

Council considers allowing deferred annexation

Whitefish Pilot

Whitefish City Council has asked for a re-write of its annexation policy to allow for deferred annexation, which it is considering as a way to get properties along Whitefish Lake to connect to city sewer.

Following discussions about the potential for annexation of the Lion Mountain neighborhood, Council May 2 directed city staff to return with a new policy for its approval. Council did not vote on the annexation of Lion Mountain.

Councilor Andy Feury said the city choosing to defer annexation of properties along the lake shows its commitment to cleaning up the lake, which has been shown to have septic leachate contamination.

"Until we put an offer on the table, people will just think we want to annex," Feury said. "This is a non-starter of discussion — deferred annexation is the right thing to do."

The city previously had a policy of deferred annexation for up to two years to encourage connection to the water and sewer system. It still has an agreement with Big Mountain that doesn't expire until 2022 when the city can decide whether to annex.

However, in 1998 when the city was preparing to annex five large areas right next to city limits it rescinded the resolution and began requiring property owners who were already on water and sewer to sign a consent to annex. The city was sued over the annexation of the areas and the case went to the Montana Supreme Court where it was decided in 2004 in favor of the city.

Aging septic systems on Lion Mountain and other neighborhoods around Whitefish Lake have been identified as potential sources of groundwater contamination impacting the lake. Research from Whitefish Lake Institute

pollution in Dog Bay near Whitefish Lake State Park where groundwater from Lion Mountain seeps into the lake.

A report by Carver Engineering says homeowners should abandon their septic systems and hook up to city sewer to prevent contamination entering the lake and their drinking water. Capital costs to connect the neighborhood to city service is estimated to be \$2.9 million with an annual operating and maintenance costs of \$86,877. That pencils out to user costs of about \$138 a month if some grant funding is obtained, up to \$173 a month without grants.

In recent weeks, Council has been discussing how to tackle the situation.

Mayor John Muhlfeld last week wasn't so quick to support annexation. He said the city should slow down on the issue and begin education and outreach efforts in the Lion Mountain neighborhood.

"The homeowners need to gain some ownership in this project," he said. "We need to get homeowners involved in discussions. We need buy-in from the residents — without them this won't move forward. We need to attempt to get the homeowners on board so it's not the city versus the homeowners."

Councilor Frank Sweeney said time is of the essence regarding Lion Mountain.

"This is a present problem and it's not getting better," Sweeney said. "We're not helping ourselves and we're not helping the lake by not getting to a solution. We need to move forward — for their sake as well as ours."

Feury seemed to agree that moving forward now is the right move.

"We need to do it soon," Feury said. "I would like to see a two-year deferred annexation with a trigger."

The topic of annexation has been met with resistance from residents of

their neighborhood hasn't been shown to be the cause of septic pollution and others simply don't want to be annexed into city limits.

Dan Cutforth, who lives on Lion Mountain, told council last week that it hasn't been proven that all of the septic systems in the neighborhood are the issue.

"We may need to replace one or two older systems, but replacing everything seems like an extreme way to address the issue," he said.

He said he's against being annexed and takes exception to the idea that homeowners on the edge of town are benefiting from city services without paying city taxes.

"We have no police cars patrolling our neighborhood," he said. "We collect our own garbage and own our own water system. We can use state roads to access our homes. We pull our own weight."

City Attorney Angela Jacobs outlined four options to require or incentivize the Lion Mountain area to connect to city sewer:

- The city could annex the area using the annexation of contiguous land method as set out in state law. However, Jacobs noted, the method allows the property owners to protest annexation and if owners were to do so the city wouldn't be able to move forward with annexation.

- A second option is deferred annexation without a trigger date under which the city agrees to annex the area after a period of time — such as 10 or 20 years. The deferral period would run upon creation of a rural special improvement district, which would give residents relief from increased property taxes that would result from annexation while they are paying the capital costs associated with new sewer improvements.

The downside, Jacobs points out, of deferred

a defined period of time — two or three years. The approach has the advantage of incentivizing the area to timely connect to city sewer and provides an endpoint for connection, she noted.

"The city should be prepared to offer the option of deferred annexation with a trigger date to other areas that have a direct link to water quality degradation," Jacobs said.

- Finally, the city could agree to provide monetary reimbursement to property owners within Lion Mountain for a limited time in exchange for their agreement to connect to city sewer. This approach could be combined with the requirement that property owners consent to annexation.

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annexation is that while it might provide incentive to annex in the long run, there's no incentive to annex in a timely manner. Owners could remain on septic systems for years before petitioning for a RSID.

Also, given the city's current policy to require property owners to consent to immediate annexation prior to connect to city services, the city must articulate a valid

reason for declining to follow its general policy in respect to Lion Mountain.

"Preventing further degradation of the water quality of Whitefish Lake would likely qualify as a valid reason," Jacobs said.

- The third option would be deferred annexation with a trigger date under which the city agrees to defer annexation for a certain period of time as long as the area excises that option within