

WHITEFISH CITY COUNCIL

September 20, 2021

7:10 P.M.

1) CALL TO ORDER

Deputy Mayor Sweeney called the meeting to order. Councilors present were Feury, Hennen, Davis, Sweeney, and Norton. Mayor Muhlfeld and Councilor Qunell 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, Interim Police Chief Kelch, Senior Planner Compton-Ring and Planner II Osendorf. Approximately 17 people were in the audience, and 2 participant via Webex.

2) PLEDGE OF ALLEGIANCE

Deputy Mayor Sweeney asked Eric Mulcahy 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, reminded the Council, staff and the community there is an Open House on Wednesday, September 22nd, between 3:30pm and 6:30pm at the O'Shaughnessy Center regarding the Montana Department of Transportation (MDT) Downtown Whitefish Highway Study. There are several plans within the study. He urges the community to attend the meeting to voice their opinion.

Shane Axhelm, 811 Railway Street, complained the recycling center on Railway Street has become dumping grounds for garbage. He also provided his displeasure along with the neighbors of the proposal to put a maximum density housing project on the Snow Lot. It will destroy their view, and traffic is already a nightmare with school twice a day. He doesn't think the neighborhood could bear it.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Jan Metzmaker, 915 Dakota Avenue, addressed the letter she submitted that is in the packet. The letter addresses the problem with weeds in Whitefish. Landowners have inherited knapweed with reconstruction projects. The Contractors are bringing in weed contaminated soil that is used for the creation of new boulevards. Landowners are told it is their responsibility to maintain the boulevards. The City should be responsible as they also prune trees in the boulevard area. She has turned properties in for enforcement for 5 years and all that is done is mowing the weeds. Mowing does not kill knapweed. It needs to be taken care of because it is proliferating all over town and the boulevards. A lot of the properties she has turned in are city street projects. She also mentioned she has had a 10,000-volt fence that Fish Wildlife and Parks (FWP) installed in her yard this week. She is not happy about having it, but she is so besieged with bears in her yard, ruining her trees and raising havoc. She hopes the City will take garbage seriously and work on people with fruit trees and work with FWP knowing that there are 16-18 bears in town. That is a problem, and it is a safety issue. She also mentioned the City has not adopted a deer management plan. She hopes the Council and City will contact the Fish, Wildlife and Parks. Bear and deer are lovely but there is a lot of them, and they are causing problems.

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 September 7, 2021, Regular Session (p.45)
- 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) (Second Reading) (p.51)

- c) [Ordinance No. 21-15](#); An Ordinance amending Title 12, Subdivision Regulations, of the Whitefish City Code (WSUB 21-01) (Second Reading) (p.53)
- d) [Consideration](#) of a request from Brad and Dana Chelf for a Whitefish Lake and Lakeshore Protection Permit to remove non-compliant structures, gravel application and tree removal, located at 1500 West Lakeshore Drive (WLP 21-W46) (p.152)
- e) [Consideration](#) of a request from Haley Barrile for a Whitefish Lake and Lakeshore Protection Permit to install a waterline and pump, gravel application and removal of trees, located at 1410 Wisconsin Avenue (WLP 21-W47) (p.169)

Councilor Norton 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 Doug Vanee, Randy Vanee, Bruce Groenenboom, and Jim Groenenboom for a Preliminary Plat for a 2-lot subdivision located at 504 Dakota Avenue, zoned WRR-2 (Medium Density Resort Residential District) (WPP 21-03) (p.188)

Planner II, Tara Osendorf, presented her staff report that is provided in the packet on the website.

Deputy Mayor Sweeney opened the Public Hearing.

Eric Mulcahy, 2 Village Loop, Kalispell, Sands Surveying, a representative of the applicant. They are in complete agreement with the staff report and the Planning Board recommendation.

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

Councilor Davis made a motion, seconded by Councilor Norton to approve WPP 21-03, and the Findings of Fact in the staff report. The motion carried.

- b) [Consideration](#) of a request from Paige McDonald for a Conditional Use Permit to construct an accessory apartment above a new garage, located at 950 Edgewood Place, zoned WLR (One-Family Limited Residential District) (WCUP 21-17) (p.216)

Planner II, Tara Osendorf, presented her staff report that is provided in the packet on the website.

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

Councilor Norton made a motion, seconded by Councilor Hennen to approve WCUP 21-17, 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 The 406 Standard LLC for a Conditional Use Permit to develop a six detached single family condominium project, located at 1625 Highway 93 West, zoned WR-1 (One-Family Residential District) (WCUP 21-16) (p.243)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website.

Councilor Norton asked and Planner Compton-Ring stated the applicant can address her concerns pertaining to the wetlands.

Deputy Mayor Sweeney opened the Public Hearing.

Eric Mulcahy, 2 Village Loop, Kalispell, Sand Surveying, applicants representative, agree with the staff report and the conditions of approval. The applicant also agreed with the Planning Boards amendment to the conditions to add the architectural review element. He stated a drainage plan will have to be reviewed by the Public Works Department to ensure they are meeting their standards for the city. Engineers are working together to design the below grade parking areas, so they don't become inundated or impact the groundwater flow.

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

Councilor Feury made a motion, seconded by Councilor Davis to approve WCUP 21-16, the Findings of Fact in the staff report and the conditions of approval. The motion carried.

- d) [Resolution No. 21-](#); A Resolution of Intention, indicating its intention to adopt amendments a map amendment to the 2007 Whitefish City-County Growth Policy, as requested by The 406 Standard, LLC and adopting findings with respect to such amendment (WGPA 21-01)(p.293)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website.

Discussion followed between Deputy Mayor Sweeney and staff regarding the cash-in-lieu of Affordable Housing that is a condition of approval for the adjacent-conjoining project. Staff stated Council can look at this as one project with the conjoining project that is paying a sizable fee towards affordable housing. The developer could let the prior CUP lapse, come back for another CUP, and not pay the cash-in-lieu. Councilor Davis asked and Planner Compton-Ring stated they are sharing access, stormwater, open space, amenities. The project's is going to function as one project, so could be considered at one project.

Deputy Mayor Sweeney opened the Public Hearing.

Eric Mulcahy, 2 Village Loop, Kalispell, Sands Surveying, applicants representative. They agree with the staff's findings as well as the Planning Board recommendation. The proposed six units with the previous conditional use permit that was approved a year ago, essentially create a whole project with our access, amenities, open space, wetlands, drainage, everything works together really well. This property with the six units allows the project to move fifteen feet to provide a buffer between the Fox Hollow subdivision and the Eagle Crest Condos. There are a lot of benefits by bringing these two properties together. That is the goal with this growth policy amendment to have a zoning that lays on both; to allow short-term rentals in the six units.

Mayre Flowers, Citizens for a Better Flathead, Kalispell, stated this growth policy amendment does not provide extraordinary benefit. There is a shortage of housing in this community. Short-term rentals are not needed. She encourages the Council to deny this growth policy amendment.

Nathan Dugan, 937 Kalispell Avenue, stated we can't address our housing issues if we approve more short-term rentals. He asks the Council to deny it.

Rhonda Fitzgerald, 412 Lupfer Avenue, (via Webex), stated it is agreed community-wide that we have way too much resort residential, and it is being abused with way too many short-term rentals, and is gutting our community. She hopes the council will deny this.

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

Councilor Norton made a motion, seconded by Councilor Feury to deny WPGA 21-01. Councilor Norton stated our community is in dire straits. The community conditions have changed and there is a dire need for real housing for real people. She doesn't think the extraordinary community benefit is there to meet a growth policy amendment. Councilor Feury stated he can't support approval based on four of the six findings; 1) *How a specific error was made in the growth policy that necessitates an amendment to the map in order to preserve property right or preserve or achieve equal protection under the law*; he can't answer positively to that question in this case; 2) *How community conditions have changed to a degree that the amendments to the map will help facilitate achieving the community goals and overall vision for Whitefish*; he thinks it probably does the opposite for what people are currently feeling in this community; 3) *There is a clear and extraordinary community benefit in terms of achieving goals resolving problems or issues or furthering the realization of the community vision*; definitely not. This is a standalone project that will function with the other. Not allowing overnight rentals will not make that function any less. They are still going to use the same drainage, same access, they just can't rent them overnight. 4) *How the proposed change will promote the goals and objectives of the growth policy overall*, he can't really answer positively to that. On that basis he has to vote to deny. Deputy Mayor Sweeney stated the community benefit is that it could and should be long-term rental. He appreciates all that they have done and are willing to do for this community. The project will also serve the community as long-term housing. **The motion carried.**

- e) [Resolution No. 21-38](#); A Resolution of Intention, indicating its intent to adopt the Whitefish Highway 93 South Corridor Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (WPGA 21-02) (p.336)

Building and Planning Director Dave Taylor presented the Highway 93 South Corridor Plan that is provided in the packet on the website. Staff received one letter prior to the Planning Board meeting asking for fresh perspective on the plan and look at possible peer review for the plan. Eleven letters were received prior to the Council meeting, suggesting looking at areas for employee housing and higher density development. Director Taylor stated the map in the plan calls for urban density outside the general commercial. Within the urban density there is opportunity for higher density development with regard to urban. The WB-2 commercial zone allows a little bit higher density not as high density as WR-4.

Councilor Norton asked and Director Taylor stated Council has adopted several amendments to the growth policy since it was adopted along with several neighborhood plans. Montana Department of Transportation and Flathead County Planning Department have been involved throughout the process.

Councilor Davis asked and Director Taylor stated the future land use map dictates what zoning can go in there. A growth policy amendment would be required to change the zoning once properties are annexed into the city.

Deputy Mayor Sweeney opened the Public Hearing.

Toby Scott, 1478 Barkley Lane, agrees with the plan for the most part. The Committee didn't consider rezoning for the purpose of high-density residential housing. He encouraged the Council to amend the future land use map of the Highway 93 South Corridor Plan to require or allow any property annexed into the city be zoned high density residential if requested, regardless of the county zoning. Without this amendment any zoning requested by a developer or other person is going to be very difficult and require an amendment to the growth policy.

Phil Boland, 12 Green Place, requests amending the future land use map of the Highway 93 South Corridor so that the future land use shown for any parcel annexed as high density residential which would allow it to be zoned WR-3 or WR-4 for more density of workforce housing. It is imperative this amendment be made for the corridor plan. If the future land use plan of 93 Corridor is not amended, it

will require a growth policy amendment to be done prior to any future zone change that differs from future land use map designation. At this time any zone change must be consistent with the future land use map of the growth policy.

Mayre Flowers, Citizens for a Better Flathead (CBF), provided a letter that is appended to the packet on the website. The letter appended to the packet outlines points to consider to not adopt this plan currently. She reviewed those points. 1) Illegal process of amending the text and maps of the Whitefish Growth Policy; 2) The Growth Policy map and text amendments for segment C (and segment b) will endorse zoning inconsistent with the Growth Policy; 3) Council should table this corridor plan and follow proper procedures to amend the Growth Policy; 4) This annexation policy should make housing a clear priority for future annexations; 5) The Chamber Board voted for the City not to adopt the Extension of Services Plan prior to approving an annexation policy; 6) She compared maps that were provided in the letter, 20027 Growth Policy Map, proposed Hwy 93 Corridor Plan map, and Kalispell Future Land Use and Annexation Map; 7) The growth policy map amendments for segment C endorse the county's highway corridor development pattern and adopts it as city policy; 8) Two members of the Committee strongly opposed the adoption of this plan; 9) The city has no legal obligation to accept annexation request if they do not support the pattern of growth set forth in the Growth Policy; 10) Request the Council table this corridor plan and seek outside professional planner, peer review; 11) Whitefish has never share the vision of commercial strips along the highways connecting the three cities. CBF asks the council to table this corridor plan.

Tom Gilfillan, 240/242 Central Avenue, Whitefish Pottery, stated he can't find employees which has to do with affordable housing and workforce housing. Anything you do to this master plan growth period should include areas that will afford more housing for workers and affordable. He also thanked the city for changing the speed limit from 45 to 35 in front of the golf course.

Nate Dugan, 937 Kalispell Avenue, stated given the nature of the housing crisis, we should not be creating more exclusionary zoning. From a practical standpoint the area south of Hwy 40, although not incredibly walkable, it is bikeable, and is the most palatable area that is close enough to the city, that is limits the amount of sprawl and keeps people involved in the community.

Toby Scott, 1478 Barkley Lane, suggest if you can't come up with the text for an amendment to allow the annexation zoning changes, he suggest tabling this until the next meeting.

Michelle Weinberg, 116 Lupfer Avenue, (via Webex), representing the south whitefish neighborhood association, provided a letter that is appended to the packet on the website. The corridor plan should not be adopted as drafted. It purports the change the future land use designation of certain areas covered by the growth policy. The association is concerned the plan would open the door to higher density residential development on the west side of Highway 93 in Segment B. Despite the natural resource values and environmental constraints present in the area. The vacant land between JP Road and Park Knoll Lane, if the designation is changed to urban over 200 units could be built by right and hundreds more if the area is zone WR-2 with a residential PUD. The association respectfully request the council not adopt the resolution of intention and remove any changes to the land use designation from the plan.

Rhonda Fitzgerald, 412 Lupfer Avenue, (via Webex), participated in the process of developing the corridor plan from the beginning and stated it has not been a robust public process, but nevertheless throughout a lot of really good information was collected and the plan offers a lot of great ideas and insight and guidepost for the future. By the time the discussion got to Segment C, there wasn't very much information at all. A lot of the public comment points out that this is just not quite ready. The community needs a more solid plan to address all of the challenges we have currently. It is a good plan, but it is not done. She hopes the Council will take a step back and work on it a bit longer.

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

Councilor Norton made motion, seconded by Councilor Davis to continue the Public Hearing to October 4, 2021. Councilor Norton would like Attorney Jacobs to take a look at the legal arguments that were brought up and make sure we are compliant. She is not sure the Corridor Plan is the correct document to request property annexed to be zoned high density. Councilor Davis he would benefit from additional time to process some of the comments and take more time looking at maps. Councilor Feury supports the motion to continue a couple of weeks. We are hearing two different competing things about housing. That is something that is not universally agreed to amongst those that are talking about housing. He would like to see some greater density through housing and annexation policy. Other than that, he is not hearing too much from the public. We do need to be conscious of the fact that we have been at this for 40 months. **The motion carried.**

7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) [Consideration](#) of appointing members to the Rating Panel and Selection Committee for the Spokane Avenue Watermain Replacement Project (p.467)

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

Councilor Hennen made a motion, seconded by Councilor Davis to appoint Neil DeZort, Craig Workman and Karin Hilding to the Rating Panel and appoint Neil DeZort, Craig Workman, Karin Hilding and Councilor Norton to the Selection Committee for the Spokane Avenue Watermain Replacement Project. The motion carried.

8) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.474)

None

- b) Other items arising between September 15th through September 20th

Manager Smith reported she will bring forward an Interlocal Agreement with the County Commissioners to add the city to the Flathead County Health Board, at the next City Council meeting.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) [Letter](#) from Jan Metzmaker requesting the City address weed compliance issues (p.477)

Councilor Norton asked and Director Workman stated staff has added language to the standard specifications addressing weed germination within boulevards. It is looked at during the two-year warranty walk. Staff goes through an educational campaign during the open houses and during the project with newsletters, but we don't see a whole lot of people out there watering. Manager Smith stated while the City does maintain the trees in the boulevard, it is the responsibility of the adjacent property owner to maintain both sidewalk maintenance and boulevard. If there is an issue within the two-year warranty period of reconstruction, the City will remediate it. Code enforcement is where we rely on making sure our property owners follow regulations.

- b) [Letter](#) from Paul Gillman and Bill Burg requesting an independent audit of Impact Fee overcharges (p.478)

Manager Smith reported City staff has been communicating with Mr. Gillman and Mr. Burg and providing a lot of documentation. She has done an internal review of the alleged issues and found an error in the program calculator. Staff is aware of that issue, will look at how that impacted the buildings

that had applied during that period and if any refunds are required. The other allegations that Mr. Gillman is making is that our impact fees are developed and being implemented incorrectly. She contacted FSC Group, who performed the 2018 Impact Fee update, and confirmed there was no change in methodology from our HDR initial study that created our impact fees in 2007. All that we have done, is we updated the capital improvements that were planned, based on the CIP that was available at the time and any planned projects Council was discussing. Those changes would not have created an issue in the way that we have collected or assessed our impact fees. There are numbers in the report that she cannot confirm if they are accurate or not. Mr. Gillman and Mr. Burg would like an independent audit of the Impact Fees, Manager Smith is not opposed, but she also questions the use of taxpayers' dollars to audit something that has gone through a significant public process.

Councilor Feury stated he is comfortable not having an outside audit. Staff caught the imperfections in the spreadsheet and have corrected it.

Council Comment

Councilor Davis asked and Manager Smith stated the Open House that is scheduled for Wednesday, September 22nd is part of the Downtown Highway Study Committee of MDT. The Committee is represented by City staff, Council, and other stakeholders of the Community. The Committee has been meeting for over a year. There were multiple alternatives that were looked at. Alternative G and Alternative C were the top choice through a rating criteria. She encourages the community to attend and provide comments. Deputy Mayor Sweeney also encourages the community to attend the Open House on Wednesday.

10) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Deputy Mayor Sweeney adjourned the meeting at 10:01 p.m.

/s/Francis J. Sweeney

Deputy Mayor Sweeney

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk