

WHITEFISH CITY COUNCIL

April 20, 2020

6:30 P.M.

1) CALL TO ORDER

The City Council meeting was held remotely through WebEx to follow Governor Steve Bullocks Stay – at – Home Directive to help slow the spread of COVID-19. Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Hennen, Hartman, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Finance Director Dahlman, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, and Planner II Bailey Minnich. Approximately 19 people were in attendance.

Mayor Muhlfeld honored Herb Peschel who passed away this week. Herb was a long-standing community member and volunteer on numerous city boards. He served on the Board of Adjustments from 1998 to current, and on the Whitefish Lake and Lakeshore Protection Committee from 2007 to current. On behalf of the community and the City Council Mayor Muhlfeld extended condolences to the Peschel family and wish Herb well in his next journey.

Mayor Muhlfeld announced he is limiting public comment to three minutes per comment with the exception of the applicant who is allowed up to thirty minutes. City Council and city staff have received numerous requests asking for Dr. Bukacek to be relieved of her position on the Flathead City-County Health Department Board. All emails received after the packet deadline and not included under agenda item 9a, have been forwarded to the City Council. These letters will not be read aloud and are a part of the public record. The Council has been made aware of each and every one of those letters. While the city does not have control over who is appointed to the Flathead City-County Health Board, Council will be considering at the end of the meeting writing a letter to the commissioners.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Councilor Norton to lead the audience in the Pledge of Allegiance.

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

City Clerk read aloud a letter emailed from Citizens for a Better Flathead requesting corrections to the April 6th meeting. The letter is appended to the packet and the April 20, 2020 meeting minutes.

Rabbi Francine Roston provided an email that is appended to the packet and the April 20, 2020 minutes. She read her letter aloud regarding Dr. Bukacek.

Richard Hildner stated he appreciates Mayor Muhlfeld and City Council's steadfast resolution to remain steadfast in protecting our community against COVID-19. He thanked the Council.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Qunell reported the Planning Board met on April 16th and recommended approval for three items that will be coming to the Council in May.

- 5) CONSENT AGENDA
- a) [Minutes](#) from April 5, 2020 Special Session (p.24)
 - b) [Minutes](#) from April 6, 2020 Regular Session (p.28)

Councilor Norton had corrections to the April 5, 2020 minutes; add ‘[scheduled](#)’ under 3a title, add [are](#) after purposes, and ‘[Schott](#)’ to Lindsay under public comment for item 3a.

Councilor Norton made a motion, seconded by Councilor Hartman to approve the Consent Agenda as amended. The motion passed unanimously.

- 6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
- a) [CONTINUED](#)- Consideration of a request from Montana Commerce, LLC for a Conditional Use Permit to construct a gas station and convenience store located at 6045 Highway 93 S, zoned WB-2 (Secondary Business District) (WCUP 20-01) **Public Hearing remains open** [Letters between April 6th and April 15th; Letters received between April 15th and April 20th](#)(p.46)

Planner II Minnich commented on the written comments that were received. Staff received 66 comments after the packet was published. She spoke on some of the highlights of those comments. There is currently no moratorium on development within the highway corridor; this property is privately owned; the applicant does not have to show an economic need within the community for the Conditional Use Permit (CUP); the basis of whether we need it or not is not a criteria under the CUP guidelines; landscaping and tree density credits are required under the zoning regulations. This plan will be required to comply with all conditions and requirements at the time of building permit. This is not a zone change application. The property has been zoned WB-2 or of similar commercial zoning since the 1980’s. Commercial projects are required to pave all parking and areas used for driveway access. The private street was built to city standards; the city’s current water system is capable of supporting the internal fire suppression system.

Discussion followed between Council and Staff; there would be nothing to the Applicants adversity if they extended later after the pandemic. Clarification from the Applicant regarding surface runoff and the stormwater retention. Comments were received of concerns of excessive signage; this property is in the highway district and is allowed a free-standing sign that cannot exceed ten feet in height maximum. Properties with greater than 450 front footage, are allowed three free standing signs. Single tenant buildings are allowed a maximum of three building signs. Concerns this is against zoning regulations due to there cannot be retail over 5,000 square feet; a convenience store would be the square footage of what is being sold as convenience store items within the footprints, office space or other uses are not counted. This is not a violation of the zoning code.

Mayor Muhlfeld reopened the Public Hearing.

Jason Egeline, CWG Architects and Engineering, 650 Power Street, Helena, Montana, stated both Town Pump and the whole design team’s goal is to work with the city. This project has gone to Architectural Review Board where they completely redesigned the overall form, the massing, and materials of the project to meet the goals of maintaining the unique small town feel of Whitefish. The project contains a dedicated pedestrian entrance, landscaping which helps to create a more forested site. Town Pump does wish to build within the city limits. This approach is in line with the city’s desire to preserve open space within the county. Developing within the city limits also creates a stronger business to City partnership and tends to improve overall city taxes. He thanked the council again for their time.

Joe Murphy, Big Sky Civil and Environmental, 1324 5th Avenue Southwest, Great Falls, Montana, addressed some of the questions that came up. Today's underground tank systems are equipped with automatic line leak detection and automatic tank leak detention measures. If a leak were to occur in the underground product lines, it would send a detection immediately to the people who are keeping track of the records for that system. Around the fueling island area slabs, there is a valley gutter to catch all of the runoff. All the product goes to an oil-water separator which removes the petroleum hydrocarbons from the stream before it enters the on-site storm drainage. All of the city's requirements will be adhered to in terms of storm drain runoff, storm drain detention, and storm drain treatment and discharge. Montana Department of Transportation (MDT) is the governing authority for access to and from all Montana highway systems as part of the planning phase of this project and responded that a traffic impact study was already completed for this property several years ago. The original development would have generated much higher traffic volumes than the current proposal. The applicant retained the services with WGM in Missoula, to review and update the traffic study based on current and projected traffic volumes. The new report concluded, the intersection analysis predicts acceptable traffic operations at both site access points with level of service C or better for all vehicles, and no interruption of traffic on US Hwy 93 and Montana 40 approaches. He spoke with MDT about this intersection, and the proposed plan for a future roundabout. MDT reported there are no projects currently planned or scheduled. The applicant asked WGM to address the possibility of a roundabout and the exhibit provided in the presentation shows that the extent of the right-of-way required is quite insignificant. His professional opinion this development will not jeopardize construction of a future roundabout in MDT right of way. He thanked the Council for the opportunity to speak.

Dan Sampson, Construction and Development Manager for Town Pump, 1832 Whitman Avenue, Butte, Montana, stated while some may consider Town Pump a franchise, they are still Montana born and breed. They hold typical Montana values and as such they have taken great care in planning and design on this project to ensure that they produce a project that both the city of Whitefish and surrounding community can be proud of. Some of the concerns brought up during this process are, concerns about the Traffic Impact Study (TIS) that was completed in 2005; MDT deemed this traffic impact study adequate and did not require an additional analysis. Concerns were also raised about environmental protections; they employ state of the art protections that exceed state DEQ and federal EPA requirements. Concerns were also raised that MDT may be planning a future roundabout at the intersection of Hwy 40 and Hwy 93; while it is not required for the applicant, they hired WGM to research this possibility. The results of these efforts prove that this development will neither preclude nor adversely affect the future course of action chosen by MDT. There were concerns they would seek development of a casino at this location; the Whitefish code prevents this from being a viable concern. Concerns were raised about the existing mature rural trees; they are taking great care and time in this design to salvage all of the trees that can be salvaged while still meeting site design requirements. They have heard concerns that the implementation of this site would create issues due to large semi traffic idling on site for long periods of time or overnight; this will not be a truck stop. There will be no large semi specific parking or services at this location. This location is designed to serve the everyday traveler, tourist and local population. Concerns were raised that their claim to being a good member of the community and state are potentially false; not only do they strive to give back to the state and communities in which we reside by being good stewards they also give back to their charitable foundations. In the last five years they have donated nearly half a million dollars to the upper Flathead Valley consisting of Columbia Falls, Kalispell and Whitefish; \$51,000 of that have been direct donations within the City of Whitefish. They have presented technical data that proves that they have addressed all concerns and have complied with all code requirements.

Discussion followed between the Applicant and the Council. The fuel delivery trucks use both primary access to get in and out of the site. The applicant has never heard the requirement of monitoring wells being within 1,000 feet of the site.

City Clerk Howke reported as of 7:18 pm. tonight, she has received 67 written public comments in opposition of the project. All of the comments have been provided to the Council for their consideration. The comments that are not read in full will be appended to the packet on the website Tuesday afternoon. (The written comments can be viewed [Letters between April 6th and April 15th: Letters received between April 15th and April 20th](#)) City Clerk read into the record a letter from Stacy Almos, who opposed to the project for reasons it is unsafe, unnecessary, and an unsightly welcome to Whitefish. Mayor Muhlfeld asked attorney Jacobs if it is required for all 67 comments to be read aloud. Attorney Jacobs stated it is not necessary for City Clerk Howke to read all 67 comments since they were provided to the Council prior to the meeting and they will be appended to the packet. The public can provide verbal comments during tonight's Public Hearing.

Mayor Muhlfeld asked Moderator Chris Hunt to open the Public Hearing to those who were attending the meeting via WebEx.

Joan Vetter Ehrenberg, 744 Hidden Valley Drive, is concerned with access to the site; the site plan looks like every tree is gone on the interior of the property; and concerned about the sloping of the site and contamination running downhill. She is grateful the applicant is adding and respecting pedestrians and bike path routes. She would recommend the Council to urge additional protection of the old growth existing trees on the property and consider a park and ride or a stop for the shuttles.

Justin Holley, 2448 Big Mountain Road, stated there is an opportunity to make that spot something special for our town. It would be unfortunate to see another gas station. There is not a need and there is not an approval that has to happen based on need. He is concerned of the total number of signs and the signs lighting up the sky. He asks the Council to consider the message that is conveyed when people are driving through town by the first thing they see.

Leo Kean, 514 Pine Place, is concerned about the trees. Town Pump does not do anything for the betterment of Whitefish. It decreases the charm of our town; it is not a welcoming entrance. This is the wrong way for Whitefish develop and he would urge the Council to deny this CUP. It is not needed in Whitefish and it does not improve our town.

Erin Flaherty, 1060 Creekwood Drive, drives this everyday coming to and from the hospital. It is a beautiful way to enter town. A lot of the comments made about the excessive signage and the lack of trees need to be taken into consideration for any business along this corridor. She asked how the signage goes along with our dark sky's initiative. She would like to see a new transportation study conducted by the city.

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

Councilor Norton made a motion, seconded by Councilor Hennen to deny WCUP 20-01. Councilor Norton has difficulty with three of the Findings of Fact. One is the site suitability; this is the entrance to our city. She has concerns with environmental constraints, and the traffic safety and the egress through the medical facility. She also stated not following our own planning in terms of letting the Highway 93 South Corridor Plan be completed, and getting the transportation plan

completed, would be shooting ourselves in the foot. She is not voting for this project. Her job is to represent the will of the people, and she has not seen hardly any comments in favor of this project.

Discussion followed between Councilors. This property has been zoned WB-2 or some form of that for the past 40 years. A conditional use permit is by grace and does not have to be approved. If the citizens of Whitefish do not think this is right for this corner and Council denies the CUP, the applicant has another option to come through with another project. Council operates within parameters and findings of fact, so it is a challenging vote. The public comment has been substantial of this decision. That corner is going to be chaotic and the traffic is going to be a nightmare. Whether or not we need this gas station is pretty irrelevant. Councilors do have to be guardians of the public interest, there are two sides to consider. One side is what is the project coming in now, is this something that the public agrees with or not if they do not it is Councils job to determine whether they can legally deny the application. The list of permitted uses is far worse than what is being proposed. The project proposed for the TIS completed in 2005 would have generated more traffic than a gas station would. Runoff of petroleum ~~are~~is far more protected now than ever. The signage is going to be protected by our codes.

Discussion followed between Council and staff. It is staff's professional opinion it is not necessary to dedicate the private road to the City as a public road and confirms the traffic analysis performed by WGM was with current data and supports the analysis.

The motion to deny WCUP 20-01 failed on a 4-3 vote with Mayor Muhlfeld breaking the tie. Councilors Norton, Feury and Hennen voting in favor of the motion, Councilors Qunell, Sweeney, Hartman and Mayor Muhlfeld voting in opposition of the motion.

Councilor Sweeney made a motion, seconded by Councilor Hartman to approve WCUP 20-01. Councilor Sweeney stated also is not necessarily enthralled by the idea of having a gas station on that corner and agrees with a number of public comment. Town Pump has done a pretty good job working with the Architectural Review Committee and has come up with some solutions to some of the concerns. The private street does meet city standards; the Growth Policy is not a controlling or regulatory document, the zoning is. This property has been zoned WB-2 or an equivalent for over 40 years. Water pressure is more than sufficient; the pandemic is not a reason that we cannot act on this matter. It is not his highest and best use, but it is privately owned. The other opportunity the property could be used for without a CUP is a much worse problem for our entrance to Whitefish.

Councilor Sweeney made a motion, seconded by Councilor Qunell to amend Condition #12, the second story mezzanine must be used only as corporate office space or storage. (Later in the meeting it was brought to Councilor Sweeney's attention, this motion would be adding Condition #13 rather than amend Condition #12, Councilor Qunell agreed. The motion passed unanimously by roll call. (Conditions number correctly)

Councilor Sweeney made a motion, seconded by Councilor Hartman to add Condition #13 (#14); in order to preserve the Montana Department of Transportation's right to acquire additional right-of-way, to protect existing mature trees (particularly on the west portion of the property), and to allow more extensive space for screening and/or greenbelts, the building must be relocated from the west property line to protect and ensure the existing mature trees on the site be protected and preserved from damage during construction. The motion passed unanimously by roll call.

Councilor Sweeney made a motion seconded by Councilor Hartman to add Condition #14 (#15); the existing mature trees located along Highway 93 South and Highway 40 must be preserved and protected to the extent they are healthy and do not present a danger, and to the extent that they are or become damaged or diseased for any reason at any point they must and shall be replaced with a large-caliber tree and in as possible close location to the same spot as the tree that was removed. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Qunell to add Condition #15 (#16); the bicycle/pedestrian path from the northern boundary of the property to Highway 40 must be constructed to City standards and ten feet wide unless the Montana Department of Transportation requires a narrower path. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Hartman to add Condition #16 (#17); a casino, as defined by the Whitefish City Code, may not be and shall never be operated on any portion of the property. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Hartman to add Condition #17 (#18); not less than five rapid electrical vehicle charging stations (super charging stations) must be installed on the property, built upon build-out. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Qunell to add Condition #18 (#19); all refuse containers except those in-service islands must be converted to animal resistant containers at the time the City's garbage contractor is able to service such containers. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Qunell to add Condition #19 (#20); containers for recycling cardboard and other currently recyclable materials produced on-site must be provided. The motion passed unanimously by roll call.

Councilor Sweeney made a motion, seconded by Councilor Qunell to add Condition #20 (#21); there shall be no overnighting of over-the-road trucks or trailers on the site. The motion passed unanimously by roll call.

Discussion followed between Council and staff regarding signage on the property. **Councilor Hartman made a motion seconded by Councilor Qunell to add Condition #22, neon advertising or open signs are prohibited from being visible from the outside. The motion passed unanimously by roll call.**

Councilor Hartman stated one of the biggest dilemmas in voting in favor for this development is the reality there are permitted uses that would be much less appealing. Councilor Qunell said sometimes Council has to make tough choices, and this is one of those. Councilor Feury supported Councilor Norton's motion, he could argue this either way. A public sentiment is obviously overwhelmingly opposed to it, it is not legal grounds to deny a condition use permit. The arguments for are considerably stronger than the arguments against. He personally does not want to see a Town Pump there. He will support motion reluctantly. Councilor Norton would like the Council to remember the Council represents this town and the people that live here. Council is capable of saying no with the assumption that maybe someone will come back with even a better project. Mayor Muhlfeld stated he has sat up there for fourteen years, and he has always tried his very best to best represent our citizens, our citizen's desires. Council always tries to cast a vote that is in the best interest of the community, but also keeps our city out of litigation. If Council were to deny this project, this evening, it would be located within 150 feet to the vacant property to the south of Highway 40 with zero

influence by the Whitefish City government. Council conditioned this application with ten strong conditions that make it a much better project and protects the interest of our community. This is a hard decision.

The original motion to approve with 21 Conditions of Approval passed on 4-2 vote with Councilors Hennen and Norton voting in opposition.

~~b) Consideration of a request from Michael Lancaster, on behalf of Triple S Land Group, LLC, for a Conditional Use Permit to construct a four bedroom home to be leased to Chrysalis as a state licensed Type 1 Community Residential Facility for school age girls located at 760 Salmon Run, zoned WR-2 (Two-family Residential District) (WCUP 20-03) (p.) Applicant withdrew the application March 11, 2020.~~

Mayor Muhlfeld called for a recess at 8:47 and reconvened at 8:52.

7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) Consideration to authorize to Bid the Water Plant Expansion Project and Purchase Sole Source Filters (p.196)
 - i) Resolution No. 20-13; A Resolution adopting a portion of state law allowing the City of Whitefish to purchase items under a "sole source" method, solely for the acquisition of a contact absorption clarifier treatment process for the Water Treatment Plant

Public Works Director Craig Workman gave his staff report that is provided in the packet on the website.

Councilor Qunell ~~made~~ emaded a motion, seconded by Councilor Hennen to authorize staff to BID for the Water Plant Expansion Project. The motion passed unanimously by roll call.

Councilor Qunell made a motion, seconded by Councilor Hennen to approve Resolution No. 20-13; A Resolution adopting a portion of the state law allowing the City of Whitefish to purchase items under a "sole source" method, solely for the acquisition of a contact absorption clarifier treatment process for the Water Treatment Plan. The motion passed unanimously by roll call.

8) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p.213)

Councilor Norton asked and City Manager Smith reported staff is looking for feedback from the Council and their thoughts for opening the City Beach Boat Launch and approval to move the Preliminary Budget due date to May 18th. After some discussion, Council agrees to defer opening the boat launch another two weeks and extend the Preliminary Budget to May 18th. Manager Smith also reported to the Council the One-Time Partial Rent Relief Program put together by the Whitefish Housing Authority, Whitefish Chamber of Commerce and the Whitefish Community Foundation. She asked if Council is interested in donating to the program. After some discussion, no direction was given to Manager Smith.

- b) Other items arising between April 15th through April 20th

Manager Smith updated the Council staff has submitted a request for public assistance from FEMA. The city has set up an incident command team and has taken this as an opportunity for training. She

does anticipate tomorrow or Wednesday to hear from the Governor about a phased reopening plan for Montana. City Hall will continue to take protective measures for the front office. Safety of the public and our staff is her top interest. Staff ~~if~~is monitoring CBG for extra funding through the CaresAct.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) [Letters](#) (multiple) regarding Dr. Bukacek position on the Flathead City-County Health Board - [Letters received between April 15th and April 20th\(p.222\)](#)

City Manager Smith reported in January, prior to the pandemic, she met with Kalispell City Manager Russell to be party to the interlocal agreement that the City of Kalispell has with the Flathead City-County Health Department. Whitefish is a second-class city, so we are required to have a health board. Currently, Whitefish has no authority managing or placing members on that board. We hope to in the future. The Council can recommend to the County Commissioners and the City of Kalispell to remove that member, but at this point we cannot take any action.

Councilor Sweeney feels it is important Whitefish become a member in the interlocal agreement on the health board. He would be in favor of a letter to the Commissioners and the City-County Health Department that Dr. Bukacek be removed and he would be happy to work with Attorney Jacobs on drafting that letter. The Council had unanimous support for the letter.

Council Comments

Councilor Sweeney stated there will be no credit given and probably no credit deserved to the vote that was taken tonight. He appreciates Town Pumps willingness to work with the city at the same time. He appreciates Councilor Norton's position and as stewards of the city and of the constituents one of Councils obligations is to ensure that the laws are applied equally to all and do what we can to protect the community. Councilor Norton stated it will take her a while to process what just happened. She has asked the community to use masks and demonstrated the correct way to take off the mask. She has noticed people are not adhering to the six-foot distancing which is the absolute minimum. Doctors, nurses and front-line workers are terrified of this disease. She asks the community to follow the CDC guidelines, the City-County Health Department guidelines, and do your part.

10) ADJOURNMENT

Mayor Muhlfeld adjourned the meeting at 9:30 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk