

WHITEFISH CITY COUNCIL

March 21, 2022

7:10 P.M.

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 (via Webex), Planning and Building Director Taylor, Senior Project Engineer Hilding, Parks and Recreation Director Butts, Sergeant Schuch, Fire Chief Page and Planner I Nymark. Approximately 8 people were in the audience and zero attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Chris Schustrom 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)

Chris Schustrom, 504 Spokane Avenue, provided an update on a partnership between the Heart of Whitefish, the City, and over 70 downtown businesses that funded the first sidewalk pressure washing in November. Businesses on Central Avenue, Railway Street, First Street, Second Street and Third Street between Baker Avenue and Spokane Avenue contributed their share and paid for pressure washing the sidewalks in front of their businesses. They anticipate this will be done twice a year moving forward. He thanked Manager Smith and Director Workman for increasing the number of garbage pickups during the busy season and adding extra cans.

Curren Edland, 1047 Columbia Avenue, submitted the letter that is on the agenda asking for the variance fee to be waived for Hurraw! Mayor Muhlfeld asked him to stick around toward the end of the meeting when that agenda item comes up in case there are questions.

John Harvey, Scout Master of Troop 1936, raises awareness about teen suicide here in the Flathead Valley. Towards that cause, he is challenging Councilor Caltabiano to do 21 push-ups for 21 days, post on Instagram and share others to do the same.

Cate Walker, Northwest Designs Studio, 301 East 2nd Street Suite 1B, represents the two applicants that are on the agenda requesting Lakeshore Variance. She is available to answer questions the Council may have.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Caltabiano reported the Bicycle/Pedestrian Committee received a letter of interest from a high school student to serve on the board.

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 March 7, 2022, Special Session/Regular Session (p.69)

b) Ordinance No. 22-04; An Ordinance amending Zoning Regulations Title 11, Chapter 2, Article A (WA Agricultural District), Article B (WCR Country Residential District), Article C (WSR Suburban Residential District), Article D (WER Estate Residential

District), Article E (WLR One-Family Limited Residential District), Article F (WR-1 One-Family Residential District), Article G (WR-2 Two-Family Residential District), Article H (WR-3 Low-Density Multi-Family Residential District), Article I (WR-4 High-Density Multi-Family Residential District), Article J (WB-1 Limited Business District), Article K (WB-2 Secondary Business District), Article L (WB-3 General Business District); Article M (WB-4 Business Park District), Article N (WRR-1 Low Density Resort Residential District), Article O (WRR-2 Medium Density Resort Residential District), Article P (WRB-1 Limited Resort Residential District); Article Q (WRB-2 General Resort Business District), Article V (WBSD Business Service District), and Article W (WT-3 Neighborhood Mixed Use Transitional District); Chapter 3, Section 9 (Daycare Centers); and Chapter 9, Section 2 (Definitions), of the Whitefish City Code (Second Reading) (WZTA 22-03) (p.77)

- c) [Resolution No. 22-05](#); A Resolution to extend within the boundaries of the City approximately 7.035 acres of land known as Tract 1 of COS No. 19966 in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, for which the owners have petitioned for and consented to annexation (p.84)

RESOLUTION NO. 22-05

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 7.035 acres of land known as Tract 1 of COS No. 19966 in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, for which the owners have petitioned for and consented to annexation.

WHEREAS, Kurt Vickman and Jeff Northrup, as authorized representatives of Pheasant Run, LLC, have filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, amended by the City Council by Resolution No. 18-16 on April 16, 2018, as required by and in conformity with §§ 7-2-4610 and 7-2-4732, MCA, available at the Office of the City Clerk; and

WHEREAS, pursuant to § 7-2-4211(2), MCA, the City shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed; and

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide municipal services to the area proposed for annexation. Further, it is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate boundaries of the City of Whitefish be extended to include the boundaries of the area described in the Petition for Annexation within the limits of the City of Whitefish.

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

Section 1: The corporate boundaries of the City of Whitefish are hereby extended to annex the boundaries of the area herein described in the Petition for Annexation, according to the map or plat

thereof, on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana, legally described as:

TRACT 1 OF CERTIFICATE OF SURVEY NO. 19966, A TRACT OF LAND, SITUATED, LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW1/4SE1/4) OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA.

Including the full width of any public streets or roads, including the rights-of-way, that are adjacent to the said property being annexed.

Section 2: The minutes of the City Council of the City of Whitefish, Montana, incorporate this Resolution.

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the March 21, 2022 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to § 7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 21ST DAY OF MARCH 2022.

S/S John M. Muhlfeld, Mayor

ATTEST:

S/S Michelle Howke, City Clerk

- d) **Resolution No. 22-06**; A Resolution to extend within the boundaries of the City approximately 13.45 acres of land known as 6335 Hwy 93 South in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, for which the owners have petitioned for and consented to annexation (p.95)

RESOLUTION NO. 22-06

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately 13.45 acres of land known 6335 Highway 93 South in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, for which the owners have petitioned for and consented to annexation.

WHEREAS, Tracy Poole, as authorized representative of True North Partners, LLC, has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, amended by the City Council by Resolution No. 18-16 on April 16, 2018, as required by and in conformity with §§ 7-2-4610 and 7-2-4732, MCA, available at the Office of the City Clerk; and

WHEREAS, pursuant to § 7-2-4211(2), MCA, the City shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed; and

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide municipal services to the area proposed for annexation. Further, it is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate boundaries of the City of Whitefish be extended to include the boundaries of the area described in the Petition for Annexation within the limits of the City of Whitefish.

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

Section 1: The corporate boundaries of the City of Whitefish are hereby extended to annex the boundaries of the area herein described in the Petition for Annexation, according to the map or plat thereof, on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana, legally described as:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NE1/4SE1/4) OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

PARCEL 2 OF CERTIFICATE OF SURVEY NO. 13182.

Including the full width of any public streets or roads, including the rights-of-way, that are adjacent to the said property being annexed.

Section 2: The minutes of the City Council of the City of Whitefish, Montana, incorporate this Resolution.

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the March 21, 2022 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to § 7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 21ST DAY OF MARCH 2022.

S/S John M. Muhlfeld, Mayor

ATTEST:

S/S Michelle Howke, City Clerk

- e) **Resolution No. 22-07; A Resolution declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property (p.106)**

Councilor Caltabiano made a motion, seconded by Councilor Sweeney to approve the consent agenda. Councilor Sweeney made a correction to the March 7, 2022, minutes; page 4 under agenda item 7a, Councilor Davis made a motion. **The motion carried.**

- 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. 22-05; An Ordinance amending Zoning Regulations Title 11, Chapter 3, Section 35 (Short-Term Rentals); Chapter 9, Section 2 (Definitions); WB-2, WB-3, WRR-1, and WRR-2 Permitted and Conditional Uses; WRB-1, WRB-2, WBMV and WBMRR Permitted Uses, of the Whitefish City Code (First Reading) (p.109)**

City Attorney Angela Jacobs via Webex presented her staff report that is provided in the packet on the website. There were several drafts to the short-term rental standards that included some midterm rental standards that were presented at the December 4th, and December 20th meeting. The ordinance was pulled off the Consent Agenda on January 3rd and was amended to remove all language pertaining to mid-term rental standards. The vote to adopt the ordinance was a 3-2 vote, but the City Code requires the vote of a majority of the members elected.

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 their consideration.

Councilor Qunell made a motion, seconded by Councilor Sweeney to approve Ordinance No. 22-05; An Ordinance amending Zoning Regulations Title 11, Chapter 3, Section 35. The motion carried.

- 7) **COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR**
- a) **Consideration of request from Steve and Stacie Gorder Trust for a Whitefish Lake and Lakeshore permit for a dock under 60 feet and tree removal and a minor variance for gravel placement over vegetation, located at 1608 West Lakeshore Drive (WLV 22-W06) (p.125)**

Planner I Jessica Nymark presented her staff report that is provided in the packet on the website.

Mayor Muhlfeld asked, and Planner Nymark stated the Lakeshore Committee recommended to only add gravel where it is already predominantly gravel, essentially denying the variance. Councilor Qunell asked Planner Nymark stated a lot of applicants work with the center for native plants to come up with a site plan for what kind of seed mixes and grass mixes would work in the lakeshore protection area.

Councilor Norton addressed Cate Walker, applicants representative. This lawn has encroached due to lack of maintenance from the previous owner into lakeward and is now exceeds the average high water by approximately fourteen feet. The owner is trying to recapture some of that. It has encroached so far to the lake there is high ground water in this area. It is so marshy that the owner cannot maintain it.

Councilor Norton made a motion to approve the variance for the gravel placement as presented. The motion fails for a lack of a second.

Councilor Sweeney made a motion, seconded by Councilor Feury to approve the recommendations of the Lakeshore Protection Committee denying the variance request. Councilor Sweeney stated this is a difficult decision. It is very clear as to what the lakeshore regulations will allow. Councilor Feury stated this does not meet all four criteria for a variance. Councilor Norton states it gives the owners a potential for a better use. The motion carried on a 5-1 vote, Councilor Norton voting in opposition.

- b) **Consideration of a request from Averill Hospitality c/o Michael Freeman for a Whitefish Lake and Lakeshore permit to construct stairs in riprap, beach gravel placement, and dry-**

set, flagstone patio and a variance for removal of a living tree, located at 1380 Wisconsin Avenue (WLV 22-W07) (p.183)

Planner I Jessica Nymark present her staff report that is provided in the packet on the website.

Cate Walker, applicants representative stated the golden willow tree is not a native tree. This is a commercial use designation along the lake, therefore certain aesthetic considerations should be considered. The tree is located adjacent to high use pedestrian areas and tend to drop limbs. The current condition of the tree is structurally sound but there are some risks. Ownership would like to replace the willow tree with three aspen trees at its current location. The replacement of the willow provides a more aesthetically pleasing, less obstructive view of the lake which is important to business while providing a native alternative. The replacement of the tree while the remainder of the lakeshore work is completed would result in less disruption to the lake.

Councilor Caltabiano moved, seconded by Councilor Feury to accept the Findings of Facts and the vote of the lakeshore protection committee and the staff. Councilor Feury stated granting of a variance criteria are pretty strict. We have seen two applications that indicate we have a problem with our regulations. People are trying to do the right thing by getting rid of the non-native species, and non-conforming lawns and we don't have legal tools to do that. We have rules and regulations we need to follow. We obviously need to take a look at our regulations. It goes to show all the pressure we are under as a city and as a staff. We have a lot of outdated sort of tools that we are trying to do the best we can with, but at the end of the day we still need to apply the rules equally and fairly as we possibly can. **The motion carried.**

8) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor and Council? (p.214)

None

- b) **Other items arising between March 16th through March 21st**

None

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Letter from Hurraw! requesting variance fees to be waived (p.217)

Curran Edland stated Hurraw! Balm would like to install solar on site to supplement some electricity. The variance fee is \$2,055 which is a significant amount to stack on top of a not so large structure. Mayor Muhlfeld stated this project is well intended and the applicant and business owners are trying to address some of the goals the city set forth for our businesses in terms of climate action and alternative energy development. **Councilor Caltabiano made a motion, seconded by Councilor Qunell to waive the variance fee as requested. The motion carried.**

- b) Letter from Pattie Johnson regarding the downtown (p.219)

None

Council Comment

Councilor Caltabiano reminded the Council of the 21 push-ups for 21 days challenge for Suicide Prevention Awareness. He also mentioned in quasi-judicial uniforms, we have to apply the rules and regulations. Although every variance is considered uniquely, we are creating a president, even if we are not working towards changing the standards. He would recommend looking at the process and consider it might be time to amend the criteria.

Council continued their discussion regarding the WB-T Business Transitional District conversation during the work session preceding the meeting. After some discussion Council has concerns with wholesale and warehousing; machinery and small equipment sales, rental or repair under conditional uses, amusement parks, the increased volume of traffic turning left onto the highway, and the bulk and scale standard be reduced from 10,000 square feet to 7,500 square feet. Council showed support of residential neighborhoods with ancillary commercial and opted to hold a work session on April 4th to discuss uses the envision as ancillary commercial.

Councilor Sweeney stated variances are unique to one another by law. They are not setting precedent by law. We have identified a couple of things that we need to address, gravel placements and non-native species in the Lakeshore Protection Zone. We need to provide a way for people to do the right thing. He also mentioned Hurraw! Balm is doing what we want, and we might want to think about an incentive through our fee schedules, for somebody to do the right thing.

Councilor Davis stated he thinks the variances have a place. It is hard to craft a policy that gives a correct answer in all situations. He does believe they should all be fair, but he does question the fact that they all come to the Council. He wonders if the lakeshore or board of adjustments should be handling lakeshore variances.

Councilor Norton asked and Officer Schuch stated we have an ordinance for dangerous dogs. Law enforcement will investigate the issue based on criteria. If it meets the criteria for being a dangerous dog, a citation is given. If the dog is convicted and found to be dangerous, the dog and owner would need to attend a class. She asked and Director Taylor stated staff is working with Dr. Mark Lorang to do some calculations specific to Whitefish Lake to update the regulations to include dynamic beaches. Councilor Norton gave support to Ukraine.

Councilor Feury acknowledge the passing of former Mayor Marge Fisher. Marge was the first Mayor he served under 31 years ago, and then went on to go to the House of Representatives and represented Whitefish in Helena. Marge was instrumental with amending the existing resort tax legislation. He sends his best wishes to her daughter Virginia.

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

Mayor Muhlfield adjourned the meeting at 8:30 p.m.

/s/John Muhlfield
Mayor Muhlfield

Attest:

/s/Michelle Howke
Michelle Howke, Whitefish City Clerk