1) Call to Order

2) Interview - Whitefish Sustainable Tourism Management Plan Standing Committee
   a) 5:30 p.m. – Stephen Kane (via phone) – member-at-large (reside inside Whitefish)
   b) 5:40 p.m. – Mariah Joos – WCVB representative
   c) 5:50 p.m. – Elizabeth Colley – member – at-large (reside outside Whitefish)
   d) 6:00 p.m. – Mark Piscoli – member – at-large (reside inside Whitefish)
   e) 6:10 p.m. – Nick Polumbus – WMR representative
   f) 6:20 p.m. – Ella Kobelt – member-at-large (reside inside Whitefish)
   g) 6:30 p.m. – Heather Cauffman – member-at-large (reside inside Whitefish)
   h) 6:40 p.m. – Brian Schott – member-at-large (reside inside Whitefish)

3) Public Comment

4) Appointment
   a) Whitefish Sustainable Tourism Management Plan Standing Committee – Eight (8) positions; Four (4) positions – members-at-large (must be a city resident with experience in, knowledge of, or perspective on tourism and its relationship to the Whitefish community); two (2) members may reside outside the City of Whitefish, as long as the member resides in Flathead County and has an ownership interest in or a managerial position at a business located and operating within the corporate limits of Whitefish; one (1) member from Whitefish Mountain Resort; one (1) member from the Whitefish Convention and Visitors Bureau.
   b) Appoint one (1) member from City staff or City Council

**If time runs out before appointments are made, there will be time at the end of the regular session**
PUBLIC NOTICE
VACANCIES ON CITY BOARDS/COMMITTEES

WHITEFISH SUSTAINABLE TOURISM MANAGEMENT PLAN STANDING COMMITTEE – Eight (8) positions. Four (4) position – members-at-large (must be a city resident with experience in, knowledge of, or perspective on tourism and its relationship to the Whitefish community); two (2) members may reside outside the City of Whitefish, as long as the member resides in Flathead County and has an ownership interest in or a managerial position at a business located and operating within the corporate limits of Whitefish; one (1) member from Whitefish Mountain Resort; one (1) member from the Whitefish Convention and Visitors Bureau.

WHITEFISH LAKE AND LAKESHORE PROTECTION COMMITTEE - Two (2) positions. One (1) 2-year term, applicant must be a lakefront property owner and reside within the corporate limits of the city of Whitefish. One (1), complete term ending 12/31/2023, shall reside within the corporate limits of the city of Whitefish. Committee meets once a month.

BOARD OF ADJUSTMENT – One (1) position, complete term ending 12/31/2023, open to City resident. The Committee meets in the evening once a month as needed.

FLATHEAD CONSERVATION DISTRICT BOARD – Two (2) position, 3-year term to serve as an urban supervisor. Pursuant §76-15-311 M.C.A (1) applicants may reside within the city limits of Whitefish; and (1) applicant may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district. For more details on this board please see their website https://flatheaded.org/

IMPACT FEE ADVISORY COMMITTEE – One (1) position to complete term ending 12/31/2023. Applicant shall be a member-at-large and shall reside or work within the City limits.

BOARD OF APPEALS – One (1) position, term not designated. The Board of Appeals determines suitability of alternate materials and methods of construction and to provide for reasonable interpretations of the International Building Code. Applicant must be qualified by experience or training to pass on matters pertaining to building construction. The Committee meets as needed.

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 St.; mail to P.O. Box 158, Whitefish, MT 59937, or email mhowke@cityofwhitefish.org. Please include your name, mailing address, physical address, and phone number. Letters of interest will be accepted until the positions are filled. If you have any questions, please call Michelle Howke, City Clerk at 863-2402 or visit the City’s website: www.cityofwhitefish.org *THANK YOU FOR YOUR INTEREST*
ORDINANCE NO. 22-16

An Ordinance of the City Council of the City of Whitefish, Montana, adding a new Chapter 18 to Title 2 of the Whitefish City Code to establish the Whitefish Sustainable Tourism Management Plan Standing Committee.

WHEREAS, the City and the Whitefish Convention and Visitors Bureau joined together to develop a Whitefish Tourism Master Plan; and

WHEREAS, in January 2018 and June 2018, through Resolution Nos. 18-05 and 18-24, the City the established the Whitefish Tourism Master Plan Steering Committee and changed the name of the plan contemplated by Resolution No. 18-05 to the "Whitefish Sustainable Tourism Management Plan" and the name of the Committee to the "Whitefish Sustainable Tourism Management Plan Steering Committee"; and

WHEREAS, on September 21, 2020, the City Council adopted the Whitefish Sustainable Tourism Management Plan which provides a strategic, long-term vision and framework for the sustainable future of the Whitefish tourism economy; and

WHEREAS, the Whitefish Sustainable Tourism Management Plan recommended establishing a standing committee to oversee the recommendations of the Plan with a long-term goal of hiring a "sustainability coordinator" that will function to implement the Climate Action Plan as well as the Sustainable Tourism Management Plan; and

WHEREAS, on October 19, 2022, the Whitefish Sustainable Tourism Management Plan Steering Committee met and voted to recommend the establishment of a Whitefish Sustainable Tourism Management Plan Standing Committee; and

WHEREAS, on November 7, 2022, the City Council considered an ordinance establishing the Whitefish Sustainable Tourism Management Plan Standing Committee, but the ordinance failed on a 4-1 vote, pursuant to section 1-6-2-E-3 of the Whitefish City Code which provides ordinances may only be passed by the vote of the majority of the members elected; and

WHEREAS, on November 21, 2022, a City Council member who voted with the majority on November 7, 2022, moved to reconsider the ordinance establishing the Whitefish Sustainable Tourism Management Plan Standing Committee; and

WHEREAS, thereafter, the City Council approved Ordinance No. 22-16 establishing the Whitefish Sustainable Tourism Management Plan Standing Committee on a 5-1 vote; and

WHEREAS, establishing the Whitefish Sustainable Tourism Management Plan Standing Committee will be in the best interests of the City and its inhabitants.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: A new Chapter 18 to Title 2 of the Whitefish City Code is hereby added as follows:

2-18-1: STANDING COMMITTEE ESTABLISHED: There is hereby established a Whitefish Sustainable Tourism Management Plan Standing Committee, hereinafter "committee."

2-18-2: PURPOSE, POWERS, AND DUTIES: The purpose and duties of the committee are to assist in the implementation of the Whitefish Sustainable Tourism Management Plan by establishing a working timeline for implementation, recommending actions and budget priorities to the City Council or City management, tracking progress towards the Plan's goals, updating the data collection and benchmarking,
priorities and the short-term work plan. Nothing in this chapter shall be construed to empower the committee to authorize or prohibit the use of public funds.

2-18-3: MEMBERSHIP:

A. Appointment; Compensation: The committee shall have nine (9) members. Members of the Committee shall be appointed by the Mayor with the consent of the City Council. Four (4) members-at-large (must be a city resident with experience in, knowledge of, or perspective on tourism and its relationship to the Whitefish community). Two (2) members may reside outside the City of Whitefish, as long as the member resides in Flathead County and has an ownership interest in or a managerial position at a business located and operating within the corporate limits of Whitefish. One (1) member from Whitefish Mountain Resort. One (1) member from the Whitefish Convention and Visitors Bureau. One (1) member from City staff or City Council representative. The city clerk shall make appropriate notation of a member's representation category on the official committee roster. Committee members shall receive no compensation.

B. Terms; Positions: Committee terms shall be for two (2) years. There are hereby created positions numbered 1 through 9 inclusive of the members of the committee. The initial term of the committee members shall be staggered, with positions 1 through 5 serving two (2) year terms, and positions 6 through 9 serving one-year terms. The initial term for members serving pursuant to this chapter shall begin upon appointment and terminate on the date specified below for each position:

<table>
<thead>
<tr>
<th>Position Number</th>
<th>Representation Category</th>
<th>Initial Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Member at Large Owner/Manager</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>2</td>
<td>City Staff Member or City Council Representative</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>3</td>
<td>Member at Large</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>4</td>
<td>Whitefish CVB</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>5</td>
<td>Member at Large</td>
<td>December 31, 2024</td>
</tr>
<tr>
<td>6</td>
<td>Whitefish Mountain Resort</td>
<td>December 31, 2023</td>
</tr>
<tr>
<td>7</td>
<td>Member at Large Owner/Manager</td>
<td>December 31, 2023</td>
</tr>
<tr>
<td>8</td>
<td>Member at Large</td>
<td>December 31, 2023</td>
</tr>
<tr>
<td>9</td>
<td>Member at Large</td>
<td>December 31, 2023</td>
</tr>
</tbody>
</table>

C. Removal Of Member: A member may be removed from the committee by majority vote of the city council for cause upon written charges and after a public hearing. Willful disregard of this chapter and the rules of procedures of the committee, or absences from three (3) consecutive meetings, including regular and special meetings, or absences from more than fifty percent (50%) of such meetings held during the
calendar year shall constitute cause for removal. Circumstances of the absences shall be considered by the city council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the chairperson or secretary of the committee at least twenty-four (24) hours prior to any scheduled meeting.

D. Vacancy: Pursuant to subsections A and B of this section, any vacancy on the committee shall be filled by the city council acting in a regular or special session for the unexpired term of the position wherein the vacancy exists. The city council may appoint members of the city council to temporarily fill vacant positions on the committee.

2-18-4: ORGANIZATION:

A. At the committee's first meeting and the first meeting of each calendar year, the committee shall elect a chairperson, vice chairperson and secretary. If a vacancy occurs in an officer's position, the committee shall elect a member of the committee to fill the vacancy at the next meeting. Upon the absence of the Chairperson, the Vice Chairperson shall serve as Chairperson Pro Tem. If the secretary is absent from a specific meeting, the attending members shall elect a Secretary Pro Tem for the meeting. The secretary need not be a member of the committee and shall keep an accurate record of all committee proceedings.

B. The committee shall meet quarterly or more often as needed.

2-18-5: MEETINGS, RULES AND REGULATIONS: The majority of the committee shall constitute a quorum. Not less than a quorum of the committee may transact any business before the committee. The concurring vote of a simple majority of members present shall be necessary to decide any question or matter before the committee. The committee shall adopt rules of procedure for the conduct of meetings consistent with statutes, the city charter, ordinances and resolutions. The committee shall meet at least annually, and at such other times as the committee may determine. All meetings shall be open to the public.

2-18-6: STAFF SUPERVISION: The committee shall have no supervisory control and shall not direct city staff in the performance of their official duties.

2-18-7: EXPENDITURES: The committee shall not have authority to make any expenditures on behalf of the city or disburse any funds provided by the city or to obligate the city for any funds.

Section 2: 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 5TH DAY OF DECEMBER 2022.

/s/John Muhlfeld
John M. Muhlfeld, Mayor

ATTEST:

/s/Michelle Howke
Michelle Howke, City Clerk
Hi Michelle, my name is Steve Kane and I’m volunteering for a position on the Whitefish Sustainability Tourism Management Plan Standing Committee. I’ve been a full-time resident of Whitefish since December 2016 and live at River Lakes Drive. I have two daughters who reside here in Whitefish with their families and have four grandchildren that attend our public schools.

I’ve come to appreciate this unique community and its residents, feeling fortunate to live in this special place. As a standing committee member, I’ll take a keen interest in maintaining the quality of this community, as well as being forward thinking and flexible in addressing the ever growing tourism needs of our community. I recognize the important role of tourism in sustaining our local businesses and community economics.

I’ve been a visitor to Whitefish since 1971, spending time with my wife’s family and taking advantage of the area’s many outdoor activities. A graduate of MSU, I have an MBA from Eastern Washington University. Since leaving Montana I’ve lived in Spokane, Seattle and the San Francisco Bay area, where my professional life included working in Executive Sales and Sales Management positions for large US companies, negotiating and managing large domestic and global IT contracts.

I believe in giving back to my community through volunteering in areas where I can contribute my knowledge and experience, such as the sustainability of tourism in Whitefish. Previously, I served as a member of the Highway 93 Steering Committee.

If you have questions please feel free to contact me at stevepk.16@gmail.com.

Best Regards,

Steve Kane
Michelle -

Please accept this as an official Letter of Interest to serve on the Sustainable Tourism Master Plan Standing Committee. I strongly believe in the on-going work on this committee and the importance of keeping the tenets of Sustainable Tourism active.

Thank you!
Mariah

--
Mariah Joos
Owner
Nelson’s Ace Hardware
6490 Highway 93 South
Whitefish, MT 59937
406-862-3573
Hi Michelle,

I am interested in filling a vacancy on the Whitefish Sustainable Tourism Management Plan Standing Committee. I am a resident of Flathead County and work in Whitefish as the Conference Services Manager at The Lodge at Whitefish Lake.

My mailing address is:

Elizabeth Colley
Kalispell, MT 59901

Sincerely,

Elizabeth Colley
Hi Michelle,

I hope you're doing great and enjoying what remains of winter.

I'm writing to express my interest in serving on the Sustainable Tourism Master Plan Standing Committee. I am still the managing partner at the Duck Inn Lodge, but I also have a keen interest in sustainability, in general. So, I feel like I would be able to contribute to the committee because of, both, my professional interest in the tourism of Whitefish along with my personal interest in sustainability.

I really enjoyed being involved with the Highway 93 South Steering Committee, but I had wished that I had been able to dedicate more time to it than I was actually able to. So, I have been hesitant to volunteer again until I felt like I would be able to 'give it my all'. While I'm not absolutely certain that my work/life has calmed down to the point I'll be able to devote all the time I'd like to in a perfect world, I do feel that it has gotten marginally better to where I'll be able to make valuable contributions to the committee and the plan.

Please reach out at your earliest convenience via email or phone to let me know if you'd like to discuss this prospect further.

Many thanks and well wishes,

Mark Pascoli  
Owner/Operator - The Duck Inn Lodge  
1305 Columbia Ave.  
Whitefish, MT  59937  
(412) 600-5811  
mark.pascoli@gmail.com
Hi Michelle. Please accept this email as my letter of interest in continuing to serve on the Whitefish Sustainable Tourism Management Plan Committee.

Thanks.

Nick Polumbus  
President  
Whitefish Mountain Resort - on Big Mountain since 1947  
PO Box 1400 • Whitefish, Montana • 59937  
www.skiwhitefish.com  
e| nickp@skiwhitefish.com  
p| 406.862.2978  
c| 406.212.3568  
f| 406.862.2955

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Hi Michelle,

I'd like to express my interest in serving as one of the four city resident members at large for the Whitefish Sustainable Tourism Management Plan Standing Committee.

As a former member of LJ Communications, the former PR agency that served the Whitefish CVB for many years, I am well-versed in the numerous strategies proposed in the Whitefish Sustainable Tourism Management Plan. I have worked directly on several of the strategies specifically outlined in the Tourism and Environment & Land Management Strategies.

Additionally, during my time at LJ Communications, I worked with the City of Whitefish and WCVB to launch the Be a Friend of The Fish campaign. This program initially rallied local residents to practice covid-safe measures (such as the downtown banners we installed Winter 2021). It took new form shortly after to inspire visitors to recreate responsibly, be respectful, and broadly practice sustainability in Whitefish and its surrounding areas.

These experiences would make me a productive member of the STMP Standing Committee. I would be excited to dive back into sustainable tourism work, and help coordinate the execution of the STMP while working across other City of Whitefish committees engaged in parallel work. Thank you for your consideration.

Best,

Ella Kobelt

Whitefish MT 59937
Hello!

I am writing to express my interest in serving on the Sustainable Tourism Management Plan Committee.

I currently live and own a home in Whitefish. I moved here in 2003. I graduated from the University of Montana with a degree in Nature Based Tourism Management and currently work in the tourism sector. I am a Senior Marketing Manager for the Pursuit Collection. We operate Grouse Mountain Lodge in Whitefish, West Glacier Village, Glacier Park Lodge, Glacier Raft Co. and St. Mary Village around the park. We also operate in the resort towns of Banff and Jasper, Alberta and small tourism communities around Alaska.

Besides working in the industry, I have a personal interest in sustainable tourism. I love to recreate locally and also frequently travel to other communities like Whitefish to enjoy the activities they afford. As visitation in Whitefish inevitably continues to grow, it will be increasingly important to continue to innovate and continue the great planning work that has already been happening here, I’d love to be a part of it.

Thanks for your consideration,
Heather Cauffman
Michelle Howke

From: Brian Schott <brian@brianschott.com>
Sent: Monday, February 6, 2023 11:22 AM
To: Michelle Howke
Subject: STMP Committee Openings

ATTENTION: External Email - This email originated from outside of the City of Whitefish. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents. Contact the IT Helpdesk<mailto:help@cityofwhitefish.org> if in doubt.

Michelle,

I would like to apply for a seat on the Sustainable Tourism Management Plan Standing Committee. As a former committee member I have deep experience in the plan and steps for the road ahead. I have been a consultant in tourism in Whitefish for twenty years and am committed to the success of Whitefish as a town that places the livability of its residents as a top priority while recognizing the importance of visitors to the economic success of our business community.

Sincerely,

Brian Schott
Whitefish, MT 59937
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, April 17, 2023 at **7:10 p.m.** at City Hall 418 East Second Street, 2nd Floor

Hybrid (In-person and/or Remotely via Teams)

To attend the meeting via Microsoft Teams, and **provide live comment** on your computer, tablet or smartphone, attendees should go to the web link below.

**Meeting Link:** Microsoft Teams Link  **Meeting Number:** 292 335 976 426  **Password:** mdc5LZ

**For the Audio Conference Call option:** call the number below and enter the access code.

- United States Toll Free: 833-563-1751  **Access code:** 597 800 870#
- **View live streaming (not to provide comment) on the City of Whitefish YouTube Channel**
- We encourage individuals to provide written public comment; to the City Clerk, Michelle Howke at mhowke@cityofwhitefish.org or deliver by 4:00 p.m. Monday, April 17, 2023, to City Hall. Written comments should include name, address, should be short and concise, courteous, and polite. All written comments received by 4:00 p.m. will be provided to the City Council and appended to the packet following the meeting.
- Public comment by those attending the meeting "live" via Microsoft Teams or in-person will be limited to three minutes per individual.

Ordinance numbers start with 23-05. Resolution numbers start with 23-06.

1) **CALL TO ORDER**

2) **PLEDGE OF ALLEGIANCE**

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

4) **COMMUNICATIONS FROM VOLUNTEER BOARDS**

5) **CONSENT AGENDA** (The consent agenda is a means of expediting routine matters that require the Council’s action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
   a) Minutes from April 3, 2023 Special Session (p.24)
   b) Minutes from April 3, 2023 Regular Meeting (p.25)
   c) Minutes from April 10, 2023 Special Meeting (p.29)
   d) **Ordinance No. 23-04:** An Ordinance rezoning approximately 9.9 acres of land located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana from County R-3 (One-Family Residential) to WR-1 (One-Family Residential), and adopting findings with respect to such rezone (Second Reading) (WZC 23-01) (p.32)

6) **PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
   a) **Ordinance No. 23-**: An Ordinance rezoning approximately 11.12 acres of land in a portion of a 31.17 acre unaddressed, undeveloped parcel located west of Highway 93 South and south of the Park Knoll subdivision and known as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, that is zoned WCR-SC (Country Residential with Special Conditions) to WER-SC (Estate Residential District with Special Conditions), and adopting findings with respect to such rezone (First Reading) (WZC 23-03) (p.36)
b) **Ordinance No. 23-__**; An Ordinance amending Zoning Regulations Title 11, Chapter 7, Administration and Enforcement, to add a new section, Zoning Upon Annexation, of the Whitefish City Code (First Reading) (WZTA 23-01) (p.76)

7) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.96)
   b) Other items arising between April 12th through April 17th

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Consideration of appointment to volunteer boards and committees not made during the Special Session preceding tonight’s meeting.
   b) Letter from City Council to Congress regarding Railroad Safety (p.102)

9) 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.
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Mayor Muhlfeld and City Councilors:

Monday, April 17, 2023 City Council Agenda Report

There will be a Special Session beginning at 5:30 p.m. to interview applicants interested in serving on the Sustainable Tourism Management Plan Standing Committee. Food will be provided.

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 April 3, 2023 Special Session (p.24)
b) Minutes from April 3, 2023 Regular Meeting (p.25)
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RECOMMENDATION: Staff respectfully recommends the City Council approve the Consent Agenda.

Items “a, b, and c” are administrative matters; Item “d” is a quasi-judicial 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) Ordinance No. 23-__; An Ordinance rezoning approximately 11.12 acres of land in a portion of a 31.17 acre unaddressed, undeveloped parcel located west of Highway 93 South and south of the Park Knoll subdivision and known as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, that is zoned WCR-SC (Country Residential with Special Conditions) to WER-SC (Estate Residential District with Special Conditions), and adopting findings with respect to such rezone (First Reading) (WZC 23-03) (p.36)

From Planning and Building Director Dave Taylor’s transmittal report.

Summary of Requested Action: This is a request by Carter Unger on behalf of Honor Bound LLC for a zoning map amendment of the easterly 11.12 acre portion of an 31.17 acre undeveloped parcel. The zoning of the 11.12 acre easterly portion is proposed to be changed from WCR-SC (Special Conditions) zoning to WER-SC (Special Conditions). It can be legally described as Tract 7A in
Planning & Building Department Recommendation: Staff recommended approval of the above referenced zone change as set forth in the attached staff report.

Planning Board Public Hearing: A public hearing was held on March 16, 2023 at the City Planning Board. Planning Director Taylor presented the city’s rezone request. Lindsey Hromadka, an attorney from Weinberg and Hromadka, PO Box 652, Whitefish, who is representing the South Whitefish Neighborhood Association, opposed the request due to the wetlands. The applicant, Carter Unger, also spoke in favor of his request.

Planning Board Action: The Whitefish Planning Board met on March 16, 2023 and considered the request. Following the public hearing, the Planning Board made a motion to approve (Scott/Qunell), which was approved 5-1 (Beckham opposed).

RECOMMENDATION: Staff respectfully request the City Council, after considering testimony at the Public Hearing and the recommendations from the Planning Staff and the Planning Board, adopt Ordinance No. 23-__; An Ordinance rezoning approximately 11.12 acres of land in a portion of a 31.17 acre unaddressed, undeveloped parcel located west of Highway 93 South and south of the Park Knoll subdivision and known as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.M, Flathead County, Montana, that is zoned WCR-SC (Country Residential with Special Conditions) to WER-SC (Estate Residential District with Special Conditions), and adopting findings with respect to such rezone (First Reading).

This item is a quasi-judicial matter.

b) Ordinance No. 23-__; An Ordinance amending Zoning Regulations Title 11, Chapter 7, Administration and Enforcement, to add a new section, Zoning Upon Annexation, of the Whitefish City Code (First Reading) (WZTA 23-01) (p.76)

From Planning and Building Director Dave Taylor’s transmittal report.

Summary of Requested Action: This application is a request by the city of Whitefish to amend Section 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, wherein the City Council can approve a zone change ordinance from county zoning to Whitefish city zoning at the same time as approving an annexation petition.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on March 16, 2023. Following this hearing, the Planning Board unanimously recommended approval of the amendments (Scott/Linville) and adopted the supporting findings of fact in the staff report (Middleton absent).

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, no one spoke. The draft minutes of the Planning Board hearing are included.

RECOMMENDATION: Staff respectfully requests the City Council, after considering public testimony at the Public Hearing, and the recommendations from the Planning Staff and the Planning Board to adopt Ordinance No. 23-__; An Ordinance amending Zoning Regulations Title 11, Chapter
7. Administration and Enforcement, to add a new section, Zoning Upon Annexation, of the Whitefish City Code (First Reading).

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor and Council? (p.96)
b) Other items arising between April 12th through April 17th

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
a) Consideration of appointment to volunteer boards and committees not made during the Special Session preceding tonight’s meeting.
b) Letter from City Council to Congress regarding Railroad Safety (p.102)

ADJOURNMENT

Sincerely,

Dana Smith, C.P.A
City Manager
The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

### PRIVILEGED MOTIONS

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</tr>
</thead>
<tbody>
<tr>
<td>Adjourn</td>
<td>I move to <strong>adjourn</strong></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Take a break</td>
<td>I move to <strong>recess</strong> for</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Register complaint</td>
<td>I rise to a question of priviledge</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Orders of the day</td>
<td>I call for the <strong>orders of the day</strong></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
</tbody>
</table>

### SUBSIDIARY MOTIONS

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Lay aside temporarily</td>
<td>I move to <strong>lay the question on the table</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>Negative vote only</td>
</tr>
<tr>
<td>Close debate</td>
<td>I move the previous question</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>Yes</td>
</tr>
<tr>
<td>Limit / extend debate</td>
<td>I move that <strong>debate be limited to...</strong></td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>2/3</td>
<td>Yes</td>
</tr>
<tr>
<td>Postpone to a certain time</td>
<td>I move to <strong>postpone the motion to...</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Refer to a committee</td>
<td>I move to <strong>refer</strong> the motion to...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Amend a motion</td>
<td>I move to <strong>amend</strong> the motion by...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Kill main motion</td>
<td>I move that the motion be <strong>postponed indefinitely</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Majority</td>
<td>Affirmative vote only</td>
</tr>
</tbody>
</table>
### MAIN MOTIONS

**YOU WANT TO:** Bring business to motion  
**YOU SAY:** I move that (or “to”)...  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBAT?** Yes  
**AMEND?** Yes  
**VOTE?** Majority  
**RECONSIDER?** Yes

No order of precedence. Arise incidentally and decided immediately.

### INCIDENTAL MOTIONS

**YOU WANT TO:** Enforce rules  
**YOU SAY:** Point of order  
**INTERRUPT?** Yes  
**2ND?** No  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** None  
**RECONSIDER?** No

**YOU WANT TO:** Submit matter to assembly  
**YOU SAY:** I appeal from the decision of the chair  
**INTERRUPT?** Yes  
**2ND?** Yes  
**DEBATE?** Varies  
**AMEND?** No  
**VOTE?** Majority  
**RECONSIDER?** Yes

**YOU WANT TO:** Suspend rules  
**YOU SAY:** I move to suspend the rules which...  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** 2/3  
**RECONSIDER?** No

**YOU WANT TO:** Avoid main motion altogether  
**YOU SAY:** I object to the consideration of the question  
**INTERRUPT?** Yes  
**2ND?** No  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** 2/3  
**RECONSIDER?** Negative vote only

**YOU WANT TO:** Divide motion / question  
**YOU SAY:** I move to divide the question  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBATE?** No  
**AMEND?** Yes  
**VOTE?** Majority  
**RECONSIDER?** No

**YOU WANT TO:** Demand rising vote  
**YOU SAY:** I call for a division  
**INTERRUPT?** Yes  
**2ND?** No  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** None  
**RECONSIDER?** No

**YOU WANT TO:** Parliamentary law question  
**YOU SAY:** Parliamentary inquiry  
**INTERRUPT?** Yes (if urgent)  
**2ND?** No  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** None  
**RECONSIDER?** No

**YOU WANT TO:** Request information  
**YOU SAY:** A point of information, please.  
**INTERRUPT?** Yes (if urgent)  
**2ND?** No  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** None  
**RECONSIDER?** No

No order of precedence. Introduce only when nothing else pending.

### RENEWAL MOTIONS

**YOU WANT TO:** Take matter from table  
**YOU SAY:** I move to take from the table...  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBATE?** No  
**AMEND?** No  
**VOTE?** Majority  
**RECONSIDER?** No

**YOU WANT TO:** Cancel or change previous action  
**YOU SAY:** I move to rescind / amend the motion...  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBATE?** Yes  
**AMEND?** Yes  
**VOTE?** 2/3 or majority w/notice  
**RECONSIDER?** Negative vote only

**YOU WANT TO:** Reconsider motion  
**YOU SAY:** I move to reconsider the vote on...  
**INTERRUPT?** No  
**2ND?** Yes  
**DEBATE?** Varies  
**AMEND?** No  
**VOTE?** Majority  
**RECONSIDER?** No
1) Call to Order

The meeting was held in-person in the Council Conference Room. Mayor Muhlfeld called the meeting to order. Councilors present were Davis, Qunell, Feury, Sweeney, Norton (5:27 p.m.) and Caltabiano. Staff present were City Manager Smith, City Clerk Howke and Planning and Building Director Taylor.

2) Interview - Whitefish Lake and Lakeshore Protection Committee

The City Council interviewed Daniel Wood for the Whitefish Lake and Lakeshore Protection Committee to serve as a member-at-large.

3) Public Comment

None

4) Appointment

Councilor Sweeney made a motion, seconded by Councilor Caltabiano to appoint Daniel Wood to the Lake and Lakeshore Protection Committee as a member-at-large to complete the term ending December 31, 2023. The motion carried.

5) Adjourn

Mayor Muhlfeld adjourned the Special Session at 5:30 p.m. and opened the Work Session

Mayor Muhlfeld

Attest:

Michelle Howke, Whitefish City Clerk
1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Caltabiano, Davis, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Finance Director Gospodarek, Planning and Building Director Taylor, Police Chief Kelch, Fire Chief Page, Senior Planner Compton-Ring and Planner Loring. Approximately 17 people were in the audience and 1 attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Luke Walrath to lead the audience in the Pledge of Allegiance.

3) PRESENTATION
   a) Annual review and consideration of approval for Whitefish Convention and Visitors Bureau Marketing Plan and Budgeting for FY24 (p.43)

   Rhonda Fitzgerald, member of the Whitefish Convention and Visitors Bureau Board, presented the Marketing Plan and Budget for Fiscal Year 2024. The Marketing Plan and Budget and the presentation is provided in the packet on the website.

   Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Marketing Plan and FY24 Budget of $267,000. The motion carried.

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)

   John Phelps, 615 Monegan Road asked the Council to consider budgeting $500,000 for FY24 and FY25 to construct the Riverbend trail along the river.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Feury reported the LLAC met and the commercial use policy for Haskill trail should be finalized for Council review in June.

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 March 20, 2023 Regular Meeting (p.83)
   b) Ordinance No. 23-03; An Ordinance amending Zoning Regulations Title 11, Chapter 3, Section 11, Fences and Retaining Walls, and Chapter 9, Section 2, Definitions, of the Whitefish City Code (Second Reading) (WZTA 23-01) (POSTPONED FROM MARCH 20, 2023) (p.87)
   c) Consideration of a request from King Family Trust for Final Plat for McDowell Subdivision, a 2-lot minor waiver subdivision located at 403 Texas Avenue, zoned WLR (One-Family Limited Residential District) (WFP 23-02) (p.92)

   Councilor Norton recused herself from the consent agenda.
Councilor Qunell made a motion, seconded by Councilor Sweeney to approve the Consent Agenda. The motion carried.

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 a request from Pheasant Run, LLC for a Preliminary Plat to develop a 24-lot subdivision on an unaddressed lot to the northwest of Pheasant Run and west of Highway 93 South (WPP 22-08) (p.118)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Kurt Vickman, owner, stated he supports the staff report. He has been working with the Park Knoll neighborhood on the tree preservation plan on the western portion of the development.

There being no further public comment, Mayor Muhlfeld closed the Public Hearing and turned the matter over to the Council for consideration.

Councilor Caltabiano made a motion, seconded by Councilor Qunell to approve the Canopy Subdivision subject to the conditions of approval, including the correction to Condition #9 changing northwest to northeast. The motion carried.

   b) **Ordinance No. 23-04:** An Ordinance rezoning approximately 9.9 acres of land located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana from County R-3 (One-Family Residential) to WR-1 (One-Family Residential), and adopting findings with respect to such rezone (First Reading) (WZC 23-01) (p.190)

Planner Nelson Loring presented his staff report that is provided in the packet on the website.

Councilor Sweeney had concerns regarding the private road easement accessing the property and that the zoning designation is not consistent with the Growth Policy Land Use Map. Planner Loring and Director Taylor stated the zoning does not change the density of the property, and all properties on the south side of Lund Lane are quarter acre to half acre in size and fit in with the R-3 zoning of the county.

Mayor Muhlfeld opened the Public Hearing. There being no public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for consideration.

Councilor Caltabiano made a motion, seconded by Councilor Qunell to adopt **Ordinance No. 23-04:** An Ordinance rezoning approximately 9.9 acres of land located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana from County R-3 (One-Family Residential) to WR-1 (One-Family Residential), and adopting findings with respect to such rezone (First Reading) (WZC 23-01). The motion carried.

   c) **Ordinance No. 23-____:** An Ordinance rezoning 11.18 acres of land known as 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South, in Section 12, Township 30 North, Range 22 West, in Whitefish, Montana, from County B-4/HO (Secondary Business/Highway Overlay) and SAG 5/HO (Suburban Agricultural/Highway Overlay) to WB-2 (Secondary Business District) and WCR (Country Residential District), and adopting findings with respect to such rezone (First Reading) (WZC 23-02). PLANNING BOARD POSTPONED TO APRIL 20, 2023
8) COMMUNICATIONS FROM FIRE CHIEF
   a) Consideration to award a contract with Northern Rockies Fire for a fire engine in the amount of $693,214.00 (p.209)

Fire Chief Joe Page presented his staff report that is provided in the packet on the website.

Councilor Qunell made a motion, seconded by Councilor Caltabiano to award the contract to Northern Rockies Fire in the amount of $693,214.00. The motion carried.

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.212)

None

   b) Other items arising between March 29th through April 3rd.

City Manager Smith asked to move the preliminary budget deadline to May 15th to give staff time to assess the impacts from the Legislative session. SB 511 will limit local government property tax increases to 4.74% in any given year. That bill passed through second reading. SB 528 related to ADUs passed through with minor amendments, which will allow ADUs by right everywhere. HB 943 would change the taxable status of a short-term rental from residential to commercial. That bill passed second reading.

   c) Consideration of appointing members to the Selection Committee for the Housing Development Plan and Financial Plan (p.218)

Manager Smith presented her staff report that is provided in the packet on the website.

Councilor Sweeney made a motion, seconded by Councilor Qunell to appoint Ben Davis, Daniel Sidder, Cameron Blake, Wendy Compton-Ring and Dana Smith to the Selection Committee for the Housing Development Plan and Financial Plan. The motion carried.

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
    a) Consideration of appointing Thomas Shea to the Whitefish Housing Authority as resident commissioner to complete the term ending 12/31/2023 (p.223)

Councilor Sweeney made a motion, seconded by Councilor Feury to appoint Thomas Shea to the Whitefish Housing Authority as a resident commissioner. The motion carried.

   b) Letter from The Lakes Master HOA Board of Directors addressing deteriorating condition of City maintained roads within the subdivision (p.224)

Staff will do an evaluation and provide an update.

   c) Consideration of appointment to volunteer boards and committees not made during the Special Session preceding tonight’s meeting.

The City Council appointed Daniel Wood to the Whitefish Lake and Lakeshore Protection Committee during the Special Session.

Council Comments
Councilor Norton asked, and Karin stated if there is a water emergency during non-working hours, citizens can call the Police Department and choose the option to report an emergency pertaining to Public Works or the Parks Department after hours. Councilor Norton asked, and Manager Smith stated the newsletter is published twice a year and posted on the website. Staff is looking into revamping the newsletter to be timelier. Councilor Norton stated to file to run for City Council opens April 20th and closed June 19th.

Mayor Muhlfeld gave a shout to Maria Butts, Carla Belski, Jenny Bradford and the rest of the Parks and Recreation Department. The Montana Trails Recreation and Park Association held their annual conference this week at Grouse Mountain Lodge. He attended the morning session and gave a short welcoming address and spoke regarding the Haskill easement project. Maria did a wonderful job as outgoing President of the organization. The lodging data that was reported during the WCVB presentation tonight was extremely compelling and paints the picture of how damaging short-term rentals are and the changes that are going to be made at the state level are going to have on housing in our town. When we evaluate whether we have met this certain occupancy threshold with our hotels and lodging establishments, there are other factors we need to look at when we set those thresholds. We don’t have shoulder seasons anymore. People crave a break from the traffic and the congestion.

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 9:05 p.m.

__________________________
Mayor Muhlfeld

Attest:

__________________________
Michelle Howke, Whitefish City Clerk
1) Call to Order

The meeting was held in-person in the Council Chambers and remotely via Microsoft Teams. Councilor Feury called the meeting to order. Councilors present were Davis, Qunell, Norton and Caltabiano. Mayor Muhlfeld and Deputy Mayor Sweeney were absent. Staff present were City Manager Smith, City Clerk Howke, City Attorney Jacobs and Planning and Building Director Taylor. Approximately 8 people were in the audience and 6 attended virtually.

2) NOTICE IS HEREBY GIVEN that Mayor John Muhlfeld, pursuant to § 7-5-4102, MCA, hereby calls a special meeting of the Whitefish City Council on Monday, April 10, 2023, at 5:00 p.m. at Whitefish City Hall, 418 E. 2nd Street, Whitefish, Montana. The object of the special meeting is to discuss SB 528 (requiring municipalities to adopt certain regulations in relation to accessory dwelling units and prohibiting certain regulations in relation to accessory dwelling units) and SB 268 (revising short term rental laws).

City Manager Smith reported the City has been working actively with the Legislature, with a Lobbyist in Helena. SB 528 and SB 268, the City has been opposing through the hearings. We are reaching the end of the session transmittal for general bills and revenue bills have both been met. Any bills that are still alive are ones we are focusing on.

SB 528 is a bill that would allow Accessory Dwelling Units (ADUs) throughout cities regardless of any zoning that is currently in place. It would prohibit municipalities from requiring certain things with ADUs such as additional parking, matching the exterior design, and assessing impact fees. It would require cities not allow a single-family dwelling or the accessory dwelling unit occupancy. The size requirement would be increased to 1,000 square feet rather than 800 square feet that is currently in the city regulations and increase the height to 35 feet.

The City has opposed SB 528 on the basis these decisions should be made locally. Our zoning is created with the public and the community. The community has more public opportunity at the local level rather than at the state level. Whitefish has recently changed the ADU regulations to allow for units to be rented without an owner occupancy requirement. We have created an affordable housing workforce program within the ADU regulations to allow for larger square footage and no parking requirement if there is a deed restriction on the ADU. In general SB 528 would be impactful on the size of the units and the height of the units and parking requirements.

SB 268 is also making its way through the legislature and is scheduled for a second reading on the House floor on April 12th. SB 268 was amended to include a “Grandfather” clause to allow all short-term rentals that are in existence of the passage of SB 268 to remain in effect of additional regulations. SB 268 would allow primary residents (owner occupied for 7 months or more) to rent out the primary home and/or the ADU or adjoining parcel. With primary residents being seven months, anybody who meets that qualification could rent at least one additional dwelling unit to their home as a short-term rental.
The concern the city has, and has expressed this to the legislature, is that in Whitefish we are unique, and we have a very high number of short-term rentals. With additional ADUs by right, without owner occupancy requirement, they will potentially turn into short-term rentals.

SB 268 is scheduled for a second reading on the House Floor on April 12th. SB 528 is scheduled for a Committee hearing on April 13th. Manager Smith would like to see a member of the Council to attend virtually or in-person to provide comment.

Discussion followed:

SB 528 is really top-down forcing regulations with land use; 35 feet in height could be an imposing garage or accessory unit in the back yard; eliminates the ability to collect impact fees; eliminates parking. Our current regulations provide incentives for deed restricted units for 5-years, for 12-month lease, such as no requiring parking.

SB 268, Whitefish can still require registration of short-term rentals because of the Resort Tax and in that process confirm residency. Both bills are being supported by the Realtors Association, AIRBNB and VRBO and their operators, other than Senator Hertz who is the main sponsor for both bills. One of the challenges would be enforcement of the resident requirement. Secondary homeowners might find themselves wanting to live here seven month out of the year to then rent out the other five months. We do have a significant population of second homeowners that rent out their homes.

3) Public Comment

Mayre Flowers, Citizens for a Better Flathead (virtually) provided written comments for the meeting. She would encourage the Council to oppose SB 268, SB 528, and SB 323. This should be a local decision. She also encourages the Council to work with Representative Fern to sponsor a floor amendment for SB 382. If counties can opt out of this, cities should also be allowed to opt out.

Toby Scott, 1478 Barkley Lane suggested providing a list of all the Representatives in a mass email. A question should be presented to the legislature how they expect the cities to enforce the 7-month residency. Does the 7-month residency have to be continuous or accumulative?

Richard Hildner, 104 5th Street, member of the Flathead Families for Responsible Growth. These two bills together are a travesty to communities across the state of Montana. They do nothing to relieve the critical shortage of affordable/workforce housing. They erode the ability for local officials to make local decisions for our community. The City should expressively oppose SB 268 and SB 528. He hopes the City can have a representative(s) to weigh in either in person or virtually.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated the proponents for SB 268 talked about affordability. They thought it is giving an owner the opportunity to have a revenue stream. They didn’t address the fact that it raises all the cost for a house. In every hearing Senator Hertz said that the League of Cities and Towns supported the bill. It is a point to make that the League of Cities and Towns does not support this bill. They have carved out for HOA some special privileges, but neighborhoods rely on the City to be their HOA. That is very unfair treatment. This is a hotel use in a residential neighborhood. Hotels have managers 24/7 because there needs to be supervision of transient travelers. These would be unsupervised hotel rooms scattered through neighborhoods. It would be a tremendously huge law enforcement issue like human trafficking, drug deals, and smuggling of contraband. This is opening a whole can of worms for things that nobody has thought about. Neighborhoods are safe because neighbors look out for each other. If every other house has hotel use, no one will know anybody, and our neighborhoods will not be safe.
Nathan Dugan, 937 Kalispell Avenue, President of Shelter WF. Shelter WF supports SB 528 and encourages the Council to move towards solutions that begin to harness SB 528. SB 268 is widely agreed upon as a bad bill. He drafted an amendment to this bill that should go to the House Floor on Wednesday to exempt places in the state where short term rentals are an issue, such as Whitefish, West Yellowstone and Big Sky. Our best course of action to address SB 268 if it passes is to look at running a ballot initiative to invalidate it.

Whitney Beckham, 427 Lupfer Avenue opposes these bills. She would be happy to see the list of contacts pass on to as many people as possible.

Public Comment Closed

4) Direction to City Manager

The more concerning bill of the two is SB 268. This is being pushed by two out of state corporations that have tons of money, have disrupted the lodging industry. They shouldn’t be pushing bills like this to get more beds into their system. We have done a lot of work to make sure to put short-term rentals in the right part of town. This is not what Montana is all about and Montana is mostly small towns. There is a lot of hidden cost such as law enforcement.

For SB 528, lobby for 800 square foot or less, eliminate the impact fee abatement. Potential impact to neighborhoods and the look, we should oppose it.

SB 268 is pointed at communities exactly like ours. Council will submit a letter that all Council can sign off on. We need an overwhelming groundswell from people in the community saying no. Talk about neighborhood integrity, impacts on local residents, enforceability. Encourage members of the community who has the time to testify in-person. Staff will provide a list of contacts for the Representatives to members of the Council and partnering agencies, with talking points.

5) Adjourn

Councilor Feury adjourned the Special Meeting at 6:17 p.m.

__________________________
Councilor Feury

Attest:

__________________________
Michelle Howke, Whitefish City Clerk
ORDINANCE NO. 23-04

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 9.9 acres of land located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana, from County R-3 (One-Family Residential) to WR-1 (One-Family Residential), and adopting findings with respect to such rezone.

WHEREAS, upon request, the City of Whitefish initiated a rezone with respect to property located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana; and

WHEREAS, in response to the applicant-initiated rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 23-01, dated March 16, 2023, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on March 16, 2023, the Whitefish Planning Board reviewed Staff Report WZC 23-01, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on April 3, 2023, the Whitefish City Council reviewed Staff Report WZC 23-01 and letter of transmittal dated March 28, 2023, received an oral report from Planning staff, and invited public comment; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone.

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: Staff Report WZC 23-01 dated March 16, 2023, together with the March 28, 2023 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property located at 625 Lund Lane, known as Parcel B of Certificate of Survey No. 1419 in Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana, previously zoned County R-3 (One-Family Residential) is hereby rezoned to WR-1 (One-Family Residential).
Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property identified on the map attached hereto as Exhibit A and incorporated herein by reference, shall be designated WR-1 (One-Family Residential). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: 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 6: 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 ___________________ 2023.

______________________________
John M. Muhlfeld, Mayor

ATTEST:

______________________________
Michelle Howke, City Clerk
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ORDINANCE NO. 23-__

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 11.12 acres of land in a portion of a 31.17 acre unaddressed, undeveloped parcel located west of Highway 93 South and south of the Park Knoll subdivision and known as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana, that is zoned WCR-SC (Country Residential with Special Conditions) to WER-SC (Estate Residential District with Special Conditions), and adopting findings with respect to such rezone.

WHEREAS, Carter Unger (Applicant) on behalf of Honor Bound, LLC (Property Owner) applied to the City of Whitefish to rezone 11.12 acres of land in a portion of a 31.17 acre lot located west of Highway 93 South and south of Park Knoll subdivision, and legally described as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M., M. Flathead County (no address), as shown on Exhibit A attached hereto; and

WHEREAS, in response to the application to rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 23-02, dated March 16, 2023, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on March 16, 2023, the Whitefish Planning Board reviewed Staff Report WZC 23-02, received an oral report from Planning staff, invited public comment, and thereafter moved to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on April 17, 2023, the Whitefish City Council reviewed Staff Report WZC 23-02 and letter of transmittal, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedures and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone.

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: Staff Report WZC 23-03, dated March 16, 2023, together with the April 17, 2023 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.
Section 3: The real property located west of Highway 93 South and south of Park Knoll subdivision, and legally described as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.,M. Flathead County (no address), as shown on Exhibit A attached hereto, previously zoned WCR-SC (Country Residential with Special Conditions) is hereby rezoned to WER-SC (Estate Residential District with Special Conditions).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property identified on Exhibit A attached hereto, and incorporated herein by reference, shall be designated WER-SC (Estate Residential District with Special Conditions). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: 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 6: 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 __________________ 2023.

__________________________
John M. Muhlfeld, Mayor

ATTEST:

__________________________
Michelle Howke, City Clerk
PROPOSED REZONE AREA OUTLINED IN RED
April 17, 2023

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

RE: Honor Bound LLC Rezone; (WZC 23-03)

Honorable Mayor and Council:

Summary of Requested Action: This is a request by Carter Unger on behalf of Honor Bound LLC for a zoning map amendment of the easterly 11.12 acre portion of an 31.17 acre undeveloped parcel. The zoning of the 11.12 acre easterly portion is proposed to be changed from WCR-SC (Special Conditions) zoning to WER-SC (Special Conditions). It can be legally described as Tract 7A in SE4SW4, S01 T30N R22W P.M.M., Flathead County. The Whitefish Growth Policy designates the properties as split between Rural and Suburban Residential.

Planning & Building Department Recommendation: Staff recommended approval of the above referenced zone change as set forth in the attached staff report.

Planning Board Public Hearing: A public hearing was held on March 16, 2023 at the City Planning Board. Planning Director Taylor presented the city’s rezone request. Lindsey Hromadka, an attorney from Weinberg and Hromadka, PO Box 652, Whitefish, who is representing the South Whitefish Neighborhood Association, opposed the request due to the wetlands. The applicant, Carter Unger, also spoke in favor of his request.

Planning Board Action: The Whitefish Planning Board met on March 16, 2023 and considered the request. Following the public hearing, the Planning Board made a motion to approve (Scott/Qunell), which was approved 5-1 (Beckham opposed).

Proposed Motion:

- I move to approve WZC 23-03 and adopt the Findings of Fact in the staff report.

This item has been placed on the agenda for your regularly scheduled meeting on April 17, 2023. Note that the applicant has submitted a “Revised Statement of Conditions” that includes a voluntary additional 10% buffer from the required...
wetland setback in addition to the additional setback off of Park Knoll Drive. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

David Taylor, AICP
Director

Att: Ordinance 22-XX
Draft Minutes of 3-16-23 Planning Board Meeting
Revised Voluntary Statement of Conditions

*Exhibits from 03-16-23 Staff Packet to Planning Board:*
1. Staff Report – WZC 23-03, 03-16-23
2. Public Notice, 02-24-23
3. Application for Rezone, 01-27-23
4. Public Comment

c: w/att Michelle Howke, City Clerk

c: w/o att Carter Unger
Planned Unit Development process even though it may be arduous, and she would prefer to wait.

Beckham made a motion, seconded by Linville, to postpone this item to the next Planning Board meeting.

Linville thinks this will be an area where there will be a lot of public comment, and she thinks it would be most appropriate to have those discussions.

Chair Qunell asked and Director Taylor said it puts us in an awkward position if there is no zoning on it. It is technically still B-4 until we change the zoning so the question is can we administer County zoning because all the uses allowed in the B-4 would continue to be allowed until the zone is changed. Chair Qunell said it sounds like Mr. Payne is not interested in starting a big project and wants it to represent the best of Whitefish. So even though it probably does not feel great to Mr. Payne, he thinks postponing this tonight would be the best outcome until we can actually recommend the zoning, so he would support the motion.

<table>
<thead>
<tr>
<th>VOTE</th>
<th>The motion passed unanimously. The matter was scheduled to go before the Council on April 3, 2023, but has now been postponed.</th>
</tr>
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</table>

PUBLIC HEARING 3:<br>HONOR BOUND LLC<br>REZONE REQUEST<br>6:57 pm

A request by Honor Bound LLC for a zoning map amendment to a 11.12 acre portion of Lot 7A in S01 T20N R22W from WCR-Special Conditions to WER-Special Conditions, matching the underlying Future Land Use of Suburban Residential, with the Special Conditions providing an additional 5' setback from the required off of Park Knoll Lane and a provision that only single-family housing would be developed directly adjacent to Park Knoll Lane west of the future Baker Avenue intersection.

STAFF REPORT<br>WZC 23-03<br>(Taylor)

Director Taylor reviewed his staff report and findings. As of the writing of WZC 23-03, one public comment had been received from a neighbor in Park Knoll objecting to the zoning change, and one public comment was received from the Park Knoll HOA discussing the uncertainty with areas of concern, noting that the HOA cannot support the zone change without more information. Two additional emails have been received since then with concerns about the zone change and were distributed to planning board members prior to the meeting tonight.
Staff recommended adoption of the findings of fact within staff report WZC 23-03 and for **approval** of the rezone request to the Whitefish City Council.

<table>
<thead>
<tr>
<th>BOARD QUESTIONS OF STAFF</th>
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<tbody>
<tr>
<td>Chair Qunell asked and Director Taylor explained the existing zoning and what exactly is being requested to be changed; we are only talking about the little L piece that is almost totally encumbered by wetlands. When this property was annexed in it changed to WER with a special condition zoning to add a 5' setback off Park Knoll Lane and with a promise in the zoning that only single-family residences would be developed directly adjacent to Park Knoll. Scott asked parcel changing zoning is that L-shaped piece which is very narrow at top of the L and wider at bottom, but if superimposed onto the purple L-shaped piece, would it be directly against the western edge? Director Taylor said the western edge goes far beyond to the left and presented a different map that showed it more clearly.</td>
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<table>
<thead>
<tr>
<th>PUBLIC HEARING</th>
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<tr>
<td>Chair Qunell opened the public hearing.</td>
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<tr>
<th>APPLICANT / AGENCIES</th>
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<tr>
<td>Carter Unger, 2375 Mountain Shadows Drive, said on June 3, he closed on the lot outlined in red on the Growth Policy Future Land Use Map on Page 2 of staff report WZC 23-03, which is 31 acres, as well as the lot to the east of it where &quot;Suburban Residential: is written, as well as the orange area. The City was the applicant, and the application was from the old owners who went through some contentiousness with some of the neighbors who had put in for annexation. When he closed on it he didn't realize it had been annexed the week before. He was the new owner, and the City was then at the following meeting the applicant on annexation. Doing the standard of closest like zoning, made that entire of 31 acres 2.5 acres WCR Rural zoning. If he was the applicant at that time he would have requested the green section (20 acres) to remain 2.5 acre rural and evened out the exact rectangle seen with the hockey stick. The top right corner is WER, and he rezoned that as the applicant. Now he is requesting to finish it out. His opinion is at a base -zoning level, we are looking at type of use and density of use. Regarding type of use, this is only single family we are discussing, not commercial, apartments, retail, or hotels. While this application is for the 11 acres, he is looking at both lots for the total of 50 acres to try to find the compromise that is right. There is some real pain going on right now in this town and we need a mix of housing, with options for others who are equally as important as</td>
</tr>
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the large homeowners. There will be no apartments in the back; he is leaving 20 acres. While we are only speaking on the 11.2 acres, he wants to give the full context. If this is approved, he will be left with a 50 acre assemblage – 20 acres is 2.5 acres minimum, 20 acres would be WER in line with the Corridor Plan of .5 acres, and 10 acres of smaller WR-2. He believes this is a good mix. He could make the argument that we should be doing a Growth Policy Amendment. Smaller lots are massively important and most of the folks he meets could not afford a 2.5 acre lot. His intent is not to do a bait and switch, and there have been some letters that have come in which have suggested that he already rezoned the 31 acres and now is coming back for more, but he thinks there was some confusion. Lindsey Hromadka has been great to talk with and very open and communicative and he has had nothing but a good experience with her but disagrees with a couple of things in her letter. He was not the applicant, the City was. He is not trying to do bait and switches and come in piecemeal, bit by bit, but rather trying to make a clear path all citizens can understand. Right now, he is doing a base zoning and if approved, it will be set, and he will come in with a site plan that is hopefully valued and respected. He will not be trying to shrink the wetlands, but actually plans to enhance them. He did a quick poll on Facebook and while not an exact science, the vast majority of the 76 people who responded to a question of what the most appropriate size lot Whitefish needs said .5 acre or less. He will have 20 acres at 2.5, 20 acres at .5, and 10 acres at WR-2 which can be a couple of different things. The wetlands are special and there are two different types of wetlands that start at the base of Highway 93 where the runoff comes, and it is not the cleanest. He would like to enhance it and clean it up and make it open with a trail system along it that can connect all the way to the park. Before he knows what he has to work with, right now he cannot get into any of that detailed site planning, and all the civil engineers are currently tied up and not able to work on it yet. His intent is to develop around the wetlands, add to the buffer zones the City requires, and use this set density to blend around and create the right use. His goal is to create a horseshoe of 2.5 acre or larger lots around the perimeter that buffer to those neighbors. The Park Knoll neighbors to his north (1 acre lots) and neighbors to the south (.25 acre lots) have been awesome. The neighbors to the west off Karrow are 2.5 acre zoned lots, so he does not feel he is pushing the envelope, this is exactly in line, and we need more housing.

Chair Qunell asked and Mr. Unger said the WR-2 is going to be adjacent to the Baker Avenue extension. The WR-2 is the orange,
Don Kaltschmidt owns all the land directly north of Great Northern. He owns the orange west of that commercial dogleg. His goal is to bring the hockey stick in line with the WER (yellow top right square) and will try to push Baker as far east as possible, which is in line with what both neighborhoods to the north and south want.

Freudenberger asked what is planned for workforce housing and Mr. Unger said the 2.5 acre lots will clearly not be close to affordable, but his long term goal with the .5 acre lots is to try to make them as market as possible, and affordable to the missing middle. On the WR-2, while not part of this application, is to hopefully do some duplexes or use the PUD process to have more height or density on Baker and leave more open space and keep that as a for-rent product.

Freudenberger said it appears most of the wetlands are encompassed by the flag lot (in yellow) being created so what is the benefit of having the zoning density increased in that area when the high groundwater may limit the density abilities. Mr. Unger said if this is approved by the planning board and Council, the base zoning overall will be established and he will then have maybe 40 .5 acre lots, eight 2.5 acre lots that he can and move around to hopefully create as much of an open wildlife corridor/pedestrian hiking area through those wetlands with the PUD process. He hired a reputable company to come out and they believe their packet will be seen by the Army of Engineers in the next couple of months. He wants to make this a true wetland and right now it is not, and he wants to provide housing people can afford and surround them with larger lots.

PUBLIC COMMENT

Lindsey Hromadka, Weinberg & Hromadka, PO Box 652, Whitefish, spoke representing the South Whitefish Neighborhood Association, said they would not be commenting tonight in opposition to this if not for the wetlands. That is their number one concerns and why they think the zoning is inappropriate here. She agrees with Mr. Scott that is does not make sense to increase the density on this area where the wetlands are primarily located. The existing zoning is WCR (Suburban Residential) which already complies with the Growth Policy. Director Taylor said earlier that the wetlands dry in the summer, but they have been taking drone footage of the wetlands since this amendment to change the Growth Policy back in approximately 2017, and they do not dry up until July; it is a big wetland and wet. Great Northern used to be in the path of the wetland and they have high groundwater issues and water in their
basements because they were developed over this wetland. In the 2017 Growth Policy Amendment, they did a wetland delineation and we never saw it, but you can see a picture of it in their comment letter. They said in the wetland delineation it was 14 acres of the 31 acres, so it is a huge part. When you have a wetland that is that large and that wet, it does not make sense to have WER zoning, or even WCR zoning and they were opposed to the City's annexation several months ago. She thinks if there was going to be any kind of zone change on this property other than what has already happened, there needs to be a wetland delineation in front of the planning board members, so they see what we are working with. The Growth Policy is clear that we need to preserve our ecosystems and wetlands are extremely important and we need to do our best to plan around them. Park Knolls is opposed to this, and she cannot speak for the Great Northern Homeowners' Association, but she knows there are members on the South Whitefish Neighborhood board who are members of Great Northern and homeowners directly south of this property who are opposed to this. She is surprised more people are not here tonight to speak to this issue.

Mr. Unger encouraged planning board members to read the letter from the Park Knoll president. They were in support of the vast majority of land that abuts them that has already been rezoned to WER. In talking with them without having the final, certain details, they said at this moment they can no longer be in support or opposed to this change and look forward to working with him to hopefully have those answers by the time it goes to Council. In his opinion if you read the letter they are not opposed.

Chair Qunell asked if Mr. Unger’s ultimate goal of getting this zoned to a higher density is to get more density in the areas of the overall 50 acres that can actually be built on if he chooses to go through a PUD process. Mr. Unger said that and more appropriate, closer to Highway 93, maintain more open space and larger lots closer to the neighbors who are concerned about the loss. It would not be hard for him to sell five-acre lots to out of town folks who would love to have these wetlands, but he would rather maintain the open space and wetlands, enhance them, and push the density to the east using the PUD not to request any more density, but to create the best plan that works best for all the neighbors.

There being no further comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.
<table>
<thead>
<tr>
<th>MOTION / BOARD DISCUSSION</th>
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<tr>
<td>Scott made a motion, seconded by Chair Qunell, to adopt the findings of fact within staff report WZC 23-03 as proposed by City Staff.</td>
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</table>

Scott understands what Mr. Unger is proposing, to consolidate his properties so he can divide it up appropriate with the 2.5 acre lots, .5 acre lots, and smaller lots for development of hopefully affordable rental housing. A .5 acre is probably still larger than a lot of folks' entry home affordability, but it is a step in the right direction. He also understands the zoning requested allows him to move around the .5 acre lots and perhaps the smaller designations so as to make the wetland through there be an appropriate park, walkway, or easement to enhance the community area. He cannot see voting against it and he thinks Mr. Unger has good intentions.

Beckham said she does not support this increased density in this area. She went back and looked at the meeting where we did the zoning for this and really listened to Park Knoll and the concessions made by Mr. Unger, and that was a little bit of a struggle just because of adding density. We do need housing, but from everything we have seen, read, and heard, this is a wetland, and she questions whether this will be treated as a wetland. She does not think it is the planning board's responsibility to allow a greater density just to make it easier to figure out and move parcels around. It is possible without greater density, and she will be voting to deny this.

Freudenberger said he was concerned about the wetland to begin with, but when the subdivision plan is submitted, it will have to have designated park area in place. At that point if they want to do cluster development in certain areas by way of PUD, he thinks there is a way to make that work. Increasing the density now allows the overall density that will allow more park area.

Chair Qunell said it should not be lost on anyone here that housing is our number 1 priority in this town as it should be. This could be zoned WR-4 and they are not going to be able to build on the wetland no matter what the density is. He appreciates having a bigger perspective on what the plan is for this area. We shot down a larger PUD that would have taken this whole area out of potential for being part of a development project, and now we are piecemealing it back together and coming in one piece at a time which is not good planning. He appreciates that Mr. Unger has a
big vision for the whole section and thinks by increasing the density of 11 acres of the 50 acres gets us to a more appropriately sized lot that can be built on and have a mix of housing which is what we need. He is sensitive to water quality here and to wetlands, but it will not be buildable in the wetland anyway. The people that live there object to everything that goes on down there; they have not come in and said yes to anything. He understands there is a lot of angst over change, but as a community we have to come together and understand that when we have a big picture to provide more housing and a mix of housing, we have to find a way to get it done or we are not going to ever have affordable housing in this town.

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<tr>
<th>VOTE</th>
<th>The motion passed 5 to 1 with Beckham voting in opposition. The matter is scheduled to go before the Council on April 17, 2023.</th>
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**PUBLIC HEARING 4: CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST**

7:37 pm

A request by the City of Whitefish for a Zoning Text Amendment to § 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, wherein the City Council can approve a zone change ordinance from county zoning to Whitefish city zoning for properties annexing into city limits at the same time as approving the annexation petition or establish Interim Zoning.

**STAFF REPORT WZTA 23-02 (Taylor)**

Planning Director Taylor reviewed his staff report and findings. As of the writing of WZTA 23-02, no public comments had been received, and none have been received since then.

Staff recommended adoption of the findings of fact within staff report WZTA 23-02 and for approval of the proposed changes to Title 11, Chapter 7, of the Zoning Regulations to the Whitefish City Council.

**BOARD QUESTIONS OF STAFF**

Chair Qunell asked and Director Taylor said this proposed text amendment would mean the zone change request would not come to the planning board but rather go straight to Council.

Freudenberger asked and Director Taylor said staff will either apply an equivalent zone of what it was in the County or whatever the Growth Policy calls for if it is something different.

Chair Qunell asked and Director Taylor said an applicant can petition for something else and if it seems reasonable and staff can support that, they can ask for it.
Honor Bound, LLC

Date

STATE OF MONTANA )
County of Flathead )

On this _______ day of ______________________, 2022, before me, the
undersigned, a Notary Public in and for the state aforesaid, personally appeared Carter Unger,
known to me to be the person whose name is subscribed to the foregoing instrument, and
acknowledged to me that he executed the same.

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

(SEAL) Notary Public for the State of Montana

[print or type name of Notary]

Residing in_________________________, Montana

My Commission expires: _______________
Legal Description of Property Rezoned

A PARCEL OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M., M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING the southeast corner of Southeast Quarter of the Southwest Quarter of Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana; Thence N89°59'14"W 657.6 feet, more or less; Thence N00°17'05"E 1327.5 feet, more or less, to the southeast corner of Lot 1 of the Plat of Assembly of God Subdivision (records of Flathead County, Montana); Thence S89°44'35" 185.3 feet, more or less; Thence S00°00'38"E 824.4 feet, more or less; Thence S89°36'53"E 468.2 feet, more or less; Thence S00°18'41"W 499.2 feet, more or less, to the point of beginning and containing 11.12 ACRES, more or less; Subject to and together with all appurtenant easements of record.
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by Carter Unger on behalf of Honor Bound LLC for a zoning map amendment of the easterly 11.12 acre portion of an 31.17 acre undeveloped parcel. The zoning of the 11.12 acre easterly portion is proposed to be changed from WCR-SC (Special Conditions) zoning to WER-SC (Special Conditions). It can be legally described as Tract 7A in SE4SW4, S01 T30N R22 W P.M.M., Flathead County. This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, March 16, 2023 at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, April 17, 2023 at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

**PROJECT SCOPE**

The property owner is requesting a zone change for a portion of the undeveloped 31 acre lot west of Highway 93 South and south of the Park Knoll subdivision. The WER-SC (Estate Residential with a Statement of Conditions), minimum lot size of 20,000 square feet, would match the underlying Future Land Use of Suburban Residential for that portion of the lot, with the Special Conditions providing an additional 5’ setback from that required off of Park Knoll Lane as well as a provision that only single family housing would be developed adjacent to Park Knoll Lane west of the future Baker Avenue intersection. It will also match the adjacent zoning to the north and east of the property. The western remainder of the lot would remain WCR, Country Residential (2.5 acre minimum lot size). The applicant has stated that any future development of this parcel and adjacent ones would be done through a Planned Unit Development process and all required buffers from the seasonal wetland would be maintained.

**Purpose of WER:** The WER District is intended to provide for single-family, large tract or estate development. These areas will typically be found in suburban areas, generally served by Municipal sewer and water lines.

<table>
<thead>
<tr>
<th>Location and Existing Zoning Map</th>
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<tr>
<th>WCR-SC (existing zoning)</th>
<th>WER-SC (proposed zoning)</th>
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<tbody>
<tr>
<td>Minimum lot area: 2.5 acres</td>
<td>20,000 sq ft</td>
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<tr>
<td>Front yard setback: 50-feet</td>
<td>25-feet</td>
</tr>
<tr>
<td>Side yard setback: 20-feet + 5'*</td>
<td>15-feet + 5'*</td>
</tr>
<tr>
<td>Rear yard setback: 20-feet + 5'*</td>
<td>20-feet + 5'*</td>
</tr>
<tr>
<td>Maximum height: 35-feet</td>
<td>35-feet</td>
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<tr>
<td>Permitted lot coverage: 10%</td>
<td>30%</td>
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</tbody>
</table>
A. **Applicant:**
Honor Bound LLC
2375 Mountain Shadows Drive
Whitefish, MT 59937

B. **Location and Size:**
The subject property has no address and can be legally described as Tract 7A in SE4SW4, S01 T30N R22 W P.M.M., Flathead County. The subject property totals approximately 31.17 acres in size. The portion being rezoned is the easterly 11.12 acres.

C. **Existing Land Use, Zoning and Growth Policy Designation:**
The property is currently undeveloped and contains a seasonal freshwater emergent wetland on the eastern portion of the property. The Growth Policy identifies the parcels Future Land Use as a combination of Rural and Suburban Residential. Appropriate zoning for Rural is WA 10 or 20, appropriate zoning for Suburban is WCR, WSR, WER.

D. **Adjacent Land Uses, Zoning and Growth Policy Designations:**
   - **North:** Assembly of God Church  WA/WLR  Rural/Suburban
   - **South:** Rural Residential  SAG-5  Rural
   - **East:** Undeveloped  WCR/WER  Suburban/Urban
   - **West:** Rural Residential  R-2  Rural

*adjacent to Park Knoll*
E. **Utilities:**
- Sewer: City of Whitefish or Septic
- Water: City of Whitefish or Well
- Solid Waste: Republic Services
- Electric: Flathead Electric Co-op
- Natural Gas: Northwest Energy
- Phone: Centurylink
- Police: City of Whitefish
- Fire: City of Whitefish
- Roads: City of Whitefish/Flathead County

F. **Public Notice:**
A notice was mailed to adjacent landowners within 150-feet of the subject parcels on February 24, 2023. Advisory agencies were noticed on February 24, 2023. A notice was published in the Whitefish Pilot on March 1, 2023. As of the writing of this report, one public comment emails has been received from a neighbor in Park Knoll, the Johnstons, objecting to the zoning change, and one public comment was received from the Park Knoll HOA, discussing the uncertainty with areas of concern, noting that the HOA cannot support the zone change without more information.

**REVIEW AND FINDINGS OF FACT:**
This request is reviewed in accordance with the Whitefish zoning regulations, Section 11-7-12 and based on statutory criteria on the purposes of zoning (76-2-303 through 305 M.C.A.).
The Whitefish zoning regulations set forth the process for rezoning properties and the considerations both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. **Made in Accordance with a Growth Policy.**
   The Growth Policy Future Land Use Map and Highway 93 S Plan designates the parcel within the Suburban Residential and Rural designation. The portion of the property being rezoned falls within the portion designated Suburban Residential. The proposed change to WER-SC Estate Residential zoning, is consistent with the Suburban Residential Future Land Use and matches the zoning to the north and east.

**Finding 1:** The proposed change of a portion of the property to WER-SC is consistent with the Growth Policy as it matches the underlying Suburban Future Land Use.

B. **Secure safety from fire, panic and other dangers.**
   The property is served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

**Finding 2:** The proposed zone change will secure safety from fire, panic and other dangers because the City Engineering Standards and Zoning Standards will be reviewed at the time of any development.

C. **Promote the public health, public safety and general welfare.**
   Public services and utilities are available near the property. City water and sewer is located on nearby Hedman Lane and JP Road. This area is included in the City’s Extension of Services Plan, and services will be extended at some point when future development occurs.

**Finding 3:** The proposed zone change promotes public interest, health, comfort and general welfare because public services are available nearby, the area is included in the City’s Extension of Services Plan, and services will be extended as future development occurs.

D. **Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.**
   City sewer and City water are available nearby. The area is also included with the City’s Extension of Services Plan for future development and extension of City services. The school district will not change due to the recent annexation.

**Finding 4:** The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because the property is located inside city limits, the area is included in the Extension of Services Plan, and the property can or will be served in the future by public services and facilities.
E. Reasonable Provision of Adequate Light and Air.
The proposed zoning designation includes setbacks, maximum building height and lot coverage. It also includes additional setbacks from the Park Knoll neighborhood. In addition, all future construction will require conformance with the Building Code.

Finding 5: The proposed zone change provides reasonable provision of adequate light and air because the zoning and other City standards will prevent the overcrowding of the land through lot coverage, additional setbacks, and conformance with the Building Code.

F. The Effect on Motorized and Non-motorized Transportation Systems.
The property is now located in the city limits and is served by JP Road and Hedman Lane off of Highway 93 South, a state of Montana maintained highway. The proposed zone change from WCR-SC to a WER-SC zone should not have a significant effect on the motorized and non-motorized transportation systems because the proposed uses in each district are both suburban residential zones.

Finding 6: The proposed zone change will not have significant effect on motorized and nonmotorized transportation systems because the property is served by JP Road and Hedman Lane with access to a paved state of Montana maintained highway, and the proposed uses in each district are very similar.

G. Promotion of Compatible Urban Growth.
The subject property is located in an area identified as a combination of Suburban Residential and Rural by the Growth Policy’s Future Land Use Map and the Highway 93 South Corridor Plan. The WER zoning district will be placed over the portion of the property with a Suburban Residential Future Land Use designation. The proposed zone change will promote compatible growth for the surrounding area.

Finding 7: The proposed zone change will promote compatible urban growth because the property is served by public services, and the proposed zoning designation is consistent with the Growth Policy Future Land Use Map designation.

H. Consideration to the character of the district and its particular suitability for particular uses.
The character of the district is a combination of single family residential and rural residential properties. The proposed half-acre minimum lot size zoning is compatible with suburban development within a city.

Finding 8: The proposed zone change considers the character of the district and its suitability for particular uses because it is a combination of single family residential and rural properties, the lot sizes are comparable between both zones, and the proposed zoning is consistent with the Future Land Use map.

I. Conserving the Value of Buildings.
The subject property is currently undeveloped. The WER-SC zoning permits suburban residential uses and the value of surrounding buildings will not be negatively impacted by the proposed zone change.
Finding 9: The proposed zone change will conserve the value of buildings because the property is currently zoned residential, and the value of surrounding buildings will be maintained as the WER-SC zoning permits only residential uses.

J. Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.
As previously stated, the area encompassing the portion of the subject property proposed for a zone change is listed as Suburban in the Whitefish Growth Policy. The proposed zone change would encourage the most appropriate use of land as the proposed zoning designation is consistent with the Future Land Use Map of the Growth Policy.

Finding 10: The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it will be implementing zoning anticipated with the Highway 93 South Corridor Plan.

K. That Historical Use and Established Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.

Finding 11: The proposed zone change is consistent with the historical, established and trending use patterns because the adjacent area has transitioned from rural residential to suburban and urban densities.

RECOMMENDATION
The criteria for approval of a zoning map amendment have been met and it is recommended that the Whitefish Planning Board adopt the staff report WZC 23-03 findings of fact and recommend to the Whitefish City Council the proposed zoning map amendment be approved.
Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you Carter Unger on behalf of Honor Bound LLC is requesting a zoning map amendment of the easterly 11.12 acre portion of an 31.17 acre undeveloped parcel. The zoning of the 11.12 acre portion is proposed to be changed from WCR-SC (Special Conditions) zoning to WER-SC (Special Conditions). The WER (Estate Residential), minimum lot size of 20,000 square feet, would match the underlying Future Land Use of Suburban Residential for that portion of the lot, with the Special Conditions providing an additional 5’ setback from that required off of Park Knoll Lane as well as a provision that only single family housing would be developed adjacent to Park Knoll Lane west of the future Baker Avenue intersection. It can be legally described as Tract 7A in SE4SW4, S01 T30N R22W P.M.M., Flathead County. WZC 23-03.

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

**Thursday, March 16, 2023**
6:00 p.m.
Whitefish City Council Chambers, City Hall
418 E 2nd Street, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on **Monday, April 17, 2023** at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a zoning map of the proposal. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 418 E 2nd Street. The public is encouraged to comment on the above proposal and attend the hearing. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at dtaylor@cityofwhitefish.org. Comments received by the close of business on Tuesday, March 7, 2023, will be included in the packets to Board members. Comments received after the deadline will be summarized to Board members at the public hearing.
PROPOSED REZONE AREA IN RED
Exhibit A

HONOR BOUND CONDITIONAL ZONING - STATEMENT OF CONDITIONS

Ordinance No. 23-

We, Honor Bound LLC, owners of parcels of land consisting of 11.12 acres described in Exhibit A and located in S01-T20N-R22W, legally described as Tract 7A in the SE4SW4, with no address, Whitefish, Flathead County, Montana, hereby voluntarily consent to the following Statement of Conditions as part of rezoning our property to WER Districts with Special Conditions (WER/SC):

1. Any future subdivision or Planned Unit Development that occurs on the parcel, whether in the WER Zone, shall be subject to the following additional restrictions:

   ▪ Any minimum yard setback for any new lot located adjacent to any property located on or adjacent to Park Knoll Lane west of the future Baker Avenue intersection will have an additional 5’ setback added on to the required yard setback that directly abuts those properties.

   ▪ Only single-family residential development will be located adjacent to any property located on or adjacent to Park Knoll Lane west of the future Baker Avenue intersection.

The aforementioned conditions are part of rezoning the property and apply to the land, including all successors in title, interest, and assignees. We understand that if any agreed to conditions are transgressed, it becomes a violation of the City of Whitefish Zoning Ordinance.

Honor Bound, LLC

Date 24/San/2023

STATE OF MONTANA

County of Flathead

On this 24 day of Jan, 2023, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Carter Unger, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

Notary Public for the State of Montana

(SEAL)

[print or type name of Notary]

Residing in 44747 N. Northway, 891 Arizona

My Commission expires: 10-8-2024

ROXANNE MILLIRON
Notary Public - Arizona
Maricopa County
Commission # 59133
My Commission Expires October 8, 2024
Legal Description of Property Rezoned

A PARCEL OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M., M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING the southeast corner of Southeast Quarter of the Southwest Quarter of Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana; Thence N89°59'14"W 637.6 feet, more or less; Thence N00°17'05"E 1327.5 feet, more or less, to the southeast corner of Lot 1 of the Plat of Assembly of God Subdivision (records of Flathead County, Montana); Thence S89°44'35" 185.3 feet, more or less; Thence S00°00'38"E 824.4 feet, more or less; Thence S89°36'53"E 468.2 feet, more or less; Thence S00°18'41"W 499.2 feet, more or less, to the point of beginning and containing 11.12 ACRES, more or less; Subject to and together with all appurtenant easements of record.
FEE ATTACHED
$ 3,111.00

(see current fees schedule)

☐ A pre-application meeting with planning staff is required. Date of pre-app meeting: __5/9/22__

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of forty five (45) days prior to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00 PM at City Hall at 418 E 2nd Street.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION

Project Name: Honor Bound LLC

Project Address: None yet given.

Assessor's Tract No.(s) A Portion of 7A (COS 21092) Lot No(s) N/A

Block # N/A Subdivision Name N/A

Section 1 Township 30 Range 22

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

Owner’s Signature: ____________________________

Date: Jan 24, 2023

Print Name: Carter Unger

Applicant’s Signature: ____________________________

Date: Jan 24, 2023

Print Name: Carter Unger

Representative's Signature: ____________________________

Date: ____________________________

**May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
B. APPLICATION CONTENTS:

**Attached**

ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- [ ] One (1) printed copy and one (1) electronic copy of the application and supplemental materials.
- [ ] Written description how the project meets the criteria in Section E
- [ ] Map showing the location and boundaries of the property
- [ ] Reduced copy of the map not to exceed 11” x 17”
- [ ] Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

C. OWNER/APPLICANT INFORMATION

**OWNER(S) OF RECORD:**

Name: Honor Bound LLC, Attn: Carter Unger Phone: (602)317-1731

Mailing Address: 12457 N, 76th Place

City, State, Zip: Scottsdale AZ, 85260

Email: carter@springcreekdevelopment.com

**APPLICANT (if different than above):**

Name: Carter Unger Phone: (602) 317-1731

Mailing Address: 2375 Mountain Shadow Drive

City, State, Zip: Whitefish, MT 59937

Email: carter@springcreekdevelopment.com

**OTHER TECHNICAL/PROFESSIONAL:**

Name: Sands Surveying, Inc, Attn Eric Mulcahy Phone: (406) 758-5980

Mailing Address: 2 Village Loop

City, State, Zip: Kalispell, MT 59901

Email: eric@sandssurveying.com

D. PROPOSAL:

CURRENT ZONING DISTRICT: WCR - SC

PROPOSED ZONING DISTRICT: WER - SC

State the changed or changing conditions that make the proposed amendment necessary:
The City of Whitefish recently adopted the Highway 93 South Corridor Plan which updated the Land Use Policy for the area starting at approximately E 6th Street and running south along Highway 93 to approximately a mile and a half south of Highway 40. The Corridor Plan designated the applicant's property with Urban and Suburban Land Use Designations supporting more dense zoning designations. The Corridor Plan states in part that these changes were made to, "support existing and new housing and employment."

In addition to the Corridor Plan, the City Council and the Chamber of Commerce have indicated that they support new residential development in an attempt to meet supply demands for workforce housing. The support for housing is always contingent on said housing being in the proper location. Given that the Corridor Plan was adopted in December of 2021, it would appear that the property subject to this request is a suitable location for urban scale residential use.

Back in September of 2022, the City Council approved a zone change on portions of the applicant's property to reflect these growth policy recommendations. After working over the past six months, the applicant is requesting this further refinement of the zoning to more closely follow the Land Use Map (See Figure 1) which designates this property for Suburban Residential which reflects a WER zoning designation.

E. FINDINGS: The following criteria form the basis for approval or denial of the Zone Change. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Made in accordance with a Growth Policy

In December of 2021, the City of Whitefish adopted the 2021 Whitefish Highway 93 South Corridor Plan. This planning process took almost three years to complete and consisted of many committee meetings and much outreach. The Corridor Plan identified the subject property in Segment B and recommended changing the land use designations to Urban and Suburban Residential where the previous Growth Policy designation was just Suburban Residential. The result of this long range planning exercise is that the proposed WER zoning designation are supported by the recently adopted Corridor Plan.

Some of the reasoning for the increase in density along the western side of the corridor is the goal of establishing the Baker Avenue extension between 19th Street and JP Road. Although this is only a zone change and not a subdivision or PUD request, the applicants understand that when they come forward with any such applications, the Baker Avenue Extension will be a required element of any development package.
Whitefish Growth Policy Future Land Use Map

2. Secure safety from fire and other dangers:

The area proposed for the zone change is within the City limits of Whitefish and is supported by the City Police and Fire Departments. The property is not located in any designated 100-year floodplains or areas of known geologic hazards. There is a wetland area associated with a portion of this property and any development of this and adjacent properties will require the applicants to abide by the Water Quality Regulations and the associated setbacks and land use restrictions.

3. Promote public health, safety and general welfare:

The current request is only a zone change to land use designations supported by the recently approved Highway 93 South Corridor Plan. PUD and subdivision designs/applications will follow once a density is established through this zone change. The PUD regulations along with the City's Subdivision Regulations will ensure that future development promotes health, safety, and welfare standards.

4. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements:

The property is located within the City limits of Whitefish. By working with the adjacent property owner to the southeast, the applicants property can gain access to JP Road (City Street) and a signalized intersection to
the south along with Headman Land (Private Street) to the east. The City of Whitefish has had the Baker Avenue extension in its long range planning documents since the mid 1990’s. Any development applications of the applicants property will include rights-of-way for the Baker Avenue extension. As the property is within the City of Whitefish, it has access to City Sewer and water facilities. The property is within the Whitefish School District. The closest public park is the Smith Fields complex east of Highway 93. Should the subject property develop at urban densities, the PUD and Subdivision Regulations will require a park amenity within the project.

5. Provide reasonable provision of adequate light and air:

The proposed WER zoning district has setback requirements, lot coverage maximums and building height limitations similar to other zoning districts in the area. In addition to the general zoning standards, the City has a Water Quality Protection ordinance that establishes minimum setbacks from wetlands. The proposed zone change will provide light an air.

6. The effect motorized and nonmotorized transportation systems:

As stated previously the subject property has worked with the adjacent property owner to gain access to JP Road (City Street) and a signalized intersection to the south along with Headman Land (Private Street) to the north. Although a form agreement has not been reached, the two property owners have worked together in the past and are willing to work together in the future. The City of Whitefish has had the Baker Avenue extension bisecting these properties in its long range planning documents since the mid 1990’s.

Any development applications of the subject property will include rights-of-way for the Baker Avenue extension along with sidewalks along future streets and connections with existing pedestrian paths along the highway.

7. Promote compatible urban growth:

The subject property has been designated for suburban growth in the Whitefish Highway 93 South Corridor Plan. The City’s extension of services plan has identified these parcels for connection to City Services and the construction of a new City water tank. The property has access to the City’s transportation system and is a logical extension of the urban land use pattern.

8. Consider the character of the district and its particular suitability for particular uses:

Though this property has been undeveloped for years, urban growth has developed to the southeast of this property. As the subject property is part of a larger holding with urban densities and the Baker Avenue corridor it is makes good planning to follow the recommendation for suburban land use as identified in the long range planning documents. The proposed zoning designations are in keeping with the neighboring character.

9. Conserving the value of buildings:

Future use of this property is subject to zoning, subdivision, building code, architectural requirements, and landscaping standards. These rules are intended to promote safe, attractive, and connected development. The proposed project will conserve the value of buildings

10. Encourage the most appropriate use of land throughout the jurisdictional area:

As stated previously, the subject property is identified for suburban scale development through the Highway 93 South Corridor Plan. The Corridor Plan went through and extensive public involvement process and numerous committee meetings to produce a long range vision for the area. Based on the public planning process the proposed zoning is the most appropriate use of the land.
11. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:

The historical use of this property was grazing and hay production. The Headman family decided several years back that it was time to sell the family farm knowing that the City had grown around their property and it was time for a new use of the property.
DESCRIPTION: Zone change from WCR to WER

A PARCEL OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M., M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING the southeast corner of Southeast Quarter of the Southwest Quarter of Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana; Thence N89°59'14"W 657.6 feet, more or less; Thence N00°17'05"E 1327.5 feet, more or less, to the southeast corner of Lot 1 of the Plat of Assembly of God Subdivision (records of Flathead County, Montana); Thence S89°44'35" 185.3 feet, more or less; Thence S00°00'38"E 824.4 feet, more or less; Thence S89°36'53"E 468.2 feet, more or less; Thence S00°18'41"W 499.2 feet, more or less, to the point of beginning and containing 11.12 ACRES, more or less; Subject to and together with all appurtenant easements of record.
Park Knoll Estates HOA, Inc.
129 Park Knoll Ln
Whitefish, MT 59937
March 7, 2023

Land Use Action: WCZ – 23-03

Planning Board Members and Staff:
There are several areas of uncertainly related to this rezone application including an incomplete wetlands delineation, potential areas for building lots within the rezone area, and internal access roads. This gap makes it difficult to assess the impact on the Park Knoll Estates neighborhood at this time. We appreciate that Carter is dependent upon several other services in limited availability to provide additional clarity on those items. Also, we realize that those may not be required elements for the Planning Board decision. So, while we cannot provide our support for this request now, we will continue to work positively with Carter as we’ve done to date and hope that we can provide our support by the time this reaches the City Council for final approval.

Thanks for your service and consideration,

David Hunt
David Hunt – President

Karen Giesy
Karen Giesy – Vice President
To The Whitefish City Planning Board:

We as longtime residents of Park Knoll Lane, cannot see the rhyme nor reason for the request or need of the "Honor Bound" development to have the minimum lot size reduced from 2.5 minimal acreage to .5 minimal acreage.

The smaller minimal acreage zoning requirement request means much more density and the last thing Whitefish needs is much more density impact building in this area. See the big footprint? More people, more automobile traffic, more pull on city and natural resources. Development is inevitable, but this high impact development here, south and west of Park Knoll Lane in unreasonable. Before you know it, the citizens of Whitefish will be proposing a community zoo to view the wildlife that once roamed our Highway 93 Corridor.

Thank you,

Dave and Skeeter Johnston
Park Knoll Lane
Whitefish, MT
March 13, 2023
Sent via E-Mail

City of Whitefish
Planning and Building Department
Attn: David Taylor
P.O. Box 158
418 E 2nd Street
Whitefish, MT 59937
E-Mail: dtaylor@cityofwhitefish.org; mhowke@cityofwhitefish.org

Re: Proposed Land Use Action: WZC 23-03

To: Whitefish Planning Board

This firm represents the South Whitefish Neighborhood Association and submits this public comment in connection with the above referenced WZC request submitted by Honor Bound LLC (the “Request”).

Overlaying the Whitefish Code requirements, and as a starting point for this discussion, are the fundamental requirements of zoning as set forth under Montana law. Section 76-2-304, MCA, states:

(1) Zoning regulations must be:
   (a) made in accordance with a growth policy; and
   (b) designed to:
      (i) secure safety from fire and other dangers;
      (ii) promote public health, public safety, and the general welfare; and
      (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:
   (a) reasonable provision of adequate light and air;
   (b) the effect on motorized and nonmotorized transportation systems;
   (c) promotion of compatible urban growth;
   (d) the character of the district and its peculiar suitability for particular uses; and
(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

1. **The Request is not in accordance with the 2007 Growth Policy.**

On September 6, 2022, the Whitefish City Council approved Honor Bound and Eagle Enterprises LLC’s request to rezone 31.17 acres of rural property from the existing agricultural zone (SAG-5) to a suburban residential zone of WCR. At the time, SWNA opposed this request based on the 2007 Growth Policy’s Rural land use designation on the property and the presence of wetlands on the property. Now, Honor Bound seeks approval for even more density on 11.2 acres of the 31.17 acre property in further contravention of the Growth Policy. After this, “PUD and subdivision designs/applications will follow once a density is established through this zone change.” *Honor Bound Application, page 7* (attached as Exhibit A).

It is not difficult to understand what is happening here – through piecemeal land use approvals, the developer is ramping up to propose a very large, very dense development that will “develop at urban densities” and encroach on the wetland area and the wildlife it supports. *Honor Bound Application, page 8.* It is also clear from the zoning requested that such a development will be contrary to the vision of the community as expressed in the 2007 Growth Policy.

The 2007 Growth Policy designates the subject property as Suburban Residential and the remainder of the property to the west as Rural. The Growth Policy describes the Suburban Residential as follows:

Suburban Residential: Lower density residential areas at the periphery of the urban service area generally fall under this designation on the Future Land Use Map. The residential product type is predominantly single-family, but cluster homes and low-density town homes that preserve significant open space are also appropriate. Densities range from one unit per 2 ½ acres to 2.5 units per acre, but could be higher through the PUD. Zoning districts include WCR, WER, and WSR. Cluster residential that preserves considerable open space, allows for limited agriculture, and maintains wildlife habitat is encouraged.

The Growth Policy also repeatedly mentions the need to protect wetlands “to the maximum protection reasonable from the encroachment of land use that would diminish the wetlands’ diversity of values or degrade their quality.” Growth Policy, page 25. This is in part because “Wetlands store flood waters and provide important wildlife habitat, including habitat for some endangered and threatened species.” Growth Policy, page 23. **There are undeniably wetlands on this Property.** Below is an image from the Montana Natural Heritage Program showing the wetlands directly in the area proposed to be rezoned.
By way of example and not limitation, the Growth Policy’s Water Policy Goals states that:

1. It shall be the policy of the City of Whitefish that no development activity, private or public, shall cause soil erosion, sedimentation, nutrient loading, or stormwater discharge that adversely impacts other properties, roads, wetlands, or any water body. Zero sedimentation and zero nutrient loading shall be the target for all development activity.

Growth Policy, page 22. However, approving the Request would obviously be inconsistent with this goal and the Growth Policy’s overall goal to protect wetlands in general because it would allow more density (d densest zoning districts allowed in the 2007 Growth Policy’s Suburban Residential land use designation) and development activity near the subject wetland area.

As a historic reminder, in 2017 nearly half the property was identified as delineated wetlands according to the Growth Policy Subarea/Neighborhood Plan amendment submitted by Whitefish 57/Eagle Enterprises in 2018 (the “Amended Application”). The picture and excerpt included adjacent hereto is directly from the Whitefish 57/Eagle Enterprises Amended Application:
Although the Planning Staff recommended approval of the Amendment Application, the City Council ultimately denied the request due to the large community opposition, in part stemming from the unsuitability of development of this property due to the wetlands. It is now obvious that this “Whitefish 57 2.0” development proposal is back on the table again and that the development strategy is to garner piecemeal approval for an even higher density project, in part through the piecemeal degradation of the Growth Policy.

However, once a growth policy has been adopted, the governing body must substantially comply with the policy in subsequent decision-making. Subsequent planning documents (such as the Highway 93 South Corridor Plan) which purport to stand alone or amend or partially repeal a growth policy but which are expressly inconsistent with a growth policy, either in part or in whole, are invalid. Therefore, for this reason alone, the Board must recommend denial of the Request.

2. **The Request is not designed to secure safety from fire and other dangers.**

   The applicant has failed to establish that the Request is designed to “secure safety from fire and other dangers,” “promote public health safety and the general welfare,” and is justified by a “clear community benefit.” WCC §§ 11-2S-6; 11-7-12; Mont. Code Ann. § 76-2-304(1)(b)(i).

   It is SWNA’s position that the development density proposed by the Request presents a clear danger to public safety. Traffic congestion due to inadequate road infrastructure is already well documented in the corridor and, City officials have admitted that the Baker Avenue Extension will never come to fruition. The applicant does not address this clear impediment to the proposed development whatsoever. Therefore, the Board must recommend denial of the Request.

3. **The Request does not promote public health and the general welfare.**

   As explained above, both the prior zone change and this Request fail to protect the wetland area on the subject property. Given this, and the general benefit to the community that wetlands provide, this Request fails to promote public health and the general welfare of the community and the Board must therefore recommend denial of the Request.

4. **The Request does not facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

   As the Board knows, there are capacity issues at both Muldown Elementary and Whitefish High School which would be exacerbated by the number of residential units being proposed. While subdivisions cannot be denied based solely on school capacity issues under Mont. Code Ann. § 76-3-608 zone change requests are not constrained in this manner under the law and, indeed, Mont. Code Ann. § 76-2-304(1)(b)(iii) requires the adequate provision of schools when a local government is considering a zone change. The number of units that will be proposed is unknown at this point, but as a reminder, the 2018 Whitefish 57 proposal sought approval for hundreds of units.

///
5. The Zoning should remain WCR.

For the reasons stated above, the zoning for this property should remain WCR. This property is not suitable for the minimum density requested, which will be made even more dense when the developer submits another zone change request to utilize the PUD overlay. As explained above, the more appropriate zoning is WCR, which is aligned with the Growth Policy:

ISSUE: Until recently, there has been no local review process to protect wetlands.

Wetlands, long regarded as wasted spaces, have, over the years both in Montana and across the country, been drained and filled for other purposes. Since 1800 it is estimated approximately 50 percent of the wetlands have been lost nationwide and in Montana 27 percent have been destroyed. Only recently has there been an acknowledgement of the important role wetlands play. The functions wetlands perform include:

- Floodwater storage
- Improve and protect water quality
- Provide critical habitat to fish and wildlife
- Sediment entrapment
- Groundwater recharge
- Maintenance of stream flows
- Shoreline stabilization

It is the intent of the wetland policies to provide the maximum protection reasonable from the encroachment of land use that would diminish the wetlands' diversity of values or degrade their quality.

To that end, it is a stated goal of the Growth Policy to preserve and protect “areas that are environmentally significant in terms of resource value and/or defining the community image and character of Whitefish.” In short, this property should remain zoned WCR to ensure the wetlands, and the wildlife and water quality it supports, are not degraded.

For these reasons, SWNA respectfully requests that the Board recommend denial of the Request.

Thank you,

Lindsey W. Hromadka
Michelle T. Weinberg

WEINBERG & HROMADKA, PLLC

Attorneys for South Whitefish Neighborhood Association
(This page left blank intentionally to separate printed sections)
An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations Title 11, Chapter 7, Administration and Enforcement, to add a new section, Zoning Upon Annexation, of the Whitefish City Code.

WHEREAS, pursuant to § 76-2-303, MCA, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of a proposed annexation if the proposed municipal zoning regulations for the annexed property: (1) authorize land uses comparable to the land uses authorized by county zoning; (2) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Montana Code Annotated Title 76, chapter 2, part 1 or 2; or (3) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Montana Code Annotated Title 76, chapter 1, for the annexed property; and

WHEREAS, the City desires to provide for annexation into City limits in conjunction with applying City zoning; and

WHEREAS, at a lawfully noticed public hearing on March 16, 2023, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA 23-02, invited public comment, and thereafter voted unanimously to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on April 17, 2023, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report WZTA 23-02, and letter of transmittal, invited public input, and thereafter voted to approve the proposed text amendments; and

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

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

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

Section 2: Staff Report WZTA 23-01 dated March 16, 2023, together with letter of transmittal from the Whitefish Planning & Building Department dated April 17, 2023, are hereby adopted as Findings of Fact.

Section 3: The amendments to Title 11, Zoning Regulations, as provided in Exhibit A are hereby adopted.

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

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

________________________________________
John M. Muhlfeld Mayor

ATTEST:

________________________________________
Michelle Howke, City Clerk
EXHIBIT A
WHITEFISH CITY CODE

TITLE 11 - ZONING REGULATIONS
CHAPTER 7 - ADMINISTRATION AND ENFORCEMENT

11-7-12: AMENDMENTS:

A. Amendments Allowed: The provisions of these regulations may, from time to time, and for the furtherance of public necessity, convenience and welfare and in recognition that circumstances and conditions may be altered substantially as time passes, be amended, supplemented, changed, modified or replaced.

B. Procedures:

1. Requests to amend the text of these regulations may be initiated by any affected party or entity on a form provided by the zoning administrator.

2. The completed application and fee, as set by the city council, shall be submitted to the zoning administrator or his designee.

3. The completed application shall be processed as per the adopted administrative procedures.

4. After acceptance by the zoning administrator or his designee, the completed application shall be transmitted to the staff of the planning board for their review and evaluation.

5. The planning staff shall set a public hearing date and publish a public notice which jointly advertises the public hearing before the planning board and the public hearing before the city council at least once in a newspaper of general circulation in the community at least fifteen (15) calendar days prior to the meeting of the planning board at which the application is to be considered.

6. The planning board shall consider the application at its next regular meeting following the public notice process. The board shall make a recommendation to the city council to grant, amend or deny the application.

7. Should a decision not be rendered by the city council within ninety (90) days after acceptance of the completed application by the zoning administrator and the payment of the appropriate fee, the application shall be deemed approved unless the time limit has been extended by an agreement between the zoning administrator and the applicant.

8. Upon receipt of the recommendation of the planning board, the city council shall hold a public hearing. Based on the results of this hearing, other public input, the staff report, and findings of the planning board, the city council shall render a decision to grant, amend or deny the requested amendment.
9. Should the proposed amendment be adopted, the city council shall officially notify the zoning administrator of the amendment now in force and he shall incorporate the amendment into the appropriate article, chapter, section or paragraph of these regulations.

10. In the event that an application to amend these regulations is denied by the city council or that the application for amendment is withdrawn after the hearing of the planning board, the zoning administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of hearing of the previous application before the board.

C. Amendments To Official Zoning Map (Rezoning):

1. An amendment proposing changes in the official zoning map shall follow substantially the same procedures as provided for in subsection B of this section, with the following additional requirements to be adhered to:

   a. The applicant shall provide the names and addresses of all property owners within one hundred fifty feet (150') of the proposed amendment area.

   b. The application for amendment shall be signed by an owner of record, or his authorized agent, in the area included in the application.

   c. In the event that an application filed by a real property owner in the area involved includes any property other than owned by the applicant, then before the application will be accepted for processing, a petition in favor of the request signed by the real property owners representing at least sixty five percent (65%) of the land area to be included in the application must be submitted. The petition shall bear the property owners signatures and addresses, the legal description and land area of each property represented in the petition, the total land area represented by the petition and the total land area of individual properties included in the application.

   d. The staff of the planning board shall mail a notice to all property owners included in the proposed amendment area, and all property owners adjacent and within one hundred fifty feet (150') of the boundary of the proposed amendment area. Where the subject property abuts a public right of way, the one hundred fifty foot (150') measurement shall be in addition to the right of way along the abutting side. The notice shall be made no less than fifteen (15) calendar days prior to the planning board hearing date.

   e. In the event that a written protest against a proposed amendment is filed in the office of the zoning administrator no later than ten (10) days following planning board action, by the owners of twenty five percent (25%) or more, either of the area of the lots included in the proposed change or those lots within one hundred fifty feet (150') of a lot included in a proposed change such amendment shall not become effective except by the favorable vote of two-thirds (2/3) of the present and voting members of the city council, provided that the required number of votes shall not be less than a majority of the full membership of the city council.
2. In the event that the city council grants the application to amend or rezone, they shall notify the zoning administrator of their action and he shall be responsible for updating the official zoning map. The updating shall include the posting on the face of the official zoning map the date and the number of the resolution or ordinance amending the map.

3. In the event that an application to amend (rezone) is denied by the city council or that the application is withdrawn after the planning board hearing, the zoning administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of the hearing of the previous application before the board.

D. Conditional Zoning:

1. In the event that it is found to be in the best interests of the city, as well as advantageous to property owners seeking a change in zoning boundaries, if certain more restrictive conditions were proposed by property owners as part of their request for rezoning, an owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.

2. The offer of conditions may be amended during the process of rezoning consideration, provided that any amended or additional conditions are entered voluntarily by the owner. An owner may withdraw all or part of its offer of conditions any time prior to final rezoning action of the city council, provided that, if such withdrawal occurs subsequent to the planning board's public hearing on the original rezoning request, then the rezoning application shall be referred to the planning board for a new public hearing with appropriate notice and a new recommendation.

3. If the city council finds the rezoning request and offer of conditions acceptable subject to the considerations of subsection E-F of this section, the offered conditions shall be incorporated into a formal written statement of conditions acceptable to the owner and conforming in form to the provisions of this subsection. The statement of conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the city council to accomplish the requested rezoning.

4. The city council, while reviewing the compatibility of the rezoning request with the considerations of subsection E-F1 of this section, shall consider compatibility of allowed uses and the performance of the conditional restrictions along with the intent of the underlying future land use shown for the parcel in the city-county growth policy maps rather than strict adherence to growth policy land use designations such as commercial and residential.

5. The statement of conditions shall:

   a. Be in a form recordable with the Flathead County clerk and recorder or, in the alternative, be accompanied by a recordable affidavit or memorandum prepared and signed by the owner giving notice of the statement of conditions in a manner acceptable to the city council.
b. Contain a legal description of the land to which it pertains.

c. Contain a statement acknowledging that the statement of conditions runs with the land and is binding upon successor owners of the land.

d. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner that are necessary to illustrate the implementation of the statement of conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.

e. Contain a statement acknowledging that the statement of conditions or an affidavit or memorandum giving notice thereof may be recorded by the city with the Flathead County clerk and recorder.

f. Contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the statement of conditions.

6. Upon the rezoning taking effect, the zoning map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a statement of conditions (SC). The city clerk shall maintain a listing of all lands rezoned with a statement of conditions.

7. The approved statement of conditions or an affidavit or memorandum giving notice thereof shall be filed by the city with the Flathead County clerk and recorder. The city council shall have authority to waive this requirement if it determines that, given the nature of the conditions and/or the time frame within which the conditions are to be satisfied, the recording of such a document would be of no material benefit to the city or to any subsequent owner of the land.

8. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the statement of conditions.

9. Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the statement of conditions. Any failure to comply with a condition contained within the statement of conditions shall constitute a violation of this zoning ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.

10. Unless another time period is specified in the ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within eighteen (18) months after the rezoning took effect and thereafter proceed diligently to completion. This time limitation may upon written request be extended by the city council for an additional twelve (12) months if it is demonstrated to the city council’s reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the
period of extension and proceed diligently thereafter to completion and the city council finds that there has not been a change in circumstances that would render the current zoning with statement of conditions incompatible with other zones and uses in the surrounding area or otherwise inconsistent with sound zoning policy.

11. If approved development and/or use of the rezoned land do not occur within the time frame specified under subsection D10 of this section, then the land shall revert to its former zoning classification. The reversion process shall be initiated by the city council requesting that the planning board proceed with consideration of rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

12. When land that is rezoned with a statement of conditions is thereafter rezoned to a different zoning classification or to the same zoning classification but with a different or no statement of conditions, whether as a result of a reversion of zoning pursuant to subsection D11 of this section or otherwise, the statement of conditions imposed under the former zoning classification shall cease to be in effect. Upon the owner's written request, the city clerk shall record with the Flathead County clerk and recorder that the statement of conditions is no longer in effect.

13. During the time period for commencement of an approved development or use specified pursuant to subsection D10 of this section or during any extension thereof granted by the city council, the city shall not add to or alter the conditions in the statement of conditions. The statement of conditions may be amended in the same manner as was prescribed for the original rezoning and statement of conditions.

14. Nothing in the statement of conditions nor in the provisions of this subsection shall be deemed to prohibit the city from rezoning all or any portion of land that is subject to a statement of conditions to another zoning classification. Any rezoning shall be conducted in compliance with this title and state statutes.

15. The city shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this title.

E. Zoning Upon Annexation:

1. Timing. A city zoning district classification may be assigned to property annexed into the city at the time of annexation if the zoning district classification:

   a. Authorizes land uses comparable to the land uses authorized by county zoning;

   b. Authorizes land uses that are consistent with land uses approved by the board of county commissioners or board of adjustment; or

   c. Is consistent with the land use and zoning recommendations adopted in the growth policy and any amendment thereto.
2. Procedure:
   
a. Application must be made on a form approved by the Zoning Administrator.
   
b. The city council will consider the application and determine whether to pass a resolution of intent to annex and assign a city zoning classification.
   
c. The planning staff will set a public hearing before city council and publish a public notice which advertises the public hearing for two successive weeks in a newspaper of general circulation with the first publication occurring at least fifteen (15) calendar days prior to the city council meeting at which the application is to be considered.
   
d. City staff shall mail a notice to all property owners included in the proposed amendment area, and all adjacent property owners within one hundred fifty feet (150') of the boundary of the proposed amendment area. The notice shall be mailed no less than fifteen (15) calendar days prior to the city council meeting.
   
e. At the public hearing, the city council will consider the staff report, staff recommendation, and public input and issue a decision to accept or reject the annexation and zoning district classification.
   
f. If the city council approves the application, the annexation and zoning district classification are effective immediately.

3. Interim zoning. The city council may apply interim zoning to the annexed property in accordance with state law.

E-F. Considerations: When considering an application for amendment to the provisions of these regulations or the official zoning map, the planning board and the city council shall be guided by and give consideration to the following:

1. Zoning regulations must be:
   
a. Made in accordance with a growth policy; and
   
b. Designed to:
      
      (1) Secure safety from fire and other dangers;
      
      (2) Promote public health, public safety, and general welfare; and
      
      (3) Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

2. In the adoption of zoning regulations, the city shall consider:
   
a. Reasonable provision of adequate light and air;
b. The effect on motorized and nonmotorized transportation systems;

c. Promotion of compatible urban growth;

d. The character of the district and its particular suitability for particular uses;

e. Conserving the value of buildings;

f. Encouraging the most appropriate use of land throughout the jurisdictional area; and

g. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.
April 17, 2023

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

Re: Zoning Text Amendment – Zoning Upon Annexation: WZTA 23-02

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend Section 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, wherein the City Council can approve a zone change ordinance from county zoning to Whitefish city zoning at the same time as approving an annexation petition.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on March 16, 2023. Following this hearing, the Planning Board unanimously recommended approval of the amendments (Scott/Linville) and adopted the supporting findings of fact in the staff report (Middleton absent).

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, no one spoke. The draft minutes of the Planning Board hearing are included.

This item has been placed on the agenda for your regularly scheduled meeting on April 17, 2023. Should Council have questions or need further information on this matter, please contact the City Planning Board or the Planning & Building Department.

Respectfully,

David Taylor, AICP
Planning Director
Att:

Exhibit A
1. Planning Board recommended text amendments
2. Draft Minutes from 3-16-23 City Planning Board Meeting

Exhibit B
1. Staff Report 3-16-23

cc: w/att Michelle Howke, City Clerk
RECOMMENDED ZONING TEXT AMENDMENT

The Whitefish Planning Board recommends the following amendment (additions shown underlined in red, deletions shown struck out):

11-7-12 AMENDMENTS

E. Zoning Upon Annexation

1. Timing. A city zoning district classification may be assigned to property annexed into the city at the time of annexation if the zoning district classification:
   a. authorizes land uses comparable to the land uses authorized by county zoning; or
   b. authorizes land uses that are consistent with land uses approved by the board of county commissioners or board of adjustment; or
   c. is consistent with the land use and zoning recommendations adopted in the growth policy and any amendments thereto.

2. Procedure.
   a. Application must be made on a form approved by the Zoning Administrator.
   b. The city council will consider the application and determine whether to pass a resolution of intent to annex and assign a city zoning classification.
   c. The planning staff will set a public hearing before city council and publish a public notice which advertises the public hearing for two successive weeks in a newspaper of general circulation with the first publication occurring at least fifteen (15) calendar days prior to the city council meeting at which the application is to be considered.
   d. City staff shall mail a notice to all property owners included in the proposed amendment area, and all adjacent property owners within one hundred fifty feet (150’) of the boundary of the proposed amendment area. The notice shall be mailed no less than fifteen (15) calendar days prior to the city council meeting.
   e. At the public hearing, the city council will consider the staff report, staff recommendation, and public input and issue a decision to accept or reject the annexation and zoning district classification.
   f. If the city council approves the application, the annexation and zoning district classification are effective immediately.

3. Interim zoning. The city council may apply interim zoning to the annexed property in accordance with state law.

F. Considerations: When considering an application for amendment to the provisions of these regulations or the official zoning map, the planning board and the city council shall be guided by and give consideration to the following:
big vision for the whole section and thinks by increasing the density of 11 acres of the 50 acres gets us to a more appropriately sized lot that can be built on and have a mix of housing which is what we need. He is sensitive to water quality here and to wetlands, but it will not be buildable in the wetland anyway. The people that live there object to everything that goes on down there; they have not come in and said yes to anything. He understands there is a lot of angst over change, but as a community we have to come together and understand that when we have a big picture to provide more housing and a mix of housing, we have to find a way to get it done or we are not going to ever have affordable housing in this town.

VOTE

The motion passed 5 to 1 with Beckham voting in opposition. The matter is scheduled to go before the Council on April 17, 2023.

PUBLIC HEARING 4: CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST

7:37 pm

A request by the City of Whitefish for a Zoning Text Amendment to § 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, wherein the City Council can approve a zone change ordinance from county zoning to Whitefish city zoning for properties annexing into city limits at the same time as approving the annexation petition or establish Interim Zoning.

STAFF REPORT WZTA 23-02 (Taylor)

Planning Director Taylor reviewed his staff report and findings. As of the writing of WZTA 23-02, no public comments had been received, and none have been received since then.

Staff recommended adoption of the findings of fact within staff report WZTA 23-02 and for approval of the proposed changes to Title 11, Chapter 7, of the Zoning Regulations to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

Chair Qunell asked and Director Taylor said this proposed text amendment would mean the zone change request would not come to the planning board but rather go straight to Council.

Freudenberger asked and Director Taylor said staff will either apply an equivalent zone of what it was in the County or whatever the Growth Policy calls for if it is something different.

Chair Qunell asked and Director Taylor said an applicant can petition for something else and if it seems reasonable and staff can support that, they can ask for it.
Linville asked and Director Taylor said a public hearing will occur at the Council meeting, it will just skip planning board.

**PUBLIC HEARING**
Chair Qunell opened the public hearing.

**APPLICANT / AGENCIES**
N/A

**PUBLIC COMMENT**
There being no comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.

**MOTION / BOARD DISCUSSION**
Scott made a motion, seconded by Linville, to adopt the findings of fact within staff report WZTA 23-02 as proposed by City Staff.

**VOTE**
The motion passed unanimously. The matter is scheduled to go before the Council on April 17, 2023.

**GOOD AND WELFARE**

7:42 pm

1. **Matters from Board.** Gardner requested to receive a paper packet as early as possible and wondered if they could go out earlier. Director Taylor said the City Council and this board had previously voted to go paperless to save trees, but he would talk to the staff and see if we could make a concession to maybe have a paper copy on the Thursday a week before the meetings. It was noted that he would be the only member of any city board that would get more than an electronic copy. Chair Qunell asked if just the staff report would be enough on larger items, and Gardner said it would be.

   Chair Qunell requested a zoomed out view be included in future staff reports that clearly shows roads to make it easier to identify where projects are located, and Director Taylor agreed to do that.

2. **Matters from Staff.** Director Taylor said he and Long Range Planner Alan Tiefenbach are putting together a public participation plan of how we are going to engage the public, what the meetings are going to be like, and what meetings are going to be held. That will be brought to the board probably in April for review. Staff also wants to wait to see what the Legislature decides to do because there is still some language that may significantly change how we approach the growth policy update and especially the public participation portion of it. A growth policy website was added to the City's website with updates, information, background, presentation with existing zoning, etc. The agendas sent out for the
PROPOSED CODE AMENDMENTS
TITLE 11-7-12-E ZONING UPON ANNEXATION
STAFF REPORT WZTA 23-02
MARCH 16, 2023

A report to the Whitefish Planning Board and Whitefish City Council regarding proposed code amendments to Section 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, wherein the City Council can approve a zone change ordinance from county zoning to Whitefish city zoning at the same time as approving an annexation petition. The Planning Board public hearing is scheduled for March 16, 2023 and a subsequent hearing is scheduled before the City Council on April 17, 2023. Draft regulations are below for review and recommendation.

BACKGROUND INFORMATION

City staff held several work sessions with the City Council on the topic of updating the City Annexation Policy. The City Council directed staff to amend the current Annexation Policy to allow for Zoning Upon Annexation, similar to how the City of Missoula allows for zoning map amendments related to properties being annexed. Under Montana state law, property annexing from a county into a city must change county zoning to city zoning that is either the closest equivalent to the previous county zoning or is consistent with the land uses outlined in an adopted Growth Policy.

City zoning must be applied to any property annexing into the city. This text amendment expedites the process and eliminates the concerning time lag between annexation and when the city zoning goes into effect. With the current process, the property remains under County zoning rules for several months after annexation, whereas with the proposed new process, the annexation and the zone change would both go into effect simultaneously.

City zoning upon annexation is allowed under State law under MCA 76-2-303:

76-2-303 (3)(a). For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:
(i) Authorize land uses comparable to the land uses authorized by county zoning;
(ii) Authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2: or
(iii) Are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property

Both the annexation and the new City zoning go into effect immediately upon adoption of one resolution by City Council, without a Planning Board hearing, but as a two-step expedited process due to it being a necessary annexation rezone. Once an applicant for annexation submits a petition to annex, it is scheduled for a City Council review. The
Council would then review the petition and vote on whether to pass a resolution of intent to annex and apply city zoning. After that, the city would then publish a notice twice for successive weeks and send a notice to adjacent property owners within 150’ of the property boundary, making known the date and time of the resolution public hearing. That will typically occur one month after the resolution of intent is passed. At the resolution hearing, staff will present a short staff report and give a recommendation on the zoning to be applied based on the it being either the equivalent of the existing county zoning or the zoning that is most consistent with the city’s adopted Growth Policy future land use map, which are the requirements of Montana state law. The public would be invited to speak at the public hearing, then the pros or cons of the annexation and rezone request are considered by the Council and then the Council would either accept or reject the annexation and zoning resolution by vote. If the vote is successful, the annexation and zone change would both go into effect immediately. The Council would also have the option of assigning an interim zoning designation.

Under the current process for a private property owner-initiated annexation, the owner submits a petition for annexation to the City Clerk along with a contract agreement for annexation and city water and/or sanitary sewer service, and an application for a Zoning Map Amendment – Annexation. The petition to annex is acted on by City Council, and, if approved, the planning staff posts notices and then schedules the Zoning Map Amendment at the next available Planning Board meeting following the annexation. Council receives the Planning Board recommendation and holds a public hearing before voting to approve an appropriate zoning district which then requires a second meeting and goes into effect in thirty days.

**PROPOSED AMENDMENTS**

Staff proposes the following amendments (additions shown underlined in red, deletions shown struck-out):

11-7-12 AMENDMENTS

**E. Zoning Upon Annexation**

1. **Timing.** A city zoning district classification may be assigned to property annexed into the city at the time of annexation if the zoning district classification:
   a. authorizes land uses comparable to the land uses authorized by county zoning; or
   b. authorizes land uses that are consistent with land uses approved by the board of county commissioners or board of adjustment; or
   c. is consistent with the land use and zoning recommendations adopted in the growth policy and any amendments thereto.

2. **Procedure.**
   a. Application must be made on a form approved by the Zoning Administrator.
b. The city council will consider the application and determine whether to pass a resolution of intent to annex and assign a city zoning classification.

c. The planning staff will set a public hearing before city council and publish a public notice which advertises the public hearing for two successive weeks in a newspaper of general circulation with the first publication occurring at least fifteen (15) calendar days prior to the city council meeting at which the application is to be considered.

d. City staff shall mail a notice to all property owners included in the proposed amendment area, and all adjacent property owners within one hundred fifty feet (150’) of the boundary of the proposed amendment area. The notice shall be mailed no less than fifteen (15) calendar days prior to the city council meeting.

e. At the public hearing, the city council will consider the staff report, staff recommendation, and public input and issue a decision to accept or reject the annexation and zoning district classification.

f. If the city council approves the application, the annexation and zoning district classification are effective immediately.

3. Interim zoning. The city council may apply interim zoning to the annexed property in accordance with state law.

F.E. Considerations: When considering an application for amendment to the provisions of these regulations or the official zoning map, the planning board and the city council shall be guided by and give consideration to the following:

REVIEWS AND FINDINGS OF FACT

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-10E.

1. Zoning Regulations Must Be:

   a. Made in Accordance with a Growth Policy

   The Growth Policy doesn’t discuss zoning for annexation. However, Future Land Use Policy 1 of the 2007 Growth Policy states: All land development regulations shall be consistent with and based upon the Growth Policy in accordance with Montana state law.

Finding 1: The proposed amendments are in accordance with the Growth Policy due to the fact that when a property annexes into the city and receives city zoning, the city can ensure it is zoned and developed consistent with the Growth Policy.

   b. Designed to:

      i. Secure safety from fire and other dangers
Finding 2: The text amendment changes the process for zoning map amendments due to annexation. While it doesn’t directly affect safety for fire and other dangers, expediting the process for zoning helps the city enforce applicable zoning and building codes.

  ii. Promote public health, public safety and general welfare

Finding 3: Annexation subjects properties to city zoning and building code standards, which promotes public health and safety. This zoning text amendment will expedite city zoning over county zoning so it happens upon annexation rather than several months later.

  iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

Finding 4: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

2. In the adoption of zoning regulations, the city shall consider:
   a. Reasonable provision of adequate light and air

Finding 5: The zoning text amendment has no impact on the provision of adequate light and air. Setbacks depend on zoning classifications.

   b. The effect on motorized and nonmotorized transportation systems

Finding 6: The proposed code amendment have no impact on motorized and non-motorized transportation systems.

   c. Promotion of compatible urban growth

Finding 7: The proposed code amendment promote compatible urban growth as it helps eliminate lag times between annexation of a property and the application of city zoning.

   d. The character of the district and its particular suitability of the property for the particular uses

Finding 8: The character of a district and its suitability for a use is looked at on a case-by-case basis and not on community-wide zoning text.

   e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

Finding 9: The proposed code amendments will not conserve the value of buildings as it is a text amendment with city-wide applicability. It will encourage the most appropriate use of land throughout the jurisdictional area as it will help facilitate the application of city zoning when properties annex into the city.
f. 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.

Finding 10: Historical uses and established use patterns as well as changes in use trends would be considered at the time new zoning is applied but have no relevance to this particular text amendment that expedites the zoning process.

RECOMMENDATION:

Staff recommends the Planning Board recommend approval as set forth in the staff report to amend Title 11, Section 11-7-12, Administration and Enforcement, Amendments, to add new section 11-7-12-E, Zoning Upon Annexation, and adopt the findings of fact and transmit the same to the Whitefish City Council for further action.
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PROJECT UPDATE FROM PUBLIC WORKS DIRECTOR WORKMAN
Sandry Construction completed the first phase of the Spokane Avenue Water Main Replacement Project last fall with the installation of new 18” PVC watermain between E. 5th St. and E. 13th St. Phase Two began on Monday March 20, 2023. This will be the final phase of the project, beginning at the 500-block continuing north to middle of the 200-block of Spokane Ave. Delays are to be expected as there will be single lane traffic with flaggers from 7:00AM to 7:00PM every weekday. So far, work on Phase 2 has included mainline installation between E. 4th St. and E. 5th St. and completion of all water services on the 500-block of Spokane Avenue. The project is anticipated to be completed by June 6th, 2023, after which MDT will resurface the entire length of the project from E. 2nd Street to E. 13th Street. MDT work is anticipated to be completed by the end of June with construction activities taking place at night.

MEETINGS
I was invited, for the third year, to present at the 2023 Growth Summit hosted by the Kalispell Chamber of Commerce held Wednesday, April 12th. My presentation is attached to this report and provides some interesting statistics for our community.

As requested by the Whitefish Community Housing Committee and approved by City Council, the City issued a request for qualifications for assistance in the creation of the development plan and financial plan identified at the top priority in the Whitefish Community Housing Roadmap. Unfortunately, no submittals were received, which is likely due to the short timeframe for completion of the project. The Committee is scheduled to meet Monday, April 24th and will discuss how to move forward.

2023 MONTANA LEGISLATIVE SESSION
Transmittal dates for all appropriation bills, revenue bills, and bills proposing referenda has passed. There are still transmittal deadlines for bills that are amended, but we will not see any new bills introduced. Below is a list of bills that could significantly impact the City that we are supporting or opposing. The list excludes bills that were previously reported this year and did not meet the transmittal deadline and hundreds more that are being monitored. To look up specific bills visit: http://laws.leg.mt.gov/legprd/law0203w$.startup?P_SESS=20231.

SB 105 – Prohibit Rent Control of Private Property. This bill prohibits a local government from enacting, maintaining, or enforcing an ordinance or resolution that would have the effect of controlling the amount of rent charged for private residential or commercial property. Even though rent control is already preempted by the State, the City opposes this bill based on principle. The bill was amended and passed through the Senate and House. The bill has been sent to enrolling.
SB 142 – Provide Oversight of Local Impact Fee Laws. Sponsored by Senator Regier, this bill was the product of the City’s ongoing class action lawsuit with many of the items directly related to the specific complaints. Senator Mandeville provided amendments to SB 142, which were approved in the Senate Local Government Committee and subsequently by a majority of the Senate. The amendment eliminated most of the proposed changes, especially those changes that would make impact fees simply ineffective as a funding source for projects driven solely by new development. The Senate and House has passed this bill and it has been sent to enrolling.

SB 159 – Restrict use of Eminent Domain. This bill would prohibit the use of eminent domain for trails and paths for walking, hiking, bicycling or equestrian use. The City provided testimony in opposition to SB 159. The Senate and House has passed this bill and it is now in the final stages of the preparation process.

SB 206 – Exempt Certain Cell Phone Use from Local Ordinances. If passed, this bill would require a change to the City’s current ordinance to allow the use of a cell phone while driving for voice communications. In other words, the City would only be able to restrict texting while driving. The City opposes this bill. The bill has passed through the Senate and has been transmitted to the House. SB 206 was referred to the House Local Government Committee and was tabled. We will continue to monitor this bill to ensure it is not pulled from the table.

SB 215 – Revise DEQ rule ARM 17.36.328 to Require Connection from Proposed Subdivision. SB 215 would change the connection requirement of a subdivision from 500 feet to 1000 feet of a public water or wastewater system and require that the system accepts the connection. The City has been monitoring this bill, which was approved by the Senate and House. SB 215 bill has been sent to enrolling and is in the stages of the final preparation process.

SB 245 – Revise Municipal Zoning to Allow Multifamily and Mixed-Use Development. SB 245 would require as a permitted use multifamily (defined as 5+ units) and mixed-use developments in commercial zones. Amendments were made to allow a city to require one parking space per unit and removed the maximum height of 40 feet. The City provided written testimony opposing this bill. The Senate has passed this bill. The House held a 2nd reading on April 12th and passed through 2nd reading.

SB 262 – Generally Revise Licensing Requirements. This bill would essentially eliminate the City’s business licensing program. As proposed, this bill would prohibit any additional licensing requirements at the City level for which a license is required by the State. There are many types of businesses and professions licensed by the State including public accommodations, bars, restaurants, CPAs, etc. The City provided written testimony opposing this bill for the February 8th hearing, but the bill passed through the committee on February 14th. It also passed the Senate and was transmitted to the House prior to the transmittal deadline. A hearing was held by the House Business and Labor Committee. An amendment that would minimize the impacts of the bill was provided for consideration, but not passed by the Committee. The 2nd reading is scheduled for April 12th.

SB 268 – Short-term Rentals. This bill was introduced by Senator Hertz on February 3rd. As currently drafted, short-term rentals would be deemed a residential use and would have to be
expressly prohibited in zoning. However, zoning could not prohibit the short-term rental of a property owner’s primary residence or a property adjacent to the owner’s primary residence. Amendments to the bill were proposed to Senator Hertz to clarify that the adjacent properties must be on separate lots and therefore would not include accessory dwelling units or guest houses on the same parcel as the owner’s primary residence, but no amendments have been made. The definition of primary residence was clarified with amendments to be an owner who resides in the home for at least 7 months. The City provided written testimony opposing SB 268 for the hearing on February 20th. Amendments were passed that would still allow short-term rentals for primary residence and an ADU or a single unit on an adjacent property. This bill was passed by the committee and the Senate. A hearing was held by the House Judiciary Committee on March 24th. The City provided written testimony and our lobbyist also provided testimony at the hearing. The Committee passed the bill with an amendment that would grandfather currently operating short-term rentals. With the 2nd reading scheduled in the House on April 12th, the City Council sent the attached letter to all Montana Representatives. This bill failed on 2nd reading.

SB 301 – Revise Property Laws Related to Lakeshore Regulations. SB 301 would grandfather structures within the lakeshore protection zone that were in place on or before January 1, 2023, unless active enforcement was taking place by a local government. Furthermore, it allows ongoing maintenance, remodeling or minor modification that costs less than $10,000 and does not involve significant excavation or in-fill of material. The City submitted written testimony for the Senate Local Government Committee hearing on January 20th. Amendments were made and passed by the Committee. The amendments clarify that these new regulations do not apply to illegally constructed items that cause material harm to lakeshore stability, water quality, or aquatic life. This bill was passed by the Senate and the House Local Government Committee. The 2nd reading on the House Floor is scheduled for April 12th and passed through 2nd reading.

SB 323 – Allow for Duplex, Triplex, and Fourplex Housing in City Zoning. This bill originally was much more impactful for communities with a population of 50,000 or more as it would have required zoning regulations for all duplexes, triplexes, and fourplexes to be no more restrictive than that of a single-family residence. For cities with a population of at least 5,000, which applies to Whitefish, zoning regulations cannot be more restrictive for duplex housing than those applicable to single-family homes and they must be a permitted use. This bill was passed by the Senate and the House Local Government Committee. The 2nd reading by the House is scheduled for April 12th and passed through 2nd reading.

SB 379 – Revise Zoning Laws. The City opposes SB 379 that originally prohibited minimum lot size more than 1 mile beyond municipal boundaries. However, the Senate Local Government Committee, without public input, passed the bill with unrelated amendments that would restrict City zoning with regards to minimum lot sizes and accessory dwelling units. A hearing was held on March 28th by the House Local Government Committee. The City provided written testimony opposing this bill and the City’s lobbyist also provided testimony at the hearing. The Committee tabled the bill. We will continue to monitor this bill to ensure it stays tabled.

SB 528 – Revise Zoning Laws Related to ADUs. The City opposes SB 528 that is sponsored by Senator Hertz. SB 528 would require cities to allow at least one ADU where a single-family
residence is located with no parking requirements, no architectural standards, setting size to the lesser of 1,000 square feet or the square footage of the primary residence, as well as other requirements. If SB 268 is passed these unit are free to become short-term rentals if the property owner is a primary resident (defined as living in a unit at least 7-months per year). **The City submitted written testimony opposing the bill for the hearing held March 27th in the Senate Local Government Committee, but the Committee approved the SB 528. It was then passed by the Senate. A hearing is scheduled on April 13th in the House Local Government Committee and the City intends to submit written testimony and testify remotely.**

**HB 76 – Generally Revise Transportation Laws.** This bill reduces the administrative burden of the State’s fuel tax and the local government allocations, including the Bridge and Road Safety and Accountability Act that was established in 2017. The City supports this bill which passed by the legislature. **Enrolling and final preparation is in process.**

**HB 226 – Generally Revise Pension Laws.** The City opposes HB 226. This bill would increase the employer (city) contributions to the Public Employees Retirement System (PERS) to ensure it is fully funded. While we are not opposed to an actuarially determined sound retirement plan, this bill does not allow for the necessary financial planning for cities as rates could significantly be adjusted in any given year. A hearing was held on January 23rd in the House State Administration Committee. The Committee and House approved this bill with amendments that somewhat minimize the impact. The House passed HB 226 and transmitted the bill to the Senate. **A hearing was held in the Senate Finance and Claims Committee on March 27th. Executive action is still pending.** While the City still opposes HB 226 as amended, the City does support SB 29 that continues the 0.10% increase each year for another 10 years to work toward a sound retirement system. SB 29 passed the Senate Finance and Claims Committee, as well as the Senate. A hearing was held on February 21st in the House State Administration Committee and concurred with the bill on March 17th. **SB 29 was referred to the House Appropriations Committee and a hearing was held on March 23rd. Executive action on SB 29 by the Committee is still pending.**

**HB 244 – Revise Laws Governing the Housing Montana Fund.** This bill, sponsored by Representative Fern, removes restrictions and income requirements for loans from the Housing Montana Fund. The City supports this bill, which passed out of the House and was transmitted to the Senate. **After a hearing, the Senate Local Government Committee passed the bill. The Senate referred the bill to the Senate Finance and Claims Committee and a hearing was held on April 11th. Executive action is pending.**

**HB 465 – Revise Local Government Acceptable Use of Building Permit Fees.** The City supports HB 430 that would increase the maximum fund balance limit from 12 months to 36 months, as well as eliminate the need for separate agreed upon procedures. A hearing was held in front of the House Local Government Committee on February 21st. The Committee passed HB 465 with minor amendments, and it has also passed the House. **The Senate Local Government Committee held a hearing on March 24th and concurred. The 2nd reading in the Senate is scheduled for April 12th.**

*NEW* **HB 943 – Revise Taxation for a Property Used as a Short-Term Rental.** HB 943 would change the taxation rate for units used as a short-term rental from residential to commercial. This
would allow the City to reduce the tax burden on residential properties. HB 943 has passed the House and is scheduled for a hearing in Senate Taxation on April 12th. The City supports this bill.

Bills that missed transmittal and were included in the most recent report include:

SB 145 – Property Tax Relief from State Lodging and Facilities Use Tax (Support)
SB 511 – Revise Government Entity Limitations on Property Tax (Oppose)
SB 517 – Establish Graduated Fee on Short Term Rentals with Money Going to Housing (Support)
SB 519 – Revise Laws Related to Maximum Mill Levies (Oppose)
HB 407 – Provide for Affordable Housing Tax Abatements (Support)
HB 430 – Establish a Rent Local Program Funded with Tax on Short-term Rentals (Support)
HB 865 – Provide for Local Government Expenditure Limitation and Penalties (Opposed)

NEXT CITY COUNCIL MEETING
The next City Council meeting is scheduled for Monday, May 1st, in the City Council Chambers with remote participation available to the public. A special session will be held for committee interviews.

Respectfully submitted,

Dana M. Smith, CPA
City Manager
GROWTH & MOMENTUM IN WHITEFISH

Dana Smith,
Whitefish City Manager
April 12, 2023
RESIDENTIAL DEVELOPMENT

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COMMERCIAL DEVELOPMENT

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2022 DEVELOPMENT

Wright's Furniture

Stockman Bank

Mixed-Use Building in Railway District

Eagle Lake Condos

Addition to the Whitefish Golf Club
## Other Notable Areas of Growth

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<td>Land Use Permits</td>
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<td>Subdivisions</td>
<td>41 new lots</td>
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**Annexation**
- 118 acres in 2022, 2 acres in 2021

**Land Use Permits**
- 163 permits in 2022, 164 acres in 2021

**Subdivisions**
- 41 new lots in 2022, 14 new lots in 2021

**Snowy Mountain Subdivision**
- Approved 2022
- Annexed 2022
TOURISM & RESORT TAX

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2023 Outlook

- New Development Projects

- Affordable Workforce Housing Initiatives
  - In the 2016 Housing Needs Assessment we needed 980 new residential units by 2020 with 62% affordable to serve local residents. A total of 1,069 units were built, but only 7% were affordable.
  - The 2022 Housing Needs Assessment identifies 1,310 units needed by 2030 with 74% affordably priced.

- Growth Policy Update – Vision Whitefish 2045

- 2023 Montana Legislative Session
April 11, 2023

Montana House of Representatives
PO BOX 200400
Helena, MT 59620-0400

RE: Senate Bill No. 268 (SB 268)

Dear Honorable Montana Representatives:

The City of Whitefish strongly opposes SB 268 scheduled for second reading on the House Floor on April 12th, which would allow by right primary residents to operate Short Term Rentals (STRs) on all or part of their property, including an accessory dwelling unit (ADU), and/or a single residence on a property adjacent to the owner’s primary residence. SB 268, as amended, would also exempt and grandfather existing illegally operating STRs in Whitefish.

To provide context for our position, Flathead County has the most STRs in the state, and Whitefish, including the immediately surrounding areas, has the highest density of STRs in the county. The City has been reeling from unprecedented growth and visitation demand, a significant contributor of which has been the rapid growth in the STR business model in our community. One can see from the attached chart that STRs have already surpassed traditional lodging (hotels) in the number of visitor beds. It is no exaggeration to say that just about anything here that can be rented as an STR here will be, as the economic forces behind the growth of this new business model are extremely strong.

In Whitefish, we regulate this growth in STRs by having “resort” zoning districts which allow STRs and “residential” zoning districts which do not. Approximately 20% of residentially zoned land in Whitefish allows STRs. Whitefish is fortunate to have established these zoning districts in the 80s, before the advent of websites such as VRBO/AirBnB. We strongly oppose this legislation for two reasons: this bill seeks to take us backwards in our shared desire for more affordable housing options and proposes to upend decades of established property rights and market dynamics for STRs.

Uncontrolled STR growth comes with significant negative impacts to the community and neighborhoods. While there are numerous deleterious effects to neighbors and neighborhoods from STRs, we focus our opposition to these proposed bills on one extremely important issue to us all: housing affordability. Enormous energy has been expended at the state and local level to address the crisis of housing affordability.

Whitefish recently adopted some of the most liberal ADU ordinances in the state, intending to encourage the construction of more ADUs in our community. In fact, SB 528, also sponsored by
Senator Hertz, mimics much of our ordinance with a few exceptions. The reasoning for this is simple: ADUs, being smaller and with a reduced land footprint, offer a lower cost housing option that is desperately needed. However, if ADUs are allowed to be operated as STRs in all residential neighborhoods, we will lose an important source of affordable housing because few people will forgo making hundreds of dollars a night to rent the ADU on a long-term basis. We will have fewer housing options for our local community and workforce, which is exactly the opposite of the result we need. Further, wealthy out of state buyers are often seeking exactly this type of STR flexibility, which brings in a new class of home buyer to compete with our local citizens for the same real estate. The result is higher home prices for everyone and destruction of our communities. It is the wrong direction.

There is nothing inherently wrong with STRs. However, there must be balance to this business model and where they are allowed to be located. We can all agree it is unsuitable to build a hotel or a gravel pit in the middle of a neighborhood, why would STRs be any different? Should a citizen wish to rent their property for all or part of the year as a STR, there are multiple zoning districts in Whitefish where they can purchase a house and do so. But we must allow for part of the community to be actual neighborhoods, with actual neighbors.

This is not just a “Whitefish problem.” Whitefish may have excessively high demand for STRs, but as prices continue to rise, we have seen our neighboring communities starting to have some of the same growth pressures from this type of real estate use and development. If your community hasn’t experienced this yet, once your town gets “discovered”, you will.

Make no mistake about it, what is proposed in its current form can have catastrophic impacts to certain communities in Montana that cannot be easily undone. This issue is a very poor choice for statewide legislation, given the significant differences in existing STR zoning and how communities would be affected by it. It should be left to the local communities and elected officials to determine how to best manage their own growth. We call on the legislature to do the right thing and vote down SB 268.

Sincerely,

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

/S/ Andy Feury
Andy Feury, City Councilor

/S/ Steve Qunell
Steve Qunell, City Councilor

/S/ Giuseppe Caltabiano
Giuseppe Caltabiano, City Councilor

/S/ Francis J. Sweeney
Francis J. Sweeney, City Councilor

/S/ Ben Davis
Ben Davis, City Councilor

/S/ Rebecca Norton
Rebecca Norton, City Councilor
2022 LODGING OCCUPANCY: TRADITIONAL + SHORT TERM RENTAL

Whitefish Lodging vs STR Rooms 2019/2022

- Lodging
- STR - City
- STR - 59937

2019:
- Lodging: 1217
- STR - City: 711
- STR - 59937: 2111

2022:
- Lodging: 1217
- STR - City: 1205
- STR - 59937: 3299

Change:
- STR - City: +69%
- STR - 59937: +56%
April 12, 2023

Honorable Members of the House Local Government Committee
Montana House of Representatives
PO BOX 200400
Helena, MT 59620-0400

RE: Senate Bill No. 528 (SB 528)

Dear Chairman Brewster, Senator Hertz, and Members of the Committee:

The City of Whitefish opposes SB 528 scheduled for a hearing on April 13th, which would revise zoning laws related to accessory dwelling units (ADUs).

SB 528 is another attempt at addressing the housing crisis in Montana and we agree that ADUs are a great way to provide more housing because they are smaller units that generally rent at a lower cost that is affordable to the workforce. However, the City does not support this one-size-fits-all top-down approach by the State.

Whitefish recently adopted one of the most liberal ADU ordinances in the state. For example, there is no owner occupancy requirement so both units may be rented long-term. ADUs are also a permitted use in all residential zoning districts to accompany single family homes and no longer require any type of conditional use permit. A rent local program (12-month lease to local resident for five years) was also adopted that allows for increased square footage, no additional off-street parking requirements, and the reimbursement of permit and impact fees. The rent local program was developed to ensure affordability and encourage more units to be developed for our workforce.

SB 528 would allow ADUs to be built to the lesser of 1,000 square feet or the gross floor area of the single-family dwelling. This means an ADU would only have to be one square foot less in size, which would clearly make it not “accessory” to the single-family residence. It would essentially be two single family homes. Many historic homes in Whitefish are around 1,000 square feet, or less, which is why the City has a standard of 600 square feet, unless the property owner participates in the rent local program allowing the square footage to increase to 800 square feet.

Also concerning is the prohibition on height limits for accessory buildings. Whitefish currently limits ADUs to 26 feet in height in order to limit the “watchtower” effect of a three story ADU towering over a neighbor’s backyard and impacting their privacy. The bill, as drafted, would allow ADUs to be built up to 35 feet in height in Whitefish.
Decisions such as this should be left up to the local communities and elected officials to best manage their own growth and affordable housing needs of their workforce. What is needed in Whitefish is not that same as what is needed in Helena, Billings, or Malta. We ask that you vote NO for SB 528.

Sincerely,

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

/S/ Andy Feury
Andy Feury, City Councilor

/S/ Steve Qunell
Steve Qunell, City Councilor

/S/ Giuseppe Caltabiano
Giuseppe Caltabiano, City Councilor

/S/ Francis J. Sweeney
Francis J. Sweeney, City Councilor

/S/ Ben Davis
Ben Davis, City Councilor

/S/ Rebecca Norton
Rebecca Norton, City Councilor
The Honorable Matthew M. Rosendale, Sr.
1023 Longworth House Office Building
Washington, DC, 20515-0001

Senator John Tester
311 Hart Senate Office Building
Washington, DC, 20510-0001

The Honorable Ryan K. Zinke
512 Cannon House Office Building
Washington, DC, 20515-2600

Senator Steve Daines
320 Hart Senate Office Building
Washington, DC, 20510-0001

Dear Representative Rosendale, Representative Zinke, Senator Daines, and Senator Tester:

Since 1904, the railroad has been an integral part of the City of Whitefish. Burlington Northern Santa Fe’s tracks bisect our town and exist in close proximity to neighborhoods, City infrastructure, Whitefish River, and Whitefish Lake. The 1989 BNSF derailment led to 20,000 to 25,000 gallons of diesel fuel contaminating Whitefish Lake and the Governor subsequently declaring a state of emergency. It is for these reasons among others that the City urges action by Congress to improve rail safety.

The unfortunate derailment and environmental contamination in East Palestine, Ohio is not unprecedented. The Bureau of Transportation Statistics records an average of 1,704 train derailments per year from 1990 to 2021. Montana is not immune. In April of this year, a 20-car train derailment occurred along Highway 135, resulting in four cars being partially submerged in the Clark Fork River. While the numbers alone are a cause of grave concern, the severity of the derailing in Ohio requires proactive reflection on rail safety actions that Congress can take now.

The City is encouraged by the introduction of the bipartisan Railway Safety Act of 2023 and urges you to support it as well as any other measures that will keep our residents, visitors, first responders, infrastructure, and environment safe.

Sincerely,

John M. Muhlfeld, Mayor

Andy Feury, City Councilor

Steve Qunell, City Councilor

Giuseppe Calatabiano, City Councilor

Francis J. Sweeney, City Councilor

Ben Davis, City Councilor

Rebecca Norton, City Councilor
The following pages were handed out at the City Council meeting the night of the meeting. They are included here as an addendum to the packet.
Dear Council Members,

Dozens of the “Avenue” neighbors are talking about the following issues. Would you kindly address:

1. Street sweeper schedule appears to be prior to leaf pickup which should be the reverse.
2. Leaf pickup is not on a specified schedule, thus residents are raking up piles multiple times since the pickup often does not occur for a week and the piles are blown about. Many of us have called the department inquiring about a schedule and the answer has been for some time “we are working on it”.
3. Now that the snow and ice has abated, neighbors talked ad nauseam about the lack of snow removal in the streets and alleys for 4 months. There were many occasions we were unable to get out of our alley and streets because the heavy snow was over 12” deep. On one occasion, I stopped by City Hall to offer this feedback and the director stated “my guys told me those alleys were done”. Seems a more prudent way would be to regularly be in a city vehicle to inspect the street(s) conditions?
4. Why are East Second Street Sidewalk not being plowed? This is a major access for pedestrians accessing services downtown & for school children walking to and from school. It was impossible to walk from Spokane up to HighPoint for 3 months because of the ice buildup; we were walking in the street.
5. Why is the sidewalk clearing ordinance not being enforced? Since 30% of the homes are non-owner occupied, either the landlord or the tenant is supposed to be keeping their sidewalks cleared but there is not enforcement. We hired a code enforcement officer over a year ago.

Thank you for your attention!
To: The Whitefish City Planning Board

From: Mayre Flowers, Citizens for a Better Flathead

RE: CITY OF WHITEFISH/WHITEFISH JUNCTION LLC, ANNEXATION ZONE CHANGE, WZC 23-02

Citizens for a Better Flathead objects not only to numerous proposed findings for this zone change but for the very deceptive way the zone is being proposed, as a result of an unacceptable violation of the clear public duty of the Whitefish zoning administrator.

- We believe that it was both the WF city council’s intent and understanding given the information provided them by the planning director during their consideration of the WB-T zoning, and that the public shared the council’s understanding, that the property included in the zone change before you this evening was included in their recent approval of the WB-T zoning which was approved by the council and we understand becomes effective March 21, 2023.

- At no time during the adoption of the WB-T zoning did the WF zoning Administrator bring to the council’s or the public’s attention that the property before you would not be part of that WB-T zone, in clear violation of his public duty as zoning administrator. The public and the council were clearly misled by the unacceptable deceptive silence of the Whitefish Zoning Administrative despite the fact that our public comments included preapplication maps of these developers proposed commercial development plans. Had the zoning administrator been transparent about his understanding that this property was not in the proposed WB-T zone the council would have been informed and able to move to include this property in the WB-T Zone.

- For the zoning administrator to only disclose that this property was not in the WB-T when this property appeared on the consent agenda for annexation is outrageous and unacceptable. At this same meeting the zoning administrator revealed to the council for the first time that there was a discrepancy between the WB-T text and map in the corridor plan that he ruled meant the city had to now move forward with WB-2 zoning for this property before you tonight.

- We ask that the requested zone change before you tonight be approved only if it is made be consistent with and recommended for approval by the city council as WB-T zoning.
Additionally, we request that an independent party be retained to investigate the actions of the WF zoning administrator and the timeline of his meetings with the applicants and his emails, notes, and all other evidence to establish if the WF planning director and zoning administrator violated his professional duty in not fully informing the public and the council that these parcels were not covered by the adoption of the WB-T zoning. Additionally, we would ask that this investigation include a timeline and other evidence that explains why despite months and months of time and despite the council's urging that they be brought a new annexation policy, that this new annexation policy was also delayed until after the property before you tonight was, with inadequate notice, not brought to the council prior to the annexation of this property under the old annexation policy.

Finally, the zone request before you is seriously lacking in information on transportation impacts under Findings 4, 6, and 7 and thus they should not be supported as presented. Additionally, the potential impacts of a future PUD overlay to this project should be considered and factored into any findings of fact.
To: Whitefish City Council  
RE: Re: Zoning Text Amendment — Zoning Upon Annexation: WZTA 23-02  
April 17, 2023

As we have stated to this council in prior workshops on this zoning amendment, but our comments were not considered in the staff report before tonight, we strongly urge the council to rely on the provisions of MCA 7-2-4601 specific to annexation by petition in amending your annexation standards and not MCA 76-2-303, which would put into the city’s zoning regulations unnecessary conditions to what zoning you may apply, or be forced to comply through litigation by an unhappy property owner, when annexing property into the city.

The City’s almost exclusive means of annexation is by petition of property owners. MCA 7-2-4601 permits you to approve or deny annexation requested by petition simply on the merit of the proposal—“(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.”

We would urge you to amend the proposed zoning text as follows to match the requirements of MCA 7-2-4601.

E. Zoning Upon Annexation:  
1. Timing. A city zoning district classification may be assigned to property petitioning to be annexed into the city at the time of annexation and the city may approve or disapprove a petition submitted under the provisions of subsection 7-2-4601 (3)(a) and (b) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation, if the zoning district classification:  
   a. Authorizes land uses comparable to the land uses authorized by county zoning;  
   b. Authorizes land uses that are consistent with land uses approved by the board of county commissioners or board of adjustment; or  
   c. Is consistent with the land use and zoning recommendations adopted in the growth policy and any amendment thereto.

Additionally, we suggest that you amend the text of staff report and findings before you this evening to:

Remove or correct this false statement, “Under Montana state law, property annexing from a county into a city must change county zoning to city zoning that is either the closest equivalent to the previous county zoning or is consistent with the land uses outlined in an adopted Growth Policy.”
Remove reference to the following as the only or controlling option as to what the city may consider in revising its zoning code on annexation, which is false:

City zoning upon annexation is allowed under State law under MCA 76-2-303: 76-2-303 (3)(a). For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:
(i) Authorize land uses comparable to the land uses authorized by county zoning;
(ii) Authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2: or
(iii) Are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

1 7-2-4601. Annexation by petition -- when election required. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 1/3% of the registered electors of the area proposed to be annexed, shall, except as provided in subsection (3), submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of real property representing 50% or more of the total area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have
an opportunity to be heard has been held. At least 15 days' notice of the time and place of the
hearing must be published in an official paper or a paper of general circulation in the
municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in
conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal
zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county
commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant
to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation
regarding zoning notice and public hearing for a proposed annexation.

History: En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704;
amd. Sec. 1, Ch. 217, L. 1997; amd. Sec. 1, Ch. 355, L. 1999; Sec. 34, Ch. 582, L. 1999; amd.
Sec. 5, Ch. 87, L. 2003; amd. Sec. 40, Ch. 19, L. 2011.