

WHITEFISH CITY COUNCIL

October 2, 2023

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Davis, Sweeney, and Norton. Councilor Caltabiano was absent. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs (virtual), Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Kelch and Fire Chief Hadley. Approximately 45 people were in the audience and 3 attended virtually.

2) PLEDGE OF ALLEGIANCE

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

3) PRESENTATION

- a) [Kim Morisaki](#) with the Northwest Community Land Trust will provide a presentation on the Montana Ground Lease Restriction pertaining to Trail View Subdivision (p.16)

Kim Morisaki, Executive Director of Northwest Community Land Trust (NMCLT) asked the Council to release Deed Restrictions on two properties within the Trailview Subdivision. NMCLT would like to purchase the land under the two homes and enter a Ground Lease with the buyers. This is a way to make it more affordable for the buyer. The property will stay with the NMCLT even when the home is sold.

Councilor Qunell made a motion, seconded by Councilor Sweeney to approve the release of the Deed Restrictions on two properties within the Trailview Subdivision. The motion carried.

- ### 4) COMMUNICATIONS FROM THE PUBLIC—
- (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Mayre Flowers, Citizens for a Better Flathead stated she appreciated joining the tour of the Wastewater Treatment Plant prior to the meeting. She mentioned Cody was delightful to meet with and was very informative. The City and the management team need the appreciation of the public that it is an impressive facility. She also reported that they are still tracking the proposal for the county where they have recently bought some property near the Lakeside sewer and water district where they are proposing to build a compost facility. The liquid from that would go to the Lakeside sewer and water district for treatment. Citizens for a Better Flathead continue to be very concerned about the changes that are being proposed. Lakeside is applying for groundwater injection of the water that they will be collecting both from their sewer line and the compost facility. We all need to look at the water quality and the impact on Flathead Lake. She would encourage the Council to watch that process.

Leanette Galaz, 265 Colorado Avenue, is a member of the Whitefish Community Housing Committee, and would like the opportunity for that meeting to be available to the public via an online video format. For an issue that is so important to the community right now, any opportunity to increase transparency, and provide opportunities for participation and public comment and hold the committee accountable by the public is a good thing.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

- 6) **CONSENT AGENDA** (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
- a) [Minutes](#) from September 18, 2023, Regular Meeting (p.20)
 - b) [Consideration](#) of a request from 93 LLC to extend the Subdivision Improvement Agreement for Rock Ridge to July 1, 2024 (WFP 22-09) (p.23)
 - c) [Consideration](#) of a request from Alex Thompson on behalf of Robert and Madeline Custer for a Whitefish Lake and Lakeshore Permit to apply 13.5 cubic yards of gravel to an existing gravel beach and to remove timber stairs in the Lakeshore Protection Zone and replace with stone steps, located at 350 Dakota Avenue (WLP 23-W27) (p.36)
 - d) [Consideration](#) of a request from Logoff LLC for a Whitefish Lake and Lakeshore Permit to remove one living cottonwood tree over 8 inches in diameter located at 236 Jennings Lakeside Road (WLP 23-W28) (p.57)

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

- 7) **PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
- a) [Resolution No. 23-](#) : A Resolution to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately 11.63 acres of land known as Tract 1 of COS 10316, addressed as 5975 Highway 93 South in Section 12, Township 30 North, Range 22 West, in Whitefish, Montana, and zone the property to WB-T (Business Transitional District), based on the findings of fact in the staff report and subject to: 1. Upgrade the portion of Emerald Drive within the annexation area to Highway 93 to City street standards including curb, gutter and streetlights on both sides and sidewalk, street trees, boulevard on the north side with Phase 1 of the project; and 2. Maintenance of the Highway 93 S. shared path, the sidewalk on Emerald Drive, the street trees and all internal landscaping and circulation is the responsibility of the property owner (WAR 23-03) (p.77)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website. Eight comments were received prior to publishing the packet and thirty-five comments were received prior to the meeting. Comments in support of the annexation noted it is proposed to develop important housing. There were folks concerned about the annexation and rezone and the development proposal itself.

A developer's agreement included in the packet will follow the land and could be a condition of approval. The applicant will still have to abide by the WB-T zone. The only thing that is not going to require a Conditional Use Permit (CUP) or PUD is multi-family due the change in state law. It is questionable whether a CUP would be required for a multi-family with commercial combo. Mixed use is permitted if there are residential units, and they have a threshold of the percentage of square foot. If the non-residential uses are less than 50% of the total square footage of the building and you have residential and non-residential then it is permitted by right. A Traffic Impact Study (TIS) is not required for annexation and zone change but will be required at building permit.

Mayor Muhlfeld opened the Public Hearing.

Alberto Valner, applicant, stated he has seen how members of our community and workforce have slowly been pushed out due to a lack of attainable and affordable housing. Alpine 93/40 is a project about housing. It is not the solution for the problem is too big to be resolved by one project or by one solution. He and his development team have met with many members of the community, businesses, hospital, Big Mountain, the Emerald Heights HOA, to share their ideas and to receive input. They have also met on multiple occasions with the Montana Department of Transportation to ensure safe egress and ingress proposed crosswalk improvements at the intersection of Highway 93 and 40. Housing with a small neighborhood retail component was the obvious answer for this location. These are not condos, nightly rentals, or luxury apartments. Instead, these are meant to be attainable and affordable units for our community workforce. 10% of the units will be deed restrictive to be affordable under the Legacy Homes Program. This project is providing a dog park, playground, bike and pedestrian paths, a proposed bus stop as well as 21 affordable units. This is the main entrance into the community. They are trying to create a landmark gateway into the community that we all can be proud of.

David Coyle, Cushing Terrell, provided slides of the project that can be viewed in the recording. They have 50 feet setback on the highways and 30 feet on the other two sides. The parking is towards the back of the project (eastern portion) the buildings will be along Highway 93. They would like to keep as many of the trees as they can. They pushed the architecture more towards the center, the highest point of these buildings is the core. The commercial and courtyard are near the corner of Highway 93 and 40. Each building has a courtyard, and roof terraces that take advantage of the views.

Brandon Theis, Robert Peccia and Associates, Civil Engineer spoke towards the engineering schematic. There is a large landscaping buffer along the highway and a nice green belt that would go around this site. There is access to the site from Highway 40 (right in/right out) and from Highway 93 (left turn lane/right turn lane) at Emerald Drive. The draft Traffic Impact Study (TIS) has been shared with MDT. Emerald Drive will be upgraded to City standards. The water flows from the south to the north through this site and ends up hitting a concrete culvert that wraps around the Highway 93 frontage and goes east along Highway 40 and discharges to the MDT ditch at the northeastern corner of the site. They are going to send the storm water to the south triangle piece, store it, treat it, and then flow control it out maintaining the historic flow and the traditional flow of water through the site. They will extend water from the corner of Highway 93 and 40 near Town Pump, directional drill underneath the highway and open dig a new water main all through their site to the intersection of Emerald Drive and Highway 93. There is an existing manhole at the city soccer fields. They are proposing to bore underneath the highway and bring the gravity main up to their site terminate at the intersection of Emerald Drive and Highway 93. Those trenchless technologies will not impede the traffic on highway 40.

Councilor Norton asked, and Brandon stated they have met with MDT to discuss improving the cross walk at the intersection of Highway 93 and 40. They discussed improving the push button controls so that you get the newer beacons with the countdown timer and potentially adding some lights to the intersection.

Ann Jeremiassen, 3012 River Lakes Drive, opposes the proposed annexation and development. She has concerns of increased traffic.

Daniel Sidder, Housing Whitefish Executive Director, stated they support the annexation and zone change. This project meets the criteria that they are looking at.

David Randall, 215 Emerald Drive, stated there is some confusion over what the development agreement is. It needs to be signed in conjunction with the annexation and zone change. It is a separate and distinct act by the Council. The agenda only has the Resolution for annexation and zone change. The public has not been

provided with the right to know that this agreement is up for debate. He asks the Council to either completely deny or postpone.

Garth Wells, 5960 Hwy 93 South, stated 30,000 square foot mixed residential and commercial building is going to be very large. He has concerns about safety traffic, adding that much retail could impact some of the existing businesses on Central Avenue.

Jerry LaPrath, 195 Sapphire Court, President of the Emerald Heights HOA, has concerns with traffic. There will be an impact to the Emerald Heights roads. A barrier between the development and the existing subdivision needs to be agreed on and entered into the agreement. The density requested seems excessive.

Kevin Abel, 120 Waverly Place, President Logan Health Whitefish, stated workforce housing continues to be a concern and hiring has been very challenging. They see this as a potential solution.

Alan Wolf, Emerald Heights resident, has multiple concerns with the Emerald Drive approach onto Highway 93 South. It is a poor choice as the main entrance into the proposed project. It is a difficult and dangerous access to Highway 93. If this is assumed by the City, provisions must be made for aggressive winter maintenance. He recommends redesigning the project and use the existing entrance off Highway 93 and avoid Emerald Drive.

Brandon Kittner, 175 Sapphire Court, agrees with Jerry LaPrath and Alan Wolf's comments about the safety issues. He recommends postponing taking a better look at what is going on. He doesn't believe people coming from Columbia Falls will go through the light and enter onto Emerald Drive; rather they are going to drive through his neighborhood.

Shae LaPrath, Emerald Heights resident stated they chose Emerald Heights because it is not the city. She has concerned her, and the neighboring family's safety is gone. She asks the Council to consider beyond dumping this housing in a beautiful view and think of the community that is there and who it will impact.

Jen Vilar, Emerald Heights resident, is concerned for the safety of their residential area and the streets, and the privacy barrier, sound barrier and security barrier. It is a concern that people can wonder in there. Her biggest concern is the traffic on Highway 93.

Jeff Carl, 1215 Wisconsin Avenue, is in support. We have a lot of people who work in the town, and we have businesses that are active that need staff. It won't fix it everything, but it will help a lot of businesses and business operators to have people part of the community instead of most employees driving in from Kalispell or Columbia Falls. He would like to see it pushed forward if it can.

Aaron Scott, 165 Sapphire Court, has concerns that the TIS has not been made public. He is concerned traffic will go through Emerald Heights. He also has concerns of the intersection of Emerald Drive and Highway 93. He would like to see more traffic study done as a solution.

Alex Killian, 465 Armory Road, stated it is a very welcoming sight to see a project like this presented within the community. This provides an opportunity for housing for so many individuals, along with the 15,000 square feet of commercial space. That provides tremendous opportunity for businesses to grow and thrive. A project such as this will provide many positive benefits to our community.

Britt Cooper, 135 Sapphire Court, asked how can you annex and at the same time approve a development of this size? Emerald Heights is a 28-lot subdivision. The only people that go through Emerald Drive are

people that live in Emerald Heights. The project is too big. He doesn't think Emerald Drive is a viable ingress egress.

Dakota Whitman, 102 Dakota Avenue, spoke to the experience of a young professional in the valley. Most young professionals he knows, don't live in Whitefish, and openly say they don't bother looking. Seeing a housing development where he could obtain to live and stay at long term is very refreshing. It brings much needed economic benefits to our area.

Mallory Phillips, Kalispell Avenue, representing Shelter WF, stated it is frustrating to hear people living in Emerald Heights are acting as if they are living in the middle of rural Montana. She understands the frustrations, but you chose to move next to a place in which there was an open lot that could have sold at any point. There are some reasonable frustrations with this development, MDT should look at the speed limit, and bumping out the corners of the intersection to make crosswalks walkable. There are a lot of young professionals in this community that are providing important services and a lot of people across the economic spectrum. They are a part of our community and when people continue to say renters don't matter, it devalues our community. It is not the Whitefish she grew up in.

Nathan Dugan, 937 Kalispell Avenue, President of Shelter WF. They are in support of this annexation and the rendering and hopefully the project comes to fruition. We know before the pandemic we were way behind on building housing to keep up with the need that we have. We have been moving in the right direction recently. The mixed-use aspect of this proposal will hopefully cater to everyday needs. The intersection is a huge issue, that presents good opportunity for improvements in the future and transportation. As an organization they would like to see this as the out limit of sprawl for a while.

Mayre Flowers, Citizens for a Better Flathead, provided comments that are appended to the packet on the website. She has concerns with the development agreement, it is inadequate and needs to be reviewed. She recommends tabling this, hold a work session and keep the public comment open. She would like the Council to look at the need to revise the zoning categories in the WB-T zoning district. The draft TIS should be made public. If a development agreement runs with the property and is filed with the development, she doesn't see how to go back and change that within the agreement. She encourages the Council to look at the examples she provided in her written comments that are appended to the packet on the website.

Tom Thomas, Point of View Ranch, Five Star Realty, stated it is a perfect development to go into this area.

Ed Docter, 845 Wisconsin Avenue, owns a business and needs employees. As a business owner he supports the annexation. He understands there is more of a conversation that needs to be had. He doesn't want stuff in his backyard either but as a guy like him and a lot of people like him, they want to keep their businesses alive. He supports this and more of a conversation about it. It is something he would like to see happen.

Joe Hess, 1275 Lion Mountain, virtually, owns two businesses in town and appreciates all the comments on both sides of the argument here. We do need housing; it is never in the right spot for everyone. There is conversation that need to continue around this project with the traffic and other things. At the same time, it is the entrance to the city. It will be developed at some point. We have a great direction from the developers and an opportunity to make it a nice entrance to the city. He supports the annexation.

Lauren Stevens, 344 Blanchard Hollow, virtually, grew up in Whitefish stated this development would be a significantly better gateway view coming into the city than dirt and fireworks stand. Having more options, apartments or otherwise is always great. She feels like people living in apartments become criminalized and everyone worries that they will somehow ruin the neighborhood. It is important to remember that a

development agreement is not something that is required with an annexation request. This is something that developers usually do to help assure people what is going to happen there. The traffic impact study would be reviewed at building permit. Emerald Drive is a public road. It cuts through this property. It is more than fair to let that be an access point if engineering says it works. The barrier between the parking area and the existing homes would be important. The existing homes could have a fence on their property if they are concerned with people walking through.

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

Mayor Muhlfeld called for a recess at 9:28 pm and reconvened at 9:36 pm.

Discussion followed, the developer would be responsible to improve Emerald Drive; the TIS will recommend the improvements; MDT has an elaborate process for adjusting speed limits; if approved tonight, it would follow the regular development review process which would be site review with more refined plans, then they would submit their engineering plans, Architectural Review would happen, and then building permit. There was discussion on whether SB 245 allows for a CUP for the commercial portion. Staff will do more research.

Councilor Qunell made a motion, seconded by Councilor Norton to postpone until the October 16th meeting, leaving the public hearing open. The motion carried.

- b) [Consideration](#) of a request from Gordon Tait and Michelle Janz for a Use Permit to use an existing primary residence as a guest house, located at 2120 Houston Drive, zoned WSR (Suburban Residential District) (WCUP 23-04) (p.138)

Planner Nelson Loring presented his staff report that is provided in the packet on the website. A letter was provided regarding issues with existing easements to the property. Attorney Jacobs stated the easement issue is a private issue as is the encroachment issue although we are doing what we can by making sure their deck encroachment does not encroach on their neighbor's property. One of Attorney Frampton's suggestions in his letter was a condition of approval that successful permitting and construction of the primary residence. At building permit, staff will make sure that they have adequate parking.

Mayor Muhlfeld opened the Public Hearing.

Brad Buckley, 2124 Houston Drive stated by his understanding about a CUP cannot be approved if there are existing encroachments. Which there are, not only the deck, but a third of the garage is on their property. The applicant is refusing to do anything about it. He asks that the permit be denied or at least be a condition precedent to satisfying that.

There being no further 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 deny WCUP 23-04. Councilor Qunell stated that a CUP is discretionary upon this Council whether approved or not. There is a building built on the neighbor's property, they have plenty of room to build a house first and then come back and ask for this. He doesn't see why we would go the opposite route and ignore all these other issues. Director Taylor stated that the existing encroachment are legal non-conforming buildings that were built not in violation of the code because it predated it. We cannot grant a building permit for a new building unless they have a

conditional use permit for a guest house. **The motion failed on a 4-1 vote, Councilor Qunell voting in favor of his motion.**

Councilor Davis made a motion, seconded by Councilor Norton to approve WCUP 23-04.

Councilor Sweeney made a motion to add Condition #10 a successful permitting of the construction of the primary residence. The motion carried 4-1, Councilor Qunell voting in opposition.

The original motion to approve WCUP 23-04 carried on a 4-1 voted, Councilor Qunell voted in opposition.

- c) [Ordinance No. 23-20](#); An Ordinance amending Zoning Regulations Title 11, Chapter 9, Section 2, Definitions (Casino), of the Whitefish City Code (First Reading) (WZTA 23-08) (p.175)

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

Mayor Muhlfeld opened the Public Hearing.

Ed Docter, 845 Wisconsin Avenue spoke in support of this amendment.

There be no further 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 Ordinance No. 23-20. The motion carried.

- d) [Ordinance No. 23-21](#); An Ordinance amending Title 6, Chapter 1, Section 9, One-Way Traffic (First Reading) (p.188)

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

Mayor Muhlfeld opened the Public Hearing.

Tyler Hope, 517 Somers Avenue spoken in support of the amendment.

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

Councilor Sweeney made a motion, seconded by Councilor Qunell to adopt Ordinance No. 23-21. The motion carried.

- e) [Ordinance No. 23-22](#); An Ordinance amending Zoning Regulations Title 11, Chapter 3, Section 1, Accessory Dwelling Units, Section 2, Accessory Buildings, and Chapter 9, Section 2, Definitions, of the Whitefish City Code (First Reading) (WZTA 23-07) (p.197)

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. 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 Feury to adopt Ord No. 23-22. The motion carried 4-1 with Councilor Norton voting in opposition in protest of the State Legislative Session.

8) COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor and Council? (p.223)

None

- b) Other items arising between September 27th through October 2nd

Manager Smith reminded the Council that City Hall will be closed Monday October 9th for Columbus Day/Indigenous People's Day. Staff will be attending the MLCT in Helena October 11-13.

- c) [Consideration](#) of an amendment to the Developer Agreement with the Whitefish Housing Authority for the Depot Park Townhomes (Snowlot) Project (p.224)

Manager Smith presented her staff report that is provided in the packet on the website. Whitefish Housing Authority Dwarne Hawkins was in attendance via Teams. Manager Smith handed out an amended version based on correspondence with the Housing Authority this morning. There are three changes in the amendment; 1) extending the term for an additional three years to allow for the completion of construction; 2) \$2 million identified within city funding for this project; 3) Section 3. The Area Median Income (AMI) ranges served by the Project may range between 80% and ~~150%~~120% but will average no more than ~~150%~~120% AMI for all units developed.

Councilor Davis stated Council has authorized a significant amount of funds for this project, for the purpose of creating a certain type of affordable housing at a certain price point. Tonight, the ask is for a significant increase in the price point of the units. He would like to see a high-level financial report to understand the finished product. Director Hawkins stated that 120% is their max as far as where they feel comfortable in talking with lenders. The City has been generous with funds already committed. They are seeking funds outside the city to make sure to get it to the finish line. He said that they can submit financials.

Councilor Davis made a motion, seconded by Councilor Qunell to postpone to October 16 and recommend the WHA to provide the price points and the proforma to Manager Smith for the October 16th meeting. The motion carried.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

Council comments.

Discussion followed between members of the Council regarding the annexation and zone change item. Members of the Council would like to see more clarification of the development agreement and more insight into the TIS; and clarification if a CUP would be required for the commercial use; the transitional zoning may need to be revisited. The actions of the past legislative session are playing out in real time. Council is going to have work to the best of their ability with a limited set of tools until the Growth Policy is adopted. The development agreement and annexation is one of those.

Manager Smith stated that because SB 382, where through the Growth Policy on a completely different fashion, her understanding from the League of Cities and Towns, bills like SB 245 will not be something that we are held to once we have implemented SB 382, we get to choose the options for housing incentives. This is temporary.

Councilor Sweeney made a motion, seconded by Councilor Feury to reconsider the motion to postpone the Public Hearing for the annexation and zone change for 5975 Highway 93 South, and to reset it for a work session on October 16th and postpone the public hearing to November 6th, keeping the public hearing open. The motion carried.

Councilor Qunell reminded members of the community that e-Bikes are not allowed on the Whitefish Trail. Councilor Norton asked if we could start working with FWP again on the deer management due to a post that was on social media of a deer with its mouth open and drooling. Chief Kelch stated that he has been working with FWP and completed a deer assessment. He is waiting for the report from the biologist.

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 11:01 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk