

WHITEFISH CITY COUNCIL

August 15, 2022

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Feury, Davis, Sweeney, and Norton. Councilors Qunell and Caltabiano were absent. 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, Fire Chief Page and Senior Planner Compton-Ring. Approximately 22 people were in the audience and 4 attended virtually.

Mayor Muhlfeld held a moment of silence for the recent passing of Missoula Mayor, John Engen.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Brian Murphy 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)

None

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Norton reported the Strategic Housing Steering Committee is going through a process called Refresh, where they are reviewing the Housing Needs Assessment with our consultants.

- 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 July 18, 2022, Regular Session (p.21)
 - b) [Consideration](#) of a request from Ethan and Karen Budin, for a Whitefish Lake and Lakeshore Protection Permit to replace existing deteriorating railroad tie retaining wall with new stacked rock retaining wall, located at 1494 Barkley Lane (WLP 22-W27) (p.23)

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

- 6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
- a) [Resolution No. 22-15](#); A Resolution amending 2022 fiscal year annual budget to increase appropriations in three funds of the City (p.44)

City Manager Smith presented her staff report that is provided in the packet on the website.

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

Councilor Feury made a motion, seconded by Councilor Sweeney to approve Resolution No. 22-15. The motion carried.

- b) [FY23 Budget](#), Tax Levy, and Assessments Public Hearing (p.48)
 - i) [Resolution No. 22-16](#); A Resolution accepting and approving the municipal budget for the City of Whitefish for the 2023 Fiscal Year Commencing July 1, 2022, in its final form (p.50)

[Budget Changes Since Preliminary FY2023 Budget](#) (p. 52) [FY2023 Final Budget](#) (p. 54)

- ii) [Resolution No. 22-17](#); A Resolution (1) budgeting property tax revenue, (2) determining the property tax mills to be levied on all taxable property within the corporate limits of the city of Whitefish, and (3) levying and assessing all special improvement assessments and other assessments on real estate within the Districts for the 2023 Fiscal Year (p.184)
- iii) [Resolution No. 22-18](#); A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Street Maintenance District to defray the costs of street improvements (p.187)
- iv) [Resolution No. 22-19](#); A Resolution levying and assessing tax upon all real estate in Special Improvements Lighting District No. 1 in the City of Whitefish, Montana to defray the cost of improvements in said Special Improvement Lighting District (p.189)
- v) [Resolution No. 22-20](#); A Resolution levying and assessing a tax upon all real estate in Special Improvement Lighting District No. 4 in the City of Whitefish, Montana, to defray the cost of improvements in said Special Improvement Lighting District (p.191)
- vi) [Resolution No. 22-21](#); A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Parkland and Greenway Maintenance District (p.193)
- vii) [Resolution No. 22-22](#); A Resolution levying and assessing a tax on each land or parcel of land in the City lying within the boundaries of the City's Stormwater Improvement and Maintenance District (p.195)
- viii) [Resolution No. 22-23](#); A Resolution levying and assessing a tax on each lot or parcel of land lying within the boundaries of Special Improvement District No. 166 (JP Road) to defray the cost of creation of said District and the Improvements therein (p.197)
- ix) [Resolution No. 22-24](#); A Resolution levying and assessing a tax on each lot or parcel of land within the boundaries of Special Improvement District No. 167 (Downtown Parking Structure) to defray the cost of creation of said District and the improvements therein (p.210)
- x) [Resolution No. 22-25](#); A Resolution levying and assessing costs from certain properties within the City for the collection of utility service charges pursuant to Title 8, Chapter 1 of the Whitefish City Code (p.217)

City Manager Smith presented her staff report that is provided in the transmittal report of the fiscal year 2023 budget that is provided in the packet on the website.

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

Councilor Sweeney made a motion, seconded by Councilor Davis to approve Resolutions 22-15 thru 22-25, of the city budget. The motion carried.

- c) [Consideration](#) of a request from Vincent Rimmel, on behalf of OBR Management, LLC, for a Conditional Use Permit to operate a recreational marijuana dispensary in the WB-3 (General Business District, located at 333 Baker Avenue, (WCUP 22-18) (p.221)

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

Mayor Muhlfeld opened the Public Hearing.

Ian Stewart, representative of OBR Management, touched on a couple of points that were brought up in the comments provided in the packet. 1) The compliance on proximity to place of worship and/or school. The doors of the church and the doors of the dispensary are on different streets. The site is qualified under state law based on these findings. 2) The concern regarding safety. Provided in the packet is a research paper provided from the City of New York and the University of Colorado in Denver and the John Jay College, and states street segments with recreational dispensaries experienced no changes in violent disorder and drug crime. The statutory purposes of Montana marijuana regulation and taxation act is to eliminate the illicit market for marijuana. Dispensaries allow for a secure and compliant marketplace for patients and adult use consumers to purchase the consumer-packaged goods. Helping to decrease crime and criminal activity in other public areas are places of business. This was the purpose and intent of the law itself and the statute itself. 3) The parking. The WB-3 zone requires no on-premises parking; however, this location provides approximately 3-4 parking spaces based on the site plan that is included in the packet. Therefor exceeding the parking requirement for this zoning district.

Josh Wilson, Whitefish Credit Union, provided a letter that is included in the packet on the website. The Credit Union operates a 24-hour ATM within the facility. The sale of recreational marijuana represents a threat to physical safety of their employees and members. They humbly ~~respect~~request that the Council deny this application.

Rhonda Fitzgerald, 412 Lupfer Avenue, provided to the Council a map of the marijuana facility restricted areas in WB-3 zone that was included in the December 6, 2021 council packet, and a photo of a Drug Free School Zone sign that is placed on the corner diagonally across for the proposed application location. She stated the map shows some areas of the WB-3 where marijuana facilities are restricted, including the location that is proposed for this facility. Council adopted an Ordinance that says you cannot have marijuana facilities within 500 feet addressed on the same street, measured from nearest entrance to nearest entrance. This is kind of classic bait and switch. The Drug Free Zone sign is in this location because of it being a popular route for kids walking or riding their bikes to school from the other side of the river. She hopes Council will think long and hard about giving a conditional use permit in a location that was told the neighborhood there would not be one.

Andrew Strong, 405 and 435 Central Avenue, via Webex, had submitted a few letters that are provided in the packet on the website. He commented if Council approves this application, Council will be in violation of their own ordinance. The church is addressed 260 Baker Avenue and the application is 333 Baker Avenue. By virtue of state law, this cannot be permitted as a marijuana dispensary.

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

Councilor Norton asked, and Director Taylor stated that map that was handed out, was put together with first draft of the ordinance. Staff showed blue lines where it talks about a state mandated 500-foot buffer from school or church entrances. Staff showed where a church entrance was and then drew a line down that street within 500 feet. This not a part of the code, it was something staff showed as an example when the ordinance came forward. The ordinance talks about pursuant to state law, in other words deferring to state law on the distancing requirements.

Mayor Muhlfeld stated the physical address for the property is 333 Baker, yet the entrance faces east 4th Street. How is the 500 feet measured? Director Taylor stated ~~The~~the state law states if the entrance is

on a different street of the church, then the 500-foot rule does not apply. That is why we state pursuant to state law in our code.

Councilor Norton made a motion, seconded by Councilor Sweeney, to deny WCUP 22-18. Councilor Norton stated this location is within 250 feet of a church. She thinks it is an appropriate denial given that our conditional use permit allows us to look at the character of the neighborhood, and also the will of the public. We have had strong outcry from the people that are adjacent and next to this site, against it. **The motion failed on a 3-1 vote, Councilor Norton voting in the affirmative.**

Councilor Feury made a motion, seconded by Councilor Sweeney to approve WCUP 22-18, the Findings of Fact in the staff report, and the fourteen conditions of approval as recommended by the Whitefish Planning Board on July 21st. Councilor Feury stated he thinks from both the planning staff and city attorney that is not a valid argument for denial. The crime argument, he would have to look at those studies carefully to see where the location of those facilities was that were studied. Arguably, we have a liquor store up the street a block and he does not think we have seen a significant increase in crime there. Alcohol probably causes more problems than marijuana does. Therefor he will approve it.

Councilor Davis commented on the legal aspects of this application because he wants to support Councilor Feury's motion and at the end of the day it is going to be because it is hard for him to go against our Planning Director and City Attorney who are saying this is the correct way to interpret these regulations.

Councilor Norton made a motion, seconded by Councilor Sweeney to have the signage changed to 4th Street from Baker Avenue. Director Taylor stated it is a multi-tenant building, so some of the other tenants might not like the sign moved, although they can have a separate sign off of 4th. Councilor Norton stated is it confusing to the public to have the address and signage accessing Baker and is a major thoroughfare into town. It would be more discreet if it were on 4th. **The motion carried on a 3 to 1 vote, Councilor Feury voting against.**

The original motion to approve as amended carried 3 to 1, Councilor Norton voting in opposition.

- d) [Ordinance No. 22-](#) ; An Ordinance rezoning approximately 31.171 acres of land known as Tract 3 of COS No. 20440 in Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, from County SAG-5 (Suburban Agricultural) to WCR (Country Residential District), and adopting findings with respect to such rezone (WZC 22-05) (First Reading) (p.322)

Director Taylor presented his staff report that is provided in the packet on the website.

This is a request from the City to change the zoning on this property that was recently annexed into the city on June 20, 2022.

Councilor Norton asked, and Director Taylor stated notices were mailed to property owners within 150 feet of the application. City Attorney Jacobs stated it was also published in the paper, on the agenda, and been through the Planning Board. The city is abiding by the State law requirements for noticing a public meeting.

Mayor Muhlfeld opened the Public Hearing.

Lindsay Hromadka, Weinberg and Hromadka, 116 Lupfer Avenue, representing the South Whitefish Neighborhood Association. She submitted a letter that is appended to the packet on the website. The

subject property contains 14 acres of wetlands and it essentially half of the property. They are opposed to zoning this to 2.5 acres, and it should be zoned agricultural. WCR is more suburban residential and as you see on the Future Land Use Map, zoning this entire property WCR does not comply with the Growth Policy, instead it should be zoned WA-15.

Cheryl Watkins, 143 Old Morris Trail, property owner to the south of the subject property. She is concerned with the amount of water on the property it will flood her property once it is developed.

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

Councilor Davis made a motion, seconded by Councilor Feury to approve Ordinance No. 22-11, WCZ 22-05. Councilor Davis stated this looks like a fairly straight forward rezone. He understands the concerns about the wetlands, and he trusts those concern will be addressed at the time this property is developed. Councilor Norton thinks the 2.5 if appropriate but she does have concerns with us not allowing trespassing onto adjacent property so we will be watching this. **Mayor Muhlfeld called for a vote, and stated the motion carried on a 3 to 1 vote, Councilor Sweeney voting in opposition.**

- e) [Ordinance No. 22-11](#); An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 19.375 acres of unaddressed land located between Park Knoll Lane and JP Road and known as Tract 3BBD in the Southwest Quarter of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, that are zoned WCR (Country Residential District) to split zoning of WER-SC (Estate Residential District with Special Conditions) and WR-2-SC (Two-Family Residential District with Special Conditions); and 11.26 acres of land addressed as 6208 US Highway 93 South and known as Tract 3B in the Southwest Quarter of the Southeast Quarter in Section 1, Township 20 North, Range 22 West, P.M.,M., Flathead County, that are zoned WER (Estate Residential District) and WB-2 (Secondary Business District) to split zoning of WR-2-SC (Two-Family Residential District with Special Conditions) and WB-2 (Secondary Business District), and adopting findings with respect to such rezone (WZC 22-04) (Frist Reading) (p.350)

Director Taylor presented his staff report that is provided in the packet on the website.

Since the Planning Board meeting, a letter was submitted to the City from Don Kaltschmidt, stating that he agrees to the conditional zoning, and they provided a draft statement of conditions that is provided in the packet on the website on page 360.

Mayor Muhlfeld opened the Public Hearing.

Carter Unger, 3275 Mountain Shadows Drive, the applicant, stated this is a simple request that is conforming to the Highway 93 S. Corridor Plan. He is hopeful to be able to bring forward a product that the whole town will be proud of.

Lisa Post, 101 Vista Drive, Great Northern Heights Homeowners Association President, stated since the Planning Board meeting, they had a meeting with Mr. Kaltschmidt. The Great Northern Heights Association appreciates his efforts. She provided to the Council that is appended to the packet, a letter signed by the members of Great Northern Heights, showing support for the zone change.

Amy Boring, 123 Colorado Avenue, spoke on behalf of Mr. Unger's character. He has been an open book to the community, all over Facebook, etc. She has met with him at great length. She participated in the corridor planning meeting since 2017. She thinks he is going to do good by the community. It is what we need, and she believes in the Council to make the right decision.

David Hunt, 113 Park Knoll Lane, speaking on behalf of owners of 12 lots in Park Knoll Estates as listed in their letter to the Planning Board that is included in the packet. They offer support for the requested zoning. They maintain high concerns regarding the WR-2 zoned densities but feel that these special conditions that are applied to this application have reduced those concerns considerably and now provide a much better baseline buffer to work from. He thanked staff for getting these special conditions into the process. Their support is due to the front-end steps taken by Mr. Unger to get to know them and the special character of their neighborhood. They valued the open dialogue they have had with Mr. Unger and the prompt initial actions he has taken to get these conditions into this application. They look forward with working together with Mr. Unger to create a much better outcome for a new neighborhood near them, while preserving their neighborhood character to a very great degree.

Kristin Zuckerman, 157 Vista Drive, via Webex, supports the proposed zone change.

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

Councilor Sweeney made a motion, seconded by Councilor Feury to Ordinance No. 22-12. Councilor Sweeney stated he hopes this will provide a blueprint for future developers who want to come to the city and add development to our community to solicit and invite the neighbors to help develop the area that they have lived in, and call home. He compliments the applicant for doing that. Councilor Feury complimented Mr. Unger in doing a great job with the neighborhood. He is trying to do the right thing out there; it has not been easy with the property. Councilor Norton stated she still has concerns with traffic and drainage in that area. JP Road is the only protected turn lane onto Highway 93. She was not sure if this was an appropriate level of density. She is glad the neighborhoods have found a solution for this property because it has been in play for a number of years. She hopes it works out for both established neighborhoods because the people that live there, love where they live. **The motion carried.**

Mayor Muhlfeld called for a recess at 8:51 pm and reconvened at 9:03 p.m.

Mayor Muhlfeld reported a housekeeping item; item 6d of the agenda, Ordinance No. 22-11, as with all ordinances require two-thirds majority of the council voting in favor for passage. Because we did not have that this evening, Councilor Sweeney voted in opposition that item did not pass.

He also stated the applicant's representative for items 6f and 6g request the Council consider postponing all four items to the September 6, 2022 meeting.

- f) [Ordinance No. 22-](#) ; An Ordinance rezoning approximately 66.4 acres of land located to the east of E. 2nd Street and south of E. Edgewood Drive, known as Tract 3D, 5BA, and 3E (COS No. 2134) in Section 32 and 33, Township 31 North, Range 21 West, P.M.,M., Flathead County, Montana, from County SAG-10 (Suburban Agricultural) and County AG-20 (Agricultural) to WCR (Country Residential District) and WA (Agricultural District), and adopting findings with respect to such rezone (WZC 22-06) (First Reading) (p.417)

- g) [Consideration](#) of a request from 1291 Edgewood LLC for a Growth Policy map amendment, zoning map amendment, preliminary plat, and planned unit development overlay, referenced as the Edgewood 90 Project, located at 1291 East Edgewood Drive and unaddressed parcels to the east of East 2nd Street, legally described as Tract 3, 3D, 3E, and 5BA in Section 32 and Section 33, Township 31 North, Range 21 West, P.M.,M., Flathead County, Montana (WPGA 22-01, WZC 22-07, WPP 22-05, WPUD 22-02) (p.453)
- i) [Resolution No. 22-](#); A Resolution indicating its intent to adopt a map amendment to the 2007 Whitefish City-County Growth Policy, as requested by 1291 Edgewood, LLC and adopting findings with respect to such amendment (WGPA 22-01) (p.484)
 - ii) [Ordinance No. 22-](#); An Ordinance rezoning approximately 3.4 acres of land located at 1291 East Edgewood Drive in the Northeast Quarter of Section 32, Township 31 North, Range 22 West, P.M.,M., Flathead County, Montana, zoned WI (Industrial and Warehousing District) to WR-2 (Two-Family Residential District) and adopting findings with respect to such rezone (WZC 22-07) (First Reading) (p.501)
 - iii) [Ordinance No. 22-](#); An Ordinance approving the Edgewood 90 Subdivision Preliminary Plat and Planned Unit Development, to develop a 15-lot mixed-use subdivision to the north of the BNSF Railroad Tracks and south of E. Edgewood Drive, Whitefish (WPP 22-05/WPUD 22-02) (First Reading) (p.520)

Councilor Sweeney made a motion, seconded by Councilor Norton to postpone this item 6f and 6g to the September 6, 2022 meeting as requested by the applicant. The motion carried.

Councilor Feury made a motion, seconded by Councilor Sweeney to reconsider Ordinance No. 22-11, item 6d on the agenda. The motion carried.

Councilor Feury made a motion, seconded by Councilor Sweeney to move item 6d, Ordinance No. 22-11 to the September 6th agenda, public hearing shall remain closed, for voting purposes only. The motion carried.

For clarification purposes agenda item 6d (WZC 22-05) failed, moving Ordinance No. 22-11 to approved agenda item 6e. The September 6th agenda will reflect that Ordinance Numbers will start at 22-12, and Ordinance No. 22-11, approving WZC 22-04, will appear on the Consent Agenda as Second Reading.

7) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.648)

None

- b) Other items arising between August 10th through August 15th

Manager Smith stated staff is aware of the issues with porta-potties and septic as the City of Columbia Falls has reduced the amount of waste, they are willing to accept from the contractors that service those. Public Works Director Workman reported he has been in touch with Pop A Squat Portables. He has confirmation from DEQ that we are permitted to accept the waste. He will be working with Pop A Squat Portables to accept some of the waste at a few different locations around town to see which is most suitable. He reported we will be making a more permanent arrangement. There will likely be a rate structure in the future.

- c) [Review](#) and adoption of the FY23-FY27 Capital Improvement Program (p.649)

Manager Smith presented the FY23-FY27 Capital Improvement Program that is provided in the packet on the website.

Councilor Sweeney made a motion, seconded by Councilor Feury to adopt the FY23-FY27 Capital Improvement Program. The motion carried.

- d) [Consideration](#) of the requires from Yoga Hive Montana to sublet a portion of the retail space to full Send Physio, LLC, in accordance with the recently approved commercial lease (p.671)

Manager Smith presented her staff report that is provided in the packet on the website.

Councilor Sweeney made a motion, seconded by Councilor Norton to recommend the City Manager Smith allow for the sublease so long as the sub-tenant is not charged in excess of what the tenant is paying within 5%. Councilor Feury commented that there are a number of things as he looks through the lease; the sub-lessee is not paying utilities, they are splitting internet costs, how do you calculate shared space use percentagewise, who is buying the toilet paper, etc. Councilor Sweeney does not want us to be in a situation where our tenant takes and subleases this space at twice the cost that they are incurring. He is fine within a ballpark. Councilor Feury agrees with that. The motion carried.

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Consideration of joining Amicus Brief in 303 Creative LLC v. Elenis

Council showed by raising hands support of joining the Amicus Brief in 303 Creative LLC v. Elenis.

- b) [Letter](#) from the Flathead Conservation District recommending to re-appoint John Ellis to the Flathead Conservation District Board of Supervisors, and appoint a representative to serve as an urban supervisor for the duration of the term ending 12/31/2022 (p.684)

Council supported re-appointing John Ellis to the Flathead Conservation District Board of Supervisors for another 3-years, and appointed City Attorney Jacobs to serve until the vacant position ending 12/31/2022 is filled.

- c) [Letter](#) from Pop A Squat Portables requesting City of Whitefish to accept and treat waste generated by portable toilets at the Wastewater Treatment Plant (p.685)
 - i) [Letter](#) from Bernie and Linda Mengwasser supporting the request from Pop A Squat Portables (p.687)

This item was addressed under City Manager report, item 7b.

Council Comments

Councilor Norton asked for staff to report on the roll out plan of the animal resistant containers. Manager Smith stated the roll out will start by the end of August beginning of September. More information will be going out to the public soon. Staff has divided the city into four quadrants, north of the viaduct and west of Wisconsin Avenue; north of the viaduct and east of Wisconsin Avenue; west of Baker Avenue; and east of Baker Avenue. The northwest portion will be the first rollout, southwest will be second, southeast will be third and then northeast will be last. It will be a month between each rollout but plan to have everything rolled out by the end of November.

Mayor Muhlfeld stated a project south of Whitefish, just north of the County Landfill that involves 73 RV park slots plus 268 commercial and residential housing units all of which will be entering and exiting onto Highway 93, and all being on septic. Council approved by showing of hands for Director Taylor and Mayor Muhlfeld draft a letter to the County Planning Department addressing concerns of this project.

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 9:39 p.m.

/s/John Muhlfeld
Mayor Muhlfeld

Attest:

/s/Michelle Howke
Michelle Howke, Whitefish City Clerk