

WHITEFISH CITY COUNCIL

May 15, 2023

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Caltabiano, Davis, Sweeney, and Norton. Councilor Feury 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, Fire Chief Page, and Long-Range Planner Tiefenbach. Approximately 8 people were in the audience and 0 attended virtually.

2) PLEDGE OF ALLEGIANCE

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

3) PRESENTATION

- a) Whitefish Winter Carnival Royal Court regarding matters related to the Realm.

The Prime Minister of the Whitefish Winter Carnival Tony Veseth introduced King Ullr LXIV Doug Zignego, Queen of the Snows LXIV Chris Zignego, Duchess of Lark LXIV Kellie Cahill and Harold the Hark Davis Madden. The Royal Court recognized, Planning and Building Director Dave Taylor, Public Works Director Craig Workman, City Clerk Michelle Howke, City Attorney Angela Jacobs, Police Chief Bridger Kelch, Fire Chief Joe Page, and City Manager Dana Smith.

- 4) 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)

None

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

- 6) 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 May 1, 2023 Special Session (p.37)
- b) [Minutes](#) from May 1, 2023 Regular Meeting (p.38)
- c) [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-T (Business Transitional District) and WCR (Country Residential District), and adopting finding with respect to such rezone (Second Reading) (WZC 23-02) (p.44)

Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Consent Agenda. The motion carried.

- 7) 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.23-08](#); An Ordinance amending the Whitefish City Code to completely rewrite Title 11, Chapter 4, Landscaping Requirements; and amend Chapter 2, Zoning Districts, Section 11-2K-4 Property Development Standards; Section 11-2N-2 Permitted Uses; Section 11-2N-4 Property Development Standards; Section 11-2O-2 Permitted uses; Section 11-2O-4 Property Development Standards; Section 11-2P-2 Permitted Uses; Section 11-2P-4 Property Development Standards; Section 11-2Q-2 Permitted Uses; Section 11-2Q-4 Property Development Standards; Chapter 3, Special Provisions, Section 11-3-42 Multi-Family Development Standards, 11-3-43 Mixed-Use and Non-Residential Building Development Standards; Chapter 6, Off Street Parking and Loading, Section 11-6-2 Parking Space Requirements; Section 11-6-3 Special Conditions; Section 11-6-5 Landscaping and Screening; Section 11-6-8 Street and Roadway Access Standards. (First Reading) (WZTA 23-08) (p.52)

Long Range Planner, Alan Tiefenbach presented his staff report that is provided in the packet on the website. This is a complete update to the landscaping code. The last revisions were in 2008. The new landscaping requirements apply to everything except for single family detached. There are new requirements for residential buffers, street frontages, internal parking lot islands, and added a 30-foot buffer along Highway 93 South.

The new tree preservation requirements identify evergreen trees with calipers greater than 12-inch, deciduous trees with calipers greater than six inches, and other trees that are determined as qualifying trees. Each qualifying tree that is removed must be replaced with trees totaling at least two times the caliper. Any qualifying trees that remain is used as a credit towards two trees. There is an allowance for relief from this requirement particularly because of the heavily forested lots. The landscape talks about sometimes it is understood that removal of trees is necessary particularly for fire mitigation.

Questions were brought forward during work sessions with the Planning Board and City Council such as how tree evaluation is determined; there should be exemptions for fire mitigation; there should be some additional clarification regarding what an acceptable root barrier is; and there should be revisions to the residential buffer standards. There was a citizen that commented about whether or not it would be difficult to have the 50 native species requirement. The solution was recommended to allow cultivars, which is hybrids of native and are much easier to get. There was also a comment whether or not there should be a footnote added with the cost of a tree in case a tree had to be removed. Staff talked about that, but they didn't want to put anything having to do with costs into the regulations.

Staff received a letter today, that is appended to the packet on the website, which had some comments and concerns about the landscape code. The comments whether these regulations were more like regulations or more like subdivision covenants. It is important to note that these codes are very similar to other municipalities. These codes are standard and tailored to the city. There were concerns if the landscape code would have an impact on housing. The code does reference there can be relief granted when there is a hardship. Staff wanted to make sure there was flexibility that the intent of these happen.

Planner Tiefenbach recommends two revisions to the proposed code; a typo 11-4-1, change from mitigation to mitigate; and 11-4-9 to read, *unlawful removal of or qualifying tree designated in the tree preservation plan for retention will result in a municipal infraction.*

Councilor Davis asked, and Planner Tiefenbach stated section 11-4-6 talks about the city recognizes that tree removal is sometimes necessary. When it is considered impractical or the trees can not be retained or replaced, the applicant has the ability to show that they are planting a tree someplace else or adding a buffer on one side. The intent is to try to get to the same end without being overly prescriptive. Flexibility is important in code otherwise you are always trying to grab variances from it.

Councilor Norton asked if the city arborist is involved in this process. The regulations state that the applicant has to have a licensed arborist. Councilor Sweeney asked, and Planner Tiefenbach stated the regulations states you should plant 50% of your species to be native and it states evergreen or deciduous.

Mayor Muhlfeld opened the Public Hearing

Jim Ramlow, 316 Somers Avenue, provided a letter that is appended to the packet. He stated that the proposed ordinance is a lot of new legislation. There is a lot of concepts that are difficult to administer and apply. In section 11-4-9(b) there are several standards by which a zoning administrator can grant permission. Zoning Administrators can have all kinds of different opinions. This ordinance is talking about trees that are located on people's private property. We have to think hard about the question of taking. What is the City trying to accomplish? Is it public safety and environment protection? Or is it about aesthetics? He recommends designing regulations that do not require variances or require special arrangements with an administrator. The more complex the ordinance the greater the discretion with the administrator the more likelihood there is going to be an equal protection problem, as well as a taking problem in this case.

Leo Keane, 514 Pine Place, stated he feels this is a great plan. We are a tree city, and we need to do something that is fairly forceful about preserving what we have here. He is concerned about those that remove trees before plans are submitted. In order for this to be effective, we need to start an inventory of what we do have. Will there be an inventory of the trees that we have within the city so that we can get a little bit ahead of the developments? His is in favor of this plan and is comfortable with the flexibility.

Richard Hildner, 104 East 5th Street, has concerns that three years is not enough time for a newly planted tree to be protected. He is concerned that bark mulch does not adequately protect houses from an ember shower, should be banned throughout the entire city. He recommends adding a viability standard for the trees that are planted. For every inch of caliper, it takes one year to establish the root system. We should do everything we can to prove to the public that we are in fact a tree city. He likes the fact that this proposed update combines all the other various regulations into one section of the code.

Nathan Dugan, 937 Kalispell Avenue, stated due to the Governor signing SB 323, duplexes will be legal throughout Whitefish. He recommends removing duplexes from the landscaping standards, since that could add workload on the planning staff.

There being 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, to postpone indefinitely this matter. The motion failed for a lack of a second.

Councilor Norton asked Director Taylor how we address undue hardship, highest degree possible, and equal or better results. Director Taylor stated some of it is subjective when looking at a site plan. Every single site is different. There might be mitigating circumstances depending on what is on the site, what is adjacent to it, whether it is on a corner lot all come into play when someone is developing a lot. To the highest degree possible, is recognizing that there are extenuating circumstances. There is subjective language, but the majority of projects are going to be able to meet these things without any kind of issue.

Attorney Jacobs stated there is an appeal process built into the statute if somebody disagrees with the Zoning Administrators decision. She stated this is very comparable with other cities landscaping requirements and is less arduous than other cities. Councilor Qunell asked, and Planner Tiefenbach stated if the landscaping plan

is approved, and it dies, then it is a zoning violation.

Councilor Norton made a motion, seconded by Councilor Qunell, to adopt Ordinance No. 23-08 with two revisions; section 11-4-1 change “mitigation” to “mitigate; and section 11-4-9D it should read “Enforcement: Unlawful removal of a qualifying tree designated in the tree preservation plan for retention will result in a municipal infraction”.

Councilor Qunell made a motion, seconded by Councilor Davis to amend 11-4-2A, “Unless otherwise noted, the provisions of this chapter apply to all districts and to all uses except single-family dwellings and duplexes”. The motion failed 3-2, Councilors Sweeney and Caltabiano voting in opposition.

The original motion for approval carried 4-1, Councilor Caltabiano voting in opposition.

8) COMMUNICATIONS FROM CITY ATTORNEY

- a) [Resolution No. 23-06](#); A Resolution Granting a Utility Easement to Flathead Electric Cooperative over land located at Lot 6 of Bakers Common – Phase II Subdivision, Section 1, Township 31 North, Range 22 West P.M., M., Flathead County Montana (p.102)

City Attorney Jacobs presented her staff report that is provided in the packet on the website.

Mayor Muhlfeld addressed Stan Pluid, Flathead Electric Cooperation. Mr. Pluid stated this is a limited easement. The idea is to keep the line close to the property line. The easement is ten feet on each side of the line as installed.

Councilor Qunell made a motion, seconded by Councilor Sweeney to approve Resolution No. 23-06, A Resolution granting a Utility Easement to Flathead Electric. The motion carried.

9) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.108)

None

- b) Other items arising between May 10th through May 15th.

City Manager Smith reported she met with other city managers, and the Montana League of Cities and Towns, in Billings to discuss the legislative session. She learned that SB 382 impacts other bills that were adopted. For example, SB 528 would not necessarily apply if you work under SB 382. You will have to select options, but you do not necessarily have to follow the rules that they have identified. They looked at modernization of tax increment financing, and tax reform. Doing something in the interim to come forward with a proposal and working with certain entities like the Montana Infrastructure Coalition. The League needs more help at the session. They will be looking at increasing their dues to get more of them working the floor. Manager Smith reported that the Governor vetoed SB 301, which would grandfather lakeshore docks.

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

Councilor Comments

Councilor Norton asked, and Director Workman stated the water main installation on Spokane Avenue is ahead of schedule. MDT will start resurfacing May 30th in the evening hours. The justification for MDT to do their work at night will take the work from two to two and half weeks to four or five days. Councilor

Norton is concerned the controlled pedestrian signal at the corner of Spokane and Fifth Street are not accessible in the winter months, and asked Director Workman to look into it. Councilor Norton stated we got a letter from a person who has been very active in our community about Bozeman writing a letter of support for Zoe Zephyr who is a trans woman that was elected to represent Missoula voters in the House of Representatives. She got sanctioned and then removed from the house, had to vote out in the hallway because she became emotional during her testimony, and she was silenced. So, they wrote something specific to that. We are non-partisan up here, but she wanted to review with our attorney. We have a long history of pretty strong civil rights activism to make sure that everybody is equally protected and welcomed here. Councilor Norton asked Attorney Jacobs to review what our current the City's non-discrimination ordinance says, because it specifically includes lesbian, gay, bisexual, and transsexual individuals. She wanted to make an effort to include people in our community and visitors in a formal way. Attorney Jacobs stated Council passed a non-discrimination ordinance in 2015 or 2016. Basically, why we did that at that time Montana law did not specifically protect sexual orientation or gender identity as a protected class. That has since changed to a certain extent. There was a United States Supreme Court case in 2020 which did recognize sexual orientation or gender identity as a protected class. So, the Montana Human Rights Bureau has since also recognized it and will take complaints. That was the intent when we passed it. It prohibits basically discrimination in employment and public accommodations and housing, and prohibits retaliation. It does make a violation of civil remedy. The process that we go through is its first submitted to the Montana Human Rights Bureau and if they refuse to prosecute it or it is an area that they do not recognize as a protected class, the person can file an action in Municipal Court. They can seek civil remedies, injunctive relief, attorney's fees and other relief. For the record, we have never actually had anybody file a complaint. She and Councilor Norton had talked a little bit today, but at the time it was important for us as a city to formally recognize that we are inclusive of everyone. We have done that in the past with resolutions. There maybe even wasn't an ordinance as were before her time. We did it when Richard Spencer saluted Trump and we had a Nazi troll storm. It still exists, and again it has never been used and it may be kind of superfluous at this point given the fact that the Montana Human Rights Bureau is now recognizing sexual orientation and gender identity as a protected class. She would be interested to see if they've prosecuted or investigated any, she hasn't checked. Councilor Norton thanked Attorney Jacobs for the level of detail. Basically she wanted to remind our community where we come from and what we stand for and that we are about diversity and inclusion and respect for everybody's individuality. which prohibits discrimination in employment, public accommodations, housing, and prohibits retaliation. A complaint would first be filed with the Montana Human Rights Bureau. If they refuse to prosecute or do not recognize as a protected class, the person can file an action in Municipal Court. We have not had anybody file a complaint.

Councilor Davis asked, and Manager Smith stated the TischlerBise will continue to work with the Impact Fee Advisory Committee. Once that process is done, a work session will be held before adopting the report, by ordinance. The new fees would be adopted simultaneously through resolution.

Councilor Qunell has concerns of the construction project near Riverbend Apartments pumping water directly out of their basements onto the bike path. Director Workman stated staff has received the same concerns and will be addressing it.

Mayor Muhlfeld asked Director Workman if the landscaping on Edgewood between Wisconsin Avenue and Texas Avenue a final project. Director Workman stated there were a few properties where staff worked with the homeowners to do individualized landscaping plans. The seeding in general has been a disaster. After meeting with the contractor and subcontractor, there is a plan in place to try to get some of that seed to germinate and do some weed mitigation. Mayor Muhlfeld asked, and Manager Smith stated Director Butts staff has reached out to Town Pump last fall and have not received a response. Manager Smith will do a follow up with their contacts to have them follow through. Mayor Muhlfeld acknowledged Alan Tiefenbach and Lanie Gospodarek for their terrific work and are a great addition to staff.

11) 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 8:48 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk