

**WHITEFISH PLANNING BOARD  
MINUTES OF MEETING  
April 20, 2023**

<p><b>CALL TO ORDER AND ROLL CALL</b></p>	<p>Chair Steve Qunell called the regular meeting of the Whitefish Planning Board to order at 6:04 pm, following review of the draft Growth Policy Public Engagement Plan and Digital Engagement Platform which began at 5:00 pm. Board members present were Whitney Beckham, Scott Freudenberger, John Middleton, and Toby Scott. Chris Gardner and Allison Linville were absent. Planning Director David Taylor, Senior Planner Wendy Compton-Ring, Long Range Planner Alan Tiefenbach, and Planner I (Current Planning) Nelson Loring represented the Whitefish Planning &amp; Building Department.</p> <p>There were approximately 10 people attending in addition to the board members and staff.</p>
<p><b>PLANNING BOARD APPOINTMENTS</b> <i>6:04 pm</i></p>	<p>Chair Qunell made a motion, seconded by Freudenberger to nominate Scott as the Whitefish Planning Board representative to the Lakeshore Committee for a two-year position. Scott currently serves as the representative and accepted the nomination. <b>The motion passed unanimously.</b></p>
<p><b>AGENDA CHANGES</b> <i>6:05 pm</i></p>	<p>None.</p>
<p><b>APPROVAL OF MINUTES</b> <i>6:06 pm</i></p>	<p>Beckham made a motion, seconded by Freudenberger, to approve the March 16, 2023 minutes without corrections. <b>The motion passed unanimously.</b></p>
<p><b>COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)</b> <i>6:06 pm</i></p>	<p>Mayre Flowers, Citizens for a Better Flathead, 135 South Main in Kalispell said the doors were locked when she arrived tonight and would have liked to have heard the presentation. In her experience working with the public, she had found online tools to be helpful but sitting across from each other and hearing different perspectives helps the public to learn from each other. She hopes the process is heavy in direct public involvement, and not overly reliant on on-line single individuals responding to a survey a question or making comments.</p> <p>Chair Qunell said what came out was a solid mix of in-person and website involvement and meetings. He apologized for the doors being locked, but there was a software update at 5:15 pm so the doors could not be unlocked for 15 minutes. The Public Engagement Plan is online, the recording can be watched, and</p>

	<p>comments may be submitted at any time via email or during one of the regular sessions of the Planning Board or City Council. The Public Engagement Plan is just the first step and because there is pending legislation in the State House, after we adopt our Public Engagement Plan, the process might slow down because we do not want to do things that then have to be redone based on new legislation.</p>
<p><b>UNFINISHED BUSINESS:</b> <i>6:10 pm</i></p>	<p>None.</p>
<p><b>PUBLIC HEARING 1: CITY OF WHITEFISH REZONE REQUEST</b> <i>6:10 pm</i></p>	<p>A request by the City of Whitefish for a zoning map amendment due to recent annexation from Flathead 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). The property is currently developed with two single family homes and is zoned Flathead County B-4/HO (Secondary Business/Highway Overlay) and SAG-5/HO (Suburban Agricultural/Highway Overlay). The property is located at 111, 119 and 140 Iverson Lane and 6010 Highway 93 S and can be legally described as Tracts 7CB, 7CD, 7CLAB, 7DA, in S12 T13N R22W, P.M.,M., Flathead County.</p> <p><i>This hearing was postponed from the March 18, 2023 Planning Board meeting, after the public hearing was closed, in order to consider the newly adopted WB-T (Business Transitional District) which went into effect on March 21, 2023.</i></p>
<p><b>STAFF REPORT WZC 23-02 (Compton-Ring)</b></p>	<p>Senior Planner Compton-Ring reviewed her updated staff report and findings. As of the writing of WZC 23-02, one public comment was received concerning the easement for lots to the west through the subject site. An additional comment was received following re-notice of this matter further clarifying the easement issue after the March Planning Board meeting. In addition, a comment supporting the WB-T zoning district versus the WB-2 zoning district in this area was also received.</p> <p>Staff recommended adoption of the findings of fact within staff report WZC 23-02 and for <b>approval</b> of the zoning map amendment to WB-2 to the Whitefish City Council; however, other findings (found on pages 12-14) were offered if the Planning Board finds the WB-T zone to be more suitable for this area. Recommendations were made to Findings 1, 7, and 10.</p>

<b>BOARD QUESTIONS OF STAFF</b>	None.
<b>PUBLIC HEARING</b>	Chair Qunell opened the public hearing.
<b>APPLICANT / AGENCIES</b>	<p>Eric Payne, nuWest Builders, 100 Central Avenue, Suite 204, Whitefish, said they purchased this property several years ago and invested a substantial amount of money on the development stage to this point. They did so with the understanding that this would be zoned WB-2, which was fought over all the way to the Montana Supreme Court, for the City to control this property and at that time was zoned by the City as WB-2.</p> <p>He is not asking for a favor or a variance or anything outside the ordinary, but rather asking for the spirit in which this was proposed to the City roughly two years ago during the height of Covid, which necessitated online video calls. They propose to create a corridor coming into Whitefish substantially different and improved over what is out there now, and everyone from the City Council and anyone involved in those discussions agreed that was highly necessary. They proposed this area and offered their property as a first example of needed oversight simply by the experts (Planning department staff) and the zoning laws have been enacted over the years.</p> <p>At no point in those initial stages were discussions ongoing about a new zoning on the north side of the intersection. There was a discussion part-way through the process about a new zoning being created which he did not pay much attention to, and he did not attend many of the meetings but did attend one where he offered strong words he felt it had gone way beyond oversight and become overreach. That was not the purpose, and he was the first one to bring that to the City two plus years ago.</p> <p>They are trying to create something the City can be proud of and give back something to the City that they fought so hard to get ten of fifteen years ago. Instead, it went from a basic "let's get control of this" and don't let what has taken place at adjoining properties continue into this corridor into Whitefish, which is not something any of us can be proud of, to a very limited public comment driving the WB-T zoning to becoming so restrictive he cannot imagine anyone on those properties south of the junction having any desire to ask for annexation. Now we have gone opposite of the whole goal of why they brought these properties to the City which was to</p>

try to create an epic design for all visitors who pull up to this light. They now have a zoning which will hinder the goal of what they were all working towards.

Mr. Payne said Chair Qunell had asked him why he would have a problem with WB-T zoning, and he said it gives back to the Planning Board and Council the ability to pick and choose what they can use this property for. He did not feel he was in a good position to answer that question because he did not feel at any point this was going to become an issue until the last couple of meetings. He has researched this since then and discussed some of the uses allowed in WB-2 that are not allowed in WB-T even with a conditional use permit.

He asked the Planning Board members to put themselves in their position and annex this as originally done in the extension of services. If they had known this would come up they would not have brought before the board. There is a plethora of uses the County zoning allows and with 12 acres they have plenty of room for sanitation services and to have multiple businesses on this property, but this is their personal project, and they want to leave a legacy and something we can all be proud of. WB-T zoning would cripple this property as there are only seven uses under WB-T that can be used without a conditional use permit and that is unfair in his opinion.

They have the option of going through the de-annexation process as came up at the last Council meeting. He is not saying they would do that, but he would be extremely discouraged that in his opinion the spirit in which we all stated this two years ago is changed to fit an agenda that is night and day opposite of the zoning placed upon this property for twenty years. The only technicality anyone could look at that we heard comment on was the only portion of this property south of the light that even could be brought into a conversation of the WB-T zoning applies to properties south of the light is a small sliver without frontage, which represents 1.39 of the just under the 12 acres. If he had known this would become a technicality that could affect the entire potential of this parcel, they would have carved that off into a fourth parcel. It has the least potential for use for them and they would consider carving that parcel off but would rather keep it included.

In this opinion, the two new comment letters have no facts that this should be WB-T zoning. WB-2 zoning, which is what they have

	<p>always thought this property would be zoned, would offer a support to downtown Whitefish for the 1,000 residents who live on that side of town, through a tremendous number of types of businesses that could go in there. To put a crushing zoning of WB-T on this property negates what everyone thought was going to happen when annexing. They are taking away the potential to create businesses to would support the residents on that side and someone pulling into Whitefish for the first time and buy a canoe or products for working on their house. The six uses allowed under non-conditional use permit in the WB-T zone and the conditional use permit is a drastic change from the WB-2 zoning.</p>
<p><b>PUBLIC COMMENT</b></p>	<p>Tom Thomas, 1000 Point of View Ranch Drive, owns 5 Star Realty. In 2008, after losing the lawsuit in court three times, jurisdiction of the two-mile radius was given back to the County. As a realtor he has had a number of restaurants and other businesses who wanted to come into Whitefish but were unwilling to fight it. They are the realtors that sold the property where Town Pump built. These folks have made an investment on their property, so work with them. If the decision is made to go with WB-T zoning most businesses will be discouraged. If things do not go well, we will end up with more businesses like Whitefish Marine.</p> <p>Linda and Tom Iverson, 222 Iverson Lane, were born and raised here, graduated from Whitefish High School, and have raised their kids here. Mr. Iverson purchased their property near the junction of Highways 93 and 40, in 1974. Setting aside the easement issues, their biggest concern is the safety issue on entering and exiting the highway at Iverson Lane. They are one block north of the Highway 40 light. At their meeting on January 5, 2022, with Mr. Payne and Mr. Grommet they stated they wanted to put in a hotel and a Trader Joe's. At their meeting with Mr. Payne, Mr. Grommet, and MDOT on February 28, 2023, they said there already would have been a Starbucks on that corner had it not been for the pandemic. These types of businesses would create a lot of traffic in that area.</p> <p>Mr. Payne and Mr. Grommet are not willing to give them a like easement. If Mr. Payne and Mr. Grommet believe they have proved their current easement would not allow them to use Iverson Lane for anything other than residential traffic only, why won't they give them the same easement they have and let them go across their property and come out at the light. At the meeting on February 28, Mr. Grommet and Mr. Payne also said they have two properties just</p>

to the north of them under contract. They also told the Iversons and their attorneys that if they acquire those properties, they plan on putting a City street to the north that would come out somewhere on Highway 93. It was pointed out at that time that if a City street was put in this would also be a non-issue because they would not need an easement. Their attorney and the Wilsons, who live in that same area, both agree there is no reason for them to give them an easement other than what they already have. They have not tried to tell them what they can do with their property, but Mr. Payne was adamant at our last meeting that he did not want the Iversons building storage units or a trailer park or putting a pot shop up there and they have no intention of doing that. There is no room for anything like that as their house is pretty much in the middle of their property. They just want to live there without any conflict. It would be nice to have a road to the light, but they will continue to use Iverson Lane if they won't give them one. Mr. Iverson said they did not ask for any of this, they were fine the way they were. Most of the time when you give an easement you get a like easement and that is not what is being offered which is why they refused. Chair Qunell asked and Compton-Ring said the easement is a private easement and she has not reviewed it as the City is not involved. Freudenberger asked and Mr. Iverson said the current easement is 30-feet wide.

Mayre Flowers, Citizens for a Better Flathead, 135 South Main, Kalispell, said the packet includes their submitted comments from the last meeting and asked that they be considered again. In looking at the comparison prepared by Planning staff of allowable uses under the WB-2 zone versus the WB-T zone, they believe there are a large number of opportunities for appropriate development in this area. Simply looking at this as a zone change without really looking at the cumulative impacts of traffic without an understanding of what might occur with a PUD puts the Board in a difficult position. She thinks the way annexations, like this, are handled needs to provide more information up front, so the Board is not in this difficult situation. Even with other annexations going forward it is important to know if the proposed annexation is in keeping with the intent of the vision for the City. The changes the Council made to the Business Transitional District provides some of the tools, but this is a difficult position, but they encourage the Board to stay with that zone.

Chair Qunell pointed out the process has changed so in the future they will be able to see the zoning as they get the annexation

applications and hopefully we will not be in this position in the future.

Mr. Payne said the single document that would offer any proof is in the packet. His email states he is thrilled to offer them a lifetime easement to the light. That is part of the whole reason they are here as he saw the value of that light. He does not want to see another business going in there adjoining these properties have control of the light. However, if you read the email he stated a lifetime residential easement to the light. In a meeting they have had since where attorney were unfortunately involved, he has offered additional leeway it could be used for commercial access but would have to be an approved access. In granting an unlimited commercial access to the light through their property that they invested millions of dollars into a unannexed property and basically uncontrolled as seen on the properties to the south could be a plethora of businesses none of us want to see go in there. His statement was residential, use of forever, their kids, their grandkids, all have access to that light, but he will not grant access to unannexed properties out there controlled by the County. In regard to the comments made about the adjoining properties, their goal is, and they have never held back in this, to accumulate all the properties that they can along that corridor. They would like to potentially accumulate all the frontage to Western Building Center, and he would love to get rid of all the entrances onto the Highway and bring them all in through the light, which is the safest situation. He wants to create a legacy in coming development as you come into Whitefish that he, his family, and business is proud of. Planning and Building staff will tell you they always try to do things right and look out for their neighbors and other residents. They are not here to hurt anyone or look for a quick buck. This is about a property that will be here long after we are in the positions we are in now. There was never a discussion about this property not being part of the Growth Policy. The only reason we are all here tonight is the tiny little sliver of 1.39 acres which is where the WB-T potentially came into this conversation. He has done everything the right, ethical and moral way, and was always assured by no one other than the Growth Plan this was part of the WB-2 zoning and is what he went by. He is just asking to be treated as we would like to be treated.

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

<p><b>MOTION / BOARD DISCUSSION</b></p>	<p>Chair Qunell asked and Compton-Ring said the adjacent properties to the north are in the County and zoned B-4 with Highway Overlay, not zoned WB-2. They have not been annexed and are not in the City limits.</p> <p>Scott made a motion, seconded by Middleton to adopt the findings of fact within staff report WZC 23-02 as proposed by City Staff.</p> <p>Freudenberger said he is having trouble wrapping his head around the easement issue. If Mr. Payne is controlling their easement as residential only, he then controls the future value and use of their property. He says he does not want a marijuana shop back there but that is not his decision. He is trying to control use and future use of the Iversons' property so limiting the easement to residential only limits their future potential and gives him the opportunity to expand onto that land before it gives other people a fair market opportunity.</p> <p>Chair Qunell asked and Compton-Ring said they still have use of Iverson Lane. Compton-Ring said we cannot condition zone changes; this is simply an annexation rezone. She has visited with the Iversons and told them it is good to bring this up so everyone is aware, and it is good to have it on the record, but at zone change time, there is nothing they can do about it. If there is a subdivision or something coming forward they will have record that there is this concern or issue.</p> <p>Freudenberger said if we recommend this be zoned WB-2, Iversons' land will be zoned on three sides as WB-2 which would be beneficial to get his zoned to that someday; however, an individual purchasing will not have the access. Compton-Ring pointed out the land use designations are on page 7 of WZC 23-02, and their property is Suburban Residential so any future proposal, if sold down the road, wanted to do commercial they would have to amend the Growth Policy and then come in for a zone change. Freudenberger said if it does not have the possibility of commercial access, why would someone even bother with trying to get a commercial zoning designation. Compton-Ring said this is an FYI and as we go forward we will be looking at.</p> <p>Middleton said he feels he has a good handle on this situation but is not sure it is the role of the Planning Board to interfere with things like easements between private parties.</p>
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	<p>Chair Qunell said this is a tricky one as he looks at the permitted uses in WB-2 versus WB-T and it was the intent of Council when they extended our services we wanted to have more control over this area. The question was is this in the WB-T zone or just outside. The timing is hard for him to swallow based on the way things went down. We have been burned before, unfortunately, and the number of permitted uses in WB-2 is too much to grant especially in his mind at this corner in this one place. Council has the ultimate say over what we zone somebody once they are annexed into the City and sometimes you have to accept what you get. That is pretty well laid out in the annexation process and in what we are allowed to do when we annex in a property. The WB-T zone may not be permissive enough in this area for what Mr. Payne would like to do, but he does not see any of the conditional uses that he could apply for that would be ones that are drastically different from the permitted uses he mentioned in the WB-2. There are several, and this was the conversation the Council had during the adoption of WB-T, they wanted removed because the people in our City do not what to see that. It is part of our Corridor Plan there are certain things we do not want to see in that corridor. For that reason, he cannot support Toby's motion tonight.</p>
<p><b>VOTE</b></p>	<p><b>The motion to rezone these parcels to WB-2 failed on a vote of 3-2 with Middleton and Scott voting in favor, and Beckham, Freudenberger, and Chair Qunell voting in opposition.</b></p>
<p><b>MOTION / BOARD DISCUSSION</b></p>	<p>Compton-Ring pointed out she offered amendments to Findings of Fact 1, 7, and 10 in WZC 23-02 to support the WB-T and WCR and a motion could be made to approve those amended Findings of Fact.</p> <p>Freudenberger made a motion, seconded by Beckham, to approve the amended Findings of Fact 1, 7, and 10 identified in staff report WZC 23-02.</p>
<p><b>VOTE</b></p>	<p><b>The motion passed 4-1 with Middleton in opposition.</b> The matter is scheduled to go before the Council on May 1, 2023.</p>
<p><b>PUBLIC HEARING 2: GOOSEBAY CAPITAL, LLC CONDITIONAL USE PERMIT REQUEST 7:00 pm</b></p>	<p>A request by Goosebay Capital LLC for a renewal Conditional Use Permit for a bar/tavern. The property is currently developed with a carwash, coffee kiosk, and commercial building and is zoned WB-2. The property is located at 6185 Highway 93 S and can be legally described as Tract 5HAB in S12 T30N, R22W, P.M.,M., Flathead County.</p>

<p><b>STAFF REPORT WZC 23-03 (Loring)</b></p>	<p>Planner Loring reviewed his staff report and findings. As of the writing of WZC 23-03, one public comment had been received in support for approval and no other comments have been received since then.</p> <p>Staff recommended adoption of the findings of fact within staff report WCUP 23-03 and for <b>approval</b> of the conditional use permit to the Whitefish City Council.</p>
<p><b>BOARD QUESTIONS OF STAFF</b></p>	<p>Chair Qunell asked and Loring said that this was approved in 2020 and the application had to be approved again as the old CUP expired. Director Taylor said the only difference is the building is now built; none of the conditions have changed.</p>
<p><b>PUBLIC HEARING</b></p>	<p>Chair Qunell opened the public hearing.</p>
<p><b>APPLICANT / AGENCIES</b></p>	<p>None.</p>
<p><b>PUBLIC COMMENT</b></p>	<p>There being no comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.</p>
<p><b>MOTION / BOARD DISCUSSION</b></p>	<p>Scott made a motion, seconded by Beckham, to adopt the findings of fact within staff report WCUP 23-03, with the four (4) conditions of approval, as proposed by City Staff.</p>
<p><b>VOTE</b></p>	<p><b>The motion passed unanimously.</b> The matter is scheduled to go before the Council on May 1, 2023.</p>
<p><b>PUBLIC HEARING 3: CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST 7:06 pm</b></p>	<p>A request by the City of Whitefish to amend Chapter 4, Landscaping Requirements; Chapter 3 Sections 11-3-42, Multifamily Development Standards; 11-3-43, Mixed Use and Non-Residential Building Standards; Section 11-2 Article K, WB-2 Secondary Business 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 Business District, Article Q, WRB-2 General Resort Business District; and Sections 11-6-5 Landscape and Screening and 11-6-3-1, Chapter 6, Off-Street Parking and Loading of the Whitefish Municipal Code, in order to introduce a revised landscaping regulations chapter, delete the existing landscape requirements of other zoning regulations which have been incorporated into the revised landscape chapter, add a new requirement into Section 11-2 Article K, WB-2 Secondary</p>

	Business District for a 30-foot wide landscaped buffer along US Highway 93 South.
<b>STAFF REPORT WZTA 23-03 (Tiefenbach)</b>	<p>Planner Tiefenbach reviewed his staff report and findings. As of the writing of WZTA 23-03, no public comments had been received, and none have been received since then.</p> <p>Staff recommended adoption of the findings of fact within staff report WZTA 23-03 and for <b>approval</b> of the proposed changes to Title 11, Chapter 7, of the Zoning Regulations to the Whitefish City Council.</p>
<b>BOARD QUESTIONS OF STAFF</b>	<p>Beckham asked a question regarding when tree removal for fire mitigation is necessary, whether the Fire Marshal will have an opportunity to comment on whether tree removal was really necessary or if it is just a justification to not retain or provide additional trees. Tiefenbach said they would have to submit a landscape plan which would go to engineering, and he thinks the Fire Marshal would look at it to determine whether the trees needed to come out. They have to be accountable and demonstrate why you cannot do it.</p> <p>Chair Qunell said one question that came up before is regarding having to replace non-native trees. If you have non-native or pest trees, like two apple trees on your property and you take them out, is there an exemption so that you don't have to replace pest trees. Tiefenbach said the chapter does not specifically talk about pest trees, but that is why some reasonable flexibility was added so an argument like that could be made.</p>
<b>PUBLIC HEARING</b>	Chair Qunell opened the public hearing.
<b>APPLICANT / AGENCIES</b>	N/A
<b>PUBLIC COMMENT</b>	There being no further comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.
<b>MOTION / BOARD DISCUSSION</b>	Scott made a motion, seconded by Middleton, to adopt the findings of fact within staff report WZTA 23-03 as proposed by City Staff.
<b>VOTE</b>	<b>The motion passed unanimously.</b> The matter is scheduled to go before the Council on May 15, 2023.

<p><b>GOOD AND WELFARE</b> 7:21 pm</p>	<p>1. <i>Matters from Board.</i> Chair Qunell said Recording Secretary Keni Hopkins is retiring so this is her last meeting. He thanked her for all the hard work she has done over her many years of service. He also said he filed today for re-election to City Council so he will be running again in the November election.</p> <p>2. <i>Matters from Staff.</i> Director Taylor said the next work session probably will not be in May. In May staff will be responding to what the legislature does and what the Governor signs into law. Staff will have to evaluate how it affects the Growth Policy Update and if we are going to have to drop some of that to make some zone changes and things like that to accommodate some of the new legislation. June is a possibility.</p> <p>3. <i>Poll of Board members available for the next meeting on May 18, 2023.</i> Director Taylor said there will be a couple of items on the May 18 agenda - the Corridor multi-family housing project and a PUD amendment for 95 Karrow. Freudenberger and Scott will not be here; staff will reach out to Gardner and Linville to find out if they are available. All other members present indicated they thought they would be available.</p>
<p><b>ADJOURNMENT</b> 7:24 pm</p>	<p>The meeting was adjourned on a motion by Scott, seconded by Freudenberger, at approximately 7:24 pm. The next regular meeting of the Whitefish Planning Board is scheduled to be held on May 18, 2023, at 6:00 pm, at 418 East 2nd Street.</p>

/s/ Steve Qunell  
Steve Qunell, Chair of the Board

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Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED / CORRECTED: 5-18-23