

WHITEFISH CITY COUNCIL
April 17, 2023
SPECIAL SESSION AT 5:30 P.M.

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, and Caltabiano. Councilor Norton was absent. Staff present were City Manager Smith, City Clerk Howke and Planning and Building Director Taylor.

2) Interview -Whitefish Sustainable Tourism Management Plan Standing Committee

City Council interviewed, Stephen Kane (via phone), Mariah Joos, Elizabeth Colley, Mark Piscoli, Nick Polumbus, Ella Kobelt, Heather Cauffman and Brian Schott to serve on the Whitefish Sustainable Tourism Management Plan Standing Committee.

3) Public Comment

None

4) Appointment

Appointments were made during the Regular Meeting following the Special Session.

5) Adjourn

Mayor Muhlfeld adjourned the Special Session at 7:02 p.m. and opened the Regular meeting.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk

WHITEFISH CITY COUNCIL

April 17, 2023

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, Finance Director Gospodarek, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Kelch and Fire Chief Page. Approximately 19 people were in the audience and 2 attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Dave Hunt 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)

Nancy Schuber, 110 Bay Point Drive, requests the City Council reassess the need for the Community Sustainability Fund. She stated the CSF revenues are around \$900,000 per year. The Convention and Visitors Bureau has \$1.3 million in the bank. Enough is enough. The tourism promotion adversely affects the quality of life for shoe living in our community. At the minimum, make it an add-on versus a takeaway.

Mary Armstrong, Monterra, wrote an email to Mayor Muhlfeld and Director Workman last week about the poor condition of River Lakes Parkway. She would like to know what the priority is for short-term repairs for the spring and also longer-term plan with the addition of the new pickleball fields and the North Valley Music School at Smith Fields. Director Workman stated there is no doubt that road has completely blown up this winter. It happens every spring, when the frost comes out of the ground, but this year in particular it seems like there is more areas that have worsened. It is on the City's list to make those repairs, as soon as the asphalt plants open, which will more likely be the first week in May. The HOA and manager have addressed Council and the Resort Tax Committee regarding this area. Staff is considering some reprioritization of the Resort Tax priority roadways and so that will likely be coming to Council as well.

Brian Schott, 708 Lupfer Avenue, stated he is a consultant for Explore Whitefish. Everything that Explore Whitefish does is seen through the lens of how we can make this a more economically vibrant community throughout all seasons. Taking pressure off the summer season, and although our shoulder seasons are not as low as they used to go, there is room for some filler. The Sustainable Tourism Management Plan that Explore Whitefish launched will come back to the table and benchmark, reprioritize issues of importance, update the data, and reassess what is next by engaging the community and offering opportunities to talk about how we keep Whitefish centered on the people who live her. Make it continually livable while welcoming visitors. Right now, the pressure has come off in terms of that crush we felt in 2021. It is a time we can take a breath re-prioritize what we are trying to do as a community with tourists and new residents.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Qunell reported the Planning Board will be holding a work session on Thursday, April 20th to review the Growth Policy Public Engagement Plan and Digital Engagement Platform. The meeting will begin at 5:00 pm in the Council Chambers.

- 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)

Councilor Qunell made a motion, seconded by Councilor Caltabiano to approve the Consent Agenda. 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. 23-05](#); 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)

Planning and Building Director Dave Taylor presented his staff report that is provided in the packet on the website. As part of the special conditions, the applicant has put together a statement of conditions to provide an additional five-foot setback from what is required off of Park Knoll Lane as well as a provision that only single-family housing would be developed adjacent to Park Knoll Lane. After feedback at the Planning Board meeting, he will also provide an additional 10% setback off of the wetland as per required in the code.

Staff received written public comment from a Park Knoll property owner, the South Whitefish Neighborhood Association, and the Park Knoll Homeowners Association, opposing the rezone. All comments are included in the packet that is provided on the website.

Discussion followed regarding the wetland delineation. A consultant performs a wetland delineation. The consultant does not make the determination of whether or not it is jurisdictional under Section 404 of the Clean Water Act. That falls in the U.S. Army Corps of Engineers purview. The wetland delineation is submitted, then the Corps makes the jurisdictional determination. The City's water quality ordinance acknowledges that isolated wetlands that are not considered jurisdictional by the Corps are equally important for water quality protection. The City's ordinance is more restrictive than the Army Corps jurisdictional criteria.

Mayor Muhlfeld opened the Public Hearing.

Carter Unger, 2375 Mountain Shadows Drive, stated the Army Corps of Engineer has just received the application and he is hoping to get it back as soon as possible. While he will not be building in any wetlands, he wanted to help set community members at ease, so he voluntarily added an additional 10% to the city's requirement, which is better protected by going from WCR to WER, from 75-foot setback to 100-foot

setback. As an outsider, the change that has been happening in Whitefish and the harm that is perceived or not, is less so about the size of lots, but more so the loss of the community. The loss of the people who grew up here and cannot afford to live here anymore. A little bit more density is needed desperately.

Cheryl Watkins, 143 and 145 Old Morris Trail, a member of the South Whitefish Neighborhood Association. She is not disputing his building; she just wants further setbacks to keep anything from encroaching on her property and downstream. She wants her property protected.

Michelle Weinberg, representing the South Whitefish Neighborhood Association, provided written comments that are included in the packet on the website. Finding of facts number 1, 3, 4, 6, 7, 8, 10 and 11 fail to address is insufficient to comply with Montana's zoning laws. The applicant nor the staff have addressed how the proposed zoning will impact wildlife and wildlife habitat. The proposal to increase the density of development on this property and thus destroy, fragment, and degrade wildlife habitat through road building, pollution and water diversion is inconsistent with the Growth Policy directives with respect to wildlife, wildlife habitat, and environmentally sensitive areas. The additional density will also result in more people, their pets living in the area, which of course will result more human wildlife conflicts, and the disruption of wildlife movement and survivability. Members of the Council has stated that housing is the cities number one priority. That is not consistent with what the public wanted in the visioning sessions before the adoption of the 2007 Growth Policy. This position is clearly at odds with the Growth Policy's vision for this community as in by embodied by the 2007 Growth Policy. Her client respectfully asks the Council to deny the zone change request.

There being no further public comment, Mayor Muhlfeld closed the Public Hearing.

Councilor Davis made a motion, seconded by Councilor Caltabiano approve [Ordinance No. 23-05](#) and adopt the findings of fact from the staff report. Councilor Davis stated as time has gone on it is becoming harder for him to understand the presence of two and half acre minimum zoning within the city boundaries. As the town has grown that just feels increasingly antiquated. He does not have an issue with the developers request. He understands the concerns about wetlands, and he thinks it is important for development to be considerate of the environment that is around it. He trusts that out regulations that we have in place and our engineering standards will address those concerns and the developer will be thoughtful in the process of developing the property. Councilor Norton would rather postpone this decision until we get more information from the Army Corps. Councilor Qunell stated he knows what the 2007 Growth Policy says but if we took a poll of citizens today, we hear it all the time that housing is our number 1 priority. Councilor Feury addressed Councilor Norton's concerns. Right now, we are approving a zone change, we are not approving a subdivision. While we are approving something that will allow 20,000 square foot lots, we have no idea of what the ultimate density would be until we see what that delineation of the wetlands is. While the wetland is an issue it has little impact a zone change. Councilor Norton stated it does matter because we are going down to half acre lots from 2.5 acre lots so impervious surface does make a difference on how water travels through the landscape. That is why she would prefer to wait until we had more information. **The motion to approve carried on a 5 to 1 vote, Councilor Norton voting in opposition.**

- b) [Ordinance No. 23-06](#); **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)**

Planning and Building Director Dave Taylor presented his staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Mayre Flowers, Citizens for a Better Flathead, provided handwritten comments to the Council that are appended to the end of the packet on the website. In her comments she references MCA 7-2-4601 and MCA 76-2-303. She strongly urges the Council to rely on the provisions of MCA 7-2-4601, that is specific to annexation by petition and amending the annexation standards and not to rely on MCA 76-2-303 as is proposed. The city's almost exclusive means of annexation is by petition of property owners. The M.C.A 7-2-4601 permits you to approve or deny annexation requests by petition simply on the merit of the proposal. She included a suggestion for editing the zone text in her written comments.

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

Councilor Sweeney made a motion, seconded by Councilor Norton to table this ordinance to May 1st for reconsideration. Councilor Sweeney thinks Council needs to analyze what has heard tonight. The whole point of our wanting to go this direction is so that we can accept the project or development as zoned as it is proposed or reject it. He wants to analyze whether we are restricted either way. Councilor Qunell asked, and Attorney Jacobs stated both sections are cohesive. You can annex via a petition. The proposed ordinance allows Council to annex and change the zoning at the same time. There is nothing that does not state council can deny an annexation on good merits.

After some discussion **Councilor Sweeney moved to withdraw his motion to table, Councilor Norton agreed.**

Councilor Sweeney made a motion, seconded by Councilor Qunell to approve [Ordinance No. 23-06](#); 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). The motion carried.

7) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.96)

None

- b) **Other items arising between April 12th through April 17th.**

Manager Smith gave an update on SB 528 had a hearing last week and thanked Mayor Muhlfeld for being our voice. The League of Cities and Towns proposed amendments to that bill and tried to work with Senator Hertz who has carried some amendments however he did not agree to all amendments proposed by the League of Cities and Towns. The league does not support the proposed amendments because they are not all-encompassing of the amendments that they asked for. The committee can choose to pass with amendments or not. If it passes with amendments, it will go back to the Senate and has to meet transmittal date later in April. HB 943, that we did support, would have changed taxation for short-term rentals being residential to commercial was tabled in committee. HB 244 would revise laws governing the Montana Housing Fund was concurred by committee.

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.**

City Council held interviews for the Whitefish Sustainable Tourism Management Plan Standing Committee during the Special Session preceding the meeting. **Mayor Muhlfeld appointed Stephen Kane, Mariah Joos, Ella Kobelt, Brian Schott, and Michelle Howke to serve two – year term ending 12/31/2024; and Elizabeth Colley, Mark Piscoi, Nick Polumbus, and Heather Cauffman to serve one-year term ending 12/31/2023. The Council ratified the appointment.**

b) **Letter from City Council to Congress regarding Railroad Safety (p.114)**

Mayor Muhlfeld and City Council signed the letter to Congress regarding Railroad Safety.

Council Comment

Councilor Norton asked, and Director Workman stated that the pond at Riverside Park will be dredged again in the Fall. Director Butts stated the port a potty is located near the footbridge at Riverside Park to help individuals getting off the river and needing a facility. Councilor Norton asked if would be possible to move it north along the trail a little bit? There are so many people that take pictures there on the footbridge and there is a lot of teenage activity it might get tipped over. Director Workman stated crews are vacuuming leaves this spring and not picking up bagged leaves. He asks the community to not place leaves in the street.

Councilor Davis asked for an update on the BNSF oil sheen on the river, and Manager Smith stated she has not received an update since last week that she forwarded to the Council. BNSF acted immediately and have been able to contain the sheen with the booms that were placed.

Councilor Qunell thanked Ely Negley for sweeping all of the gravel off of the pedestrian side of Skyles Place so that it is safe for people to ride their bikes.

Mayor Muhlfeld asked, and Director Workman stated striping will start in late May and early June once the ground warms up.

9) 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 8:46 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk