

**WHITEFIS CITY COUNCIL**  
**May 1, 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 Qunell, Feury, Norton, and Caltabiano. Councilor Sweeney attended at 5:40. Councilor Davis was absent. Staff present were City Manager Smith, City Clerk Howke and Parks and Recreation Director Butts.

2) Interviews

The City Council interviewed Jim DeHerrera, Terry Dunn and Antonia Malchik for the Board of Park Commissioners; Jim Trout for the Police Commission; Julia Olivares and Ken Stein for the Resort Tax Monitoring Committee; Mariah Joos, Lauren Oscilowski and Kimberly Wortman for the Whitefish Convention and Visitors Bureau. All interviews were incumbent positions.

3) Public Comment

None

4) Appointment

- a) Board of Park Commissioners – Three (3) positions, received three (3) letters, all incumbents, 2-year term – Mayoral appointment.

**Mayor Muhlfeld made a motion, ratified by the Council to re-appoint Jim DeHerrera, Terry Dunn, and Antonia Malchik to the Board of Park Commissioners.**

- b) Police Commission – One (1) position, received one (1) letter, incumbent, 3-year term – Mayoral appointment.

**Mayor Muhlfeld made a motion, ratified by the Council to re-appoint Jim Trout to the Police Commission.**

- c) Resort Tax Monitoring Committee – Two (2) positions, received two (2) letters, all incumbents, 3-year term – Council appointment.

**Councilor Feury made a motion, seconded by Councilor Caltabiano to re-appoint Julia Olivares and Ken Stein to the Resort Tax Monitoring Committee. The motion carried.**

- d) Whitefish Convention and Visitors Bureau – Three (3) positions, received three (3) letters, all incumbents, 3-year term – Council appointment.

**Councilor Caltabiano made a motion, seconded by Councilor Sweeney to re-appoint Mariah Joos, Lauren Oscilowski and Kimberly Wortman to the Whitefish Convention and Visitors Bureau. The motion Carried.**

5) Adjourn

Mayor Muhlfeld adjourned the Special Session at 6:53 p.m. and opened the Regular meeting.

*/s/John Muhlfeld*

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Mayor Muhlfeld

Attest:

*/s/Michelle Howke*

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Michelle Howke, Whitefish City Clerk

## **WHITEFISH CITY COUNCIL**

**May 1, 2023**

**7:10 P.M.**

### 1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Caltabiano, Sweeney, and Norton. Councilor Davis was absent. 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, Senior Planner Compton-Ring and Planner Loring. Approximately 8 people were in the audience and 1 attended virtually.

### 2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Eric Payne 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)

Mayre Flowers, Citizens for a Better Flathead, provided a handout to the Council that is appended to the packet on the website. She spoke towards agenda item 8c). Citizens for a Better Flathead is asking the County to consider anaerobic digestion as an energy process to take biosolids and septic waste to generate electricity. She hopes the Council will encourage the county and public works department to look at this as well. She also spoke towards the handouts she provided to the Council pertaining to agenda item 5d), the zoning text amendment adding zoning upon annexation. She reached out to other communities that stated they have been doing this forever. All cities she spoke with have strong language in their zoning codes, which she provided in her handout. The language links their intent of their annexation to comply with their growth policy, and the vision of the community. It is missing from the zoning text amendment that is before the Council and limits the Council by saying the City needs to consider county zoning. She encourages the Council to pull item 5d) from the agenda to bring back with broader, more comprehensive response to annexation moving forward.

Ed Docter, spoke towards the letter that is provided in the packet asking for an extension to the casino overlay to include his property to allow a few casino machines. After submitting his letter, he thought a better way is to change the definition from casino to anything with five or more machines. It is harder to stay in business. He has never wanted keno machines in his bar, but it can bring him \$50 to \$60 thousand a year if he has a couple machines. He is just asking for 3 to 4 machines.

### 4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Ben Johnson, Whitefish Housing Authority Board member introduced Dwarne Hawkins, Interim Executive Director for Whitefish Housing.

Dwarne Hawkins, Interim Director for Whitefish Housing Authority, reported since his time as Interim Director they have done a lot of internal infrastructure and system upgrades along with compliance and reporting. The Housing Authority is here to help and put their resources together with the City to make a better Whitefish. He reported that they have submitted their utility drawings to the City for the Depot Park Townhome project. The approval will then be passed onto DEQ.

Julie Mullins, Executive Director for Explore Whitefish introduced herself. She is available at any time to meet with questions about Explore Whitefish. She reported the CSF program has been in the news lately. While this is a private fund from Explore Whitefish, she knows the Council has been receiving some heat from that as well. Explore Whitefish is doing a complete and total evaluation of this program. They are meeting with each one of their CSF members to understand if this program is working. They will report back on their findings. They take the grievances and the controversy very seriously and they are looking at how to make the program better, not only for their members but for the community of Whitefish.

Councilor Caltabiano announced that the Montana West Economic Development is holding a Community Day in Whitefish on May 8, 2023, 9:00 am to 10:00 am at National Park Realty. He also announced on May 24, 2023, the Bike/Ped Committee is sponsoring a Bike and Walk to Work Day. There will be events held downtown between 4:00 pm and 6:00 pm. The Impact Fee Advisory Committee met and are make good progress with the Impact Fee Study. It will be coming to the Council for a work session in the near future.

Councilor Sweeney reported that Project Whitefish Kids and Carol Anderson has done some fundraising to build pickleball courts at the Smith Fields.

Councilor Norton reported that she attended Arbor Day on Friday, April 28<sup>th</sup>. The celebration was in Depot Park with the city Arborist and the 8<sup>th</sup> Graders planting four trees.

- 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 four votes for passage – Section 1-6-2 (E)(3) WCC)
- a) [Minutes](#) from April 17, 2023 Special Session (p.39)
  - b) [Minutes](#) from April 17, 2023 Regular Meeting (p.40)
  - c) [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 (Second Reading) (WZC 23-03) (p.45)
  - d) [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 (Second Reading) (WZTA 23-01) (p.48)

**Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Consent Agenda.** Councilor Caltabiano made a correction to the April 17, 2023 Regular meeting minutes; page one, under Communications from the Public; *CSF revenues are around \$900,000 per year.*

**Councilor Norton pulled agenda item 5d) Ordinance No. 23-06 from the Consent Agenda for discussion.** She is confused about what Mayre Flowers is recommending and asked if staff could review her comments. **Councilor Norton made a motion, seconded by Councilor Sweeney to postpone Ordinance No. 23-06 to the May 15<sup>th</sup> meeting.** Councilor Norton would like input from the staff about how the other cities are handling annexation and zoning and if we can make is simpler for the future. Councilor Qunell asked, and staff stated the Whitefish City Code has specific criteria for zone changes. **The motion failed on a 4 to 1 vote, Councilor Norton voting in favor.**

**The motion to approve the Consent Agenda 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. 23-07](#); An Ordinance rezoning 11.18 acres of land located at 111 Iverson Lane, 119 Iverson lane, 140 Iverson Lane, and 6010 US Highway 93 South in Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, zoned 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), and adopting finding with respect to such rezone (First Reading) (WZC 23-02) (p.58)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website. The Planning Board postponed action in March in order to consider the newly adopted WB-T zoning district that went into effect on March 21<sup>st</sup>. She provided a history of the zoning for this property that is provided in the packet. Staff noticed neighbors for the March Planning Board meeting as well as the April Planning Board meeting, and received comments that are included in the packet. There were comments on an easement from the neighbors, which is a private easement and does not involve any of the city streets or utilities. There was also comment in support of the WB-T zoning.

Staff included alternate findings of fact that are included in the packet because the Planning Board was interested in considering the WB-T zoning and approved the amended findings of fact. Councilor Norton asked, and Planner Compton-Ring stated that Iverson Lane is an actual easement, but it is not a street.

Mayor Muhlfeld opened the Public Hearing.

Erik Payne, 100 Central Avenue, applicant, accompanied by Dean Grommet his partner in this project. They are requesting the WB-2 zoning as they were formerly zoned and that the City fought hard to retain. They are asking for the zoning that was applied in the prior years and that is applied to the neighboring property across Highway 93. Ninety percent of this property sits inside the Growth Policy to be designated as WB-2. He believes the WB-T zoning is far too restrictive and believes it should not be applied to their zoning request. It will defeat the purpose for why they tried to start with this application. He stated that WB-2 allows for 30 permitted uses, the WB-T allows for 6 permitted uses plus government buildings; WB-2 allows for 24 conditional uses, WB-T allows for 16 conditional uses. Their goal is to create a landmark design. They want to create a legacy style vision that sets a standard for this entryway into Whitefish. He explained that Iverson Lane continues to exist. Property owners that utilize it are free to use their properties and access to the highway. Everything points to this property being the property that ideally fits WB-2 zoning.

Councilor Norton asked, and the applicant stated that they want a highly vegetative green space focused master plan that buffers it from the highway. Councilor Sweeney asked, and the applicant stated there are multiple ways they can get utilities to the property, none of which are inexpensive and are extremely costly. A backage road would impact the future for Whitefish and the ability to access the light. The cost for them to incur to develop these parcels with a backage road is substantial in cost. Now they are looking at parcels that have far less use, far less valuable use to their potential tenants that will not justify them bringing city utilities or creating a spectacular backage road to allow other property owners or uses to access that light. That would impact this particular parcel negatively.

Mayre Flowers, Citizens for a Better Flathead, provided comments that are provided in the packet on the website. She asked Council to look at Finding 8 and Finding 11. She is not sure that those are accurately consistent with the recommended WB-2 zoning. She supports the Planning Board recommendation that this property be zoned WB-T.

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

Councilor Caltabiano discussed with staff, that the applicant applied, council approved extending the city limits, and the applicants expectation according to M.C.A and the Growth Policy they were going to have a WB-2 zoning. When Council approved WB-T it was clearly stating that the zoning overlay was south of Highway 40. He asked and staff stated when the transitional zoning was designed as part of the Highway 93 Corridor Plan, they put together the bones of what a transitional zone would be. It was designed to be something that would apply to commercial properties that would not have the same types of intense traffic and uses as would be further north of Highway 40. They were trying to put a zone together that would control the access points, consolidate accesses, have backage roads, and limit the uses to ones that would not be high traffic uses.

Councilor Sweeney stated, and Director Taylor stated in general the Highway 93 South Steering Committee talked about the County B-4 properties and were more focused on the southeast lot of the intersection, and the southwest lot of the intersection. This particular property may not have been talked about.

**Councilor Caltabiano made a motion, to approve WZC 23-02, the findings of fact originally presented by the City Planning staff, which points to WB-2 zoning. The motion failed for a lack of a second.**

**Councilor Sweeney made a motion, seconded by Councilor Norton to approve Ordinance No. 23-07; an Ordinance rezoning 11.9 acres of land, as WB-T and WCR pursuant to the findings of fact issued by and approved by the Planning Board to include the correction to Finding 8, *The proposed zone change considers the character of the district and its suitability for particular uses because it is single family residential on large lots and commercial uses*, ~~and the proposed zoning will be the most equivalent to the County B-4 zoning district.~~ Councilor Sweeney stated WB-T has been in discussion for years, and the Highway 93 Corridor Plan is a good indication for the vision of Whitefish. **The motion carried on a 4-1 vote, Councilor Caltabiano voting in opposition.****

- b) [Consideration](#) of a request from Goosebay Capital LLC for a Conditional Use Permit for a bar/tavern at 6185 Highway 93 South, zoned WB-2 (Secondary Business District) (WCUP 23-03) (p.191)

Planner Nelson Loring presented his staff report that is provided in the packet on the website. This Conditional Use Permit is a reapplication of a Conditional Use Permit that was approved in 2020. There has been development on the lot since and the permit has expired. Notices were mailed to adjacent property owners and advisory agencies; a notice was published in the Whitefish Pilot. One comment was received in support of the permit.

Mayor Muhlfeld opened the Public Hearing.

Mayre Flowers, Citizens for a Better Flathead, stated she would like to hear some discussion on what type of precedent this would set elsewhere in the district if other properties wanted to have a conditional use as well to add a few additional machines and if there is a limit to the number of machines that would be allowed.

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

**Councilor Caltabiano made a motion, seconded by Councilor Sweeney to approve WCUP 23-03, the findings of fact in the staff report and the four conditions of approval as recommended by the Whitefish Planning Board on April 20, 2023. The motion carried.**

7) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.216)

None

- b) Other items arising between April 26th through May 1<sup>st</sup>.

Manager Smith reported Friday, May 5, 2023 marks the 90<sup>th</sup> day of the legislative session and provided an update; SB 262, related to business licensing, passed without amendments, this will impact revenues in the general fund; SB 382, Montana Land Use Planning Act, passed through its readings in the Senate and is likely headed to the governor; HB 465, related to the building code fees was signed by the governor; SB 245 and SB 407 were amended in the conference committee and will likely be passing; HB 226, related to Public Employee Retirement System, is going to conference committee, this could impact the budget for FY25. She also reported that there will be a work session with the Impact Fee Study Consultant who is working on the update at the next meeting.

Pertaining to agenda item 5d) Ordinance No. 23-06 adopting Zoning Upon Annexation, was pulled from the Consent Agenda, it was discussed, Councilor Norton made a motion to postpone, the motion failed; and Council voted to approve the Consent Agenda, but Ordinance No. 23-06 was not voted on. **Councilor Qunell made a motion, seconded by Councilor Caltabiano to adopt Ordinance 23-06. The motion carried on a 4-1 vote, Councilor Norton voting in opposition.**

Councilor Norton asked, and Manager Smith stated that SB 528 was scheduled for a third reading this afternoon and passed through. Accessory Dwelling Units (ADU) will be by right. There is language in the bill that allows municipalities to regulate short-term rentals in ADUs, but are not able to collect impact fees, or parking requirements.

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Consideration of appointment to volunteer boards and committees not made during the Special Session preceding tonight's meeting.
- b) [Letter](#) from Cora Arnold with concerns of individuals who repeatedly abuse city ordinance regarding animal resistant containers (p.222)
- c) [Letter](#) from Mayre Flowers on Energy Production from Septic Waste and Biosolids (p.225)
- d) [Letter](#) from Ed Docter regarding the casino overlay in the zoning regulations (p.239)

Councilor Comments

Councilor Caltabiano stated that the Planning Board and the Planning staff kicked off the public engagement plan for the Growth Policy update (Vision Whitefish 2045), he invites the public to participate or write an email to Long Range Planner, Alan Tiefenbach to enroll for updates. He reported that the Whitefish Rotary Club is looking for freshman students who are interested in a four-day life-changing experience at the Rotary Youth Leadership Awards. Thursday, May 4<sup>th</sup> will be the 79<sup>th</sup> birthday of Miss Montana Plane, famous for thirteen jumpers who died fighting a fire on the Mann Gulch. A celebration will be at the Museum of Mountain Flying on Thursday, May 4, 2023 in Missoula.

Councilor Qunell asked and Chief Kelch reported that Fish, Wildlife and Parks biologist out of Eureka has been working with staff on developing a further plan for deer management. They have conducted a deer assessment north of the viaduct. Chief Kelch has not heard back from the biologist of the results of the assessment. Councilor Qunell also announced that today is the beginning of Hit the Trail month for Whitefish

Legacy Partners. Every mile that that you log on the trail with STRAVA, brings money to Whitefish Legacy Partners.

Councilor Sweeney thanked the Whitefish Convention and Visitors Bureau/Explore Whitefish for their letter to the editor in the Whitefish Pilot explaining the details of what the CFS fund is and what it does.

Councilor Norton asked, and Manager Smith stated we have advertised online for the position for the Flathead City-County Health Board, but we have not received any applications. Councilor Norton also reported that you have to be registered to vote before filing to run for an elected position. She asked and Attorney Jacobs stated as a self-governing unit, Whitefish can exercise any power that is not forbid by the Montana Constitution or the legislature itself. Whitefish has a Non-Discrimination Ordinance, and we can provide more protection for individuals than the state unless they amend and prohibit us from doing so. Attorney Jacobs will have to look into it more.

Councilor Feury reminded everybody that the lake is really cold and just because it is 85 degrees out, being on your paddleboard or in your canoe without a life jacket, you stand a 50/50 chance of making a 50-yard swim in 50-degree water. He addressed the letter in the packet from Ed Docter. Councilor Feury remembers when the Casino overlay was created. At the time it was created it was becoming apparent that Whitefish was being overrun with casinos. There was a great fear that suddenly we were going to have a lot of neon lights on Central Avenue. It is a very marginal business and for a lot of businesses, particularly if they have beer and wine and the ability to have machines can make a huge difference in their sustainability. He would be willing to revisit that issue and take a look at it as a conditional use. The council showed support with a showing of hands for staff to look into allowing casino machine in establishments outside the casino overlay.

Mayor Muhlfeld announced Legal Assistance, Keni Hopkins is retiring and there will be a celebration at the Great Northern Bar on May 11<sup>th</sup>. Councilor Feury stated he will be absent from the May 15<sup>th</sup> meeting.

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 9:03 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk