

'Donut' issue is No. 1 story of 2010

By **RICHARD HANNERS** Whitefish Pilot | Posted: Wednesday, December 29, 2010 9:31 am

Planning authority in rural Whitefish, cleaning up the Whitefish River and zebra mussels in Flathead Lake are the Whitefish Pilot's top three stories of 2010. Rounding out the top five are stories about medical marijuana and the creation of an independent library for Whitefish.

The 'doughnut'

The continuing controversy over Whitefish's governance of the two-mile planning and zoning "doughnut" area surrounding the city made the front page dozens of times this year.

Spearheaded by two of the city council's three new members, a city-county committee was tasked with negotiating a settlement to the city's lawsuit against the county for unilaterally rescinding the 2005 interlocal agreement that had created the doughnut area.

Councilor Bill Kahle, who had represented the council in one-on-one meetings with Flathead County commissioner Jim Dupont, asked the council in March to formally request a delay in court proceedings so negotiations could start. "It's an olive branch," he said.

On June 21, the council unanimously agreed to send three "concepts" to the city and county's attorneys for drafting into a revised interlocal agreement. Mayor Mike Jenson expressed his opposition, noting that the city could end up bearing the burden of paying for planning in the doughnut while the county got veto power.

Criticism of the proposed interlocal agreement by both city and doughnut residents was strong and even emotional, but sometimes for opposite reasons. While some, such as former Montana Supreme Court Justice Terry Triewiler, argued that everyone would be better served if Whitefish controlled development in the doughnut, many critics of the draft agreement wanted some type of representation for doughnut residents who can't vote for city councilors.

A turnaround in the negotiations process took place when the county commissioners traveled to Whitefish for an Oct. 18 work session. In a surprise announcement, the three commissioners and six councilors agreed to totally eliminate a section of the draft agreement that would have given the county veto power over new legislation created by the city council that affected property in the doughnut.

Members of the negotiating committee all agreed that the three remaining provisions in the draft agreement adequately addressed the main concerns raised in the lawsuit — one-year termination, five-year duration and non-binding mediation.

The city council approved the revised agreement and agreed to dismiss the lawsuit on Nov. 15 by 3-2 votes. Kahle was still laid up from a motor vehicle accident and missed the meeting. As

resolutions, the measures did not require four votes to pass. The three commissioners traveled to Whitefish again on Nov. 30 and unanimously approved the new agreement.

As the year drew to a close and the issue at last seemed to be resolved, intervenors in the city’s lawsuit announced they intended to ask the district court judge to make a ruling on the merits of the case despite the city and county’s settlement. What was missing from the agreement, Whitefish attorney Sean Frampton said, was representation for doughnut area residents.

Meanwhile, a group of city and county residents opposed to the settlement drafted a referendum for city residents aimed at repealing the revised interlocal agreement and an initiative for doughnut residents calling for the establishment of an elected community council to represent them.

Once again, resolution of the dispute appears to be threatened by groups with similar goals but different means — while some want representation by the county commissioners, others want representation by a community council.

River cleanup

The BNSF Superfund site and river cleanup was the No. 1 story for the Pilot in 2009. More than 100,000 gallons of diesel fuel that spilled over the decades at BNSF’s locomotive refueling facility remain in an underground plume above the river.

After the Environmental Protection Agency determined in spring 2009 that the spilled fuel had contaminated the Whitefish River, it ordered a section of the river below the fueling facility isolated with a steel coffer dam and cleaned up. The last sheet pile was removed from the 500-foot long dam on Jan. 22, but the project was far from over.

Property owners in the gentrifying Railroad District, alarmed that news about the underground plumes of diesel fuel could affect real estate values, got some good news in January. Lab results from 25 soil-borings across the neighborhood revealed little or no contamination from the plumes.

In July, the EPA announced plans to drain the river from west of the BNSF roundhouse downstream to the Second Street bridge. Portable dams were installed at both locations, and the slow-moving river was diverted into three 48-inch diameter plastic pipes

The isolated section of Whitefish River was dry by noon on Sept. 3. Contaminated sediment was pumped out as slurry to a treatment facility near the roundhouse, where it was mixed with lime and loaded into railroad cars for transportation to an approved disposal site.

The dams were opened up again by the end of October. Heavy equipment had removed up to 18 inches of contaminated sediment from the river bottom — including some historic logs. The dams and pipes will be put back to use next year to clean up a smaller section of river about 500 feet upstream of the BNSF property line.

The river cleanup project extends all the way to the Highway 40 bridge, but how the cleanup will proceed further downstream has not been determined, the EPA said. The worst contamination has been located at the Riverside Park footbridge and just downstream of the Columbia Avenue bridge, where the river caught fire in May 1970, sending flames 75 feet into the air.

Zebra mussels

Montana Fish, Wildlife and Park's announcement that zebra mussels may have been found in Flathead Lake could be the story of the year for the entire state of Montana — if it's true.

For now, the results are not conclusive, but larval samples collected from the northern end of the lake near Woods Bay during routine water-quality sampling were suspected to be from the nonnative species.

Many people in Montana are familiar with spotted knapweed and how the nonnative weed spread from the Bitterroot Valley to forests and farm lands across the Pacific Northwest in just several decades. Zebra mussels threaten to do the same to Montana's pristine lakes.

First discovered in the U.S. in the Great Lakes in the 1980s, zebra mussels have since spread throughout the Midwestern and mid-Atlantic states. A predator doesn't exist in the U.S. to keep the exotic mussels in check.

Zebra mussels can reproduce and spread rapidly, especially on hard surfaces like docks, piers and boat hulls — even attaching themselves to the shells of living organisms, such as lobsters and clams. The mussels can also block water intake pipes, cover beaches with razor-sharp shells and impact fishery populations.

The good news for now is that samples from Whitefish Lake and other local lakes for the past two years have come back negative for signs of zebra mussels, according to Whitefish Lake Institute executive director Mike Koopal.

But he says he knows of one confirmed case of a boat that traveled here from Nevada's Lake Mead, where the zebra mussels were discovered in 2007. And lakes here have enough calcium to promote growth of the invasive species, he notes.

Medical

marijuana

"Medical marijuana zoning is a complex issue," city planning director David Taylor told the Whitefish City-County Planning Board on Jan. 21 in what could be the understatement of the year. It was the board's job to review proposed zoning regulations for a new industry that was not only controversial but growing quickly.

The city council had passed an urgency ordinance in December 2009 prohibiting medical marijuana businesses within the city and one mile of the city limits until a permanent ordinance could be approved to regulate the new industry.

By January, six years after voters approved Initiative 148 allowing the medical use of marijuana, 5,440 people in Montana had registered as medical marijuana patients and 1,578 as caregivers. By November, there were more than 23,000 cardholders.

Four months after the planning board began looking at zoning medical marijuana growers and sellers, as cities and counties across the state struggled with ways to regulate the businesses, the board came up with a draft zoning ordinance.

The city council, however, was not ready to vote on the board's recommendation. With the urgency ordinance still in place and state legislators promising to address vague language in the state's medical marijuana law during the 2011 session, the council tabled a vote on the planning board's draft zoning on May 17 and again on July 6.

In the meantime, police logs and court dockets across the state were filled with cases tied to medical marijuana — from major producers and caregiver organizers in Missoula to a highly publicized murder case in Kalispell.

Library secedes

Personality conflicts between staff at the Whitefish public library and the Flathead County Library System's board of trustees had been brewing for about a year when members of the Whitefish Ad Hoc Library Committee presented their report to the city council in May.

Their recommendation — secede from the county and form an independent library under the city's parks and recreation department that would continue to be open to people living around Whitefish.

Acknowledging a possible budget shortfall, the Whitefish Library Association pledged \$15,000 a year for the next five years to support an independent city library. Then in October, library supporters Jake and Connie Heckathorn announced they would donate \$100,000 to help defray maintenance and operation costs.

As the deadline neared for the city to give its termination notice to the county, the Montana Attorney General's Office issued a preliminary opinion saying tax revenue that currently goes to the county library system could be diverted to a city library.

For the fiscally conservative city councilors, transferring the 5.95 mills collected by the county to city coffers was a wash. But getting the city out from under a potential \$18 million bond levy for a new county library in Kalispell was even a bigger plus, and on Oct. 18, the council voted unanimously to form an independent city library.