

City annexes the lake, doubles city's area

By RICHARD HANNERS

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There was no public opposition at Monday's city council meeting to the city's proposal to annex Whitefish Lake, but the question of federal authority and enforcement of open-container laws left some councilors wondering about how the annexation will play out.

City attorney John Phelps brought forward the idea of annexing the lake to address concerns about the city's authority over planning, zoning, subdivision, flood plain and lakeshore regulations within the new extraterritorial jurisdiction that will go into effect Oct. 1.

The city will expand its zoning jurisdiction from one mile to two miles, but the new extraterritorial jurisdiction's boundaries negotiated with the county actually extend more than two miles beyond the city limits where they encircle the northern end of Whitefish Lake. The two-mile limit in fact falls just shy of where Hellroaring Creek enters the lake.

At Monday's meeting, former Montana Supreme Court justice Frank Morrison raised the issue of federal authority over navigable waters, suggesting the city could not annex the lake without the federal government ceding jurisdiction.

"This is something that has been litigated and litigated," Morrison said. "There's a long history of navigable use on the lake. The federal government has a well established claim to the lake."

Phelps disagreed, saying the state claims ownership of the lake. He had contacted Bob Sandman, at the Department of Natural Resources and Conservation, and received a reply July 26 approving the city's annexation.

"The rivers of Montana are navigable waters, and the state owns them," Phelps said. "The city will not acquire any property rights, just the authority to enforce regulations and city ordinances."

Saying he favored annexation, Councilor Tom Muri noted that if the annexation proved to be unconstitutional, it will simply be null and void. He also said he preferred having Phelps review current law, or perhaps contact the state attorney general's office, but to avoid contacting the federal government.

Councilor Erik Garberg agreed with Muri's assessment.

"I'm sure the feds will want something if we ask them about this," he said.

In a memo to the council, Phelps addressed questions about police enforcement and emergency services raised by Muri at the last city council meeting.

"Merely by annexing Whitefish Lake, the Whitefish police department is not obligated to institute any particular level of patrol," Phelps said in the memo. "When to patrol, and how much to patrol, would be in the discretion of Chief Bill Dial, based on the perceived need."

Phelps said Dial intended to team up with the state's Department of Fish, Wildlife and Parks, and Dial had estimated most of the city's patrol costs would be paid by FWP funds.

Regarding consumption of alcohol and enforcement of open-container laws, Phelps said the new law passed by the legislature this year only applied to motor vehicles, not boats, but Councilor Velvet Phillips-Sullivan asked if city ordinances applied to open containers in boats.

"That's a good question," Phelps said. "I haven't checked into city law on that."

"Technically, we could enforce open-container laws, but I don't think we want to go there," Chief Dial said, referring to a tradition of social drinking on boats.

That answer didn't sit well with several councilors.

"If a law is on the books, we can't pick and choose which ones to enforce," Muri said, recalling several fatal accidents on the lake that involved alcohol.

"I don't like the suggestion by Chief Dial that we just won't go there," Councilor Cris Coughlin said.

Councilor Doug Adams asked about other downsides to the annexation proposal. Phelps said he had found none, but he noted that he received a letter from a person concerned about city gun regulations interfering with duck hunting at the north end of the lake.

East Lakeshore Drive-resident Hal Bennett asked the council if the city intended to tax people or charge for water residents take out of the lake. Phelps said the city would not own the water and couldn't charge for it, and that it had never occurred to him that the city would use the annexation to increase tax revenue.

Coughlin, Muri, Adams and Phillips-Sullivan said they were uncomfortable with the issues raised at the meeting. Nonetheless, the council approved the annexation resolution 5-1, with Coughlin casting the lone nay vote.

The council had one more task left to help implement the new extraterritorial jurisdiction by Oct. 1. State law limits zoning authority for third-class cities, such as Whitefish, to only one mile past their city limits. A second-class city can extend its zoning authority two miles out, as is proposed by the new city-county interlocal agreement.

State law allows a third-class city to become a second-class city after its population exceeds 5,000. It must become a second-class city when its population reaches 7,000.

Councilor Coughlin seconded the motion to change the city's designation, saying, "I'll vote for this, but I don't like being called a second-class city."

The motion passed unanimously.