

WHITEFISH CITY COUNCIL
June 5, 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, Sweeney, Davis, Caltabiano, and Norton (5:42 pm). Staff present were City Manager Smith, City Clerk Howke and Parks and Recreation Director Butts.

2) Interviews

The City Council interviewed Leslie Lowe as an incumbent to the Architectural Review Committee. Incumbent Tracy Rossi was out of the Country and was not able to interview in-person, but provided a letter that is provided in the packet.

3) Public Comment

None

4) Appointment

- a) Architectural Review Committee – Two (2) positions, received two (2) letters, incumbents, 3-year term – Council appointment.

Councilor Sweeney made a motion, seconded by Councilor Qunell to reappoint Leslie Lowe and Tracy Rossi to the Architectural Review Committee. The motion carried.

5) Adjourn

Mayor Muhlfeld adjourned the Special Session at 5:45 p.m. and opened the work session meeting.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk

WHITEFISH CITY COUNCIL

June 5, 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, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Kelch, Acting Fire Chief/Fire Marshal Tveidt, Senior Planner Compton-Ring and Long-Range Planner Tiefenbach. Approximately 28 people were in the audience and 2 attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Boy Scout Troop #36 to lead the audience in the Pledge of Allegiance.

Mayor Muhlfeld congratulated the Whitefish High School Class of 2023. It was a remarkable Baccalaureate as well as the graduation ceremony. He congratulated Director Workman's daughter Tallory Workman and his niece Madeline Muhlfeld.

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)

Toby Scott, 1478 Barkley Lane, proposes a stop light at the intersection of 13th Street and Baker Avenue. Many times, a day it is a 10-minute wait.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

- a) [Consideration](#) of a request from the Whitefish Convention and Visitors Bureau to hang Friend of the Fish messaging banners (p.21)

Mariah Joos, Whitefish Convention and Visitors Bureau Chair, asked the Council to consider the request to hang Friend of the Fish messaging banners geared toward visitors and locals to promote sustainability community values, destination stewardship and kindness. They are requesting to place the banners during the peak visitor season, along Edgewood Place from the City Beach overflow parking to Texas Avenue; near the O'Shaughnessy building; Depot Street between Spokane Avenue and Columbia Avenue; the BNSF/Library parking lot; Library main parking lot; along Columbia Avenue from Depot Street to 1st Street; and the Second Street and Spokane Avenue parking lot. A total of 49 banners.

Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the placement of the banners as proposed by the Whitefish Convention and Visitors Bureau. The motion carried.

Councilor Caltabiano reported the Impact Fee Advisory Committee has come to a recommendation that the Council will see at the next opportunity.

- ### 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 May 15, 2023 Regular Meeting (p.33)
 - b) [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. (Second Reading) (WZTA 23-08) (p.38)

- c) [Consideration](#) of a request from Houston Point Homeowner's Association for a Whitefish Lake and Lakeshore Protection Permit to widen and rebuild the existing hiking trail using mechanical equipment, and remove rocks and vegetation along trail, located at 2303 Houston Point Drive (WLP 23-W-07) (p.69)
- d) [Consideration](#) of a request from Bay Point Country Homeowner's Association for a Whitefish Lake and Lakeshore Protection Permit to remove a concrete block that is in the lake approximately 10' from the shore, located at 115 Bay Point Drive (WLP 23-W12) (p.101)
- e) [Consideration](#) of a recommendation for confirmation of Police Officer Jonathan Warricks pursuant to MCA §7-32-4113 (p.115)

Councilor Qunell made a motion, seconded by Councilor Norton to removed Item 5b from the Consent Agenda for discussion after Item 6c. The motion carried.

Councilor Qunell made a motion, seconded by Councilor Sweeney to approve the Consent Agenda, Items a, c, d, and e. Councilor Norton made a correction to the May 15, 2023 regular session minutes. She would like her comments about NDO to be included, verbatim as well as Attorney Jacobs' comments. 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 and had to vote 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 the 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. **The motion to approve the Consent Agenda as corrected 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) Consideration of a request from High Water LLC for Preliminary Plat to develop a 9-lot subdivision located at 1600 and 1628 East 2nd Street, zoned WLR (One-Family Limited Residential District) (WPP 23-02) (p.117)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet. This project does not have a Planning Board recommendation because it was eligible for an expedited review because it is in city limits, is covered by a Growth Policy, it conforms to all city zoning and design standards, and it doesn't need any variances to proceed and includes plans for extension of services. Adjacent landowners were noticed, a sign was posted on the property and advisory agencies were noticed. Staff received twelve comments from the public which are provided in the packet. Folks were concerned about the infrastructure installation and maintenance, possible impacts on adjacent development, high groundwater, traffic, loss of mature trees, and questions about the expedited preliminary platting process. Staff has asked for a condition to provide a tree preservation plan along with engineering plans and ask that the open spaces be properly mitigated for Wildland Fire Protection.

Mayor Muhlfeld opened the Public Hearing.

Doug Peppmeier, TD&H Engineering, stated he provided a letter that is included in the packet addressing the several public comments. They also had a neighborhood meeting. He and the applicants are comfortable with the staff findings.

Leigh Drogen, 209 Wild Rose Lane, has concerns the entrance from Second Street onto Ponderosa is a blind intersection. There will be another road beyond that with the same issue, so all traffic is going to flow through Wild Rose. It needs to be mitigated somehow. There is no sidewalk on the north side of Second Street east of Armory Road. He thinks a sidewalk should be required on the north side of Second Street from Armory Road east. He asks that the construction not be staged on the Wild Rose side. He would prefer that it be staged on Second Street.

Laura Webb, 69 Ponderosa Court thinks the expedited process presents problems because the very purpose of having the Planning Board review subdivision applications is a necessity. Because that step has been bypassed, she thinks there are some issues that would have otherwise been resolved. She has concerns of the amount of high water in the area and thinks there needs to be additional water testing. She doesn't think 90 vehicle trips per day is an accurate representation. She thinks once there is through traffic between Wild Rose Lane and Second Street, connecting three subdivision, potentially more, there will be a lot more traffic. She thinks a Traffic Impact Study needs to be done. There needs to be additional drainage accounted for. She doesn't think as it is proposed currently is such that everything is going to flow downhill. The flag lots proposed in this subdivision do not comply with City regulations and needs to be addressed. She proposes there be no flag lots. She supports the subdivision but there are some additional steps that need to be take that have not been taken.

Kathy Spangenberg, 1665 E. 2nd Street, has concern with traffic. She is frequently tailgated at 25 mph and on numerous occasions encounter cars turning illegally out of Ponderosa Court.

Barb Brant, 1658 E. 2nd Street, also has concerns of the traffic and the safety with the sidewalks.

Jeremy Nelson, 1590 E. 2nd Street, is all about progress. He would like to keep the progress of Whitefish more natural than ever and keep the hill safe.

John Middleton, 1040 W. 7th Street, understands the concern of the neighbors. This applicant is a local, is invested in the community, and is a business owner. Had he chosen to maximize density and go through the PUD application, there would be double the number of lots that are proposed. He is not trying to cram as much in there as he legally could. It is consistent with the Growth Policy; and the tree preservation plan will help alleviate some of the concerns. This is a great project, and he supports it wholeheartedly.

Nick Desimone, 199 Wild Rose Lane, has concerns of the omission of the Traffic Impact Study. The intersection of Armory Road and Wild Rose Lane has a stop sign and the existing nature of Ponderosa Court, any second where residents on Ponderosa can't access Ponderosa from 2nd St, they are all routed up Armory Road or Wild Rose past Armory. Making that connection to this new subdivision will increase the traffic load there.

Doug Peppmeier agreed the traffic on 2nd Street is a concern. He lives on E. 2nd Street. Corners did not get cut because of the expedited process. They did the same thing that is required for a subdivision and are held to the same guidelines. Ponderosa Court is a restricted right turn for concerns of site distance. The entrance into High Water is very good site distance and is a safer intersection. These proposed lots are larger than those in High Point subdivision.

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

Councilor Qunell made a motion, seconded by Councilor Sweeney to approve a request from High Water LLC for preliminary plat of 9-lot subdivision. Discussion followed regarding adding a crosswalk at Armory Road, and sidewalks along the north side of 2nd Street. Director Workman had reservations on adding a crosswalk at an uncontrolled intersection. He also reported there isn't sufficient right-of-way to connect the sidewalk from where it terminates on Armory to this new roadway.

Councilor Davis made a motion, seconded by Councilor Sweeney to add Condition #18 adding cash-in-lieu of sideway for the frontage on East 2nd Street associated with the subdivision. The motion carried 5-1 voted, Councilor Caltabiano voting in opposition.

The original motion to approve as amended carried.

- b) [Ordinance No. 23-09](#): An Ordinance amending Ordinance Nos. 18-01, 19-02 and 21-14, which approved and subsequently amended the 95 Karrow, LLC Preliminary Plat and Planned Unit Development, to develop a mixed-use development on the former Idaho Timber property located at 95 Karrow Avenue, Whitefish (First Reading) (WPUD 23-01) (p.269)

Senior Planner Compton-Ring presented her staff report that is provided in the packet on the website. The purpose of the amendment is to maintain a cohesive more urban influence type of neighborhood, keeping in the character of the original intent of the project. The adjacent landowners were noticed, advisory agencies were noticed, and a legal notice was placed in the *Whitefish Pilot*. Staff did not receive any comments.

Mayor Muhlfeld opened the Public Hearing.

Casey Malmquist, 160 Walker Creek Lane, applicant, reported that LHC has been on site doing the infrastructure work. They have all the deep utilities in and are putting in the higher dry utilities. The curb, gutter and paving will be done in July. They are approaching final plat, which is due August 1st. He is working with individual people on these lots. Lots 1 and 2 went to Architectural Review and realized there was issues with the setback and discovered the plat amendment didn't get conveyed into the PUD. This amendment is asking for some design latitude to create the best project possible.

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

Councilor Caltabiano made a motion, seconded by Councilor Sweeney to approve WPUD 23-01, the findings of fact in the staff report and the one condition of approval as recommended by the Whitefish Planning Board on May 18, 2023. The motion carried.

- c) [Resolution No. 23-07](#); A Resolution adopting an Annexation Policy (p.338)

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

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

Councilor Qunell made a motion, seconded by Councilor Sweeney approve [Resolution No. 23-07](#); A Resolution adopting an Annexation Policy, including the amendment to include **The City reserves the right to condition annexation approvals. Those include but are not limited to: The motion carried.**

- d) ~~Consideration of a request from Ruis Texco LLC for a Planned Unit Development to develop a 146-unit multi-family project in seven buildings located at 105 Colorado Avenue, 709 Waverly Place, 60, 124, 136 and 152 Texas Avenue, zoned WR 4 (High Density Multi Family Residential District) and WR 2 (Two Family Residential District) (WPUD 22-04) (p.)~~ POSTPONED PER APPLICANT TO JUNE 19, 2023 CITY COUNCIL MEETING

~~e)~~

- 5b [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. (Second Reading) (WZTA 23-08) (p.38)

Councilor Qunell made a motion, seconded by Councilor Davis to reconsider agenda item 5b, Ordinance No. 23-08. The motion carried.

Discussion followed regarding duplexes are exempt from the current landscaping requirements, and the

recent legislative session, duplexes cannot be treated differently than single-family residences.

Councilor Qunell made a motion, seconded by Councilor Norton to approve Ordinance 23-08, including the language to exempt single-family dwellings and duplex dwellings under 11-4-2A on second reading. Some discussion also included excluding triplexes and quadruplexes.

Councilor Caltabiano made a motion to include excluding triplexes and quadruplexes. The motion failed for lack of a second. Councilor Norton stated we are correcting this because we were non-compliant with state law. It makes sense to proceed with exempting duplexes.

Councilor Davis made a motion, seconded by Councilor Caltabiano to exempt triplexes. The motion failed on a 4-2 vote, Councilors Caltabiano and Davis voting in favor.

The original motion to exclude single-family dwellings and duplex dwellings under 11-4-2A and adopting Ord 23-08 on second reading carried on a 5-1 vote, Councilor Caltabiano voting in opposition.

7) COMMUNICATIONS FROM FIRE CHIEF

- a) [Consideration](#) of a request to award a contract for an airboat as a rescue boat (p.348)

Acting Fire Chief/Fire Marshal asked Council to reject the request to award a contract for an airboat. Staff is not in support of this airboat.

Councilor Caltabiano made a motion, seconded by Councilor Qunell to not award the contract and to rebid for a rescue boat. The motion carried.

8) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.351)

None

- b) Other items arising between May 31st through June 5th

Manager Smith stated the June 19th work session will be a legislative update with the Planning Department. She also reported that the City and BNSF applied for a railroad crossing elimination grant to study the three at grade crossings. We were awarded \$400,000 as partnering with BNSF. The City's contribution will be \$25,000 and BNSF will be contributing \$75,000. Budget amendments will be made, and she thanked everybody that worked on that grant application and BNSF working with us. This grant is for a study to improve safety for three at grade crossings and the viaduct. This could potentially add an overpass or and underpass at one of the three at grade crossings.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) [Letter](#) from Jan Metzmaker regarding nuisance deer (p.353)

Councilor Comments

Councilor Qunell thanked those who participated in the trail challenge out on the Whitefish Trails. He asked Chief Kelch if it is possible to provide a temporary electronic speed limit sign on Karrow Avenue.

Councilor Davis asked, and Director Workman stated the level of service at the intersection of 13th Street and Baker Avenue has been low in the last eight months since the construction started on the Spokane Avenue

Water Main Replacement project. He doesn't think that intersection lends itself very well to a signal. That intersection is included in the transportation plan as part of the Downtown Highway Study. Councilor Davis commented on the discussion during the work session pertaining to the Council goals about short-term-rentals. He thinks that we should have at least some basic level of proactive enforcement efforts. At the last housing committee meeting there was a motion made and passed to suggest to staff and Council that we follow through with our short-term rental enforcement plan.

Councilor Norton asked, and Director Butts stated there is some remaining work to be done to the trees at the Riverside Park detention pond after the storm that we had last fall. Staff has been working on contracting that out.

Councilor Feury is happy to see some crosswalks getting painted. It is amazing how it lets you see pedestrians better.

Mayor Muhlfeld reminded the Council of the June 12th FY24 budget work session. He congratulated Travis Tveidt to his promotion as Acting Fire Chief. It is great to have him on board. He would like to have a work session with the Karrow 95 project to discuss the pedestrian bridge that was part of the approval process. He asked Director Workman if there would be an opportunity to petition the County to stripe a dedicated bike lane on Reservoir Road to connect with the City trail system from the Haskill Basin trailhead to Wisconsin Avenue. Director Workman stated the City has asked, Whitefish Legacy Partners has asked, and the response was to provide the Share the Road signs. Director Workman will look into it.

10) 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 9:16 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk