to increase density without obliging the surrounding WR-1 development that bought from him is disrespectful and non-caring.

I support development for I am a developer. I also support what buyers need. All my young couple buyers are not buying City lots less then 64' wide and most prefer lots closer to 77' wide. Everything in the City of Whitefish with lots ranging from 64' to 77' wide that can have a decent safe yard has sold. In light of this I urge my fellow developer to consider my clients before proposing to increase density.

I will honor the conflict of interest rule and withdraw myself during the voting of this proposal. I do own a home in Phase 1 of GNH and also own another WR-1 single family lot in Phase 2.

Thank you for your time,

Chad Phillips
Architect/ Planner



Phillips Architecture & Planning, Inc

EXHIBIT

14

Wendy Compton-Ring

From: Sue Robison <sue@littlecreekfarm.com>
Sent: Monday, November 11, 2013 12:52 PM
To: 'Wendy Compton-Ring'
Subject: Hilltop Partners proposed land use

To Whom It May Concern,

I am sorry to say, but I am still opposed to the proposed land use plan that Hilltop Partners is proposing for Phase 3 of the Great Northern Heights subdivision. I don't want them to reduce the size of the lots from the required 10,000 square feet. It would produce unattractive homes with predominant garage fronts and very little backyard space for kids and pets in this family-oriented neighborhood. The design of the homes would not be cohesive with the existing homes built in Phase 1 and 2 and would devalue the existing neighborhood.

I also have concerns with the extension of Mr. Pero's plan to line the south side of Great Northern Drive adjacent to Phase 3 with more single car garage townhomes that have proven to be a problem with parking, safety and traffic flow with only 2 access points at JP Road and Great Northern Drive. I have submitted photos of the congestion in the past regarding this issue. The proposal for these small lots and tiny yards would really increase the safety hazards in this kid and pet-oriented neighborhood.

I don't understand why he is not seeing the market potential in the lovely piece of property that borders a conservation easement to the west. Why not maximize this asset and have larger more marketable lots that would tie in with the existing Phase 1 and 2? The word on the street is that this is what buyers want. Why build lots that will just sit? Also, the added density will put more pressure on the wetlands and wildlife.

Another issue that seems to not be taken into consideration is how Phase 3 would tie into the existing HOA covenants, architecture guidelines and use of the common areas.

Thank you for your time and consideration

Susan Robison

Lot 45, 298 Brimstone Drive

EXHIBIT

15



City of Whitefish
Planning & Building Department
 1005 C Baker Avenue
 Whitefish, MT 59937
 Phone: 406-863-2410 Fax: 406-863-2409

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

MAJOR PRELIMINARY PLAT APPLICATION

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

FEE ATTACHED \$ 11,370.00 + \$396
 (See most current fee schedule)

Project /Subdivision Name: Great Northern Heights, Phase 3

Initial Preliminary Plat

Amendment to an Approved Preliminary Plat

Change a Condition of Approval to an Approved Preliminary Plat (attach a narrative explaining which condition you are requesting to be changed and why the condition is no longer valid or warranted)

Re-file of an Expired Preliminary Plat; date preliminary plat expired: March 6, 2010

A. OWNER(S) OF RECORD:

Name: Hilltop Partners, LLC (Attn: Rob Pero) Phone: (406) 253-6147

Mailing Address: 1290 Birch Point Drive

City, State, Zip: Whitefish, MT 59937

Email: _____

APPLICANT (if different than above):

Name: Same Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

TECHNICAL/PROFESSIONAL:

Name: Sands Surveying, Inc Phone: (406) 755-6481

Mailing Address: 2 Village Loop

City, State, Zip: Kalispell, MT 59901

Email: _____

Name: Carver Engineering, Inc Phone: (406) 257-6202

Mailing Address: 1995 3rd Avenue East

City, State, Zip: Kalispell, MT 59901

Email: _____

B. LEGAL DESCRIPTION OF PROPERTY: Street Address Brimstone Drive

Assessor's Tract No.(s) N/A Lot No(s) Portion of Lot 2 Block # N/A

Subdivision Name Askew Subdivision 1/4 Sec _____ Section 12 Township

30 Range 22

C. GENERAL DESCRIPTION OF SUBDIVISION

ZONING DESIGNATION: WR-1

If proposing to change the underlying zoning, proposed zoning: WR-1/PUD

CRITICAL AREAS ON-SITE OR NEARBY:

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

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

- Date of Parks Board Meeting (prior to submitting an application): _____
- Market Value before Improvements: N/A
- Total Acreage in Parks, Open Spaces and/or Common Areas: Parkland was dedicated in previous phases of the Great Northern Heights development

LOTS AND ACREAGE:

Total Acreage in Subdivision: 6.125 Number of Lots or Rental Spaces: 24
 Maximum Size of Lots or Spaces: 9615 sq ft Minimum Size of Lots or Spaces: 5285 sq ft
 Total Acreage in Lots: 3.369 ac Total Acreage in Streets or Roads: 1.017 ac

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

Single Family: 24 Townhouse: Mobile Home Park: Duplex: Apartment:
 Recreational Vehicle Park: Commercial: Industrial:
 Planned Unit Development: X Condominium: Multi-Family: Other:

IMPROVEMENTS TO BE PROVIDED:

Roads: Gravel Paved Curb Gutter Sidewalks Alleys Other (explain): _____
Water System: Individual Multiple User Neighborhood Public Other (explain): _____
Sewer System: Individual Multiple User Neighborhood Public Other (explain): _____
Other Utilities: Cable TV Telephone Electric Gas Other (explain): _____
Solid Waste: Home Pick Up Central Storage Contract Hauler Owner Haul
Mail Delivery: Central Individual
Fire Protection: Hydrants Tanker Recharge
Drainage System: See EA and attached drainage Plan for details

D. APPLICATION CONTENTS:

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

Attached

- Preliminary Plat Application
- 20 copies of the preliminary plat
- One reduced copy of the preliminary plat not to exceed 11" x 17"
- Electronic version of plat such as .pdf
- One reproducible set of supplemental information.
- Certified adjacent owners list for properties within 300-feet of subject site
- Any additional information requested during the pre-application process
- Fair Market Appraised Value
- Recommendation from the Parks Board – unless exempt 12-4-10(C)
- \$100.00 deposit for sign to be posted on-site during the duration of the public process

When all application materials are submitted to the Planning & Building Department and it is found complete, the staff will schedule the subdivision for a public hearing pursuant to Section 12-3-5(D). The Council must act within 60 working days or 80 working days if the subdivision has 50 or more lots.

E. VARIANCES:

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

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

Owner(s) – all must sign the application (Date)

Owner(s) – all must sign the application (Date)

Applicant – if different than above (Date)

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

Applicant (Date)

VARIANCE REQUEST

Completely address each of the following items, if requesting a variance to the Subdivision Regulations. The Council will use the information provided to evaluate the variance request – all criteria need to be met or found not applicable in order for the Council to grant the variance.

SECTION OF REGULATION CREATING HARDSHIP: N/A

EXPLAIN THE UNDUE HARDSHIP CREATED WITH STRICT COMPLIANCE OF THESE REGULATIONS:

PROPOSED ALTERNATIVE(S) TO STRICT COMPLIANCES WITH ABOVE REGULATIONS:

PLEASE ANSWER THE FOLLOWING QUESTIONS IN THE SPACES PROVIDED BELOW:

1. Will the granting of the variance be detrimental to the public health, safety or general welfare or injurious to other adjoining properties? Explain.

2. How is the physical surrounding, shape or topographical conditions of the property limiting the ability to fully comply with the Regulations?

3. Is the hardship solely a financial hardship or a hardship that has been self-imposed? Explain.

4. Will the variance cause a substantial increase in public costs? Explain.

5. Will the variance cause the subdivision to be in nonconformance with any adopted zoning regulations, growth policy or adopted policies or regulations? Explain.

Whitefish Planning & Building Dept.
PO Box 158
510 Railway Street
Whitefish, MT 59937
Phone: (406) 863-2410 Fax: (406) 863-2409

APPLICATION FOR PLANNED UNIT DEVELOPMENT

FEE ATTACHED \$3,382.00 (See current fee schedule)

PROJECT NAME Great Northern Heights, Phase 3

- 1. NAME OF APPLICANT: Hilltop Partners, LLC (Attn. Rob Pero)
- 2. MAIL ADDRESS: 1290 Birch Point Road
- 3. CITY/STATE/ZIP: Whitefish, MT 39937 PHONE: (406) 253-6147
- 4. E-mail (Optional; not for official notifications.) _____

NAME AND ADDRESS OF OWNER IF DIFFERENT THAN APPLICANT:

- 5. NAME: Same
- 6. MAIL ADDRESS: _____
- 7. CITY/STATE/ZIP: _____ PHONE: _____
- 8. E-mail (Optional) _____
- 9. TECHNICAL ASSISTANCE: Sands Surveying, Inc
- 10. MAIL ADDRESS: 2 Village Loop
- 11. CITY/STATE/ZIP: Kalispell, MT 59901 PHONE: (406) 755-6481
- 12. E-mail (Optional) _____

If there are others who should be notified during the review process, please list those.

Carver Engineering, 1995 Third Avenue East, Kalispell, MT 59901

Check One:

- Initial Planned Unit Development proposal
- Amendment to an existing Planned Unit Development
- A. Property Address: Brimstone Drive
- B. Total Area of Property: 6.125 Acres
- C. Legal description including section, township & range: A portion of Lot 2 in the Askew Subdivision all in Section 12, Township 30 North, Range 22 West,

P.M.M, Flathead County. (See the attached for a more specific perimeter description)

- D. The present zoning of the above property is: WR-1
- E. Please provide the following information in a narrative format with supporting plans, drawings, renderings, photos, or other format as needed:
- a. An overall description of the goals and objectives for the development of the project.

Great Northern Heights began the review process back in 2004 with the approval of the Phase 1 Preliminary Plat for 22 single family lots and 8 townhouse lots and PUD for the Phase 1 Townhouses located on the south side of Great Northern Drive. Phase 2 received preliminary plat approval in 2005 for 25 single family lots. The Great Northern Height, Phase 3 Preliminary Plat was originally approved on March 16, 2006 for 21 single family residential lots. In November of 2008, Phase 3A was granted preliminary plat approval for one single family lot and 14 townhouse lots.

To date Phases 1 and 2 have received final plat approval. Phase 1 was recorded in October of 2005 and Phase 2 was recorded in April of 2006. Phase 3 expired in the spring of 2010 as the market for lots was nonexistent and the infrastructure alone would cost more to install than lots were worth. Phase 3A still has a valid preliminary plat approval.

The goal of the new Phase 3 is to complete the subdivision that was started back in 2004. To create a development that is economically feasible, the applicant needs a slight increase the density of the originally approved Phase 3. In addition, the original Phase 3 approval pre-dated the City 's Critical Area Standards which now removes approximately 1.7 acres from lots and converts it to open space and stormwater detention. However, Chapter 11-3-29B(12) Density Calculation: states: "Density shall be calculated based on gross acreage of the site... Where development is partly prohibited due to the presence of critical areas, as defined in this section, an applicant may be permitted to transfer up to one hundred percent (100%) of the density attributable to the undevelopable area of the property to another portion of the same property..." The primary reason for requesting the variance is to shift density from the critical area and increase by three the number of lots that was originally approved. The original Phase 3 subdivision had a gross density of 3.42 lots per acre and this proposed Phase 3 version has 3.91 units per acre for an increase of 0.49 units per acre.

- b. In cases where the development will be executed in phases, please include a phasing plan.

Great Northern Heights Phase 3 is the final phase of the overall project.

- c. The extent to which the plan deviates from zoning, subdivision regulations and/or “Standards for Design and Construction” (public works standards). The standards that may be deviated from through the approval of a Planned Unit Development are listed in section 11-2S-5.A. Please describe the public benefit for such departures including how they further the intent and purpose of the Planned Unit Development as set forth in Sec. 11-2S-1.

The proposed PUD amendments will deviate from zoning regulations as follow:

Density

The 6.125 acre Great Northern Heights Phase 3 development is zoned WR-1 (One-Family Residential). The WR-1 zoning establishes a minimum lot size of 10,000 square feet per lot and a gross density of 4 units per acre. The PUD provisions allow an applicant to secure a density bonus of up to 7 units per acre in exchange for providing 10% of the total number of units as “affordable” units for moderate income families as defined by the Whitefish Zoning Ordinance or a cash-in-lieu of affordable housing dedication as set by Whitefish Ordinance.

In this revision, the applicant is no longer requesting a density bonus and in fact the proposed density is 3.91 lots per acre (24 lots ÷ 6.125 acres =3.91lots/acre). As such the applicant is no longer proposing affordable housing with the PUD application.

There is no longer a deviation to setback, road section, row with, or sidewalks. All of the lots will be single family as prescribed in the zoning regulations for WR-1.

- d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; assess the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the plan.

The proposed project is developed with single family lots throughout. To comply with the Critical Area Regulations, a buffer is established that is not part of the residential lot or yard. As a result, 1.45 acres is established as a common area buffer that will be revegetated with native plants as part of a restoration incentive. This area will be fenced off from the residential lots with a split rail fence or equivalent that will discourage use of the area. The restoration area abuts the established common area that was dedicated with the previous phases of Great Northern Heights. The existing Open Space C is maintained by the existing Homeowners Association and includes a walking path, park benches and picnic tables.

- e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

Sewer and Water

Water service to the proposed lots will be provided a public water supply system owned, operated and maintained by the City of Whitefish. There is an existing 10" water main in Great Northern Drive. Some modifications to this existing water main, as well as a water main extension, will be required to serve the proposed lots.

Sewer service to the proposed lots will be provided by a public wastewater collection and treatment system owned, operated and maintained by the City of Whitefish. There is an existing 8" sewer main in Great Northern Drive. Some modifications to this existing sewer main, as well as a sewer main extension, will be required to serve the proposed lots. See Water and Sewer Plans accompanying this Preliminary Plat submittal.

Wetlands

The subject property has had two wetland studies done over the years. The first study was completed in 1995 by a previous land owner for Great Northern Business Park proposal. The latest wetland delineation was performed by Calypso Ecological Consulting, LLP in 2010. Both wetland boundaries are shown on the preliminary plat and one can see that the wetland area has expanded.

Since the initial plans and proposals for Great Northern Heights in 2004 and 2006, the City has adopted a Critical Areas Regulation that is designed to protect critical drainage conveyances and their associated wetlands. The proposed PUD and Subdivision will utilize Buffer Averaging (11-3-29C(4) and Restoration Incentives 11-3-29C(3) to provide a buffer that works with the development and meets the provisions and intent of the Regulations. In addition, the applicant is preserving density as prescribed in 11-3-29B(12).

Stormwater

Runoff from Brimstone Drive, with the exception of the easterly side of Brimstone south of its intersection with Great Northern Drive, will flow in a northerly direction to a Catch Basins Nos. 3-3 & 3-4 located near Lot 15. Water from Catch Basin Nos. 3-3 & 3-4 will then be conveyed to Stormwater Detention Area #3B located north of Lot 16. This detention area will consist of shallow rock lined pond with a controlled discharge structure. Water from the pond will be discharged to the Wetland Area. The detention pond will be designed to detain runoff flows from a 10-year storm and provide a discharge flow rate less than or equal to the pre-development runoff flow rate from the contributing areas. See proposed stormwater drainage and erosion control plan with this preliminary plat submittal.

Runoff water from the southern portion Brimstone Drive, will flow to Stormwater Detention Area #3A located just east of Lot 24. As with Detention Area #3B, this detention area will consist of shallow rock lined pond with a controlled discharge structure, and water from the pond will be discharged to the Wetland Area. The detention pond will be designed to detain runoff flows from a 10-year storm and provide a discharge flow rate less than or equal to the pre-development runoff flow rate from the contributing areas.

There are existing 24" HDPE culverts where both Great Northern Drive and Brimstone Drive cross the wetland area. To improve flow through the wetland area, or at least the perception of improving flow, new 24" HDPE culverts will be installed next to the existing culverts at each location. The new culverts will be slightly lower in elevation which should alleviate the concerns of some that the culverts are somehow restricting the flow of runoff water through the wetland area.

Schools:

Using County wide average of 0.31 school aged children per residence. (There were 14,753 students recorded with the Flathead County Superintendent of Schools Office including public, private and home schooled children at the beginning of the 2011 school year. The US Census Bureau 2010 counted 46,963 housing units in Flathead County – 14,753 students / 46,963 housing units = 0.31 students per unit), the 24 units would generate 7 students in the school system.

Streets and Pedestrian Access

The interior roads will be privately developed to the City specifications and dedicated to the City of Whitefish for public use the same as the previous phases. Great North Heights Phase 3 connects with roads in Phases 1, 2, and 3A which provide access at two locations on Highway 93, one just south of Western Building Center and the other at the stoplight/JP Road intersection. Brimstone Drive will be constructed as a City Street with curb gutter and sidewalk on both sides, same as the existing two phases of Great Northern Heights.

- f. The relationship of the planned development upon the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.

The proposed Phase 3 is the last phase to of a project that has been in the planning /development process for the last decade. Phases 1 was developed with single family and duplex townhomes; Phase 2 which is located to the north and east of Phase 3 are developed primarily with single family residences; and Phase 3A located to the south is primarily duplex townhomes. There is a significant commercial land use pattern along the Highway 93 corridor to the east. To the west is suburban agricultural with large tracts and a small conservation easement. Because of the conservation easement, the property immediately to the west will not develop with urban residential densities. As with previous renditions of this Great Northern Development, the City has recommended a six foot privacy fence along the western property boundary to separate the urban use from the suburban agricultural use. The developer would expect a similar condition with this proposal and is prepared to install a fence as a condition of PUD and Final Plat.

- g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.

The proposed project is within the urban confines of the City of Whitefish and this is a phase of a developing subdivision. Most of the adjacent uses are similar in use and density. The revised Phase 3 proposes only single family residential use. The density of the proposed Phase 3 is 3.91 units per acre. This compares with densities in Phase 1 of 2.40 units per acre; Phase 2 of 2.20 units per acre; the original Phase 3 of 3.42; and Phase 3A of 5.1 units per acre.

- h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy.

Since the original approval of Great Northern Heights Phase 3 back in of 2006, the City of Whitefish adopted a new Growth Policy and a Growth Policy Update. As with the old Whitefish Master Plan Map, the new Whitefish Growth Policy Land Use Map designates the Great Northern Heights property as Suburban Residential.

The Whitefish Growth Policy encourages infill development over Growth Policy Amendments and although the property is on the edge of Whitefish's Urban area, the property is currently zoned for the proposed densities with the urban WR-1 zoning designation.

The Whitefish Growth Policy encouraged the establishment of the City's Critical Areas Regulations (CAR). While the first Great Northern Heights, Phase 3 received approval prior to this ordinance, this new PUD and Subdivision is designed to comply with the CAR.

- i. If affordable housing is a component of the project, describe how the project is implementing the standards in Section 11-2S-3.B

As the proposed subdivision does not exceed the four dwelling units per acre, it is not subject to the "affordable Housing Component" and therefore the applicant is not proposing one.

j. Submit site plans, drawings and schematics with supporting narratives where needed that include the following information:

- (1). Total acreage and present zoning classifications; *(See Preliminary Plat)*
- (2). Zoning classification of all adjoining properties; *(See Attached)*
- (3). Density in dwelling units per gross acre; *(Addressed in item c)*
- (4). Location, size, height and number of stories for buildings and uses proposed for buildings; *(Locations are indicated on the preliminary plat. All lots are single family and the lots with most likely be developed individually.)*
- (5). Layout and dimensions of streets, parking areas, pedestrian walkways and surfacing; *(See Preliminary Plat and Preliminary Plat application.)*
- (6). Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
- (7). Location, size, height, color and materials of signs; *(N/A)*
- (8). Location, height, and material of fencing and/or screening; *(See draft CC&R's. The western property boundary will consist of a six-foot cedar fence)*
- (9). Location and type of landscaping; *(Typical of any residential. CAR buffer landscaping address in attached Restoration Plan)*
- (10). Location and type of open space and common areas; *(See attached Preliminary Plat)*
- (11). Proposed maintenance of common areas and open space; *(See CC&R's and Native Plant Restoration Plan)*
- (12). Property boundary locations and setback lines *(See Preliminary Plat)*
- (13). Special design standards, materials and / or colors; *(N/A)*
- (14). Proposed schedule of completion and phasing of the development, if applicable; *(N/A)*
- (15). Covenants, conditions and restrictions (CC&Rs); *(See Attached)*
- (16). Any other information that may be deemed relevant and appropriate to allow for adequate review.

The proposed PUD application is accompanied by a Major Subdivision Application. As both applications work in concert, the supporting materials overlap and support each application. For example, the environment assessment and preliminary plat address much of the requested elements of the PUD application.

Zoning Map



If the Planned Unit Development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.

Please note that the approved final plan, together with the conditions and restrictions imposed, shall constitute the zoning for the district. No building permit shall be issued for any structure within the district unless such structure conforms to the provisions of the approved plan.

The signing of this application signifies that the aforementioned information is true and correct and grants approval for Whitefish Planning & Building staff to be present on the property for routine monitoring and inspection during review process.

(Applicant Signature)

(Date)

Print Name

ENVIRONMENTAL ASSESSMENT
Great Northern Heights, Phase 3

The sources of information for each section of the Assessment are identified. All Environmental Assessments shall contain the signature, date of signature and mailing address of the owner of the property and the person, or persons, preparing the report (**Note:** Any response to the EA question that does not have a specific source is attributed to the author of the EA.)

Description: Great Northern Heights, Phase 3 was granted a preliminary plat approval by the Whitefish City Council on March 6, 2006. The applicants did complete the engineering and received the proper approvals, however, as with many of the developments in Whitefish and Flathead County, the applicants did not proceed construction and final plat as the market would not support the inventory. The preliminary plat expired in March of 2010. In order to begin the approval clock again, the applicants are resubmitting the preliminary plat for review and approval. Since 2006, the City has adopted a number of new and revised ordinances that the new plat must comply with. As a result of complying with the wetland setback of the Whitefish Critical Area Regulations, the new preliminary plat is slightly different than the originally approved Phase 3 development. The density is shifted out of the Critical Area and increase by three lots for a density of 3.91 lots per acre verses the original (2006) Phase 3 with a density of 3.42 lots per acre. The road layout is now exactly the same as the layout approved in 2006.

PART 1 – RESOURCE ASSESSMENT

1. Surface Water

Locate on a plat overlay or sketch map:

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).

There is a natural drainage channel that runs through the recorded Open Space of Phases 1 and 2 and within the proposed open space of Phase 3. This drainage has been altered over the years as evidenced by the Aerial Photos published in the Upper Flathead Valley Soils Survey and through the development of Phases 1 and 2. The drainage, wetlands (Historic and Expanded) are shown on the preliminary plat. The drainage is not named.

A previous developer of the subject property completed a wetland delineation back in the mid 1990's. As site conditions were altered by the previous developer along with the construction of Phases 1 and 2 of the project, the current applicant hired Calypso Ecological Consulting to conduct the field work and prepare a wetland delineation of the subject property back in 2010. The Wetlands and Sensitive Areas identified in the Assessment are indicated on the Plat and are shown with a blue hatching for the old wetland boundary and a green line for the new boundary.

- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).

There are no artificial water systems located on the property. There is a natural drainage channel adjacent to the proposed Phase 3 development and an open space area is proposed to provide a buffer area as prescribed in the Whitefish Critical Areas Regulations (CAR). The wetland area associated with the drainage has expanded over the period of development of the site.

- c. Time when water is present (seasonally or all year).

The water in the drainage occurs seasonally and typically is only present in the spring or during times of heavy rainfall.

- d. Any areas subject to flood hazard, or in delineated 100 year floodplain.

The subdivision in question is mapped in Zone X, “area determined to be outside the 0.2% annual chance floodplain” on FIRM Panel 300023/300026-1090 G. (See attached Floodplain Map, Appendix A)

- e. Describe any existing or proposed stream bank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

Great Northern Drive and Brimstone Drive both cross the drainage that runs through the Great Northern Heights development. The crossings were constructed with culverts and fill during development of the previous phases. The Brimstone crossing will need to be finished with the top courses, paving, curb, gutter and sidewalks. This work however will not increase the existing footprint of the fill.

2. Groundwater

Using available data, provide the following information:

- a. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.

Based on the “Potentiometric Surface Map of the Deep Aquifer, Kalispell Valley, Flathead County, Montana” by John I. La Fave the static water level of the deep aquifer is approximately 100-feet below the surface ground elevation in the location of the proposed subdivision. The Deep aquifer is the primary drinking water source for much of the Flathead Valley. According to the LaFave Map, the groundwater flow is in an easterly direction.

There is also a shallow seasonal water table in the general area and water depths during the spring and early summer months can range from 3 ft at lower elevations close to the wetland area (Wetland Buffer Area) to 7 ft. in the higher elevation areas near the west property line. This was determined from test holes and previous excavation for installation of water & sewer mains. This water is not present in the late summer months.

b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

As with almost all subdivisions in the City Limits of Whitefish, the proposed development will utilize the City's public water and wastewater facilities. The City of Whitefish utilizes surface water for its source of drinking water and waste water is treated in the municipal wastewater treatment plant and discharges in the Whitefish River. The proposed subdivision should have no impact on the groundwater aquifer.

3. Topography, Geology and Soils

a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:

- i Shallow bedrock
- ii Unstable slopes
- iii Unstable or expansive soils
- iv Excessive slope

The preliminary plat provides one foot contour intervals. The site is relatively flat with the exception of the drainage areas. The drainage is confined to open space and has a substantial buffer as required by the CAR. There is no exposed bedrock within the development or unstable slopes..

b. Locate on an overlay or sketch map:

Any known hazards affecting the development which could result in property damage or personal injury due to:

- A. Falls, slides or slumps -- soil, rock, mud, snow.
- B. Rock outcroppings
- C. Seismic activity.
- D. High water table

There are no falls, slides, slumps, rock outcroppings, or a high water table. The City of Whitefish is located in a seismic area with a fault running along the Whitefish Divide.

c. Describe measures proposed to prevent or reduce these dangers.

As the subject property is within the City Limits of Whitefish and Whitefish has a very good plan check and building inspection program, new development will have to comply the 2009 IBC which includes seismic standards to mitigate the threat to property or persons.

d. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

4. Vegetation

a. On a plat overlay or sketch map:

i. Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.

The site is striped of most vegetation in preparation of construction under the previous preliminary plat approvals. The drainage area is vegetated with a number of willows and wetland indicator species. According to the wetland consultants and reviewing prior wetland studies of the property, the wetland area has expanded as a result of the additional stormwater run-off being directed to the drainage with the construction of Phases 1 and 2 of Great Northern Heights along with Highway construction that adds water to the drainage in the vicinity of Highway 40 and 93 which is located southeast of the subject development.

ii. Identify the location of critical plant communities such as:

- A. Stream bank or shoreline vegetation
- B. Vegetation on steep, unstable slopes
- C. Vegetation on soils highly susceptible to wind or water erosion
- D. Type and extent of noxious weeds

The only critical plant community is in the wetland area which is preserved in open space dedicated in Phases 1 and 2 of the subdivision. A CAR buffer area is proposed with Phase 3 that will theoretically further enhance the existing wetland.

b. Describe measures to:

i. Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).

This particular property has had two preliminary plat approvals granted by the City Council. The first approval was for a business park development called Great Northern Business Park and was approved in the mid 1990's. The road that is currently rough graded into Phase 3 along with the existing water main was extended back at that time of the business park approval. The work along the drainage was completed with the

construction of Phases 1 and 2 of Great Northern Heights and occurred in the early and mid 2000's. Other than what occurs in the wetlands, there is not much vegetation to preserve. .

- ii. Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.

The City's CAR is intended to provide buffers and open space for wetland plant communities. The proposed subdivision is complying with the CAR through buffering averaging and buffer enhancements both of which are offered in the regulations.

- iii. Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)

The property is not in the Wildland Urban Interface. The project will be developed with irrigated lawn, shrubs and trees which are not considered wildfire fuels. The property is located within the City limits of Whitefish and will utilize City water service, therefore city water mains will be extended into the subdivision along with fire hydrants providing fire flow.

- iv. Control and prevent growth of noxious weeds

The property has been sprayed for noxious weeds in the past and as development takes place, the proposed housing units will revegetate the site in yard areas. This includes the control of noxious weeds along within the buffer enhancements through the planting of native vegetation and the long term maintenance recommended in the wetland restoration plan.

5. Wildlife

- a. Identify species of fish and wildlife use the area affected by the proposed subdivision.

The site is not mapped as Crucial Big Game winter range as depicted in Figure 23 of the Resource and Analysis Report for the Whitefish City – County Growth Policy. The property is, as is most of Whitefish, located in Moose Winter Range, Figure 25 of the Resource and Analysis Document. These maps were updated in 2002 by the Tri-City Planning Office. There are wetlands in the bottom of the drainage that provided some habitat for smaller terrestrial species. The proposed open space/buffer should mitigate any impacts with the wetland area. It should also be pointed out that the previous development of Phases 1 and 2 along with Highway 93 improvements has contributed to the increase in wetland area along the drainage.

It was recently reported that the 2013 spring was particularly bad for bear incidents in the City of Whitefish. In Particular, garbage collection is a problem as residents of the City put out their refuse bin the night before pick-up and the bears have figured out the schedule. The developer of the subdivision fully supports a City wide ordinance that

would require refuse containers be put out the morning of pick up to reduce the attractants for bears.

b. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.

The site is not mapped as Crucial Big Game winter range as depicted in Figure 23 of the Resource and Analysis Report for the Whitefish City – County Growth Policy.

c. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

To ensure that new bear attractants are not created on the site with the proposed development. The development will comply with the City of Whitefish policy of requiring refuse containers be stored within an enclosure except for the day of pick-up.

PART II - SUMMARY OF PROBABLE IMPACTS

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

1. Effects on Agriculture

a. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.

The 6.125 acre property is not in any form of agricultural production. The property is mapped within the Upper Flathead Valley Area Soils Survey. The soils are primarily Whitefish cobbly silt loam, 0 to 7% slopes (Wr), ClassVs-1. According to the Soils Survey, these are not very productive soils for agricultural purposes.

b. Describe whether the subdivision would remove from production any agricultural or timber land.

N/A The site has not been used for crop production in the past. Historically this and neighboring properties were logged and then possibly used as pasture for stock. (Aerial Photos from the 1960 Upper Flathead Valley Soils Survey)

c. Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).

The property to the west is in a small Conservation Easement and the owners use the property for some stock and possibly some hay productions. To avoid or mitigate the

potential for future residents to harass stock, the City Council required that the developer construct a six foot fence along the western border of the subdivision as a condition of final plat approval. As this subdivision phase never made it to final plat the fence was not constructed but the developer would expect the same condition with this preliminary plat.

d. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.

As the neighboring property is not practicing intensive agriculture (tilling, planting, spraying, irrigating, harvesting late into the evening, etc.) the neighboring agricultural activities should not pose any nuisance to the subdivision.

e. Describe effects the subdivision would have on the value of nearby agricultural lands.

N/A. See previous statements.

2. Effects on Agricultural Water User Facilities

a. Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.

According to the DNRC there are only two irrigation districts in Flathead County and neither is located in the Whitefish area. There is no presence of agricultural water user facilities on the property such as reservoirs, irrigation ditches, pivots, wheel lines, agricultural water or irrigation line easements located on the subject property. Therefore it is anticipated that the proposed Great Northern Heights, Phase 3 subdivision will have no impact on Agricultural Water User Facilities.

b. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

N/A. See previous statement.

3. Effects on Local Services

a. Indicate the proposed use and number of lots or spaces proposed for the subdivision, i.e. single family residential, multi-family residential, commercial, industrial.

The proposed subdivision will create 24 single family residential units on the 6.125 acres. The property is zoned WR-1 (One Family Residential) in the Whitefish Zoning District. To secure the shifting of and slight increase in density, the proposed subdivision accompanies a Planned Unit Development application for Phase 3.

b. Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.

i. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).

The road within the Phase 3 subdivision will be privately built and dedicated to the City of Whitefish for maintenance and public use. . Water and Sewer mains will be extended at the expense of the developer and long term maintenance is provided by the City with the costs of hook-up fees and service fees being paid by the developer and/or future unit owners. Costs for law enforcement, fire protection, parks and recreation and schools will be paid by the taxpayers within the service jurisdictions and the future lot owners.

ii. Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?

See the previous answer. There is a Special Improvements District that was created for the development of the JP Road intersection and traffic signal. The developer of Great Northern Heights paid the subdivisions share of the intersection improvements in a single payment with construction and platting of Phase 2.

iii. Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?

The City of Whitefish enacted impact fees for public facilities in order for new development to pay its way. As with most fees and taxes there is always a lag between the increase in new users and the accumulation of funds to upgrade or expand existing public facilities. Although not perfect, the service providers should be able to maintain the level of service.

iv. Describe off-site costs or costs to other jurisdictions that may be incurred (e.g. development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).

I am not aware of any off-site costs that are directly attributable to this Phase of the Great Northern Heights subdivision and would not be paid for by this developer or the fees charged by the service providers to this developer

c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g. allow installation of a central water system, or upgrading a country road).

The Great Northern Heights development was designed to facilitate the City of Whitefish's long range Transportation Plan by providing rights-of way, dedicated to the

city, that will allow for the continuation of road ways to the north, south and west. The Phase 3 development, which is the subject of the report, provides linkage between the two right-of-way extensions on the north and the south.

g. Would any special improvement districts be created which would obligate local government fiscally or administratively? Are any bonding plans proposed which would affect the local government's bonded indebtedness?

No. There is a Special Improvements District that was created approximately eight years ago for the development of the JP Road intersection and traffic signal. The developer of Great Northern Heights paid the subdivisions share of the intersection improvements in a single payment with construction and platting of Phase 2.

4. Effects on the Historic or Natural Environment

a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.

The are no known historic, paleontological, architectural, or cultural sites with in the proposed subdivision.

b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.

i. Would any streambanks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?

Great Northern Drive and Brimstone Drive both cross the drainage that runs through the Great Northern Heights development. The crossings were constructed with culverts and fill in the previous phases. The Brimstone crossing will need to be finished with the top courses, paving, curb, gutter and sidewalks. This work however will not increase the existing footprint of the fill.

To comply with the buffer averaging and the 25% buffer reduction for restoration incentives, the applicant is proposing a planting plan along the wetland border. The plan was prepared by Calypso Ecological Consulting to be implemented with the development of a previous design. The Concept will be applied to the new design along with a revised restoration plan that would be a condition of Preliminary Plat Approval.

ii. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?

As with almost all subdivisions in the City Limits of Whitefish, the proposed development will utilize the City's public water and wastewater facilities. The City of

Whitefish utilizes surface water for its source of drinking water and wastewater is treated in the municipal wastewater treatment plant and discharges in the Whitefish River. The proposed subdivision should have no impact on the groundwater aquifer.

- iii Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?

As evidence, the preliminary plat provides one foot contours of the development site. At the steepest point, there is a ten foot change in elevation over a 320 distance for an average three percent grade over the subject property. With the almost flat topography, there will be minimal cut and fill and erosion should be easily mitigated with standard erosion control techniques.

During-Construction: A sedimentation/erosion-control plan will be developed prior to construction that identifies critical areas, the controls to mitigate them, and the construction sequence/schedule to ensure the plan's objectives are met. Site construction work schedules will be sequenced thus that land-disturbing activities will only occur after erosion-protection and sedimentation-control measures are in place. Work will be performed such that land clearing and removal of natural cover is reduced, necessary controls are in place before commencing work, and protective cover is restored as soon as possible.

Grubbing and clearing will aim to occur during dry periods and/or as soon as key erosion- and sediment-control measures are in place. Any required grading will occur immediately after control measures are in place so that protective ground cover can be reestablished quickly. A revegetation/landscaping plan will be established prior to construction and implemented concurrently with site construction activities to minimize periods of exposed ground.

Temporary measures as a result of planned activities, or weather and other unpredictable factors may include the following:

- Installation of a Vehicle Tracking Pad;
- Sediment Traps;
- Silt Fencing/Straw Wattles & Straw Bale barriers (inlet/outlet protection);
- Incidental Surface Stabilization (seeding/mulching).

No on-site sewage treatment is proposed with this subdivision.

- iv Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.

Removing vegetation from any site will have some impact on soil erosion. There are local, state, and federal regulations involving development of property and created to mitigate and control impacts of erosion. Arguably, the City of Whitefish has one of the most stringent set of development regulations in the State of Montana and they are

intended to protect water resources by preventing erosion, protecting banks and shorelines from instability.

During-Construction: A sedimentation/erosion-control plan will be developed prior to construction that identifies critical areas, the controls to mitigate them, and the construction sequence/schedule to ensure the plan's objectives are met. Site construction work schedules will be sequenced thus that land-disturbing activities will only occur after erosion-protection and sedimentation-control measures are in place. Work will be performed such that land clearing and removal of natural cover is reduced, necessary controls are in place before commencing work, and protective cover is restored as soon as possible.

Temporary measures as a result of planned activities, or weather and other unpredictable factors may include the following:

- Installation of a Vehicle Tracking Pad;
- Sediment Traps;
- Silt Fencing/Straw Wattles & Straw Bale barriers (inlet/outlet protection);;
- Incidental Surface Stabilization (seeding/mulching).

v Would the value of significant historical, visual, or open space features be reduced or eliminated?

The proposed Phase 3 development is part of a four phase project. Phase 1 and 2 have already be constructed and final platted. Phase 3A was granted preliminary plat approval in November of 2009. Phase 3A was also developed with a PUD and two unit townhouse design. Phase 3 has had two preliminary plat approvals, one for a business park and one for a twenty lot subdivision that expired in 2010. The proposed Great Northern Heights development has long been slated for development and should not decrease the value of visual or open space features any more than any subdivision that develops at an urban density.

vi Describe possible natural hazards the subdivision be could be subject to (e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).

The preliminary plat provides one foot contour intervals. The site is relatively flat with the exception of the drainage areas. The drainage is confined to open space and has a substantial buffer as required by the CAR. There are no exposed bedrock outcroppings within the development or unstable slopes. The property is not mapped in a Wildland Urban Interface.

c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

The Great Northern Heights development has completed two phases. Although not built out, there are a significant number of homes and two unit townhouses constructed with the development. The existing residences are well constructed and landscaped. The proposed Phase 3 development will be all Single Family lots which matches phase 2 and most of Phase 1.

5. Effects on Wildlife and Wildlife Habitat

a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.

The proposed subdivision should have little impact on wildlife as the property is not mapped with big game winter range, located on migration routes, located in nesting areas or habitat for endangered species. The subdivision is on the urban edge of the City of Whitefish. Wetlands will actually be enhanced by the proposed work identified with the subdivision applications and as proposed mitigation to address CAR setbacks.

b. Describe the effect that pets or human activity would have on wildlife.

Some species of wildlife tolerate human and pet activities and can share the same general areas. As this area is on the urban edge of Whitefish already, most of the wildlife present, such as whitetail deer, raccoon, skunk, turkey, flickers, robins, etc are tolerant of human activities should not be further impacted by the proposed subdivision.

6. Effects on the Public Health and Safety

a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.

The subdivision will be served by municipal water and sewer, a drainage plan for this subdivision was already approved once by the City of Whitefish, and Highway 93 is nearby but not directly adjacent. As part of the required improvements of Phases 1 and 2, the developer improved the southern approach to MDOT standards, and participated in the JP Road intersection and signalization. Drainage is adequate and utilizes the drainage channel that bisects the development. There are no high pressure gas mains, high voltage power lines, airport, railroads or irrigation ditches on or adjacent to the property.

b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.

N/A. See response above.

c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.

The adjacent uses are a complete mix with residential, commercial, and suburban agricultural. The property between the subdivision and Highway 93 consist of a building supply/lumber yard and a tool rental business. To the North is a residence on a large parcel and a funeral home. To the south is a mix of residential uses and small businesses. To the west is a suburban agricultural property with a conservation easement that limits future development. The current zoning is WR-1 (One Family Residential) for the development. To the South and East is WR-1 (PUD) and WB-2 (Secondary Business) and to the North and West is WA (Agricultural). There are no land uses adjacent to the proposed subdivision that creates a potential for conflict or complaints by the future residents.

d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which would be created by the subdivision.

The initial phases of Great Northern Heights required extensive review and coordination with the MDOT. The developer secured the applicable permits and constructed the southern approach and a significant portion of the JP approach/intersection and signalization. As described previously in this report, there is no threat of contaminating ground or surface waters and fire conditions will be mitigated by the development of yards and the City's water supply.

PART III - COMMUNITY IMPACT REPORT

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

1. Water, Sewage, and Solid Waste Facilities

a. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).

Water service to the proposed lots will be provided by a public water supply system owned, operated and maintained by the City of Whitefish. There is an existing 10" water main in Great Northern Drive. Some modifications to this existing water main, as well as a water main extension, will be required to serve the proposed lots. See Water and Sewer Plans accompanying this Preliminary Plat submittal. Plans for proposed modifications to, and an extension of, the existing water supply system have already been reviewed and approved by the City of Whitefish and the Department of Environmental Quality.

Sewer service to the proposed lots will be provided by a public wastewater collection and treatment system owned, operated and maintained by the City of Whitefish. There is an existing 8" sewer main in Great Northern Drive. Some modifications to this existing sewer main, as well as a sewer main extension, will be required to serve the proposed lots. See Water and Sewer Plans accompanying this Preliminary Plat submittal. Plans for proposed modifications to, and an extension of, the existing wastewater collection system have already been reviewed and approved once by the City of Whitefish and the Department of Environmental Quality.

As the density and the configuration of proposed residences has changed with this new proposal, new plans for all infrastructure improvements will need to be reviewed by the City Public Works Department and the MDEQ prior to construction.

b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.

The owners/developers will be responsible for installing the water system and sewer system improvements, and following construction and testing, the City of Whitefish will own, operate and maintain the water supply and sewage collection systems. The cost of water system improvements is estimated to be \$82,000. The cost of sewer system improvements is estimated to be \$54,000. This assumes that proposed water and sewer improvements approved for Phase 3A have been constructed prior to constructing Phase 3 improvements.

c. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.

Plans for modifications to, and extensions of, the City's public water and sewer systems, necessary to serve the lots being proposed in Great Northern Heights, Phase 3, will need to be reviewed and approved by the City of Whitefish and the Department of Environmental Quality. In the City's review of the plans for water and sewer system improvements, impacts on the respective systems will be addressed. The City is well aware of this project and has worked with the applicant's engineer on the infrastructure extensions.

d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.

This is actually a statement of fact rather than a question. Great Northern Heights Phase 3 has a previously approved set of sewer, water and drainage plans from the original application. As the proposed preliminary plat has a change in density and unit type, the sewer, water, and stormwater drainage will need to be reviewed again by the City and the

MDEQ. However, the applicants cannot submit plans for review by the City and MDEQ until the Whitefish City Council approves the preliminary plat as the signed approval statement is a required element of the submittal.

Following preliminary plat approval by the Whitefish City Council in March of 2006, the engineering consultants prepared detailed engineering plans for sewer, water and stormwater drainage and submitted the drawings to the City of Whitefish Public Works Department for review. After successfully completing the City's Public Works Review process, the plans were approved by Public Works. The DEQ approved the water, sewer and stormwater drainage on June 19, 2007. The approval letters are included in the packet. (Appendix B)

e. Describe the proposed method of collecting and disposing of solid waste from the development.

Solid Waste will be collected and disposed of by North Valley Refuse. Each lot will have a refuse container and will be responsible for taking it out on the day(s) of pick-up and putting it back that evening. As this is an area frequented by wildlife, the owners will be required to keep refuse containers indoors except for the day of pick-up.

f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

North Valley Refuse is located approximately two miles south of the City of Whitefish on Highway 93 and the Flathead county Land Fill is located approximately five miles south of the City off of Highway 93.

2. Roads and Maintenance

a. Estimate how much daily traffic the subdivision, when fully occupied will generate on existing streets and arterials.

Phase 3, when developed, will average 240 vehicle trips per day based on a factor of ten (10) vehicle trips per day per unit. The Great Northern Heights development projected 910 vehicle trips per day based at full buildout. Phase 3 is the last phase in the Great Northern Heights development and there are only four more units proposed than originally approved.

b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.

Brimstone Drive provides access to Phase 3 and the design has been previously approved by Public Works as part of the initial Phase 3 infrastructure package. The new proposal is almost identical to the originally approved road system. No variances are requested for the road system and it will be constructed to City of Whitefish Standards for Design and Construction and dedicated to the City. Sidewalks will be constructed along both sides of

the street to provide pedestrian movement through the development and to pedestrian paths along Highway 93 and JP Road.

Access to the Great Northern Heights development, in general, is provided by two approaches onto Highway 93. There is a full movement approach just south of the Western Building Center on Highway 93, and there is a full movement approach on the north end of the development that creates a four-way intersection with Highway 93 and JP road. Both approaches are permitted (by MDOT) and constructed. The JP/Highway 93 intersection is signalized and the previous phases of the Great Northern Heights Development contributed funding for the installation of the traffic lights.

c. Describe increased maintenance problems and increased cost due to this increase in volume.

The new streets are designed to meet the City's design standards, there should not be maintenance problems associated with the streets. Traffic volumes were generally anticipated in the development of the adjacent streets.

d. Describe proposed new public or private access roads including:

- i. Measures for disposing of storm run-off from streets and roads.
- ii. Type of road surface and provisions to be made for dust.
- iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
- iv. Seeding of disturbed areas.

All of the roadways within the subdivision will be paved to provide longevity of the roadways and to reduce or eliminate dust from vehicle traffic.

All new roads in Phase 3 will have curbs and gutters and roads will be crowned along the centerline to direct runoff water to the respective gutters.

Runoff from Brimstone Drive, with the exception of the easterly side of Brimstone south of its intersection with Great Northern Drive will flow in a northerly direction to a Catch Basins Nos. 3-3 & 3-4 located near Lot 15. Water from Catch Basin Nos. 3-3 & 3-4 will then be conveyed to Stormwater Detention Area #3B located north of Lot 16. This detention area will consist of shallow rock lined pond with a controlled discharge structure. Water from the pond will be discharged to the Wetland Area. The detention pond will be designed to detain runoff flows from a 10-year storm and provide a discharge flow rate less than or equal to the pre-development runoff flow rate from the contributing areas. See proposed stormwater drainage and erosion control plan with this preliminary plat submittal.

Runoff water from the southern portion of Brimstone Drive, will flow to Stormwater Detention Area #3A located just east of Lot 24. As with Detention Area #3B, this detention area will consist of shallow rock lined pond with a controlled discharge structure, and water from the pond will be discharged to the Wetland Area. The detention

pond will be designed to detain runoff flows from a 10-year storm and provide a discharge flow rate less than or equal to the pre-development runoff flow rate from the contributing areas.

There are existing 24" HDPE culverts where both Great Northern Drive and Brimstone Drive cross the wetland area. To improve flow through the wetland area, or at least the perception of improving flow, new 24" HDPE culverts will be installed next to the existing culverts at each location. The new culverts will be slightly lower in elevation which should alleviate the concerns of some that the culverts are somehow restricting the flow of runoff water through the wetland area.

All areas outside of roadways that are disturbed during construction will be graded, covered with topsoil, and will then be raked and hydroseeded.

e. Describe the closing or modification of any existing roads.

The proposed subdivision will not close or modify any existing roads.

f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.

All of the lots are accessed from the internal subdivision streets.

g. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.

All access is provided by conventional means through legal rights-of-way that will be dedicated to the City of Whitefish. The Streets will be owned by the City and although there was no legal access through the subdivision to adjoining properties prior to the subdivision development, the subdivision as a whole is providing access to the north and south for continuation of the City's infrastructure.

h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

The street system will be constructed by the developer and dedicated to the City for long term maintenance includes snow removal. Completion of the infrastructure is dependant on the market for lots and therefore it could happen anytime during the approval timeframe. The cost of constructing the new roadways, along with sidewalks, curb & gutter, street lights and boulevard improvements, is estimated to be \$220,000. This assumes that proposed road improvements approved for Phase 3A have been constructed prior to constructing Phase 3 road improvements.

3. Fire, Police Protection and Emergency Services

a. Describe the fire, police protection and emergency services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:

- i Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?

The proposed subdivision is located within the Whitefish Fire Service Area and the City limits of Whitefish. The subdivision will connect to the Whitefish Public water system. As part of the approval of the water system, Public Works and the Fire Marshall will review the sizing, pressure, and location of hydrants needed to serve the development. The attached sewer and water plans indicate the probable locations of the Water mains. As noted previously in the report, the City has reviewed and approved the water system and hydrant location once with the previous submittal.

Whitefish has a full time fire staff available 24 hours a day, seven days a week. The City recently completed construction of a new emergency services building located off Baker Avenue. The new facility provides modern facilities for both equipment and personnel. The site also provides a much better location for entering and exiting the Fire Hall than the old facility.

- ii Law enforcement protection – Is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department?

Whitefish City Police Department serves the site. The City provides a full service police department. As with Fire, the Police department recently moved into the new Emergency Services building which provides state of the art facilities for the force.

b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

Police and Fire Services can be met through the existing personnel and facilities. As a result of the recession everyone had to tighten their belts to off-set declining revenues while the workload remained constant for these service providers. This decline in revenue was not just an impact for new development but existing residents as well. The City of Whitefish has established impact fees to help off-set or mitigate the impact of new development on the City's service providers.

4. Education and Busing

a. Describe the available educational facilities which would serve this subdivision.

b. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system

indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

Using County wide average of 0.31 school aged children per residence, (There were 14,753 students recorded with the Flathead County Superintendent of Schools Office including public, private and home schooled children at the beginning of the 2011 school year. The US Census Bureau 2010 counted 46,963 housing units in Flathead County – 14,753 students / 46,963 housing units = 0.31 students per unit), the 24 lots would generate 7 students in the schools system.

The Whitefish School District #44 serves the site. Three attempts were made to contact the Superintendent of Whitefish Schools and three messages were left and none returned. In reviewing the Flathead Statistical Report for Schools 2012 put out by the Flathead Superintendents of Schools office, the Whitefish Elementary School has dropped enrollment by 90 students or 8% over the past 10 years. The Whitefish High School seen a drop of enrollment by 195 students or 29% over the last 10 years. The Whitefish School District complete a major reconstruction of the Central School facility and is just beginning a major upgrade of the High School Facility. Given that the enrollment is trending downward and the facilities are greatly improved, one would be hard pressed to say that the proposed subdivision will negatively impact the school system.

5. Payment for extension of Capital Facilities

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

The developer will use a combination of investors and construction loans form lending institutions to raise the capital to build the infrastructure required for the subdivision.

Prepared By: _____
Eric H. Mulcahy AICP
Sands Surveying, Inc.
2 Village Loop
Kalispell, MT 59901
(406) 755-6481

Date: _____

Applicant: _____
Hilltop Partners, LLC
1290 Birch Point Drive
Whitefish, MT 59937
(406) 862-6271

Date: _____

Appendix A
FIRM Panel 1090G

Appendix B
MDEQ Approval for Great Northern Heights Phase 3.

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

JOB NO: 242908 (163101.DWG)
 DRAWING DATE: MARCH 6, 2013
 REVISED: AUGUST 14, 2013
 FOR: ROB PERO
 OWNERS: HILLTOP PARTNERS, LLC
 ROBERT W. PERO REVOCABLE TRUST
 ROBERT W. PERO

Preliminary Plat of Great Northern Heights, Phase 3

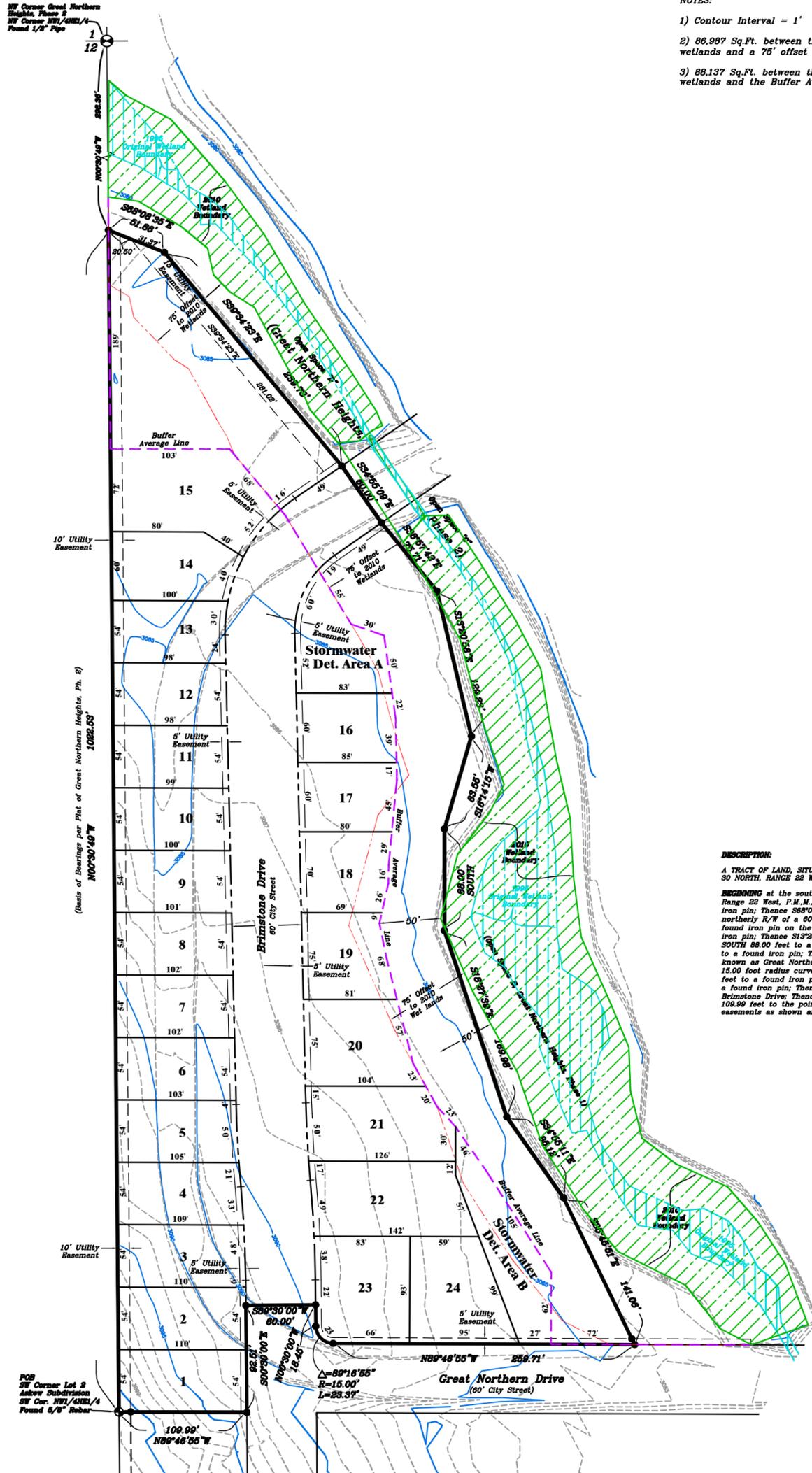
A P.U.D. Of
 A Portion of Lot 2, Askew Subdivision
 In the W1/2NE1/4 SEC. 12, T.30N., R.22W., P.M.,M.,
 Flathead County, Montana

SCALE: 1" = 50'
 50' 25' 0 50' 100'

Basis of Bearings per plat of Great Northern Heights, Phase 1

NOTES:

- 1) Contour Interval = 1'
- 2) 86,987 Sq.Ft. between the west edge of the 2010 wetlands and a 75' offset to this wetland edge.
- 3) 88,137 Sq.Ft. between the west edge of the 2010 wetlands and the Buffer Average Line.



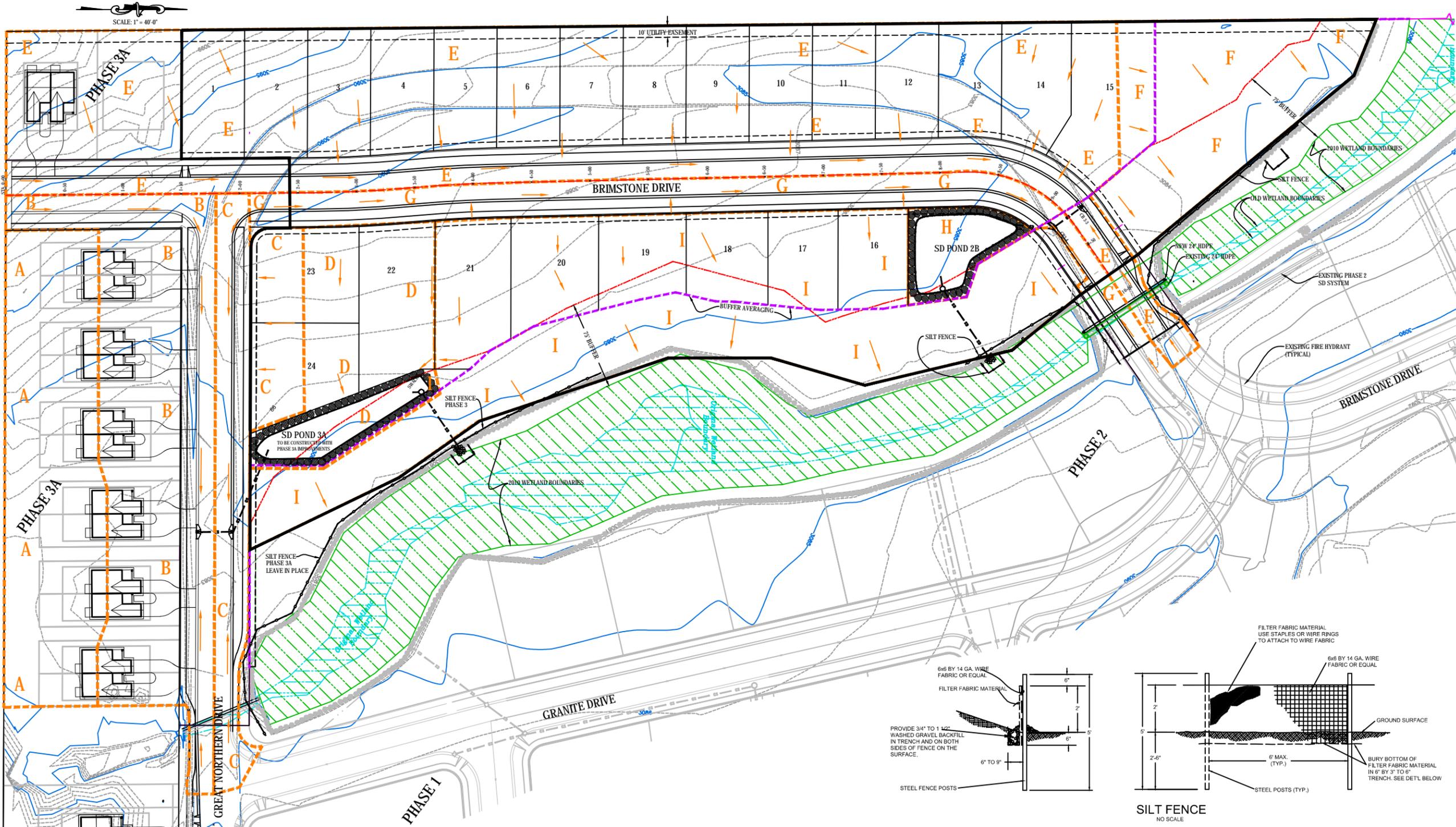
LOT	SQ.FT.	ACRES
1	5939.6	0.136
2	5940.3	0.136
3	5922.2	0.136
4	5781.7	0.133
5	5609.2	0.129
6	5546.8	0.127
7	5505.0	0.126
8	5463.3	0.125
9	5421.6	0.124
10	5379.8	0.124
11	5338.1	0.123
12	5296.4	0.122
13	5285.4	0.121
14	6102.6	0.140
15	9651.6	0.222
16	5078.4	0.117
17	4977.2	0.114
18	5280.8	0.121
19	5460.2	0.125
20	6746.4	0.155
21	7829.7	0.180
22	8584.2	0.197
23	7490.3	0.172
24	7145.2	0.164
TOTAL	146776.0	3.369
ROADS		
Road		1.017 AC.
Stormwater Area A		0.135 AC.
Stormwater Area B		0.146 AC.
Common Area		1.458 AC.
TOTAL		6.125 AC.

DESCRIPTION:

A TRACT OF LAND, SITUATED, LYING, AND BEING IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
BEGINNING at the southwest corner of the Northwest Quarter of the Northeast Quarter of Section 12, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, which is a found iron pin; Thence N00°30'49"W 1022.53 feet to a found iron pin; Thence S88°08'35"E 51.66 feet to a found iron pin; Thence S80°34'23"E 238.73 feet to a found iron pin on the northerly R/W of a 60 foot city street known as Brimstone Drive; Thence leaving said R/W S34°55'09"E 60.00 feet to a found iron pin on the southerly R/W of said Brimstone Drive; Thence leaving said R/W S38°57'42"E 75.71 feet to a found iron pin; Thence S13°20'58"E 126.23 feet to a found iron pin; Thence S10°14'15"W 63.55 feet to a found iron pin; Thence S07°11'15"E 109.98 feet to a found iron pin; Thence S10°27'39"E 109.98 feet to a found iron pin; Thence S34°05'11"E 63.12 feet to a found iron pin; Thence S25°45'51"E 141.06 feet to a found iron pin on the northerly R/W of a 60 foot city street known as Great Northern Drive; Thence along said R/W N89°46'55"W 259.71 feet to a found iron pin and the P.C. of a 15.00 foot radius curve, concave northeasterly, having a central angle of 89°16'55"; Thence along an arc length of 23.37 feet to a found iron pin on the easterly R/W of said Brimstone Drive; Thence along said R/W N00°30'00"W 15.45 feet to a found iron pin; Thence leaving said R/W S89°30'00"W 60.00 feet to a found iron pin on the westerly R/W of said Brimstone Drive; Thence along said R/W S00°30'00"W 62.51 feet to a found iron pin; Thence leaving said R/W N89°46'55"W 109.89 feet to the point of beginning and containing 8.125 ACRES; Subject to and together with all appurtenant easements as shown and of record.

LEGEND:

- 1/4 Corner (as noted)
- 1/16 Corner (as noted)
- Found 1/2" Rebar & Cap (79755)
- Buffer Average Line
- 75' Offset to 2010 Wetlands
- 2010 Wetland Boundary
- 1995 Original Wetland Boundary



**GREAT NORTHERN HEIGHTS, PHASE 3 & 3A
STORMWATER RUNOFF (BEFORE DEVELOPMENT)**

Q = QA WHERE: Q = PEAK RUNOFF FLOW
C = COEFFICIENT OF RUNOFF
i = RAINFALL INTENSITY (IN/HR) - 10-YR, 6-HR.
A = AREA

DRAINAGE AREA	COEFF. OF RUNOFF ⁽¹⁾	RAINFALL INTENSITY	AREA (ACRES)	TOTAL FLOW (CFS)	TOTAL FLOW (GPM)
A	0.20	0.32	0.772	0.049	22.2
B	0.32	0.32	1.071	0.110	49.2
C	0.43	0.32	0.504	0.069	31.1
D	0.20	0.32	0.513	0.033	14.7
E	0.37	0.32	3.054	0.362	162.3
F	0.19	0.32	0.625	0.038	17.1
G	0.28	0.32	0.564	0.051	22.7
H	0.20	0.32	0.135	0.009	3.9
I	0.20	0.32	1.750	0.112	50.3

Drainage Areas B, C & D flow to Detention Pond 3A - Total after development flow = 152.6 gpm
 Drainage Areas E, G & H flow to Detention Pond 3B - Total after development flow = 264.3 gpm
 The maximum discharge rate from Detention Pond 3A will be 95.0 gpm
 The maximum discharge rate from Detention Pond 3B will be 188.9 gpm

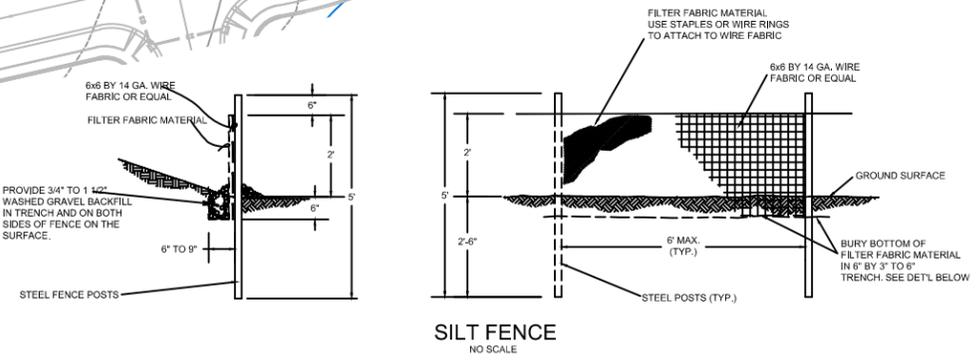
⁽¹⁾ WEIGHTED COEFFICIENT OF RUNOFF BASED ON PERCENTAGE OF VARIOUS TYPES OF SURFACE CONDITIONS:
 0.65 - EXCAVATED ROADWAYS/PAVE GROUND
 0.25 - GRADED AREAS W/ MODERATE GRASS COVER (5 - 10%)
 0.20 - GRADED AREAS W/ MODERATE GRASS COVER (1 - 5%)
 0.17 - UNDISTURBED AREAS WITH NATIVE VEGETATION (1 - 10%)

**GREAT NORTHERN HEIGHTS, PHASE 3 & 3A
STORMWATER RUNOFF (AFTER DEVELOPMENT)**

Q = QA WHERE: Q = PEAK RUNOFF FLOW
C = COEFFICIENT OF RUNOFF (WEIGHTED)
i = RAINFALL INTENSITY (IN/HR) - 10-YR, 6-HR.
A = AREA

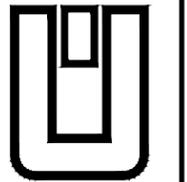
DRAINAGE AREA	COEFF. OF RUNOFF ⁽¹⁾	RAINFALL INTENSITY	AREA (ACRES)	TOTAL FLOW (CFS)	TOTAL FLOW (GPM)
A	0.30	0.32	0.772	0.074	33.3
B	0.50	0.32	1.071	0.171	76.9
C	0.68	0.32	0.504	0.110	49.2
D	0.36	0.32	0.513	0.059	26.5
E	0.47	0.32	3.054	0.459	206.2
F	0.25	0.32	0.625	0.050	22.4
G	0.65	0.32	0.564	0.117	52.7
H	0.28	0.32	0.135	0.012	5.4
I	0.32	0.32	1.750	0.179	80.4

⁽¹⁾ WEIGHTED COEFFICIENT OF RUNOFF BASED ON PERCENTAGE OF VARIOUS TYPES OF SURFACE CONDITIONS:
 0.90 - ASPHALT PAVEMENT, CONCRETE & ROOFS
 0.20 - WETLAND BUFFER AREA
 0.18 - LAWNS & LANDSCAPE AREAS (5 - 10%)
 0.16 - LAWNS & LANDSCAPE AREAS (1 - 5%)



- DRAINAGE & EROSION CONTROL NOTES**
 (Assumes infrastructure improvements for Phase 3A are complete)
- During Construction:**
- Silt fencing shall be placed as along the 2010 Wetland Boundary as shown in the plan view above.
 - Vehicle tracking pads, with 4" to 8" rock, shall be constructed from the edge of existing pavement on both ends of Brimstone Drive, into Phase 3, for a distance of at least 50 ft. Any material spilled, dropped, washed or tracked from vehicles onto the existing Phase 1, Phase 2 and/or Phase 3A roadways, or U.S. Hwy. 93, shall be removed immediately.
 - Drainage fabric shall be placed under the inlet grates at catch basins and detention pond drain basins.
 - Rock riprap, underlain with drainage fabric, shall be placed at the outlet of all storm drain discharge lines, and silt fencing shall be installed around the outlet ends.
- After Construction:**
- All areas outside of roadways and boulevards that are disturbed during construction shall be graded, covered with at least 3" of topsoil, and hydroseeded.
 - At least 4" of topsoil shall be placed in boulevards for final grading. The boulevards shall then be raked, rolled and hydroseeded.
 - All temporary erosion control measures shall remain in place until vegetation is established and is capable of mitigating erosion.
 - Existing silt fencing around the Wetland/Conservation Area shall remain in place after construction of infrastructure improvements.
 - The sumps in all catch basins and drain basins shall be pumped to remove any rocks, soil or debris.

CARVER ENGINEERING
 Consulting Engineers
 1995 Third Avenue East
 Kalispell, Montana 59901
 (406) 257-6202

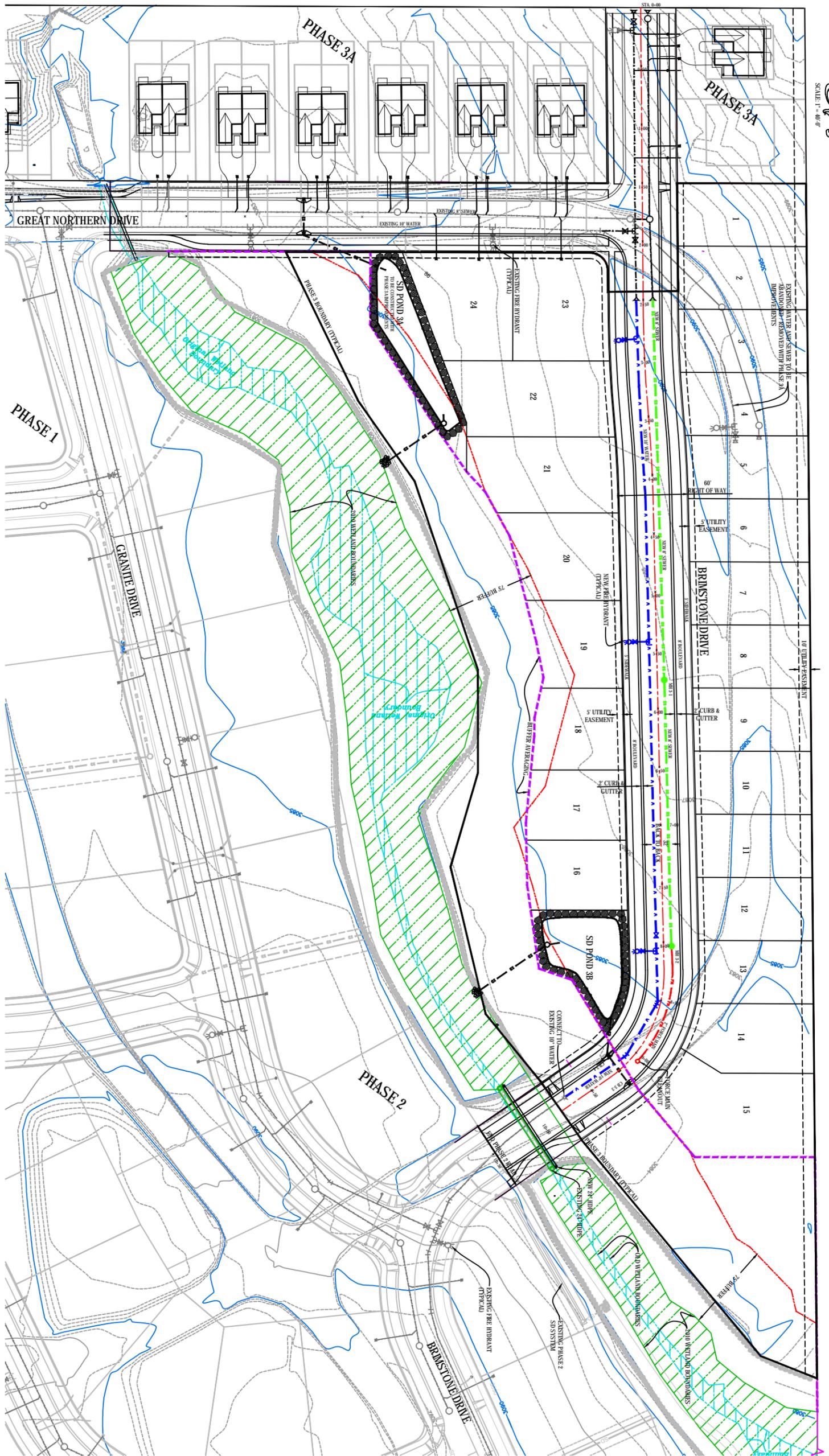


Revision(s)
 Drawn by TLM
 Checked by TC
 Date OCTOBER 29, 2013
 Project Number
 40081.60

**GREAT NORTHERN HEIGHTS
 PHASE 3
 PRELIMINARY DRAINAGE &
 EROSION CONTROL PLAN**

Project Title
 Sheet Title

SD-1



SCALE: 1" = 40'-0"

<p>Project Title GREAT NORTHERN HEIGHTS PHASE 3</p> <p>Sheet Title PRELIMINARY WATER & SEWER PLAN</p>	<p>Project Number 40081.00</p> <p>Date OCTOBER 29, 2013</p> <p>Drawn by TC</p> <p>Checked by TIM</p>	<p>Revision(s)</p>		<p>CARVER ENGINEERING Consulting Engineers</p> <p>1995 Third Avenue East Kalispell, Montana 59901 (406) 257-6202</p>
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November 20, 2013

To: City of Whitefish
Planning Board

From: Robert Pero

RE: Great Northern Heights Phase 3

11-20-13 P02:15 IN

I am sorry I could not be here this evening but I am on my way to Portland. I was so enraged by Chad Phillips email to the city and homeowners that I had to respond.

First off I provided some idea plans to Wendy to show we can build attractive homes. These exact plans are not the exact ones to be used. We will custom design plans to fit each individual lot. Many of our proposed lots are larger than the minimums quoted by Chad and we can create a diverse neighborhood. My last subdivision was on Cedar Street in Whitefish. These homes were 900 sq. ft. to 1400 sq. ft. These homes we sold to single people, retired people, and families. These homes sold as fast as I could build them because that is a need in our community. I don't understand how a 900 sq. ft. single level home doesn't support the elderly. That is exactly what they want. No homes on Cedar St. are subsidized and most are owner occupied by teachers, firefighters, etc. Chad's statement that only welfare people are my buyers and they can't afford them is unbelievable! Many people only want a 2 bedroom 1 bath home. That does not make them undesirable people!

My main comment of this letter is that I feel it is VERY unfair that we are getting "beat up" on the density issue. This is not by our choice. We had 21 lots approved that were 10,000 sq. ft. when the city enacted their new drainage guidelines they took away 1.6 acres (more or less). That dropped the number of lots to 17 not 21. The guidelines state that the developer shouldn't be penalized because of the new drainage rules. The only way we can get any way close to making this work financially is to get more lots. We would be overjoyed if you gave us 21 10,000 sq. ft. lots and give us back our 1.6 acres. Please consider this in your voting.

As a note that I can't let go of is that Chad Phillips is the one that contacted me over a year ago wanting to purchase phase 3 and it was his idea to make 42 townhomes in phase 3. I had not even considered that option. I was needless to say surprised when he did not support it as he came up with the idea

Sincerely,



Wendy Compton-Ring

From: Bruce McEvoy <mcevoybr@gmail.com>
Sent: Wednesday, November 20, 2013 2:16 PM
To: Whitefish City-County Planning Board
Cc: Sue Robison; Roger Sherman; Tyler Frank; Chad Phillips
Subject: Great Northern Heights Phase 3

Greetings Board Members ~

I have previously submitted two emails expressing concerns about the Great Northern Heights Phase 3 development plan. The 2nd Revised Plan is now before the City-County Planning Board.

To reconfirm, I reside at 292 Brimstone Drive, a/k/a Lot 46 of Great Northern Heights Phase 2.

Initially, I want to commend the developers for modifying the Plan such that it is now solely single family residential lots, consistent with the current zoning classification.

However, as the Public Notice states, the proposed lots are smaller than the minimum size in the WR-1 zone. Frankly, I don't know what the minimum lot size is under that zone, but I remain an advocate for enforcing that which is currently in place. Zoning is important and works effectively only when enforced consistently. There are many circumstances when variances and adjustments are appropriate, and even desirable given changed circumstances (e.g., the recent application affecting the nearby Austen Funeral Home/Don K property), but a mere financial benefit to private developers is not such a circumstance. No reason beyond that private financial benefit has been put forth for a variance from WR-1 minimums, at least to my knowledge.

Naturally, I would prefer to see Phase 3 developed with a density comparable to Phases 1 and 2, which I believe would result in approximately 12 or 13 lots. That lot size accommodates a variety of architectural styles as evidenced by the diversity of homes in Phases 1 and 2. Given the architectural limitations imposed within Appendix A of the Covenants, notably Section 4 setting forth minimum square footages and Section 8 requiring attached double garages, as well as the minimum front, back and side setbacks, the proposed density will virtually assure every home in Phase 3 will be a two story box.

But, just as I believe developers should generally be precluded from getting more than they purchased, they should certainly get everything they did purchase. If the lot sizes within Phase 3 are adjusted to be consistent with the WR-1 zone, then I will have no objection to the development. The traffic flow and hazard concerns raised in earlier messages/hearings will be things I am prepared to deal with to the best of my ability. They are simply a part of what I purchased four years ago, and I hold myself to the same standard to which I would hold these developers.

Thank you for your service to the community.

Bruce McEvoy
P.O.Box 5063
Whitefish, MT 59937
862-2225

Wendy Compton-Ring

From: Toni Hale <mudhen92@gmail.com>
Sent: Thursday, November 21, 2013 10:46 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Re: Zone Revision for Hilltop Partners

November 20, 2013

Dear Whitefish Planning Board:

We have recently built a home in the existing Great Northern Heights Subdivision and are Opposed to the proposal brought forth by Rob Pero on behalf of Hilltop Partners to change the existing WR-1 zoning status.

We chose to build in this subdivision largely due to the fact that we had researched how the third phase was to be developed and it IS zoned WR-1. We invested in this neighborhood with the knowledge that future development would be held to the same regulations that we were subject to. To change the zoning status of the adjoining land to create smaller lots after the existing homeowners have invested in the subdivision is unacceptable. Not only will our property values be negatively effected, there are also traffic issues that will impact the existing neighborhood.

In conclusion, please do not accept the Hilltop Partners proposal to change the current zoning status of Phase 3. We understand and appreciate the desire to capitalize on future development, but their profit should not come at the expense of those of us who have already invested in this neighborhood. Mr. Pero should realize that the quality of homes and obvious pride of home-ownership that is currently displayed in Great Northern Heights will also translate to his Partnership being able to make more money by attracting future homeowners to this subdivision.

Thank You,
Toni and Kimberly Hale
210 Granite Drive

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ORDINANCE NO. 13-__

An Ordinance of the City Council of the City of Whitefish, Montana, approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping.

WHEREAS, through an extensive public process, residents of the City and the extraterritorial area developed the 2007 Whitefish City-County Growth Policy (2007 Growth Policy) as a statement of the community's goals, public policies addressing growth and development issues and recommended actions for achieving those goals; and

WHEREAS, the 2007 Growth Policy recommended the creation of a new zoning district classification to be known as the Whitefish Planned Resort District, which contemplates for future land uses, a master planned, dense, mixed and multi-use destination resort complex; and

WHEREAS, in response to the 2007 Growth Policy's recommendation, Planning staff met with the Whitefish City-County Planning Board at a work session at its October 17, 2013 meeting, reviewed the proposed text amendment to create the Whitefish Planned Resort as a new zoning district classification, and thereafter the Planning Board recommended that a final version of the proposed text amendments, with one additional provision, be prepared for their review and approval; and

WHEREAS, in response to such request, Planning staff prepared the proposed text amendments including the additional provision and Staff Report WZTA-13-02, dated November 21, 2013; and

WHEREAS, at a lawfully noticed public hearing on November 21, 2013, the Whitefish City-County Planning Board received an oral report and written Staff Report WZTA-13-02 from Planning staff, invited public comment, and thereafter voted to recommend staff proceed with draft text amendments with two amendments (adding a 1500 ft noticing requirement and newspaper notices on the neighborhood plan and moving conference centers to the permitted uses); and

WHEREAS, at a lawfully noticed public hearing on December 2, 2013, the Whitefish City Council received an oral report and written Staff Report WZTA-13-02 by Planning staff, reviewed the Whitefish City-County Planning Board's recommendation, invited public input, and thereafter approved the text amendments, attached as Exhibit "A;" and

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

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

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

Section 2: Amended Staff Report WZTA-13-02 is hereby adopted as Findings of Fact.

Section 3: Whitefish City Code Section 11-2, is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by reference.

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"
Title 11 – ZONING REGULATIONS
Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.

7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development with the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.

- i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.
 - f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.

- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
- j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
- k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
- l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.

D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.

1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:
 - a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and

- 7) Total area of landscaping/open space and landscape ratio (LSR);
 - b. Present zoning classification and zoning classification of all surrounding properties;
 - c. Property boundary locations and setback lines;
 - d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
 - e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
 - f. Special design standards, materials and/or colors;
 - g. Covenants, conditions and restrictions (CC&Rs);
 - h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
 - i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
 - j. Location and number of proposed parking spaces;
 - k. Location, size, height and orientation of all signs with the exception of directional signage;
 - l. Location and height of all fences, walls, and plantings for buffering and screening purposes;
 - m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
 3. The applicant shall furnish:

- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.
- E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.
- 1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
 - 2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference centers and facilities.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.

- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and
- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale: When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.

Minimum District Size: 5 acres

Minimum Lot Area: N/A

Minimum Lot Width: N/A

Maximum Density: 15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Side: 10 feet

15 feet if there are three or more units

30 feet when non-residential uses abut a residential or agricultural use or zone

Rear: 20 feet

30 feet when non-residential uses abut a residential or agricultural use or zone

Lakeshore setback: 30 feet horizontally from the mean high water line

Maximum height: 35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

11-2W-6: DEVIATIONS FROM STANDARDS: In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear

public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;
10. Landscape standards, except for required buffers; and
11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.
2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
3. Lakeshore protection standards;
4. Utility standards for construction, installation, sizing, etc.;
5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

EXHIBIT "A"

Title 11 – ZONING REGULATIONS Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.

4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.
 7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.

- f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
- a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

- f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.
 - i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
 - j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
 - k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
 - l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.
- D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.
- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:

- a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and
 - 7) Total area of landscaping/open space and landscape ratio (LSR);
- b. Present zoning classification and zoning classification of all surrounding properties;
- c. Property boundary locations and setback lines;
- d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
- e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
- f. Special design standards, materials and/or colors;
- g. Covenants, conditions and restrictions (CC&Rs);
- h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
- i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
- j. Location and number of proposed parking spaces;
- k. Location, size, height and orientation of all signs with the exception of directional signage;
- l. Location and height of all fences, walls, and plantings for buffering and screening purposes;

- m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
3. The applicant shall furnish:
- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.

4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.

E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.

1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.
3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference Centers and facilities
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.

- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.
- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention/~~conference~~ centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and

- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale:	When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.
Minimum District Size:	5 acres
Minimum Lot Area:	N/A
Minimum Lot Width:	N/A
Maximum Density:	15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.
Minimum Yard Spaces:	
Front:	15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.
Side:	10 feet 15 feet if there are three or more units 30 feet when non-residential uses abut a residential or agricultural use or zone
Rear:	20 feet 30 feet when non-residential uses abut a residential or agricultural use or zone
Lakeshore setback:	30 feet horizontally from the mean high water line
Maximum height:	35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

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A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;

10. Landscape standards, except for required buffers; and
 11. Parking and loading standards.
- B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:
1. Density standards as set forth in this chapter.
 2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
 3. Lakeshore protection standards;
 4. Utility standards for construction, installation, sizing, etc.;
 5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
 6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

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



December 2, 2013

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

Re: Zoning Text Amendment: WZTA-13-02; Whitefish Planned Resort Zoning District

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses.

City Staff Recommendation: Staff recommended approval of the attached referenced text amendments.

Public Hearing: At the public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The draft minutes of the Planning Board hearing that include the entirety of the comments are included.

This item has been placed on the agenda for your regularly scheduled meeting on December 2, 2013. Should Council have questions or need further information on this matter, please contact the Whitefish City-County Planning Board or the Planning & Building Department.

Respectfully,

A handwritten signature in blue ink, appearing to read "David Taylor".

David Taylor, AICP
Director

Att: Draft minutes of the 11-21-13 Planning Board meeting
Exhibit A, Planning Board recommendation, 11-22-13
Exhibits from 11-21-13 Staff Packet to Planning Board
1. Staff Report, 11-21-13

c: w/att Necile Lorang, City Clerk

John Gerbozi said Phase 1 and Phase 2 sold at a time of high values and the developers made their money on those two phases. He said the folks in Phase 1 and 2 shouldn't be impacted because the applicant needs more lots to make more money.

Michael Morton said there is not the same potential for revenue if they decrease the number of lots. He thinks it is interesting that Mr. Gerbozi thinks he understands their profit or loss on the last phase. He said they are only asking for 3 additional lots from the original plan. Gunderson said if the applicant gives up land for the road extension then the lots get even smaller.

AMENDMENT

Gunderson offered an amendment, seconded by Blake to remove condition #6 (the road extension) and reduce the number of lots to the west of Brimstone Drive to 12 lots.

Meckel asked why 12 and not 13 and Gunderson said it takes them back to the original request for 21 lots. Meckel said he appreciates what they are trying to do, but he is hesitant to design projects. He leans toward approving or disapproving within certain limits. Blake said he is glad to see this proposal come back as single family. He said the CAO really messed them up and he appreciates that they've come back with the single family design and he wanted to applaud them for that.

VOTE ON THE AMENDMENT

The amendment passed 3-2 with Konopatzke and Meckel voting in opposition.

VOTE

The original motion, as amended, passed unanimously. (Scheduled for City Council on December 2, 2013.)

**CITY OF WHITEFISH
ZONING CODE
AMENDMENT REQUEST**

A proposal by the City of Whitefish to amend Title 11 of the Whitefish Zoning Code to create a new zoning district, Whitefish Planned Resort (WPR), as called for in the 2007 Whitefish City-County Growth Policy.

STAFF REPORT WZTA 13-02

Director Wilson reported that the Growth Policy calls for this zoning district, but it just hasn't been implemented yet, so that is why they are recommending it. Blake asked what "extraordinary" means in relation to the requirement for 'extraordinary public benefit' and Director Taylor said maybe significant is a better word. They provided a list, under C.2, of what would be provided under the neighborhood plan that would be considered an extraordinary public benefit. Blake asked about affordable housing and noted cash-in-lieu wasn't mentioned. Taylor said cash-in-lieu is tied to development which is residential where the applicant can get a density increase with a PUD. In this case they don't have to build the affordable housing but its one of the benefits they can provide,

but there is no density bonus as an incentive. Gunderson asked if the affordable housing was work force housing and Director Taylor said if it is all commercial development then it wouldn't be residential affordable housing, but they would be required to look at how they would provide employee housing somewhere. He said this is not a PUD, so they can't require it, but the applicant could want to show it as a community benefit.

Blake asked how the neighborhood plan comes together. Director Taylor said in the C section under the neighborhood plan it explains how it is set up. He said it is like any neighborhood plan, the people are notified and then there is an opportunity to go through the public process to develop a plan for the neighborhood. Blake asked and Director Taylor said they generally have 150 feet from the development for notifying the neighbors, but they could expand notification range to 1,000 feet. He said that is a valid concern.

Blake asked about #25 under permitted units. He said if the restaurant has a bar, then what happens. Director Taylor said a typical restaurant could have a beer and wine license and wouldn't need a CUP, but if they want a full bar then it requires a Conditional Use Permit. Director Taylor said a bar or a lounge requires a CUP in each zone. He said they have to look at the distance to schools and churches. Blake said #16 lists hotels and motels, but then convention centers and conference centers are listed as a conditional use. He said Rocky Mountain Lodge and Pine Lodge have conference rooms. Director Taylor said that is a good point. In general, he doesn't have a problem moving conference centers into that list.

Gunderson asked about permitted uses #16 regarding hotels and motels when integrated with a bar. Director Taylor said a stand alone bar would have to go through a CUP. Blake asked and Director Taylor said they could make amendments.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

Chris Hyatt, 611 Somers Avenue, said they have had a few projects that deal with resort style planning, like Two Elk or others who have looked at Whitefish. He said this is a nice attempt at creating a resort plan. He said each of the components have talked about water parks and conference centers. When they are in the CUP phase then it moves them out of the resort. He thinks they need to be separate line items. He said Whitefish Mountain Resort has done a good job of mixing individual buildings that give different amenities. He is fine with the convention center being a conditional use, because it sounds huge—like 15,000 to 100,000 square feet.

PUBLIC HEARING

No one else wished to speak and the public hearing was closed.

BOARD DISCUSSION

Director Taylor said if someone came with an original plan that included a water park they wouldn't have to come in for an additional CUP. It wouldn't be a separate process. Later on, if they came up with a new idea then they would have to go through a CUP because it would have a significant visual impact on the neighborhood. Gunderson said that clarifies it for him. If it was part of the original development then they would all be permitted uses.

Chris Hyatt said he has watched Whitefish Mountain change and try to change a lot over the past 20 years. He thinks they need something set aside so that if they deviate from their plan it matches the resort design.

Smith said this brings out the skeptic in her. She said if they have to approve a plan anyway, why do the applicants have to bring it before them. She said it is difficult to discuss water slide parks unless they know where they would be allowed. She wondered if they were having this discussion because there is something they actually have in mind.

Director Taylor said it is a zoning district that would be on the code. He said this is a separate zone that could be applied anywhere in the zoning district, after a neighborhood plan change that would amend the future land use plan. Once it is adopted there is a phasing plan. He said the only variables would be unforeseen circumstances. If there are significant changes to the development they would have to amend it through a new site plan using the PUD amendment process. If it was a major change then it would have to go through the whole neighborhood plan process again. He said this gives flexibility beyond what a hotel resort zone would offer.

Konopatzke said if someone wanted to do a resort at the old hospital site this would give the developer guidelines for the process. Smith said the Board just saw a housing development with 21 lots for the third time, so she thinks they already have the hoops in place for folks to jump through. She said they write it all down, but then they apply it very situationally anyway. Director Taylor said this allows a mechanism if they want to apply it. Smith said if Two Elks Development wanted to come build in Whitefish right now is he saying that the City couldn't do it. Director Taylor said there were elements they might not have been able to approve, depending on where it would be located. A rezone would have to happen, and the zones on the books aren't very flexible. This provides a better public input process. Smith said she loves the opportunity to get more public input. Director Taylor said it provides more public input, but it also provides more flexibility for creativity for resort

development.

MOTION

Blake moved and Konopatzke seconded to adopt the findings of fact within staff report WZTA 13-02 and recommend that the City Council approve the City of Whitefish request to amend the zoning ordinance and add Whitefish Planned Resort to the list of various zoning districts, as recommended by staff.

AMENDMENT

Phillips offered an amendment, seconded by Blake, to notify the neighbors up to 1500 feet from the boundary for the neighborhood plan and the re-zone as well as to provide notification in the newspaper.

BOARD DISCUSSION

Director Taylor suggested that it would fit under 11-2W-2, A-2, to add notifying property owners with 1500 feet.

VOTE ON AMENDMENT

The amendment passed unanimously.

AMENDMENT

Blake offered an amendment, seconded by Konopatzke, to move conference centers and facilities to permitted uses.

VOTE ON AMENDMENT

The amendment passed unanimously.

BOARD DISCUSSION

Meckel asked if microbreweries could be a stand-alone building and Chris Hyatt said if they are going to create a zone then he thought these things should all be included so they didn't have to see every item come before them again and again. He said resort style items should be permitted uses. Gunderson said these conditional uses are after-the-fact. It is not like a typical application. With their first proposal the whole list applies as a permitted use. Blake said if he was a developer he would list everything in there. Meckel said they only have a certain amount of time to complete them, however.

Director Taylor said if something was never mentioned or listed then they would have to come back. Smith said there are things they do to make the process more streamlined for the developer so they know what to expect. She said this isn't it. This insures that there is greater opportunity for the community to give input. She is OK with that, but this isn't about making it easier for people who are thinking about putting in a resort community. Meckel said he does think it will make it easier. Smith disagreed. She thinks Chris Hyatt said that this is about getting certainty in the process and this doesn't lend itself to that. Director Taylor said they could move some of the conditional uses into permitted uses. He said the list includes things that are conditional uses in all zoning districts.

Konopatzke said Big Mountain laid out their district and then if they added to it, the additional things would be conditional uses. He said they are trying to have predictability for the process for those

surrounding the property. He said when he goes through the conditional permit uses he wonders if it would be simpler to allow some of those uses that don't impact health, safety and welfare. Director Taylor said he agrees, but there are some uses that could impact the neighbors significantly. Konopatzke said he was trying to weigh high-volume, high-traffic issues that would impact the public. Director Taylor said if it is too broad they won't get any buy-in from the neighbors. Smith they have people saying that they bought property with certain zoning and then the City shifts that and it upsets people. Konopatzke said large scale developments take a long time so it has to ride out economic changes, too. Smith said they have had concerns with the simple changes like the 21-23 lot subdivision tonight. She said there isn't certainty for the developers or the residents in this case. That is what troubles her about the process. She thinks the applicants tonight could have complained about being treated differently than other applicants. She thinks they need to take this into consideration as they move forward, particularly as development picks back up. She said the City is in a precarious position when it makes decisions situationally. Phillips said he is always an advocate for looking at programs that look well and wondered if this proposal could be modeled after a program in other resort communities.

**VOTE ON ORIGINAL
MOTION**

The original motion, as amended, passed unanimously.

NEW BUSINESS

Phillips said he thinks they can improve on a couple of things on the Board. He said in both Hilltop and the Second Street development projects the applicant proposed things that were not accurate. He said the pictures Mr. Pero showed were built on wider lots than he will have on Hilltop so it was impossible to build anything like the photos he showed. The same thing happened on the Second Street proposal. He said the site images didn't match the proposal. That makes it confusing for the Board members. He asked that the City pull in a professional to look at the PUD. Director Taylor said the applicants don't bring the exact renderings, but they show "eye candy" examples of what their concepts are. They will have to go through ARC for final approval, so what they show aren't their exact plans—they are conceptual. Phillips said they are not similar. If the massing and scale were similar he would agree. Meckel said he thinks designing is outside the scope of the Board. They have planning and zoning regulations the staff reviews and this is outside their prevue. He said they don't design single family homes. Phillips said he thinks they shouldn't even make it part of the application process then.

Phillips said anything over 200 vehicular trips should have a traffic study, but in the Hilltop case Director Wilson overrode the need for one. He said Director Wilson is not a traffic engineer. He said they

have two roads that go through. The traffic engineer is going to be stuck with a 60-foot right-of-way. The traffic engineer looks at a 20 year horizon level. He says one developer has to follow certain standards and another doesn't. This is an important code regulation that they need to follow. Director Taylor said there is a transportation plan that shows which roads should be designed to arterial standards and applicants have to design to Public Works standards. Public Works determines what roads are which and how they'll be developed. Phillips asked and Planner Compton-Ring it is in the engineering standards. Phillips said it should be removed from the engineering standards if they are not going to follow it.

Meckel told Phillips it is not the Planning Board's role to design projects for applicants, they are to review projects in light of the zoning and subdivision codes.

GOOD AND WELFARE

1. Matters from Board-None.
2. Matters from staff

Director Taylor said Ken Meckel is not re-upping as the conservation district appointee. He thanked him for his service.

3. Poll of Board members available for next meeting (December 19, 2013.) All members indicated they would be available.

ADJOURNMENT

The meeting was adjourned by motion at approximately 8:38 p.m. The next regular meeting of the Whitefish City-County Planning Board will be held on December 19, 2013, 6:00 PM

Ken Meckel, Chairman of the Board

Jane Latus Emmert, Recording Secretary

APPROVED as submitted/corrected: ____ / ____ /13

**PROPOSED CODE AMENDMENT
SECTION 11-2: ZONING DISTRICTS, PLANNED RESORT
STAFF REPORT # WZTA-13-02
November 21, 2013**

This is a staff report to the Whitefish City-County Planning Board and Whitefish City Council regarding the creation of a new zoning district called the Whitefish Planned Resort (WPR) as called for in the 2007 Whitefish City-County Growth Policy, to be found in Section 11-2, Zoning Districts. The Planning Board public hearing is scheduled for **November 21, 2013** and a subsequent hearing is scheduled before the City Council on **December 2, 2013**. Draft regulations are below for review and recommendation.

Background Information

This is a request to adopt a new zoning district called Whitefish Planned Resort as called for in the 2007 Whitefish City-County Growth Policy. The Planned Resort zoning district is set up to be similar to a Planned Unit Development (PUD) in that there is flexibility built in to deviate from some development requirements provided that the development offers up significant public benefit of some sort. A neighborhood plan for the area is required prior to adoption of any WPR zoning, and a binding site plan consistent with the neighborhood plan as well as any conditions imposed become part of the development requirements of the final zoning district. All development in the district must follow the basic outline of the approved final binding site plan.

The Growth Policy, under the Land Use Element chapter, designates a number of Future Land Uses on its Future Land Use Map, which is a graphic and general representation of the type, density, and spatial extent of future growth in the Whitefish area. The map designates what types of zoning districts are appropriate in various land use areas. The Growth Policy outlines a Planned Resort land use designation, and states that a zoning district called Planned Resort be implemented there. The only area currently with a Planned Resort designation on the Future Land Use Map is Whitefish Mountain Resort.

The Growth Policy defines the Planned Resort Future Land Use as follows:

Planned Resort: This designation is for a master planned, dense, mixed and multi-use destination resort complex. The Planned Resort center is highly walkable and is pedestrian and bicycle oriented. Architecture and streetscapes are of very high quality. Parking is generally in on-site structures or lots that do not interfere with trails, paths, and walkways. Land uses include accommodations of all kinds, resort retail, eating and drinking establishments, and spas and fitness centers. Residential uses are generally medium to high density and are clustered around open space and other resort amenities. Zoning is generally WPR (Whitefish Planned Resort).

The Growth Policy will eventually need to be amended in the last sentence of that section to include Big Mountain Resort Residential (WBMRR) and Big Mountain Village Districts (WBMV). We can look at that when we do the two-year Growth Policy Review.

Staff held a work session with the Whitefish City-County Planning Board on October 17, where the Board reviewed this draft and consented to have a final version sent to them for review and approval. The only change from that draft is under 11-2-X-2-C-2(i) below. As was suggested by the board, we added a provision that green building practices and minimizing impervious surfaces can qualify as a public benefit.

Items to focus review on would be the Intent and Purpose, Neighborhood Plan contents, Site Plan contents, permitted and conditional uses, and property development standards for the new zone.

Proposed Text Amendment:

11-2W WPR PLANNED RESORT DISTRICT

11-2W-1: INTENT AND PURPOSE:

The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:

1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.
 7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy; and,
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.

- d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
 4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

- f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
- g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
- h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.
- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
- j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
- k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
- l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.

D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.

- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:

a. Complete land development program to include:

- 1) Total gross acreage;
- 2) Total undevelopable acreage;
- 3) Total net acreage;
- 4) Total area covered by buildings;
- 5) Total floor area of buildings, heights, and floor area ratio (FAR);
- 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and
- 7) Total area of landscaping/open space and landscape ratio (LSR);

b. Present zoning classification and zoning classification of all surrounding properties;

c. Property boundary locations and setback lines.

d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;

e. Layout of residential uses, including identification, building types, and density of single family through multifamily development

f. Special design standards, materials and/or colors;

g. Covenants, conditions and restrictions (CC&Rs);

h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;

i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;

j. Location and number of proposed parking spaces;

k. Location, size, height and orientation of all signs with the exception of directional signage;

l. Location and height of all fences, walls, and plantings for buffering and screening purposes.

m. Location and maintenance plans for all open spaces, common spaces and facilities.

n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands.

- o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards.
 - q. Any other information that may be deemed relevant for review.
- 2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
- 3. The applicant shall furnish:
 - a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation.
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
- 4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.

C. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy,

that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.

1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.

2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.

4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.

- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-5, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.
- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-6 of this title).

11-2W-4 CONDITIONAL USES

- Amusement parks and water parks
- Bars, lounges and taverns
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
- Cellular towers
- Churches and other places of worship
- Convention/conference centers and facilities.
- Dwellings: nine-plex or greater multi-family dwelling units
- Golf courses
- Marinas (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
- Microbreweries and distilleries.
- Parking structures, commercial.
- Recreational vehicle parks and campgrounds
- Ski areas (downhill) and facilities

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

<u>Bulk and Scale:</u>	<u>When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.</u>
<u>Minimum District Size:</u>	<u>5 acres</u>
<u>Minimum Lot Area:</u>	<u>N/A</u>
<u>Minimum Lot Width:</u>	<u>N/A</u>
<u>Maximum Density:</u>	<u>15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.</u>
<u>Minimum Yard Spaces:</u>	
<u>Front:</u>	<u>15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area</u>
<u>Side:</u>	<u>10 feet</u> <u>15 feet if there are three or more units</u> <u>30 feet when non-residential uses abut a residential or agricultural use or zone</u>
<u>Rear:</u>	<u>20 feet</u> <u>30 feet when non-residential uses abut a residential or agricultural use or zone</u>
<u>Lakeshore setback:</u>	<u>30 feet horizontally from the mean high water line</u>

<u>Maximum height:</u>	<u>35 feet</u>
<u>Permitted lot coverage:</u>	<u>60 percent</u>
<u>Off street parking:</u>	<u>See Chapter 6 of this title</u>
<u>Accessory buildings:</u>	<u>Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.</u>
<u>Landscaping:</u>	<u>See Chapter 4 of this title.</u>

11-2W-6: DEVIATIONS FROM STANDARDS:

In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;

7. Street design;

8. Storm water management;

9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;

10. Landscape standards, except for required buffers; and

11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.

2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.

3. Lakeshore protection standards;

4. Utility standards for construction, installation, sizing, etc.;

5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and

6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2-S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.

B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are

inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.

C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.

B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.

C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7-A unless new development is consistent with the originally approved neighborhood plan and binding site plans.

Zoning Code Amendment Review – Section 11-7-10(D).

The following considerations from Section 11-7-10(D) are intended to guide both the Planning Board and the City Council when considering an amendment to the zoning regulations or the official map.

CONSIDERATIONS FROM SECTION 11-7-10D.	Findings/Staff Analysis/Comments
Conformity to the Growth Policy	The proposed changes are consistent with the 2007 Whitefish City-County Growth Policy Land Use Chapter, which calls for a Planned Resort zoning district to be implemented in areas the Future Land Use map calls for Planned Resort. Also, providing for visitor amenities supports the Economic Development chapter.
Project Designed to Lessen Congestion in the Streets	Not applicable
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	This amendment requires any area applying this proposed zoning to carefully weigh compatibility and historical use patterns.
Security from Fire, Panic, and Disasters	This criterion is not applicable to this code amendment.
Promote Health and General Welfare	In general, these amendments promote the general health and welfare of residential neighborhoods by providing a thorough public vetting process and significant public benefit before approval of changes to use and density.
Provide Adequate Light and Air	This criterion is not applicable to this code amendment. This criterion originates with the model zoning enabling statutes and codes of the 1920s. While it remains in the Montana Code Annotated as well as the planning enabling legislation of some other states, its use as a meaningful standard ceased decades ago.
Prevent Overcrowding of Land and Avoid Undue Concentration of People	The proposed code amendment sets density standards and setback requirements that help alleviate overcrowding and undue concentrations of people.
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirements	The proposed zoning district requires a neighborhood plan to be adopted first that would look at infrastructure and transportation needs.
Reasonable Consideration to the Character of the District	The proposed zoning district requires significant public benefit as well as screening from adjacent residential properties. A neighborhood plan, which is required, would address impacts to district character.
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	The proposed amendments establish performance standards and require a neighborhood plan and extensive site plan review prior to application on a particular property

CONSIDERATIONS FROM SECTION 11-7-10D.	Findings/Staff Analysis/Comments
Conserve the Value of Buildings	This criterion is not applicable to this code amendment.
Encourage the Most Appropriate Use of the Land throughout the Municipality	As a neighborhood plan is a required part of adoption of this zoning type, the community will decide up front if the proposed land uses are appropriate for the location presented.

Findings

1. Staff finds the considerations in Section 11-7-10(D) are either met, can be mitigated or are not applicable;
2. Whereas the 2007 Whitefish City-County Growth Policy establishes the specific need for a Planned Resort zoning district;
3. Whereas a neighborhood plan and adopted site development plan are required prior to application of the proposed WPR zoning district so as to offset neighborhood impacts and provide predictability;
4. Whereas the creation of this zoning type will spur the development of visitor amenities;
5. Whereas the adoption of a Planned Resort zoning district will benefit the Whitefish community as a whole by providing extensive public input anytime a future resort is developed;

We find it is in the best interest of the City of Whitefish to amend the zoning ordinance and add Whitefish Planned Resort to the list of various zoning districts.

Recommendation

Staff recommends the Planning Board review the staff report, offer up recommended changes, and ultimately forward it to the City Council for further action with a recommendation of **approval**, subject to the findings set forth in this staff report.

David Taylor, AICP, Director

EXHIBIT "A"
Title 11 – ZONING REGULATIONS
Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.

7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development with the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.

- i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.
 - f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.

- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
 - j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
 - k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
 - l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.
- D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.
- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:
 - a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and

- 7) Total area of landscaping/open space and landscape ratio (LSR);
 - b. Present zoning classification and zoning classification of all surrounding properties;
 - c. Property boundary locations and setback lines;
 - d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
 - e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
 - f. Special design standards, materials and/or colors;
 - g. Covenants, conditions and restrictions (CC&Rs);
 - h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
 - i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
 - j. Location and number of proposed parking spaces;
 - k. Location, size, height and orientation of all signs with the exception of directional signage;
 - l. Location and height of all fences, walls, and plantings for buffering and screening purposes;
 - m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
 3. The applicant shall furnish:

- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.
- E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.
- 1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
 - 2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference centers and facilities.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.

- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention/conference centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and
- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale: When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.

Minimum District Size: 5 acres

Minimum Lot Area: N/A

Minimum Lot Width: N/A

Maximum Density: 15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Side: 10 feet

15 feet if there are three or more units

30 feet when non-residential uses abut a residential or agricultural use or zone

Rear: 20 feet

30 feet when non-residential uses abut a residential or agricultural use or zone

Lakeshore setback: 30 feet horizontally from the mean high water line

Maximum height: 35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

11-2W-6: DEVIATIONS FROM STANDARDS: In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear

public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;
10. Landscape standards, except for required buffers; and
11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.
2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
3. Lakeshore protection standards;
4. Utility standards for construction, installation, sizing, etc.;
5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

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MANAGER REPORT

November 27, 2013



CITY HALL DESIGN COMPETITION ON DECEMBER 11TH

The City Hall Steering Committee will hold a design competition and interviews with the four finalist architectural firms as part of the process for recommending an architectural firm for the new City Hall building. This design competition will occur all day on Wednesday, December 11th. The schedule for the architectural firms' presentations and interviews is below. Each presentation will begin with a half hour presentation by the firm on their conceptual ideas and proposal for how a new City Hall could look. After that half hour, the Committee will ask questions about their presentation and also ask interview questions about the firm's experience and skills.

The schedule of presentations on Wednesday, December 11th is:

8:30 a.m.	Mosaic Architecture
10:15	MMW Architects
1:00 p.m.	CTA Architects/Engineers
2:45 p.m.	OZ Architects/John Constenius

A copy of the press release which we issued and a copy of the flyer and advertisement is attached in the packet.

WHITEFISH HWY 93 WEST CORRIDOR PLAN COMMITTEE – PUBLIC MEETING FOR VISIONING POSSIBILITIES FOR IDAHO TIMBER SITE

On Thursday, December 12th from 5:30 to 8:00 p.m., the Hwy 93 West Corridor Plan Committee will hold a public meeting and charette/visioning session to discuss and solicit ideas and concepts for how the Idaho Timber site could be redeveloped in the future. Representatives of Idaho Timber will be present along with the City's West Corridor planning consultants. The public and elected officials are invited to attend. A copy of the upcoming display ad is attached in the packet.

MEETINGS

Only internal and staff meetings during the past two weeks

UPCOMING SPECIAL EVENTS

REMINDERS

Thursday and Friday, November 28-29 – Thanksgiving holidays – City Hall is closed

Respectfully submitted,

A handwritten signature in blue ink that reads "Chuck Stearns". The signature is written in a cursive, flowing style.

Chuck Stearns
City Manager



PRESS RELEASE

November 26, 2013

RE: Upcoming Whitefish City Hall Design Competition

Contacts: Sherri Baccaro, 863-2460

FOR IMMEDIATE RELEASE:

After months of deliberation on the location of the new city hall and the pros and cons of a downtown parking structure, the Future City Hall Steering Committee, an ad hoc advisory committee, is taking steps to make the new city hall a reality. On December 11th, 2013 the Steering Committee (Steering Committee) will be hosting a design competition with four Montana architecture firms.

“The purpose of a design competition is to get a sense of each firm’s creativity at designing a city hall that fits our downtown along with a parking structure,” stated Sherri Baccaro, chair of the Steering Committee. The four architectural firms will present their ideas to the Steering Committee followed by an interview of each firm. The day-long process will start at 8:30 AM with Mosaic Architecture of Helena, MT followed by MMW Architecture from Missoula at 10:15 AM, CTA Architects and Engineers from Kalispell at 1:00 PM and J Constenius Architecture of Whitefish paired with OZ Architecture of Missoula at 2:45 PM. During their designated time each firm will spend thirty minutes presenting their design ideas for a city hall with a parking structure after which the Steering Committee will interview each firm. Upon the completion of the interview process, the Committee will make a recommendation to the Council on the architectural design firm that should be selected.

The public is invited to attend the City Hall Design Competition which will be held at Whitefish City Hall, 418 E 2nd Street, Whitefish in the City Council Chambers. The public is welcome to attend the presentations, listen to the interview process and provide written comments on each firm’s proposal. The public may stay for part of the day or the entire day.

In 2011, the City Council decided to take a unique approach for the city hall project by utilizing a Steering Committee that would provide a broader perspective into this important

---more---

public building. “There are advantages to be gained from using an ad hoc committee than the typical process for launching a public project of this scale and complexity. This is an important building in our town and we want to involve the expertise and ideas of our citizenry,” said Mayor John Muhlfeld. The Committee, comprising of the Mayor, a City Councilor, members of the public, city staff, a licensed architect, a representative from the Whitefish Chamber and a representative from the Heart of Whitefish, has been charged with studying, evaluating and recommending ideas for the location, design and architectural selection for the future City Hall to the City Council.

A new city hall was identified in the 1987 Urban Renewal Plan and 2005 Downtown Master Plan as a needed project. A new city hall will provide effective and efficient services to the public. Currently, city staff is located in several locations and the existing building is past its useful life. The city looked at remodeling the existing building, but it was not financially feasible to remodel the building due to structural deficiencies, and the addition of a proposed parking structure also limits the ability of reusing the building.

For more information, please visit the City of Whitefish website at www.whitefish.govoffice.com. Project specific information can be found by clicking on “Committees, Boards and Commissions” and selecting “Future City Hall Ad Hoc Steering Committee”. Steering Committee meetings are open to the public. Agendas for future meetings are also listed on the City’s webpage and meetings are held at the Whitefish City Council Chamber conference room at City Hall.

Comments concerning the project may be mailed to: Sherri Baccaro, City of Whitefish, Future City Hall Steering Committee Chair, PO Box 158, Whitefish, MT 59937. Comments may also be submitted by email to publicworks@cityofwhitefish.org. Participants attending the public open house are welcome to submit comments at that time.

---end---



Help City Officials and Citizens consider design ideas for a New City Hall!

CITY HALL 1917—1958



CITY HALL 1958—PRESENT



CITY HALL 20??—20??



The four finalist architectural firms will present their ideas and concepts for a new City Hall and Parking Structure to the City Hall Steering Committee in a day long design competition.

The schedule of presentations is:

- 8:30 a.m.— Mosaic Architecture
- 10:15 - MMW Architects
- 1:00 p.m.— CTA Architects/Engineers
- 2:45 — OZ Architects/John Constenius

If you cannot attend, display boards will be on display in City Hall after the presentations and information will be posted on the City's website—www.whitefish.govoffice.com

Attend this
City Hall Design “Competition”
 Wednesday, December 11, 2013
 City Council Chambers, City Hall
 402 2nd Street East (2nd and Baker)

What's your vision for the Idaho Timber site?

Industrial? Commercial? Resort? Residential Condos? Mixed Use?

The **City of Whitefish** invites you to participate in a DESIGN CHARETTE/VISIONING SESSION to **dream up future land uses for the former Idaho Timber site and vicinity**. The charette will be in the City Council Chambers at 418 E. 2nd St. on Thursday, December 12 from 5:30 to 8:00 pm.



This is an opportunity for you to get involved and collaborate on Whitefish riverfront redevelopment as part of the Highway 93 West Corridor Land Use Plan.

Contact Director Dave Taylor at the Planning Office at 863-2410, or go to www.whitefish.govoffice.com under Projects, Hwy 93 W Corridor Plan, for more information.

RESOLUTION NO. 13-____

A Resolution of the City Council of the City of Whitefish, Montana, approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish.

WHEREAS, the City of Whitefish owns real estate at the current location of City Beach, available to the public for Whitefish Lake recreational uses; and

WHEREAS, the City of Whitefish has the opportunity to purchase real property located close to City Beach, at 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, Whitefish, Montana, for the public's use; and

WHEREAS, if the terms of the Buy-Sell Agreement are acceptable to the property owners, the City of Whitefish believes the purchase of the three lots close to City Beach will add value to the public's recreational use of City Beach; and

WHEREAS, the purchase of the property qualifies as an eligible activity for the use of Tax Increment Funds under Section 7-15-4288, MCA:

Costs that may be paid by tax increment financing. The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area...as identified in the urban renewal plan...:

- (1) land acquisition;
- (2) demolition and removal of structures;
* * *
- (4) the acquisition, construction, and improvement of public improvements or infrastructure, including....parking lots....

WHEREAS, the City has proposed a Buy-Sell Agreement for the purchase of the three lots and improvements, dependent upon its approval by the Whitefish City Council; and

WHEREAS, the entire Buy-Sell Agreement is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the terms contained in the Buy-Sell Agreement if acceptable to the property owners is reasonable, and the purchase price offered by the City represents the fair market value of the property being sold.

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 hereby approves all of the terms of the Buy-Sell Agreement attached as Exhibit "A", and approves the purchase of the property described therein according to such terms.

Section 3: The City Manager or his designated official is authorized and directed to negotiate and to complete the sale of the property identified herein according to the terms of the Buy-Sell Agreement attached as Exhibit "A", and in connection therewith is authorized to execute any additional documents necessary in order to close the sale.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

John Muhlfeld, Mayor

Necile Lorang, City Clerk

EXHIBIT A

**BUY - SELL AGREEMENT
(Including Earnest Money Receipt)**



The use of this form is for REALTOR® members only (members of the Montana Association of REALTORS®) and cannot be used by any other party for any purpose. Use of these forms by other parties may result in legal action by the Montana Association of REALTORS®.

1 This Agreement stipulates the terms of sale of this property. Read carefully before signing.

2 This is a legally binding contract. If not understood, seek competent advice.

3 Date: 11/14/13

City of Whitefish - Mr. Charles C. Stearns, City Manager

5 as joint tenants with rights of a survivorship, tenants in common, single in his/her own right,

6 Other _____ (hereinafter called "Buyer") agrees to purchase, and the

7 Seller agrees to sell the following described real property (hereinafter referred to as "Property") commonly known

8 as 1 Lakeside Blvd

10 in the City of Whitefish, County of Flathead,

11 Montana, legally described as:
WFSH, S25, T31 N, R22 W, BLOCK 16, Lot 7-8-9

15 TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other
16 appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and fittings that are
17 attached to the Property are included in the purchase price, such as electrical, plumbing and heating fixtures, wood,
18 pellet, or gas stoves, built-in appliances, screens, storm doors, storm windows, curtain rods and hardware, attached floor
19 coverings, T.V. antennas, satellite dish, hot tub, air cooler or conditioner, garage door openers and controls, fireplace
20 inserts, mailbox, storage sheds, trees and shrubs and perennials attached to the Property, attached buildings or
21 structures, unless otherwise noted below:

Ms. Creon (Owner) or her representatives may salvage anything from the residence, outbuildings or property that may benefit Ms. Creon. This shall be completed no later than January 4, 2014.

25

26 **PERSONAL PROPERTY:** The following items of personal property, free of liens and without warranty of condition,
27 are included and shall be transferred by bill of sale:

None

32 **LEASED/RENTED PERSONAL PROPERTY:** The following personal property is leased/rented: water softener

33 water conditioner propane tank satellite dish satellite control alarm system other _____

None Leased

35 Buyer is responsible for making arrangements concerning Buyer's right to lease/rent said items and Seller makes no
36 representations or warranties concerning the transferability of said items or the assignment of any agreements relating
37 to the lease/rental of said items.

39 **PURCHASE PRICE AND TERMS:**

40 Total purchase price is Four Hundred Fifty Thousand U.S. Dollars

41 (\$ 450,000.00) payable as follows:

42 \$ 9,000.00 earnest money to be applied at closing.

43 \$.00 as additional cash payment, payable on or before closing.

44 \$ 441,000.00 balance of the purchase price will be financed as follows:

45 Conventional

MBOH

Seller Financing

46 FHA

USDA-RD

Assumption of Existing Loans

47 VA

Other Institutional Financing

Balance of purchase price to be funded by City of Whitefish's choice.

Earnest Money will become Non-Refundable on December 06, 2013. Said Earnest Money, if forfeited, shall be divided equally (at a 50/50 split) between Jacqueline Creon and Location Realty, LLC for professional Real Estate services by Location Realty, LLC.

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51 **CLOSING DATE:** The date of closing shall be (date) 01/09/14 or sooner (the "Closing Date").
52 The parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date
53 specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the
54 purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement
55 (including assumptions, contracts for deed, and lender financing), the Closing Date may be extended without
56 amendment by not more than 5 days to accommodate delays attributable solely to such third party financing.

58 **POSSESSION:** Seller shall deliver to Buyer possession of the property and allow occupancy:
59 when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase: OR
60 on the date of recording the deed or notice of purchaser's interest, OR
61

62 Property shall be vacant unless otherwise agreed in writing. Seller shall provide keys and/or means to operate locks,
63 mailboxes, security systems, alarms, garage door opener(s), and Property Owner's Association facilities, if applicable.

65 **RECEIPT OF EARNEST MONEY:** Buyer agrees to provide Earnest Money in the amount of _____
66 Nine Thousand U.S. Dollars (\$ 9,000.00) as evidenced by Cash,
67 the receipt of which is acknowledged by the undersigned Broker/Salesperson; OR Check, the receipt of which is
68 acknowledged by the undersigned Broker/Salesperson; OR, _____

70 If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be
71 entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.

73 All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited
74 pursuant to Montana law OR within (3) business days of the date all parties have signed the Agreement or

76 and such funds will be held in a trust account by First American Title - Kalispell.
77 Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to: None

79 If interest is payable to the Broker it is agreed that sums so paid are consideration for services rendered.
80 Roy Hutchin (406) 253-2766 _____

81 (Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson)
82 To be signed only if in actual receipt of Cash or Check.

84 The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any
85 portion of the earnest money required to complete the closing of the transaction.

87 FINANCING CONDITIONS AND OBLIGATIONS:

89 **BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that they have sufficient funds for the down
90 payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any
91 contingent source of such funds unless otherwise expressly set forth herein.

93 **LOAN APPLICATION:** If Buyer fails to make written application for financing and pay to the lender any
94 required fees, apply for assumption of an existing loan or contract, or initiate any action required for
95 completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) NONE
96 Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

98 **V.A. BUYERS:** It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer
99 shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase
100 of the Property if the contract purchase price or cost exceeds the reasonable value of the Property established
101 by the Veteran's Administration. The Buyer shall, however, have the privilege and option of proceeding with
102 the consummation of this Agreement without regard to the amount of the reasonable value established by
103 the Veteran's Administration.

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104 **F.H.A. BUYERS:** In the event funds for the transaction anticipated by this Agreement are to be derived from
 105 an F.H.A. insured loan, it is expressly agreed that, notwithstanding any other provisions of this Agreement,
 106 the Buyer shall not be obligated to complete the purchase of the property described herein or to incur any
 107 penalty by forfeiture of earnest money deposits or otherwise, unless the Buyer has received a written
 108 statement issued by the Federal Housing Commissioner, Veteran's Administration, or a Direct Endorsement
 109 lender setting forth the appraised value of the Property for mortgage insurance purposes of not less than the
 110 amount set forth in the APPRAISAL PROVISION section, which amount is incorporated herein by reference.
 111 The Buyer shall have the privilege and option of proceeding with the consummation of this Agreement without
 112 regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised
 113 valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban
 114 Development (HUD) will insure. HUD does not warrant the value nor the condition of the Property. The Buyer
 115 should satisfy himself/herself that the price and condition of the Property are acceptable.

117 **DETECTION DEVICES:** The Property is equipped with the following detection devices:

- 118 Smoke detector(s)
 - 119 Carbon monoxide detector(s)
 - 120 Other fire detection device(s): _____
- NONE KNOWN

123 **PROPERTIES INSPECTIONS:** The Buyer is aware that any Brokerage Firm(s) and Salespersons involved in the
 124 transaction anticipated by this Agreement have not conducted an expert inspection or analysis of the Property or its
 125 condition and make no representations to the Buyer as to its condition, do not assure that the house and/or buildings
 126 will be satisfactory to the Buyer in all respects, that all equipment will operate properly or that the Property and/or
 127 improvements comply with current building and zoning codes and ARE NOT building inspectors, building contractors,
 128 structural engineers, electricians, plumbers, sanitarians, septic or cesspool experts, well drillers or well experts, land
 129 surveyors, civil engineers, flood plain or water drainage experts, roofing contractors or roofing experts, accountants,
 130 attorneys, or title examiners, or experts in identifying hazardous waste and/or toxic materials.

132 **CONTINGENCIES:** The contingencies set forth in this Agreement or on attached addenda shall be deemed to have
 133 been released, waived, or satisfied, and the Agreement shall continue to closing, unless, by 5:00 p.m. (Mountain
 134 Time) on the date specified for each contingency, the party requesting that contingency has notified the other party or
 135 the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has
 136 notified the other party on or before the release date that a contingency is not released, waived, or satisfied, this
 137 Agreement is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other
 138 terms or provisions.

140 **INSPECTION CONTINGENCY:**

141 This Agreement is contingent upon Buyer's acceptance of the Property conditions identified through any
 142 inspections or advice requested below. Buyer agrees to acquire, at Buyer's own expense, independent
 143 inspections or advice from qualified inspectors or advisors of the Buyer's choice. Buyer agrees that any
 144 investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the
 145 property, without the prior written consent of Seller. Further, Buyer agrees to return the property to its original
 146 condition and to indemnify Seller from any damage or destruction to the property caused by the Buyer's
 147 investigations or inspections, if Buyer does not purchase the property.

- | | |
|--|--|
| 148 <input type="checkbox"/> Home Inspection | <input type="checkbox"/> Review and Approval of Protective Covenants |
| 149 <input type="checkbox"/> Seller's Property Disclosure | <input type="checkbox"/> Easements |
| 150 <input type="checkbox"/> Roof Inspection | <input type="checkbox"/> Flood Plain Determination |
| 151 <input type="checkbox"/> Structural/Foundation Inspection | <input type="checkbox"/> Water Sample Test |
| 152 <input type="checkbox"/> Electrical Inspection | <input type="checkbox"/> Septic or Cesspool Inspection |
| 153 <input type="checkbox"/> Plumbing Inspection | <input type="checkbox"/> Mineral Rights Search |
| 154 <input type="checkbox"/> Heating, ventilation, cooling system - Inspection | <input type="checkbox"/> Radon |
| 155 <input type="checkbox"/> Stove/Fireplace Inspection | <input type="checkbox"/> Asbestos |
| 156 <input type="checkbox"/> Pest/Rodent Inspection | <input type="checkbox"/> Wild Fire Risk |
| 157 <input type="checkbox"/> Well Inspection for Condition of Well and Quantity of Water | <input type="checkbox"/> Legal Advice |
| 158 <input type="checkbox"/> Accounting Advice | <input type="checkbox"/> Toxic Waste/Hazardous Material |
| 159 <input type="checkbox"/> Survey or Corner Pins located | <input type="checkbox"/> Underground Storage Tanks |
| 160 <input type="checkbox"/> Access to Property | <input type="checkbox"/> Sanitary Approval/Septic permit |
| 161 <input type="checkbox"/> Verification of # of code compliant bedrooms | <input type="checkbox"/> Mold |

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- 162 Verification of square footage of improvements _____ Verification of lot size _____
- 163 Water Rights _____ Airport Affected Area _____
- 164 Zoning Determination _____ Road Maintenance _____
- 165 Other Any Deemed Necessary by Buyer or Buyer's Lender _____

167 Unless Buyer delivers written notice(s) of Buyer's disapproval of the Property conditions on or before (date)
 168 12/06/13, this inspection contingency shall be of no further force or effect. **If Buyer**
 169 **disapproves** of the property condition, Buyer shall deliver written notice to the Seller or the Seller's
 170 Broker/Salesperson on or before the date specified above, together with a copy of that portion of the inspection
 171 or report upon which the disapproval is based. Buyer shall also state whether Buyer elects to immediately
 172 terminate the Agreement or negotiate a resolution of the conditions noted. **If Buyer elects to negotiate** a
 173 resolution of the conditions noted, the notice must contain all of Buyer's objections and requested remedies.

176 If the parties enter into a written agreement in satisfaction of the conditions noted, this contingency shall be of
 177 no further force or effect. If the parties cannot come to written agreement in satisfaction of the conditions
 178 noted or if the Buyer does not withdraw, in writing, his/her disapproval of the condition noted, on or
 179 before (date) 12/13/13, the earnest money shall be returned to the Buyer, and the
 180 agreement then terminated.

FINANCING CONTINGENCY:

- 182 This Agreement is contingent upon Buyer obtaining the financing specified in the section of this
 183 Agreement entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Closing
 184 Date this Agreement is terminated and the earnest money will be refunded to the Buyer; **OR**
 185
- 187 This Agreement is contingent upon Buyer obtaining the financing specified in the section of
 188 this
 189 Agreement entitled "PURCHASE PRICE AND TERMS." Release Date: N/A.

APPRAISAL CONTINGENCY:

- 191 Property must appraise for at least (\$ N/A). If the Property does not appraise for at least
 192 the specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the
 193 Buyer elects to proceed with closing this Agreement without regard to appraised value. Written notice of
 194 Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within _____ days of
 195 Buyer or Buyer's Broker/Salesperson receiving notice of appraised value; **OR**
 196 Property must appraise for at least (\$ _____). Release Date: _____
 197

199 **TITLE CONTINGENCY:** This Agreement is contingent upon Buyer's receipt and approval (to Buyer's
 200 satisfaction) of the preliminary title commitment. Release Date: 5 days from Buyer's
 201 or Buyer's representative's receipt of preliminary title commitment.

203 **INSURANCE CONTINGENCY:** This Agreement is contingent upon Buyer's ability to acquire, at a rate
 204 acceptable to the Buyer, hazard insurance on the property. Release Date: 12/06/13.

This Agreement is contingent upon Whitefish City Council Approval on Monday, Dec 02, 2013

209 _____ Release Date: 12/03/2013

210 This Agreement is contingent upon _____

215 _____ Release Date: _____

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216 ADDITIONAL PROVISIONS:

Subject to acceptance of this Buy/Sell Contract by Franklin E Ruckman and Mary Louise Ruckman (Trustees of Ruckman Family Trust) & Joan Ruckman Wagar, on or before 2:00 p.m., November 26, 2013.

Buyer and Seller hereby agree and will each pay 2% (total of 4%) of Purchase Price, at closing, as a Real Estate Commission to Location Realty, LLC. Commission will show on the Final HUD statement.

239 CONVEYANCE: The Seller shall convey the Property by Warranty deed, free of 240 all liens and encumbrances except those described in the preliminary title commitment, as approved by the Buyer.

242 MANUFACTURED HOME(S): If a MANUFACTURED HOME is included in the sale of this Property, title will be 243 conveyed at time of closing. Year NONE Make/Model NONE
244 Serial Number NONE Title Number NONE

246 WATER: All water, including surface water or ground water, any legal entitlement to water, including statements of 247 claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches, 248 ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the 249 Property, except None - on City Water

251 Filing or transfer fees will be paid by Seller, Buyer, split equally between Buyer and Seller.
252 Documents for transfer will be prepared by First American Title - Kalispell

254 WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, failure of the parties at closing or transfer 255 of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for 256 updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in 257 the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, 258 MCA, could result in a penalty against the transferee and rejection of the deed for recording.

260 CLOSING AGENTS FEES: Closing agents fee will be paid by Seller Buyer Equally Shared.

262 TITLE INSURANCE: Seller, at Seller's expense and from a title insurance company chosen by Seller, shall furnish 263 Buyer with an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by a standard form American 264 Land Title Association title insurance commitment) in an amount equal to the purchase price. Buyer may purchase 265 additional owner's title insurance coverage in the form of "Extended Coverage", "Enhanced Coverage" for an additional 266 cost to the buyer. It is recommended that buyer obtain details from a title company.

268 CONDITION OF TITLE: All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to 269 closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements 270 or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of 271 the preliminary title commitment approved by the Buyer.

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272 **SPECIAL IMPROVEMENT DISTRICTS:** All Special Improvement Districts (including rural SIDs), including those
273 that have been noticed to Seller by City/County but not yet spread or currently assessed, will be:
274 paid off by Seller at closing;
275 assumed by Buyer at closing; OR
276
277 All perpetual SIDs shall be assumed by Buyer.

279 **ASSOCIATION SPECIAL ASSESSMENTS:** Any special or non-recurring assessments of any non-governmental
280 association, including those that have been approved but not yet billed or assessed, will be:
281 paid off by Seller at closing;
282 assumed by Buyer at closing; OR
283

285 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement
286 District assessments for the current tax year, as well as prepaid rents, water and sewer system charges, heating
287 fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance
288 fees, as of the date of closing unless otherwise agreed as set forth in the additional provisions.

290 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and
291 tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the
292 Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through
293 inspection of said Property prior to closing to insure that all appurtenances and appliances included in the sale
294 remain on the Property.

296 **NOXIOUS WEEDS DISCLOSURE:** Buyers of property in the State of Montana should be aware that some
297 properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to
298 control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your
299 obligations as an owner of property, contact either your local County extension agent or Weed Control Board.

301 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code
302 Annotated, certain individuals are required to register their address with the local law enforcement agencies
303 as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement
304 offices will make the information concerning registered offenders available to the public. If you desire further
305 information please contact the local County Sheriff's office, the Montana Department of Justice, in Helena,
306 Montana, and/or the probation officers assigned to the area.

308 **RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control
309 Act, Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING
310 RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES,
311 MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON
312 THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL
313 INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR
314 STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test
315 results concurrent with an executed copy of this Agreement. If the property has received radon mitigation treatment, the
316 Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

318 **NEWLY CONSTRUCTED RESIDENCE:** If this Agreement is for the sale of a newly constructed residence that has not
319 been previously occupied and the Seller is the builder or a developer who built or had the residence built for the
320 purpose of resale, the Seller shall provide the following to the Buyer prior to closing:

322 (1) A statement of all inspections and tests that were performed prior to, during, or upon completion of
323 construction of the residence; and

324 (2) An express warranty that is valid for a period of at least 1 year from the date of the sale of the
325 residence that will provide detailed descriptions of those components that are included or excluded from the
326 warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain
327 components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the
328 Buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become
329 applicable.

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330 **BUYER'S REMEDIES:**

331 (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the
332 BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer.

333 (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the
334 transaction anticipated by this Agreement within the time period provided in this Agreement, the Buyer may:

335 (1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the
336 return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated;

337 OR (2) Demand that Seller specifically perform Seller's obligation under this Agreement;

338 OR (3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

340 **SELLER'S REMEDIES:**

341 If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the
342 transaction anticipated by this Agreement within the time period provided in this Agreement, the Seller may:

343 (1) Declare the earnest money paid by Buyer be forfeited;

344 OR (2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement;

345 OR (3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

347 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing
348 this Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind,
349 and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a
350 corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on
351 behalf of such entity.

353 **FOREIGN PERSON OR ENTITY:** Section 1445 of the Internal Revenue Code provides that a Buyer of a U.S. real
354 property interest may be required to withhold tax if the Seller is a foreign person. Sellers acknowledge and agree that
355 unless the purchase price of the Property does not exceed \$300,000 and Buyer is purchasing the Property for use by
356 Buyer as a personal residence, Sellers shall deliver to Buyer a certificate of non-foreign status and any other
357 certificate, affidavit, or statement as may be necessary to meet the requirements of Section 1445 of the Internal
358 Revenue Code, in a form reasonably acceptable to Buyer and/or Buyer's attorney. In the event Sellers do not deliver
359 said documents to Buyer at or before closing, Sellers acknowledge and agree that Buyer or the closing agent may
360 withhold ten percent (10%) of the Purchase Price and submit this amount to the Internal Revenue Service, pursuant to
361 Section 1445 of the Internal Revenue Code.

363 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure
364 by Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this
365 Agreement, of any and all information reasonably necessary to consummate the transaction anticipated by this
366 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar
367 documents concerning this property or underlying obligations pertaining thereto.

369 **RISK OF LOSS:** All loss or damage to any of the above-described Property or personal property to any cause is
370 assumed by Seller through the time of closing unless otherwise specified.

372 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.

373

374 **BINDING EFFECT AND NON-ASSIGNABILITY:** The Agreement is binding upon the heirs, successors and
375 assigns of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the
376 Seller's express written consent.

378 **ATTORNEY FEE:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement,
379 the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall
380 determine just.

382 **COMMISSION:** The Seller's and/or Buyer's commitment to pay a commission in connection with the transaction
383 anticipated by this Agreement is an integral part of this Agreement.

385 **FACSIMILE:** The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the
386 parties' signatures may be used as the original.

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387 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments
388 signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other
389 written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by
390 the Seller and Buyer.

392 **COUNTERPARTS:** A copy of this Agreement may be executed by each individual/entity separately, and when
393 each has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete
394 Agreement between the parties.

396 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the
397 earnest money and things of value held by the Broker, closing agent, or any person or entity holding such money or
398 property, unless mutual written instructions are received by the holder of the earnest money and things of value,
399 Broker or closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or
400 closing agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a
401 Court of competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to
402 advance the cost and fees required for filing such action.

404 **ADDENDA AND/OR DISCLOSURES ATTACHED:** (check all that apply):

- 405 Lead Based Paint Disclosure Sale of Buyer's Property
406 Addendum for Additional Provisions 1031 Tax Deferred Exchange
407 Back-up Offer Multi-Family Disclosure
408 Mold Disclosure Water Rights Acknowledgement
409 _____ Condominium Disclosure/Addendum

411 **RELATIONSHIP CONFIRMATION:** The parties to this Agreement confirm that the real estate licensees' identified
412 hereafter have been involved in the capacities indicated below and the parties have previously received the
413 required statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:

414 Roy Hutchin of Location Realty, LLC
415 (name of licensee) (name of Brokerage company)
416 is acting as Seller's Agent/Salesperson Dual Agent/Salesperson Statutory Broker.

418 Roy Hutchin of Location Realty, LLC
419 (name of licensee) (name of Brokerage company)
420 is acting as Buyer's Agent/Salesperson Dual Agent/Salesperson Statutory Broker;
421 Seller's Agent/Salesperson (includes Seller's Sub-Agent or Salesperson).

423 **BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that prior verbal representations by the Seller or Seller's
424 representatives do not modify or affect this Agreement. Buyer acknowledges that by signing this Agreement
425 he/she has examined the subject real and personal Property; has entered into this Agreement in full reliance upon
426 his/her independent investigation and judgments; and has read and understood this entire Agreement.

428 **BUYER'S COMMITMENT:** I/We agree to purchase the above-described Property on the terms and conditions set
429 forth in the above offer and grant to said Salesperson until (date) 11/26/13, at 2:00 am pm
430 (Mountain Time) to secure Seller's written acceptance, whether or not that deadline falls on a Saturday, Sunday or
431 holiday. Buyer may withdraw this offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller
432 has not accepted by the time specified, this offer is automatically withdrawn.

433
434 The parties hereto, all agree that the transaction contemplated by this document may be conducted by electronic
435 means in accordance with the Montana Uniform Electronic Transaction Act.

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436 I/WE HEREBY ACKNOWLEDGE receipt of a copy of this Agreement bearing my/our signature(s).

438 Buyer's Address: 418 E 2nd St City Whitefish

440 State MT, Zip Code 59937 Phone Number 406-863-2406

442 Buyer's Name Printed: City of Whitefish - Mr. Charles C. Stearns, City Manager

444 Dated this November 14, 2013 at 11:15 am pm (Mountain Time).

447 Charles C. Stearns
448 (Buyer's Signature) (Buyer's Signature)

451 OFFER PRESENTATION: This offer was presented to the Seller(s) on

453 Date: _____ Time _____ am pm By: _____
454 (Signature of person presenting the offer)

456 SELLER'S COMMITMENT: I/We agree to sell and convey to Buyer the above-described Property on the terms
457 and conditions herein above stated. I/We acknowledge receipt of a copy of this Agreement bearing my/our
458 signature(s) and that of the Buyer(s) named above.

460 Seller's Address: 1 LAKESIDE BLVD City WHITEFISH

462 State MONTANA, Zip Code 59937 Phone Number NA

464 Seller's Name Printed: Joyce Statton Jacqueline A Creon CONSERVATOR for Jacqueline Creon

466 Dated this 20th day of November 2013 at _____ am pm (Mountain Time).

469 Joyce Statton, CONSERVATOR
470 (Seller's Signature) (Seller's Signature)

472 ACTION TAKEN, IF OTHER THAN ACCEPTANCE:

474 I/We acknowledge receipt of this Agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named
475 above.

477 Rejected by Seller _____ / _____ / _____ Modified per Attached Counter _____ / _____ / _____
478 Seller's Initials Date Seller's Initials Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

BUYER BROKER AGREEMENT - Short Form



1 The Buyer(s), identified below, authorize Roy Hutchin
2 (Broker/Salesperson) of Location Realty, LLC (company)
3 to act as their Broker/Salesperson to locate real estate of the type and on the terms and conditions described
4 below. Buyer(s) shall not be obligated to directly compensate the undersigned Broker/Salesperson for their
5 efforts on behalf of the Buyer(s). Buyer(s) consent to the Broker/Salesperson receipt of compensation
6 from a cooperating Broker or Seller. In this regard, ~~the Broker/Salesperson is only retained to locate~~
7 properties on which an offer of compensation to them from a cooperating Broker or Seller exists. The Civil
8 Rights and Fair Housing Laws of the United States and Montana prohibit housing discrimination on the
9 basis of race, religion, sex, national origin, color, handicap, familial status, marital status, age and creed.
10 Buyer acknowledges that a seller is not obligated to treat the existence, terms or conditions of an offer which
11 may be presented by buyer as confidential.

13 This Agreement is non-exclusive, Buyers are free to work with other Brokers and/or Salespersons in
14 locating real estate, and it may be terminated at will of either party, without cause.

15 -OR-

17 This Agreement is exclusive, Buyers will work only with Broker/Salesperson, and this Agreement shall
18 terminate on _____.

20 Buyer hereby affirms that Buyer is not a party to a current, valid exclusive agreement to provide the same type
21 of real estate services as set forth in this agreement.

22 Buyers are aware that Broker has not and will not conduct an expert inspection or analysis of any property or
23 its condition and makes no representations to Buyers as to the condition of any property that Buyers may be
24 interested in purchasing or leasing. Moreover, Buyers understand and acknowledge that Broker does not and
25 can not assure that any house and/or buildings will be satisfactory to Buyers in all respects, that all
26 equipment will operate properly or that any property and/or improvements thereon that Buyers are
27 considering purchasing or leasing comply with the current building and zoning codes.

29 Buyers understand that Broker IS NOT a building inspector, building contractor, structural engineer,
30 electrician, plumber, sanitarian, septic or cesspool expert, well driller or well expert, land surveyor, civil
31 engineer, flood plain or water drainage expert, roofing contractor or roofing expert, accountant, attorney, title
32 examiner or expert in identifying hazardous waste and/or toxic materials. Buyers understand that it is Buyers'
33 responsibility to be informed buyers and to be certain that any property is satisfactory to Buyers in every
34 respect. Buyers are strongly encouraged to obtain professional inspections of any property that Buyers may
35 be interested in purchasing or leasing to provide Buyers an in-depth, unbiased evaluation of any such
36 property.

37 The type of real property and the terms and conditions are generally set out as follows:

38 Size: _____

39 Location: _____

40 Price: _____

41 Other terms and/or conditions: None

42 Special Requirements: _____

43 #1 Lakeside Blvd, Whitefish MT 59937

47 The parties hereto, all agree that the transaction contemplated by this document may be conducted by
48 electronic means in accordance with the Montana Uniform Electronic Transaction Act.

50 Date: 11/14/13

52 Charles C. Stearns
53 Buyer City of Whitefish - Mr. Charles C. Stearns

Roy Hutchin 11-14-13
Broker/Salesperson Roy Hutchin

55 _____
56 Buyer

Broker/Salesperson

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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This form presented by Jayleen Flanigan | Location Realty, LLC | (406) 261-0760 | jayleen@location-realty.com





MEMORANDUM

#2013-046

To: Mayor John Muhlfield
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Possible purchase of property by City Beach

Date: November 25, 2013

Introduction/History

We were recently contacted by a realtor who is representing the owners of a property at 1 Lakeside Blvd (Jacqueline Creon et al) which is at the corner of Lakeside Blvd and Oregon Avenue, right by City Beach. The legal description is Lots 7, 8, and 9 of Block 16 of the Original Whitefish Townsite. Two pictures are below and more property information is in the attachment in the packet.



When I first arrived at the City five years ago, I was told by several Department Directors that this property was our most desired piece of property around City Beach and that we should pursue it when it becomes available. Well it now appears that it might be available.

As you can see in the attachment, the realtor representing Ms Creon's conservator believes that a price of \$450,000.00 is a fair price for this piece of land (17,705 sq. ft. or .407 acres) which equals \$25.35 per sq. ft. The realtor points to Rob Pero's recent purchase of the lakefront property next to City Beach as indicative of pricing, but that really is a different type of property with beachfront. However, for another piece of property in the vicinity, I asked Joe Basirico to

do a CMA (Comparative Market Appraisal? – a realtor’s valuation) and he said that property was probably worth \$175,000 to \$200,000 for 6,500 sq. ft. which is \$26.92 to \$30.77 per sq. ft. The houses on both properties are pretty much tear downs. Ms. Creon’s property is a better property (closer to the lake with undisturbed views), but it also is subject to more City Beach traffic, noise etc. However, I do believe that the \$450,000.00 or \$25.35 per sq. ft. is a very good price.

The likely use is for parking as adding parking in the City Beach area has been a priority from before my arrival. Gary Mark’s standing direction to Joe Basirico was to inform Gary whenever any property in the City Beach area became available. Joe has continued to inform me, but not many properties have gone up for sale.

If we were to develop the lot as parking, we would also incur demolition costs (unless the Fire Dept did a test burn, but even then there are some costs) and construction costs. Based on getting about 36 spaces in the lot we leased from Mr. Goguen which was 16,250 sq. ft., we could likely get 40-45 spaces on Ms. Creon’s lot. The cost per space at the 2nd and Spokane parking lot in 2009 was \$5,717 per space which included grading, concrete, asphalt and landscaping. However, the costs on Ms. Creon’s site might be less per space because of smaller sidewalks and other reasons. If we were to assume 40 spaces at \$5,000 per space, that would be construction costs of \$200,000 and engineering costs of \$30,000 on top of the purchase and demolition costs. These costs are just estimates for decision making purposes and we wouldn’t know better costs until we hired an engineering firm to design a parking lot. During my site inspection, I did notice that there is about a ten foot grade difference from the north end of the lot to the south end, so there may be a need for some retaining walls, which the costs above do not include. There may be uses other than a parking lot, but parking has seemed to be the biggest problem at City Beach.

I did discuss with Karl Cozad that we want to be careful with the carrying capacity of City Beach as I believe the parking situation there is somewhat like building additional highway lanes to ease congestion in urban areas – the more you build, the more you attract new use to the area and you often don’t alleviate congestion because you attracted new users. Similarly, I think that if we added 40 parking spaces, I doubt that would really alleviate much of the current parking congestion in the area and more people might just come and create the same parking congestion. However, Karl does feel that City Beach can accommodate more people without degrading the experience, so that may not be as much of a concern. I still think parking congestion problems in the area will remain to some degree.

The funding for the \$450,000 plus \$200,000 plus \$30,000 to buy and build this parking lot would really have to be out of the Tax Increment Fund as no other fund would have the money without a tax increase. The Park’s allocation of the Resort Tax might be able to build the parking lot however. City Beach was and remains a priority project in the 1987 Urban Renewal Plan as amended, so it would qualify. I am attaching to this report the most recent TIF forecast for the remaining years. The beginning cash balance in July, 2013 was about \$1,000,000 higher than earlier forecasted because we have not spent money on a lot of projects yet, most notably City Hall, Depot Park, and Skye Bridge. So I think it would be possible to purchase and construct the parking from the TIF, but that would come at the expense of other alternative uses. So this purchase would come down to a matter of priorities.

Current Report

The Real Estate Committee of Mayor Muhlfeld, Frank Sweeney, and I believe we should go forward with this purchase out of the Tax Increment Fund. A buy-sell agreement is included in the packet that I have signed, but it is contingent upon the City Council approval at the December 2nd meeting. Mary VanBuskirk reviewed the buy-sell and advised me on some provisions of it.

Financial Requirement

The acquisition cost of \$450,000 plus \$9,000 for splitting the commission plus some closing costs would come from the Tax Increment Fund. If and when the City Council wanted to pursue construction of a parking lot, that money could come from the Tax Increment Fund or the allocation of Resort Tax for Park capital improvements.

Recommendation

Staff respectfully recommends the City Council adopt a Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish for \$450,000 plus ½ of the realtor commission plus closing costs.

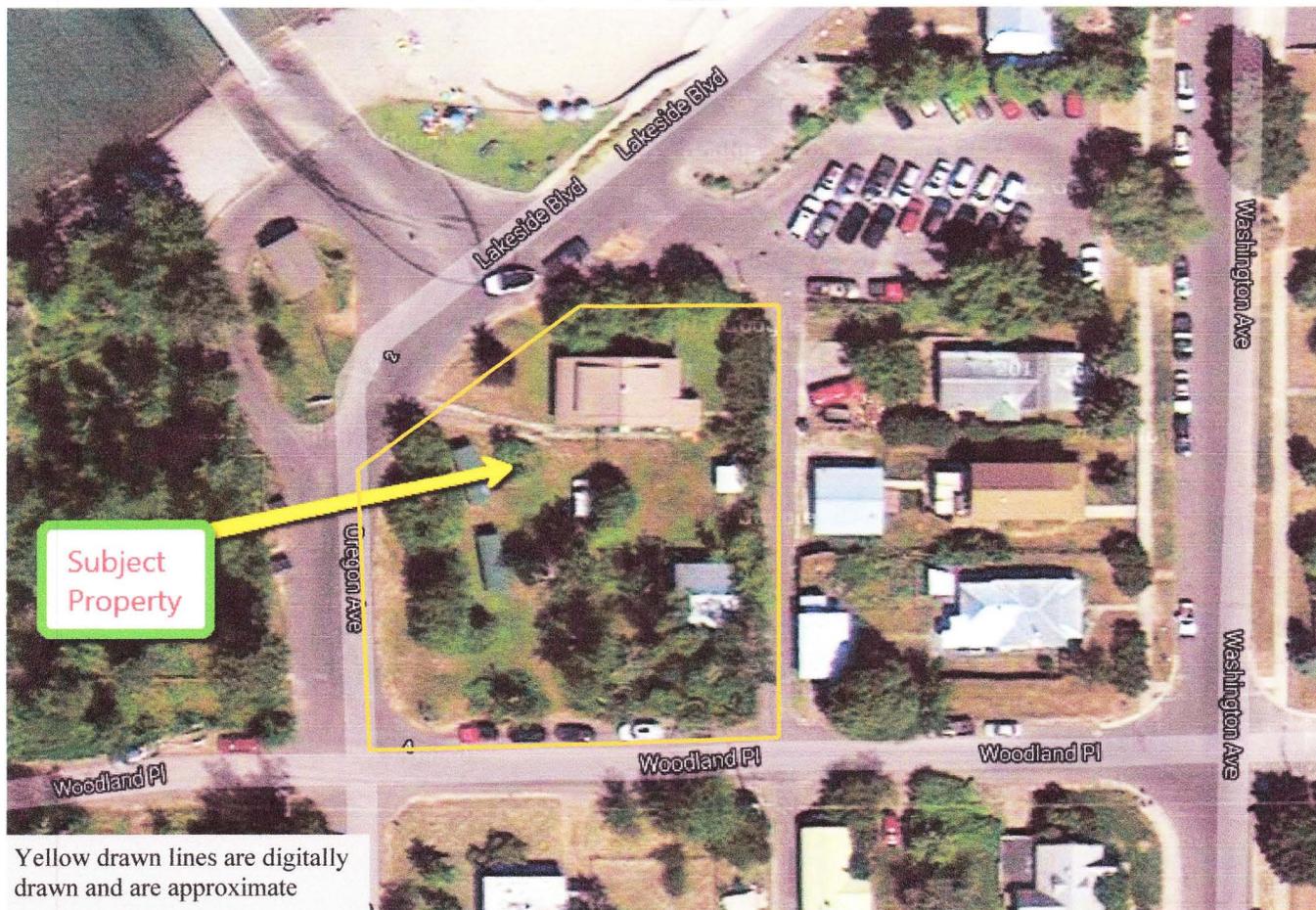
JACQUELINE A. CREON

*

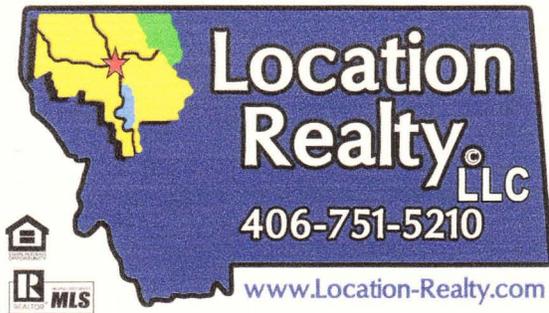
0.407 ACRES

*

1 LAKESIDE BLVD



Yellow drawn lines are digitally drawn and are approximate



264 N. Main St., STE 100
Kalispell, MT 59901

(406) 751-5210 Office
(406) 751-5209 Fax

www.Location-Realty.NET

main@Location-Realty.COM

The BEST Location for YOUR Next Location

City of Whitefish
City Manager
Mr. Chuck Stearns
418 2nd St,
Whitefish, MT 59937
(406) 863-2406

Dear Mr. Stearns,

Thank you for your time speaking with me about Ms. Jacqueline Creon's property adjacent to the Whitefish City Beach parking area. We have been working very diligently to receive the authority to market Ms. Creon's property. As you will see in these documents, we have been working with Mr. Lewis C. Villemez, Attorney for the Conservation Corporation of Montana, and Ms. Joyce Statton of Helena, an authorized agent of the corporation. As such, Ms. Statton has full power and authority to act as conservator for Jacqueline Creon pursuant to the District Court order. Subsequently, I, Roy Hutchin, Supervising Broker for Location Realty, LLC, located at 264 N Main St, STE 100 in Kalispell, MT. put together a starting point Buy/Sell agreement based on previous conversations with all the involved authorized parties.

The Buy/Sell agreement has been reviewed and subsequently signed by the authorized representatives of Ms. Creon. Please note on page 5 of the Buy/Sell, Line 216, entitled "Additional Provisions" the 3 lots are presently under ownership with an "undivided" interest by three (3) parties (two others as mentioned).

Mr. Villemez has been in contact with those two other parties and feels that once we have this Buy/Sell accepted by the City of Whitefish, we could then meet with Mr. Franklin E. Ruckman, Mrs. Mary Louise Ruckman, and Ms. Joan Ruckman Wagar for their acceptance and signatures on this Buy/Sell in hopes of completing the transaction as quickly as possible in order to help Ms. Creon with her current needs. But these dates can all be adjusted as necessary bearing the fact that "things and process" all take some time. We want to hold as closely as possible to the listed dates, but realize that we will need to adjust some dates.

Please find enclosed some information on the property for your review and use.

The property is currently zoned WR-2 Two Family Residential and would lend itself to private party development for single family or two family (duplex) dwellings. We at Location Realty, have reviewed the property, the location, the pertinent area Real

Estate Market, and conclude that the highest and best use would be for the City of Whitefish to acquire the property and manage it "For the Public" as you best see fit, tying it into your very heavily used "Whitefish City Beach and Boat Ramp" area.

Therefore, we have not placed the property on the "open" Real Estate Market and feel very strongly that "the Public" through you, Whitefish City Officials, Whitefish City Council, and all interested parties should acquire this property.

In valuing the Creon property we found only one very good comparable type property that just happens to be located west across Lakeside Boulevard. It has 0.44 acres with 100' of Whitefish Lake waterfront. It sold April 22, 2013 at a price of \$937,500.00! (see enclosed listing sale sheet) Given this comp and the general Real Estate Market around Whitefish Lake, we feel that a \$450,000.00 sale price is quite fair.

I look forward to meeting with you and your fellow management personnel, tomorrow, Thursday October 31, 2013 at 10:30 am if that fits your schedules. Please let me know at your earliest convenience.

Most Sincerely,



Roy Hutchin
(406) 253-2766
Supervising Broker
Location Realty, LLC

Total Market Land

0.407

00.00

Deed Information:

Deed Date	Book	Page	Recorded Date	Document Number	Document Type
7/23/2013			7/23/2013	201300017912	Quit Claim Deed

Owners

Party #1

Default Information: CREON, JACQUELINE A
MAIL TO FE RUCKMAN

Ownership %: 100

Primary Owner: "Yes"

Interest Type: Conversion

Last Modified: 8/27/2013 11:34:29 AM

Other Names

Other Addresses

Name	Type	Other Addresses
WAGAR, JOAN RUCKMAN	L Additional Legal Owners	No other address
RUCKMAN FAMILY LIVING TRUST	L Additional Legal Owners	No other address

Appraisals

Appraisal History

Tax Year	Land Value	Building Value	Total Value	Method
2013	174875	130325	305200	MKT
2012	174875	130325	305200	MKT

Market Land

Market Land Item #1

Method: Sqft Type: 1 - Primary Site

Width: Depth:

Square Feet: 17,750 Acres:

Valuation

Class Code: 2201 Value:

Dwellings

Existing Dwellings

Dwelling Type	Style	Year Built
SFR	09 - Bungalow	1922

Dwelling Information

Residential Type: SFR Style: 09 - Bungalow
 Year Built: 1922 Roof Material: 5 - Metal
 Effective Year: 1985 Roof Type: 3 - Gable
 Story Height: 2.0 Attic Type: 0
 Grade: 4+ Exterior Walls: 1 - Frame
 Class Code: 3501 Exterior Wall Finish: 6 - Wood Siding or Sheathing

Year Remodeled: 0

Degree Remodeled:

Mobile Home Details

Manufacturer:

Serial #:

Width: 0

Model:

Length: 0

Basement Information

Foundation: 2 - Concrete

Finished Area: 0

Daylight: N

Basement Type: 3 - Full

Quality:

Heating/Cooling Information

Type: Non-Central

System Type: 1 - Floor/Wall/Space

Fuel Type: 3 - Gas

Heated Area: 0

Living Accomodations

Bedrooms: 5

Full Baths: 1

Addl Fixtures: 2

Family Rooms: 0

Half Baths: 0

Additional Information

Fireplaces:

Stacks: 0

Stories:

Openings: 0

Prefab/Stove: 0

Garage Capacity: 0

Cost & Design: 0

Flat Add: 0

% Complete: 0

Description:

Description:

Dwelling Amenities

View:

Access:

Area Used In Cost

Basement: 1056

Additional Floors: 0

Attic: 0

First Floor: 672

Half Story: 0

Unfinished Area: 0

Second Floor: 672

SFLA: 1344

Depreciation Information

CDU: Good (8)

Physical Condition:

Utility:

Desirability:

Property:

Location:

Depreciation Calculation

Age: 23

Pct Good: 0.82

RCNLD: 0

Additions / Other Features

Additions

Lower	First	Second	Third	Area	Year	Cost
	14 - Porch, Frame, Enclosed			192	0	0
	14 - Porch, Frame, Enclosed			192	0	0

There are no other features for this dwelling

Other Buildings/Improvements

Outbuilding/Yard Improvement #1

Type: Residential

Description: RRG1 - Garage, frame, detached, finished

Quantity: 1

Year Built: 1987

Grade: 5

Condition:

Functional:

Class Code: 3501

Dimensions

Width/Diameter:

Length:

Size/Area: 484

Height:

Bushels:

Circumference:

Commercial

Existing Commercial Buildings

No commercial buildings exist for this parcel

Ag/Forest Land

Ag/Forest Land

No ag/forest land exists for this parcel

(This page left blank intentionally to separate printed sections)

Chuck Stearns

From: Necile Lorang [nlorang@cityofwhitefish.org]
Sent: Tuesday, October 08, 2013 9:11 AM
To: cstearns@cityofwhitefish.org
Subject: Fw: Property annexation

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

From: [Chris Erler](#)
To: nlorang@cityofwhitefish.org
Sent: Tuesday, October 08, 2013 9:01 AM
Subject: Property annexation

Hi Necile,

I just built a new home on Rest haven Drive over the past two years and am ready to have my sewer valve turned on. Imagine my surprise when I was told that it wouldn't be turned on unless I basically sign over my entire 4 acre property to the City of Whitefish for annexation, and waive any future rights to appeal an annexation. My property is in the County, but this is a sewer line extension that all residents in the subdivision are paying the full cost of through a levy (RID) on our property tax bill. In addition, no one else in the subdivision that I know of has had to fill out this form as a condition of connecting.

I would like to contact the Mayor, Deputy Mayor, and the City Manager regarding this issue, and possibly bring it before Council as this policy crosses the boundary lines on many levels, not just legally. Please provide me with email addresses for these City officials, or forward this to them so they can reply and discuss this. Also, could you please provide instructions on how to bring this before Council if I cannot get a satisfactory resolution from talking to City officials.

Thank you.

Chris Erler
2855 Rest Haven Drive
Whitefish, MT

Chuck Stearns

From: Chuck Stearns [cstearns@cityofwhitefish.org]
Sent: Tuesday, October 08, 2013 2:21 PM
To: 'erler08@gmail.com'
Cc: 'Necile Lorang'; 'John Muhlfeld'; 'Bill Kahle'; 'Mary VanBuskirk'
Subject: Property annexation

Mr. Erler:

I am responding to your email below regarding our policy of requiring a petition to annex and a waiver of the right to protest a future annexation in return for being allowed to connect onto the City wastewater system.

First, I will address the legality of the policy which you question. Section 7-13-4134 MCA, the relevant Montana state law, shown below, clearly indicates that cities may require consent to annexation as a condition of providing water or sewer services outside the City. This law was originally enacted in 1925 (see highlighting) and has long been a part of Montana law and Montana municipal practice. The legality was tested in court cases and Montana municipalities have prevailed in these cases. I was Finance Director and City Clerk in Missoula, MT in 1989-1991 when the City of Missoula was sued for annexing over 10,000 people, many against their will. The District Court ruled in favor of the City of Missoula and upheld the legality of Missoula's required petitions and waivers.

7-13-4314. Annexation as requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).

The City of Whitefish pursued several, contentious annexations in 1998 using the waivers of protesting annexation and another method of annexation and those annexations were upheld in 2004 at the Montana Supreme Court. However, because of those lawsuits, the City also began requiring Petitions to Annex in addition to waivers of the right to protest annexations because annexations under one section of Montana law are more easily accomplished with a petition to annex rather than just a waiver. However, we still require the waiver in case we don't want to annex a particular property right away. Also as a result of those annexations, the City Council decided generally just to annex people right away when they petition to annex unless there are good reasons not to annex them. These policies have been in place since January 4, 1999.

Regarding Rest Haven, we do have waivers of the right to protest which were signed by property owners who connected onto the RSID sewer line. Some properties may have changed ownership since the waivers were signed which is why we record the waivers and petitions at the Flathead County Clerk and Recorder. Then the documents show up in the Title Report when properties are bought and sold.

We have never chosen to annex Rest Haven yet because it is still pretty far out, however we are certainly moving city limits in that direction. Three properties by the entrance to Les Mason Park were annexed at last night's meeting via petitions they signed for sewer service. The City Council has also directed staff to pursue annexation of other lots in the Jennings Lakeside Road area and follow that annexation up by pursuing annexation of Houston Drive.

While I don't think we will immediately annex your property, that is ultimately a City Council decision. I would imagine the annexation of as much of Rest Haven as possible will be considered in the future.

If you are not satisfied with these explanations of the long held City policies, you may write a letter addressed to the Mayor and City Council and that letter will be put on the agenda for the following meeting of the City Council at which time you could address the Mayor and City Council. If you want to pursue such a letter, please send it to me or Necile Lorang, City Clerk.

If you have further questions regarding our annexation policies, please feel free to call me at 863-2406 or email me. I have copied Mayor John Muhlfeld and Deputy Mayor Bill Kahle with this response, so then you have their email addresses as you requested.

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



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

From: Chris Erlor
To: nlorang@cityofwhitefish.org
Sent: Tuesday, October 08, 2013 9:01 AM
Subject: Property annexation

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Thank you.

Chris Erlor
2855 Rest Haven Drive
Whitefish, MT

Chuck Stearns

From: Chris Erler [erler08@gmail.com]
Sent: Tuesday, October 08, 2013 3:24 PM
To: Chuck Stearns
Subject: Re: Property annexation

Thanks for the fast reply Chuck.

There are a few issues of concern in your response, the first one being that the law you are quoting is from 1925. Any law that old was probably enacted with an entirely different purpose, and intent, than what the City of Whitefish is using it for - that being a land grab to gain control of all of Whitefish Lake and the tax revenue that goes with it. I imagine that back in 1925 people also had a CHOICE as to whether or not they wanted to connect to the City line; because the DEQ now won't issue a permit for a septic field if there is a sewer line nearby, what you are essentially doing is holding people "hostage" if they don't want to be using an outhouse permanently. It is fine to quote an old law, and legal precedents supporting victories in court, but this is also just simply ethically wrong as there is no other choice for property owners. Another issue is the residents of the subdivision are paying the full cost of the line extension and have turned it over to the City of Whitefish to become your property, in trust, for you to provide service. Was this also the case in 1925, or in the Missoula example? Lastly (for today), my particular parcel was part of a sub division in the 1980's and an easement was recorded to the City of Whitefish in 1994, I believe, for access to any sewer system for construction, maintenance, etc. Everything was done as per the laws and codes that were in effect at that time, and long before Jan.4, 1999, so what I would like to know is when exactly did the sewer extension go into the Rest Haven subdivision, and how many residents out of the total number of homes have signed this?

In my view, and any reasonable person's opinion, paying for the extension through an RID, purchasing all of the sewer equipment for the STEP system and turning it over to you as your property, having an easement on the property for your access, paying the impact fees, paying the deposit, and paying a ridiculously high sewer bill every month should be more than enough for a home owner to acquire sewer service without the added "kick in the pants" of having to sign over their property for annexation. The City needs to wake up and start treating people fairly instead of stepping on them to feed what seems to be a voracious appetite to gain control of the donut area. Just because there is an old law on the books does not mean you need to use it.

I look forward to a reply and an answer to the few questions in this email. Thank you.

Chris Erler

On Tue, Oct 8, 2013 at 2:21 PM, Chuck Stearns <cstearns@cityofwhitefish.org> wrote:

Mr. Erler:

I am responding to your email below regarding our policy of requiring a petition to annex and a waiver of the right to protest a future annexation in return for being allowed to connect onto the City wastewater system.

First, I will address the legality of the policy which you question. Section 7-13-4134 MCA, the relevant Montana state law, shown below, clearly indicates that cities may require consent to annexation as a condition of providing water or sewer services outside the City. This law was originally enacted in 1925 (see highlighting) and has long been a part of Montana law and Montana municipal practice. The legality was tested in court cases and Montana municipalities have

Chuck Stearns

From: Chris Erler [erler08@gmail.com]
Sent: Tuesday, October 08, 2013 5:06 PM
To: Chuck Stearns
Subject: RE: Property annexation

Thanks Chuck,

I really do appreciate your time and the replies but I can't agree with you, and sometimes emails do sound harsh. Nobody minds paying their fair share but my neighbor's sewer bill last month was \$110! Just for sewer, no water, or garbage, or anything else. Do you have any idea how out of line that is? An average sewer bill should be in the neighborhood of about \$30 per month, so if we were to calculate the difference over a year, I am sure we all more than make up for the difference in the fire coverage, etc. It's not even a real sewer, fluids only. And then there is the local tourist tax that everyone pays in a State that does not have a tax, lots of extra revenue there too, we should be able to have a fire truck, police officer, and an ambulance parked on Rest Haven full time, just waiting for something to happen. People in the donut area also keep a lot of your businesses " in business " and spend a major amount of money in your City - we don't just show up and use services. I have personally stimulated your local economy to the tune of about \$400,000 in the last two years. Maybe I should have bought that 12 acres just outside of Lakeside instead. If you think that everyone who comes to your City should pay their way because they sit on a park bench or walk on a sidewalk downtown, maybe you are going to have to try and annex Kalispell and Columbia Falls as well. Whitefish has a poor public image and is already well known for being poorly run and overly expensive, it's maybe time to start changing that. Cheers.

Chris

On 2013-10-08 4:07 PM, "Chuck Stearns" <cstearns@cityofwhitefish.org> wrote:

Mr. Erler:

The law was also amended in 1971 as it shows at the end of the annotations, so it is probably up to date and has been used continuously by cities for annexations. If you want to research when the sewer extensions went in to Rest Haven and how many residents have connected, you should contact our Public Works Department at 863-2460.

Just as you have some harsh comments for the City, you should try to understand it from our perspective. For example, we currently subsidize your Fire service. You get the same Fire Department service that city residents get, yet you pay \$90 per year for that service whereas a house valued for taxes at \$200,000 in Whitefish city limits pays \$247 per year for Fire and Ambulance service. For the same Fire Department and the same level of service, you may think that is fair, but we do not. When we considered a five year transition to end our contract with the Whitefish Fire Service Area a few years ago because they didn't want to pay near the cost for the service, we were again demonized with comments similar to yours. People in the doughnut use City services such as roads, police protection, water, sewer, library, parks, and planning regularly, but do not pay property taxes to support those services and we think people should pay for services that they regularly use.

Chuck Stearns

City Manager

City of Whitefish

P.O. Box 158

418 East 2nd Street

Whitefish, MT 59937-0158

Telephone - [406-863-2406](tel:406-863-2406)

Fax - [406-863-2419](tel:406-863-2419)

Cell -

cstearns@cityofwhitefish.org



From: Chris Eler [mailto:erler08@gmail.com]

Sent: Tuesday, October 08, 2013 3:24 PM

To: Chuck Stearns

Subject: Re: Property annexation

Thanks for the fast reply Chuck.

There are a few issues of concern in your response, the first one being that the law you are quoting is from 1925. Any law that old was probably enacted with an entirely different purpose, and intent, than what the City of Whitefish is using

Chuck Stearns

From: Chris Erler [erler08@gmail.com]
Sent: Friday, October 11, 2013 9:55 AM
To: Chuck Stearns
Cc: Necile Lorang; John Muhlfeld; Bill Kahle; Mary VanBuskirk
Subject: Re: Property annexation

Good morning Chuck,

All arguing and bantering aside, I would like to officially request that I be allowed to connect to the Rest Haven Drive sewer extension line without having to put my entire 4 acre parcel up for annexation by the City of Whitefish. My request is based on the following points:

1. Myself, and the residents of the Rest Haven subdivision are paying the full cost of the sewer line extension through an RID on our property tax bills.
2. I have had to pay the full cost for the Orenco Sytems STEP tank/pump, as well as all the excavavtion and installation costs, as specified by the City. This now gets turned over to you and becomes City property.
3. Exception #14 on the Title documents to my property already have recorded an easement granted to the City of Whitefish for the purpose of access to the sewer equipment for maintenance, repairs, etc. I believe this was recorded in 1994, prior to any City "policy" requiring property owners to have their property annexed as a condition of connecting to the sewer. I have not been able to find an official City policy or by-law, in writing, in regards to this - perhaps someone could email it to me.
4. There is no need for the City to annex my property as there currently are no plans for the City to annex the Rest Haven subdivision. In addition, my property is not on the lakeshore and is exempt from most CAO requirements because I am outside of the 200 foot zone.
5. Lastly, and maybe most importantly, residents of Rest Haven currently have no choice but to use your sewer line - the DEQ will not issue a permit for a septic field because the sewer line is nearby. If I did have the choice, your policy may have some merit, but with no choice the poilicy walks a fine line of extortion and, at the very least, is both ethically and morally wrong. I believe it also goes against the intent of the law that is on the books originating in 1925, that you have quoted me, and against the basic principles of private property and democracy.

I am more than willing to pay my connection/impact fees, and grudgingly pay the very high monthly sewer bills as a customer. I hope reason and common sense will prevail in this matter and if not, I would like to bring this before City Council sometime in the near future. Thank you.

Chris Erler
2855 Rest Haven Drive
Whitefish, MT

On Tue, Oct 8, 2013 at 2:21 PM, Chuck Stearns <cstearns@cityofwhitefish.org> wrote:

Mr. Erler:

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

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

THIS AGREEMENT is entered into as of ____ day of _____, 20____, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and _____ ("OWNER"), as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is _____ with respect to the following facts:

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

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

OWNER agrees to provide necessary utility easements for construction, installation, maintenance, replacement, and repair of CITY utility mains needed to provide requested services to the OWNER'S REAL PROPERTY. OWNER also agrees to transfer

and convey to the CITY any community-served utility systems owned by OWNER that are part of the service to the OWNER'S REAL PROPERTY. OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by the OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary sewer extension lines. If any portion of the lateral extension is constructed on land owned by OWNER at the time OWNER transfers their interest in the sanitary sewer extension line to the CITY, OWNER shall also grant the CITY an appropriate easement for construction, repair, and maintenance of the municipal water and/or sanitary sewer extension lines.

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

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

(6) Annexation: OWNER hereby petitions the CITY to annex the OWNER'S REAL PROPERTY. OWNER consents to and waives the right to protest the annexation when the CITY elects annexation. When the CITY annexes the OWNER'S REAL PROPERTY, any obligations of this Agreement not fulfilled or completed survives the annexation and remain a burden upon the property. OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA § 7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to annexation of the tract served by the CITY, and in consideration for the CITY'S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to consent to annexation under the following conditions and in the following manner:

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

- b) OWNER hereby petitions to have OWNER'S REAL PROPERTY annexed to the CITY, pursuant to Montana law. OWNER agrees that the CITY may act on this petition at any time in the future, without limitation. OWNER furthermore expressly waives the provisions of MCA § 7-2-4608, which provides, in effect, that no property used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purposes or for any purpose incident thereto shall be annexed pursuant to the provisions of MCA § 7-2-4601, et seq.
- c) OWNER hereby signs the petition requesting annexation attached to and made a part hereof under this Agreement for municipal water and/or sanitary sewer services at the time of signing this Agreement. Such Petition shall be filed with the City Clerk.
- d) OWNER acknowledges and agrees that OWNER has had an opportunity to inspect the contents of the CITY'S Plan for Extension of Services, as adopted by the CITY, and which describes the manner in which CITY services may be extended to properties annexed by the CITY. OWNER acknowledges and agrees that OWNER is satisfied with the CITY'S Plan for Extension of Services, and that the CITY'S Plan for Extension of Services adequately provides for the extension of CITY services to OWNER'S REAL PROPERTY. OWNER hereby waives the right to object or otherwise challenge the CITY'S Plan for Extension of Services.
- e) OWNER hereby irrevocably waives for all time the right to file an action in court to challenge, for any reason, the CITY'S annexation of OWNER'S REAL PROPERTY, whether such annexation occurs now or in the future.
- f) OWNER acknowledges and agrees that all of OWNER'S REAL PROPERTY, as described above, will clearly and immediately, and not merely potentially, be serviced by the municipal water and/or sanitary sewer service to be provided by the CITY pursuant to this Agreement.
- g) OWNER agrees that if ever OWNER, their heirs, assigns, successors, purchasers, administrators, personal representatives or subsequent holders of title to OWNER'S REAL PROPERTY, breach, challenge, disregard, or otherwise violate any of the terms of this Agreement, the CITY may, after providing twenty (20) days written notice, terminate water and/or sanitary sewer services to OWNER'S REAL PROPERTY, in addition to any other remedies that the CITY may have.
- h) OWNER agrees that if OWNER, in violation of this Agreement, submits a protest to the annexation of OWNER'S REAL PROPERTY, the CITY may disregard such protest, in addition to any other remedies that the CITY may have.

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

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

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

The Owner hereby covenants and agrees that acceptance of this deed does constitute a waiver of the statutory right of protest against any annexation procedure initiated by the City of Whitefish with respect to the property described herein. Owner also agrees that acceptance of a deed constitutes an obligation on the part of Owner to initiate annexation procedures per the Petition to Annex on file at the City Clerk's Office.

This consent to annexation and waiver shall run with the land and shall forever be binding upon the Owner, transferees, successors and assigns.

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

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

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

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

(12) Necessary Acts: Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to

carry out the provisions of this Agreement.

CITY OF WHITEFISH

OWNER(S)

By: _____
Charles C. Stearns, City Manager

[Printed Name]

[Printed Name]

ATTEST:

Necile Lorang, City Clerk

STATE OF MONTANA)
) ss.
County of Flathead)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared CHARLES C. STEARNS and NECILE LORANG, known to me to be the City Manager and City Clerk of the City of Whitefish, whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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

Notary Public for the State of Montana

STATE OF MONTANA)

County of Flathead) ss.
)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared _____ and _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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

(SEAL)

Notary Public for the State of _____

[print or type name of Notary]

Residing at _____

My Commission expires: _____

