

WHITEFISH CITY COUNCIL

September 7, 2021

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Hennen, 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, Interim Police Chief Kelch, Fire Chief Page, and Senior Planner Compton-Ring. Approximately 15 people were in the audience and one participating via Webex.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Casey Malmquist 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)

Toby Scott, 1478 Barkley Lane, spoke towards the lack of affordable rental housing for the workforce. The only way we are going to get workers is if the City Council increases the density and multifamily units through zoning, regardless of the Master Plan. The Master Plan is not written in stone and has been modified on many occasions. He is looking forward to hopefully implementing some available workforce housing.

Nathan Dugan, 937 Kalispell Avenue, spoke towards Accessory Dwelling Units, ADUs. He and his partner have purchased a house, and currently has two roommates, and views the long-term rental income will help him to afford to live in Whitefish, and to be able to maintain their home into the future. As the prices continue to go up, property values go up. Owner occupancy requirements may be a bad idea; folks may have to work out of town due to layoffs; or care for family members who live out of town that are sick, etc. Those scenarios would be in violation of owner occupancy of the code. This not only affects those that live here full time, but also people that live here full time when their life circumstances might change. He suggests making it more financially viable to keep property rather than selling as the property values continue to go up. He hopes this is something the council considers when thinking about keeping it in the code.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

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 August 16, 2021, Special Session (p.24)
- b) [Minutes](#) from August 16, 2021, Regular Session (p.25)
- c) [Ordinance No. 21-12](#); An Ordinance rezoning approximately 1.93 acres of land located at 1625 Highway 93 West in Section 35, Township 31 North, Range 22 West, P.M.,M., Flathead County, Montana, from County R-3 (One Family Residential) to WR-1 (One-Family Residential District) and adopting findings with respect to such rezones (Second Reading) (WZC 21-02) (p.32)

- d) **Ordinance No. 21-13**; An Emergency Ordinance lifting all Fire Restrictions within City limits and repealing Emergency Ordinance No. 21-09 and Emergency Ordinance No. 21-10, and waiving the second reading, with an immediate effective date (Only Reading) (p.35)

Councilor Sweeney made a motion, seconded by councilor Hennen 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) **Consideration** of a request from Beene Smyley for a Conditional Use Permit to construct an accessory apartment over a new garage, located at 304 Columbia Avenue, zoned WR-2 (Two-Family Residential) (WCUP 21-15) (p.38)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website. This property is two lots that will need to be consolidated prior to building permit.

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 Qunell made a motion, seconded by Councilor Sweeney to approve WCUP 21-15, the Findings of Fact in the staff report and the eight conditions of approval. The motion carried.

- b) **Ordinance No. 21-14**; An Ordinance amending Ordinance Nos. 18-01 and No. 19-02, which approved and subsequently amended the 95 Karrow, LLC Preliminary Plat and Planned Unit Development, to develop a 22-lot mixed-use development at the north end of Karrow Avenue on the former Idaho Timber property located at 95 Karrow Avenue, Whitefish (WPUD 21-02) (First Reading) (p.69)

Planning and Building Director Dave Taylor presented his staff report that is provided in the packet on the website. The developer 95 Karrow, LLC is amending Ordinance 18-01, which was approved by City Council in 2018 to add more housing, reduce commercial space by 50%, reconfigure the footprint of the marketplace building and to relocate the microbrewery. Staff has received three comments since the completion of the staff report for the Planning Board, with concerns related to the existing First Street right of way that is not developed and how access will be maintained. An additional letter was received prior to the Council meeting, with concerns of the traffic light and additional noise and traffic from the development.

Councilor Davis asked and Director Taylor addressed the concerns over the First Street right-of-way. An updated email from Architect Bruce Boody was provided to the Council and is appended to the packet on the website. There was a condition on the original plat that said any public trail that is put in, the First Street right-of-way will need to protect future access to those properties. The lots on Highway 93 West are deep lots with potential to be subdivided. The First Street right-of-way can be utilized as access to those lots. One adjacent property owner was concerned of maintaining a level area to get down to the river. Since notices have gone out, the applicant has graded some of the trail down to the river. There are three lots along the First Street right of way, that would have access to their property if developed.

Mayor Muhlfeld opened the Public Hearing.

Casey Malmquist, 160 Walker Creek Lane, stated there has been some fundamental things that have happened since the original approval of the project. They have gotten a lot of feedback in terms of what would work and what people are interested in. They have worked to repurpose, recycle, and reuse

everything they can on site. All the concrete has been ground up, and there has been very little infill and out fill movement. They have taken out a tremendous amount of steel, waste, and trash, and recycled it. They wanted to repurpose the existing building but that presented a lot of challenges and found some foundational issues with the building. It became unfeasible. By eliminating that building and creating more parking they were able to enhance this project. They are not changing the use of this at all. By providing ground-level parking, and adding podium-style construction above it, allows everything else to remain in place and add 74 residential units. The project has gotten better and will serve the community better.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated the multi-family housing is very appealing to her. She hopes the 74 more units is for people who live and work in Whitefish. That would make it even more appealing. She also thought if First Street was actually built out, all those other owners on Highway 93 could access the back half of their property and build more multi-family residential.

Dan Rasmussen, Lots 5 & 6 of Hendrix (424 and 438 W 2nd St), stated he has reviewed the documents that Bruce Boody has included about the easements. He thinks this is an outstanding compromise and supports it. Maintaining the pathway and having the access to keep the Highway 93 Corridor as whole and as undisturbed as 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 Norton asked and Director Workman stated further developing First Street would happen with development of the Hendrix Tracts. 95 Karrow, LLC is showing significant improvements on Karrow Avenue to make the necessary connection to their property.

Councilor Davis made a motion, seconded by Councilor Norton to approve [Ordinance No. 21-14](#); An Ordinance amending Ordinance Nos. 18-01 and No. 19-02, which approved and subsequently amended the 95 Karrow, LLC Preliminary Plat and Planned Unit Development, to develop a 22-lot mixed-use development at the north end of Karrow Avenue on the former Idaho Timber property located at 95 Karrow Avenue (WPUD 21-02) the Findings of Fact in the staff report and the conditions of approval as recommended by the Planning Board. The motion carried.

- c) **[Consideration](#) of a request from Casa Marco Montana, LLC, for a Whitefish Lake and Lakeshore Variance, to remove a seawall below the high-water mark and replace with rip rap and native vegetation; and a standard permit to remove deck and painted wooden stairs and install dry-set stone walkway and steps within the Lakeshore Protection Zone, located at 235 Glenwood Road (WLV 21-W41) (p.136)**

Director Taylor presented both Whitefish Lakeshore Variance in one presentation, but Council will vote separately. Planner II Tara Osendorf's staff report is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Kurt Vomfell, Terra Designworks, 234 2nd Street West, Kalispell, spoke on behalf of the applicants and was available for questions. He described the placement of the rip rap for Councilor Norton.

There being nor further 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 WLV 21-W41 the request from Casa Marco Montana, LLC, for a Whitefish Lake and Lakeshore Variance.

Councilor Feury asked staff to reach out to the people that installed the rip rap just east of this property and get a report back on how that is functioning. He would like to see it given the amount of wave action from wake boats has increased. We are going to see more and more lakeshore issues with erosion and because of our current requirements in the lakeshore protection of not allow very much gravel being applied, we are going to have to start seeing more and more of this kind of solution included into our regulations. **The motion carried.**

- d) **Consideration of a request from CCR FLP Holdings LP (Chris Ellis) for a Whitefish Lake and Lakeshore Variance, to remove a seawall below the high-water mark and replace with rip rap and native vegetation; and a standard permit to remove concrete steps and hot tub pad, add new steps and walkway, and remove trees, located at 245 Glenwood Road (WLV 21-W42) (p.198)**

Director Taylor presented Planner II Tara Osendorf's staff report that is provided in the packet on the website, with the prior application.

Mayor Muhlfeld opened the Public Hearing that was held in conjunction with the previous application. There being no further 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 WLV 21-W42. The motion carried.

- e) **Ordinance No. 21-15; An Ordinance amending Title 12, Subdivision Regulations, of the Whitefish City Code (WSUB 21-01) (First Reading) (p.263)**

Senior Planner Compton-Ring gave her staff report that is provided in the packet on the website. A list of the major changes is on page 2 and 3 of her staff report.

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 Hennen made a motion, seconded by Councilor Sweeney to adopt Ordinance No. 21-15; An Ordinance amending Title 12, Subdivision Regulations, of the Whitefish City Code (WSUB 21-01) (First Reading), including the suggested addition of 'this definition does not include commercial pads' to the subplot definition. The motion carried.

- f) **Resolution No. 21-37; A Resolution amending the Whitefish Legacy Homes Program Administrative Procedures (p.450)**

Senior Planner Compton-Ring 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 Qunell made a motion, seconded by Councilor Sweeney to adopt Resolution No. 21-37; A Resolution amending the Whitefish Legacy Homes Program Administrative Procedures. The motion carried.

7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) **Consideration to authorize City Manager Smith to execute a Preliminary Engineering Services Agreement with BNSF to establish the Birch Point Quiet Zone (p.477)**

Public Works Director Craig Workman presented his staff report that is provided in the packet on the website.

Councilor Sweeney made a motion, seconded by Councilor Hennen to authorize City Manager Smith to execute a Preliminary Engineering Services Agreement with BNSF to establish the Birch Point Quiet Zone. The motion carried.

8) COMMUNICATIONS FROM FINANCE DIRECTOR

- a) **Consideration to contract for Audit and Consulting Services and direct the City Manager to execute the contract and agreement (p.484)**

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

Councilor Hennen made a motion, seconded by Councilor Sweeney to award the contract for Audit and Consulting Services to Denning, Downing and Associates and to direct City Manager Smith to execute the contract and agreement. The motion carried.

9) COMMUNICATIONS FROM CITY MANAGER

- a) **Written report enclosed with the packet. Questions from Mayor and Council? (p.517)**

Council directed City Manager Smith to donate \$3,600 of American Rescue Plan funds to the Parent Community Outreach Program based within the Browning Public Schools that would have been allocated to the Town of Browning.

Councilor Sweeney would like to bring more public attention to and elevate the conversation to the valley on getting vaccinated. Manager Smith stated the COVID Task Force met but was not super strong in a recommendation for a new messaging outreach campaign. She thinks because the sentiment among everybody is so deflated. The health care workers that attended the meeting are exhausted and they don't know if messaging is going to fix the problem. The WAVE is going to offer a vaccine clinic and would be happy to get on any messaging with the city, pushing the vaccination.

- b) **Other items arising between September 1st through September 7th**

None

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a. **Consideration of appointing Sandra Cooper to the Whitefish Housing Authority as recommended by the Housing Authority Board to complete term ending 12/31/2022-Mayoral (p.530)**

Mayor Muhlfeld appointed with ratification from the Council to appoint Sandra Cooper to the Whitefish Housing Authority representing the members, completing term ending 12/31/2022.

- b. **Letter from Doug Rosholt requesting Council to contest legislative measures pertaining to COVID-19 and re-implement measures like the mask mandate (p.532)**

None

Council Comments

Councilor Norton reminded members of the community to wear masks, wash hands and keep distance during this time.

Councilor Davis spoke towards the work session prior to the meeting regarding Short-Term Rentals. He heard five ideas that came out during the work session regarding enforcement; 1) change to the 90-day term for leases; 2) require the license number in all advertising for the rentals; 3) hiring an external firm for enforcement; 4) raising the business license fees and permit fees to cover the cost of enforcement; 5) three strikes program similar to the County. These are things we should already be doing and should be moving forward with. He doesn't think enforcement is going to solve the problems in our town. What keeps coming into his mind is 'over visitation'. In the CVB report there are twice as many beds for visitors as there were a couple years ago. It feels to him that there are so many people here this summer that it strains our businesses and our infrastructure. It has a lot of collateral impacts to our community in the form of housing, traffic, and other things. If we have a moratorium it needs to be towards a goal. Caps may be completely unworkable; though he would be interested if there was a way to do that. The other big one is fees Is there some way to have the cost of the short-term rentals help pay for our affordable housing problem? We need a plan. After some discussion, Council directed staff to work on the five points for enforcement.

Discussion followed regarding a moratorium, and without a goal we will be right back in the same boat. Mayor Muhlfeld is in favor of a moratorium. We need to buy ourselves some time. Our infrastructure is getting taxed. Councilor Feury stated it could take a couple of weeks to pass a moratorium, and in that time, we are probably going to see 30% of those come in for a license and maybe boot their renters out. We need to be very cognizant of that and possible litigation with properties purchased with the expectation of renting for short-term. Can we do it without a moratorium and find a solution, then institute a moratorium? All we are going to prevent is issuing licenses. He supports the idea with an end game. Councilor Sweeney would support it, but he doesn't think it works at this point. We ought to take a look at the enforcement provisions, get those enacted, and be aggressive with fees.

The direction to staff is no moratorium at this time and work towards enforcement. Manager Smith stated Whitefish is a desirable place to visit. Columbia Falls, the County, and Kalispell are going to have short-term rentals. They will naturally rise the price of living in Whitefish. We are up against a large hurdle to address affordability based on short term rental. Idaho has a law that was passed that short-term rentals cannot be regulated at all. You can't treat them any different than residential uses, they are allowed in any residentially zoned place. We have to be cautious that we have a legislature right now that would be willing to move toward those types of regulations.

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 9:02 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk