

# JOURNAL OF COMMISSION PROCEEDINGS

September 18, 2018

Regular City Commission Meeting  
Commission Chambers Room 206

**CALL TO ORDER: 7:00 p.m.**

## PLEDGE OF ALLEGIANCE

**ROLL CALL:** City Commission members present: Bob Kelly, Bill Bronson, Mary Sheehy Moe, Owen Robinson, and Tracy Houck. Also present were City Manager Greg Doyon and Deputy City Manager Chuck Anderson; City Clerk Lisa Kunz; Public Works Director Jim Rearden; Planning and Community Development Director Craig Raymond; Finance Director Melissa Kinzler; Fire Chief Steve Hester; City Attorney Sara Sexe; and, Police Captain Jeff Newton.

**AGENDA APPROVAL:** City Manager Greg Doyon noted that no changes were made to the agenda, but that the agenda packet was updated after original posting to include Item 12 attachments 33-39. Those attachments have been made available to the Commission and the applicant, and online for the public. No changes were made by the City Commission. The agenda was approved as submitted.

**CONFLICT DISCLOSURE/ EX PARTE COMMUNICATIONS:** Commissioner Bronson announced that, for reasons stated in the past, he would not participate in the discussion or vote of agenda item 18.

## PETITIONS AND COMMUNICATIONS

### 1. Miscellaneous reports and announcements.

**Jim Porter**, Veterans of Foreign Wars, Belt, MT, and committee member of "Raise the Flag for the Holidays" provided and read a prepared statement requesting donations to replace the flag poles at Highland Cemetery. The hope is to raise a minimum of \$15,000 to cover the cost of two new poles and any charges for installation. Donations can be sent to the Stockman Bank "Raise the Flag for the Holidays" account, and donations are tax deductible.

**Wes Old Coyote**, Indian Family Health Clinic (INFC) Interim Executive Director, 1220 Central Avenue, commented that INFC is a non-profit facility providing clinical, behavioral health, fitness and wellness services to the community and surrounding areas. INFC will be hosting a methamphetamine prevention and suicide prevention symposium tomorrow at the Hampton Inn from 9 am to 4 pm. He welcomed the Commission and public to attend.

**Robert Thornton**, 2509 6th Street NW, referred to Manager Doyon's August 30, 2018, Memorandum regarding the Natatorium, and discussed a July 12, 1939, *Tribune* article he provided for historical information.

**John Hubbard**, 615 7th Avenue South, referred to the prior speaker's comments about the Natatorium and opined that the land was donated for a pool and not for a park.

**Barbara Linn**, 1507 High Street, discussed comments regarding the Natatorium made at the September 4th Commission meeting. She inquired about land to build a new pool. Ms. Linn suggested enclosing an existing pool, and that the Natatorium remain open until a new pool is built.

**Becky Monroe**, 1801 2nd Avenue North, commented that it would be a disservice to close the Natatorium without a viable Plan B. Ms. Monroe commented that the pool at the Montana School for the Deaf and Blind (MSDB) should not be considered as a Plan B because, unless you are a resident or connected to the MSDB campus, it is hard to get into that pool.

**Shyla Patera**, 1013 7th Avenue NW, shared Ms. Monroe's concerns about access to the MSDB pool. After the last Commission meeting she thought of our community as a town of deferred maintenance, and commented that the City needs to start planning for the future that includes ADA accessibility.

**Karen Kaszula**, 2416 2nd Avenue North, commented that she cannot get around very much and she really likes the Natatorium pool.

**Mike Kaszula**, 2416 2nd Avenue North, suggested recycling efforts and solar panels wherein the pool could produce money by selling power back to the grid. He concluded that there are options that haven't been looked into with regard to the Natatorium.

**May Chase**, 2001 3rd Avenue North, commented that there are an excessive number of squirrels in Great Falls that are causing damage to property. Ms. Chase urged citizens to cease and desist feeding the squirrels.

**Donna Williams**, 2916 2nd Avenue North, commented that there isn't \$20 million dollars in the budget to fix the pools from the information she gleaned by attending the Commission's budget meetings. She commented that there are four indoor swimming pools in Great Falls. One of the pools is too small and too cold; the second is too cold and too busy; the third is too expensive. The Natatorium is the fourth pool being considered for closure in order to support the three other pools. She suggested a Great Falls wherein the expensive pool could be shared with people who use the Natatorium. She concluded that she will come back to the Commission with a modest proposal.

Written correspondence was received from **Denice Baune**, 1427 Cleveland Drive, also urging the Commission to have an alternate plan in place before closure of the Natatorium.

## **NEIGHBORHOOD COUNCILS**

### **2. Miscellaneous reports and announcements from Neighborhood Councils.**

Shyla Patera, NC 2, reported that the September council meeting included discussions about speeding and nuisance properties. She announced that the October agenda includes community policing.

Commissioner Houck added that community policing is on a number of council agendas in October. The Neighborhood Council meetings are on the City's website. She encouraged the public to view the calendars and attend upcoming meetings to participate in discussions about issues that affect their neighborhoods.

## **BOARDS AND COMMISSIONS**

3. **Miscellaneous reports and announcements from Boards and Commissions.**

None

## **CITY MANAGER**

4. **Miscellaneous reports and announcements from the City Manager.**

City Manager Greg Doyon proposed that Rick Reisig from Anderson ZurMuehlen present at the next work session about the CAFR and audit process. The Commission concurred.

Manager Doyon announced that Great Falls Fire Rescue and the Cascade City County Health Department have partnered to provide flu shots at rotating fire stations during the month of October.

In response to previous public comments regarding the Natatorium, Manager Doyon commented that the City has property to put a new facility on that doesn't have the current Natatorium site problems. The key ingredient will be a partnership - organizations to work with the City to provide those services and meet the needs of the community in the long term.

## **CONSENT AGENDA**

5. Minutes, September 4, 2018, Commission Meeting.
6. Total Expenditures of \$1,687,361 for the period of August 15, 2018 through September 5, 2018, to include claims over \$5,000, in the amount of \$1,300,669.
7. Contracts List.
8. Approve Change Order #1 in the amount of \$148.64 for the ADA Handicap Ramps 2nd Street NW project, and Approve final payment in the amount of \$16,372.40 to United Materials of Great Falls and \$165.37 to the State Miscellaneous Tax Fund, and authorize the City Manager to make the payments.
9. Not award a contract for the Public Works Facilities Repairs project at this time and recommend staff re-bid the project in early 2019.

**OF**  
**1730.1**

**OF**  
**1733**

10. Approve the Amendment to the Citywide 911 Emergency Ambulance Services Contract with Great Falls Emergency Services.

**Commissioner Houck moved, seconded by Commissioner Robinson, that the City Commission approve the Consent Agenda as submitted.**

Mayor Kelly asked if there was any discussion amongst the Commissioners or comments from the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

## **PUBLIC HEARINGS**

### **11. Resolution 10255, Establish Residential and Commercial Water, Sewer, and Storm Drain Utility Service rates effective October 1, 2018.**

Public Works Director Jim Rearden reported that the rate analysis has been presented to the Commission at several meetings: Wastewater Master Plan, Engineering Project Update, and the August 21, 2018 Work Session. A comprehensive review and Cost of Service Study was also completed by AE2S.

Director Rearden reviewed PowerPoint slides pertaining to the rate adoption process, as well as the proposed rates pursuant to the Cost of Service Study for residential and commercial customers for water, sewer and storm drain utilities. If adopted, the average residential customer bill will decrease approximately \$0.91 per month, and the average commercial customer bill will increase 4% or \$5.48 per month. Great Falls still has the lowest utility rates in the state. Not only are the utility dollars used to maintain the systems, the City is also building towards the future with new river crossings and a new water tower.

Mayor Kelly declared the public hearing open.

Speaking in opposition to Resolution 10255 was:

**John Hubbard**, 615 7th Avenue South, spoke in opposition to any rate increases.

Speaking in favor of Resolution 10255 was:

**Brett Doney**, Great Falls Development Authority, 300 Central Avenue, commended the City for its continual investments in infrastructure. From a business standpoint, GFDA would rather see continuity and a well run, dependable system and minor increases rather than what some other Montana cities are going through with huge increases in one year.

Written communication was received from **Dan Nezworski**, 2500 Central Avenue West, expressing vehement opposition to any rate increases; and, **Vivian Slape**, 1318 7th Avenue South, requesting information specific to her account and about budget billing.

Mayor Kelly closed the public hearing and asked the will of the Commission.

**Commissioner Houck moved, seconded by Commissioner Robinson, that the City Commission adopt Resolution 10255 establishing residential and commercial water, sewer, and storm drain utility service rates effective October 1, 2018.**

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

12. **Wheat Ridge Estates, Phase 1.**

**I. Resolution 10268, annexing a 21.10 acre tract identified as Parcel 1 on Certificate of Survey #5162.**

**II. Ordinance 3180, establishing Planned Unit Development zoning and the accompanying Findings of Fact.**

**III. Preliminary Plat for the 40-lot Major Subdivision and the accompanying Findings of Fact.**

Mayor Kelly explained the public hearing process.

Planning and Community Development Director Craig Raymond reported that this agenda item is a request to conduct a public hearing and to consider Resolution 10268 to annex the subject property, Ordinance 3180 assigning PUD zoning upon annexation into the City of Great Falls, and to either approve or deny the proposed preliminary plat. Staff's recommendation is to deny all three motions based on at least four significant concerns and challenges with the proposal. The applicant has the ability to directly affect two of the concerns and really has little to no ability to influence the other two concerns in the immediate and foreseeable future. City staff has worked hard to propose solutions to some of these issues. To this point, the developer has chosen to press forward with the proposal despite knowing staff is not satisfied that this project is supportable as submitted.

The applicant, KYSO Corporation, is requesting annexation, zoning, and subdivision of a 21.10 acre parcel located south of the East Great Falls Retail Center anchored by the Walmart Superstore. The 21.10 acre parcel is one of three parcels that comprise 227.63 acres owned by the applicant. The 227.63 acres are bordered by the Walmart store and vacant, commercially zoned property to the north, the KOA Campground and vacant property to the west, vacant property to the south, and vacant property to the east. The northeast portion of the 227.63 acres adjoining US Highway 89 and the Malmstrom Air Force Base contains a 10.21 acre Airfield Restrictive Easement not being disturbed for development. Currently, these tracts are zoned Agricultural which restricts development outside of farming to single family detached units or two-unit dwellings on parcels that must be at least 20 acres in size. Because the 21.10 acre parcel is contiguous to the City limits as a result of the East Great Falls Retail Center annexation, it is eligible to be considered for annexation. The applicant's request for PUD zoning is due to the mix of residential densities and a few mixed-use commercial lots on the north end of the master planned project. These mixed-use lots are proposed to primarily mirror those dimensional and use standards that are allowed under the City's M-1 Mixed Use zoning designation, providing for the possibility of different residential uses, retail, offices, institutional and light manufacturing.

The applicant also wishes to subdivide another portion of the 21.10 acres for 37 single family detached home lots. All of the proposed lots would be at least 11,500 square feet, and most resemble development in the City's R-2 Single-family medium density zoning district, which

requires 11,000 square foot residential lots. The remaining development standards for this portion of the proposed PUD, such as lot width, building heights, setbacks, and lot coverage percentage, are requested to be a mix of standards found in the City's R-1, R-2, and R-3 zoning districts. Although the proposed use of the lots will be for single family detached homes, the applicant is requesting permitted uses consistent with the R-1 zoning district. The combined area of the residential lots is 12.50 acres, with the remaining acreage being devoted to both public and private streets and greenspace.

Staff does not arrive at a negative recommendation easily, and it is extremely rare for staff to do so. It is after working extensively with the applicant for an extended period of time, careful consideration of the City's growth policy, guiding documents such as the Joint Land Use Study (or JLUS), seeking input from Cascade County and Malmstrom officials, and after consultation with the City's defense counsel regarding a lawsuit against the City related to alleged storm water damage on an adjacent parcel, that staff comes to this recommendation.

Each of these issues in isolation are enough to cause sufficient concern and influence the decision making process, but together they create more than sufficient support of the findings of fact for the negative recommendation and ultimately a denial of all three motions by the City Commission. In this case especially, the details of the proposal really do matter. The primary issues which are the basis for staff's negative recommendation can be summed up in four areas: encroachment on Malmstrom Air Force Base, public safety service, transportation connectivity, and storm water concerns.

Because concerns were extensively spelled out in the agenda report, Director Raymond highlighted a few key subjects related to the negative impacts to Malmstrom Air Force Base (MAFB). The mistake that many people make when discussing land use compatibility surrounding the base is the notion that it's all about holding out hope for a future fixed wing mission where the closed runway would be needed. The truth is there are a number of reasons to thoughtfully plan and develop land use documents which carefully set forth specific recommendations for compatible land use which is what took place in 2012 when the City adopted the Joint Land Use Study (JLUS). The purpose for the JLUS is to provide guidance related to incompatible land uses encroaching on the base and its current mission as well as potential future missions. This takes into consideration not only property immediately surrounding the base but also other lands in the City of Great Falls and throughout Cascade County.

Agenda report attachments included memos and emails from Air Force officials that not only point to future considerations and potential, but also to the current mission. A paper on encroachment impacts from Lt. Col. Mignery states that "1. Undeveloped lands southwest of MAFB are currently compatible; however, the potential exists for residential and/or commercial development that could impact military operations; 2. Several assets would be impacted by the potential development area, including helicopter movement areas, Drop Zones and proposed Assault Landing Zone; and 3. Development could have an impact to helicopter operations and C-130H operations.

The Bullet Background Paper also discusses that development could have the following negative impacts: 1. Light pollution effects on multiple arrival and departure flight tracks of the Helicopter operations; 2. Flights at 500 feet above ground and aircraft noise posing a nuisance to the proposed development; and 3. That the location of the approach and departure zones for the active drop zones and proposed assault landing zones may be impacted by development.

In addition to the summary points provided by Lt. Col. Mignery, comments were also provided to the City from Assistant Secretary of the Air Force for Installations, Environment and Energy, John

W. Henderson. He noted general USAF concerns about installation encroachment, incompatible development, and its potential negative impacts on operational effectiveness and influence on future basing decisions.

Director Raymond continued that one must also consider the effect the base has on the local economy. Most estimates show that the base is responsible for approximately 40% of our local economy. Based on figures provided by the 341st, the base brings in an estimated \$367,399,992 annual impact to the Great Falls area. One housing development will not provide enough upside to trade-off that kind of revenue. He asked the Commission to also consider all of the businesses and jobs in and around Great Falls that could be negatively affected by a base closure. Even Great Falls Development Authority expends an appreciable amount of time and effort in providing seminars and mentoring local businesses not only in order to support the base but also to assist local businesses in contracting with the military and other branches of the federal government so that they can profit from the potential that exists right here. It has been said in many circles that Great Falls is too dependent on the base for our local economy, we need to diversify. Staff agrees.

However, Director Raymond commented that he doesn't think that subtraction is an effective or wise strategy for diversification. He suggested not making a decision to close the base an easy one for some committee in D.C. It makes sense to not only recruit new business into Great Falls but to also protect what we have.

Because the 21.10 acre parcel is only contiguous to the City limits on the parcel's north side and because the property is located at the southeast boundary of Great Falls, it presents challenges for police, fire, and emergency services. In the event of a fire or EMS call, the typical response to an incident on this parcel would come from Fire Station #3 located on the east end of Central Avenue. According to Great Falls Fire Rescue, the current average response time to provide service to the closest edge of the adjoining Walmart property is approximately six to seven minutes. A four minute response time is the industry standard for service according to the National Fire Protection Association. As staff has mentioned in the past, this is an issue that cannot be ignored. Since the City desires to accommodate future growth, long range comprehensive planning is imperative in order to pave the way for maintaining adequate public safety services that the public demands and deserves as the city expands. To say that the City's public safety services are stretched thin would be an understatement. While the applicant is correct in asserting that impact fees may be levied by the City to help pay for much needed infrastructure, the development community in Great Falls has been opposed to any such discussion in the past of levying impact fees on new development. In addition to response time concerns, the proposed development does not comply with the adopted fire code which requires two points of access for emergency services in a 37 lot subdivision. The applicant has made application with the Montana Department of Transportation (DOT) for a second point of access off Highway 89. The problem, however, is that despite clear minimum specifications for City streets and access roadways, the applicant has proposed an access road comprised of asphalt millings seeded with grass. This design is not appropriate due to concerns with vegetation and root matter degrading the integrity of the surface, as well as maintenance and durability failures.

Due to the clear lack of compliance with minimum specifications, staff finds that a second point of access does not exist and the proposed plat does not comply with the adopted fire code and should be denied.

The single point of access is also at the crux of near and long term transportation connectivity concerns. Although the specific proposal for tonight is for 37 single family dwelling lots as well as a few mixed use parcels, for Phase I (21.10 acres), the 227.63 acre development will contain

hundreds of units with one single roadway (in and out) serving the entire development, going through one single intersection for the foreseeable future. This proposal completely dismisses appropriate and common sense transportation design and connectivity. Again, the applicant has resisted staff suggestions that additional connectivity is important to a successful subdivision.

Storm water is also a paramount concern of the proposed preliminary plat. The applicant has proposed conveying storm water through a series of detention ponds that ultimately will discharge water at a flow rate that is believed to be at a rate that is slightly less than that experienced in the basin prior to development. What the design does not do is maintain or decrease the total volume of water that is discharged downstream into the Gibson Flats area. The construction of streets, sidewalks, concrete patios and roof surfaces will result in a significant increase in water volume that is discharged in a concentrated area. The City is currently defending itself against litigation where the L. Johnson Corporation has alleged that storm water from other developments located in the City of Great Falls has damaged property owned by the corporation in the Gibson Flats area. While the City is not admitting any liability or fault and is actively defending itself against this claim, the outcome of this \$2 million claim has not been determined. In an effort to work cooperatively with the developer, the City has proposed that the applicant construct a lined pond system that will capture and hold storm water until it ultimately evaporates or a piped storm water system that will convey the water to the City's storm system to the north. The applicant has refused to consider a piped and pumped system and asserts that such a system could result in downstream water right problems that the City would have to resolve. While the City recognizes that water rights may become an issue, staff finds that it is the developer's responsibility in support of their development to resolve any potential issues. Ultimately, however, if a responsible solution to the issue cannot be found, denial of the annexation and proposed preliminary plat is the appropriate action to take.

Despite staff's recommendation and findings of fact supporting a denial of the project as it is proposed, on April 24, 2018, the Planning Advisory Board ultimately voted in split decisions to recommend that the City Commission approve of the annexation, PUD zoning as well as the preliminary plat. Regardless of the Planning Advisory Board/Zoning Commission recommendation, City staff respectfully continues to disagree and still recommends denial based on the reasons listed in the agenda report and findings of fact that staff originally presented to the Planning Board. The Planning Board/Zoning Commission Findings of Fact and staff Findings of Fact were attached to the agenda report for public and Commission review and can be used in reaching a decision on this application. Alternative findings of fact can also be drafted if necessary to support Commission decisions on the matter.

Director Raymond commented that he firmly believes that just about every piece of dirt has its day. This one is just not ripe yet for a development of this type. With time, concerns surrounding base encroachment and storm water issues may be resolved. And, with appropriate design and planning, perhaps this particular piece of ground may be developable into a higher and better use than farming or 20 acre residential development. As it stands today, there are too many negative impacts to the community that the developers either can't or refuse to resolve. It's a great development concept proposed in a lousy spot. Truly there are other properties with fewer issues that can be developed without hindering such a large portion of our economy.

The requested action is that the City Commission conduct the public hearing and deny Resolution 10268, Ordinance 3180, and the Preliminary Plat.

**Project Developer Spencer Woith**, 1725 41st Street South, commented that, for over a decade, he has been at the forefront of growing Great Falls and is "pro-Great Falls." He and his brother brought high end housing to downtown Great Falls with the construction of the Johnson Hotel. He



commented that this hearing is more than just about this project. It is a decision that will define the legacy of Great Falls for the next 20 years.

Mr. Woith continued that the military is part of what built this city, but it doesn't have to be what defines or controls Great Falls. He agrees that the military is one of the largest economic drivers of this economy, if not the largest, but believes Great Falls can evolve. The economic facts that were presented in the City's staff report are as Malmstrom Air Force Base (MAFB) stands today. If the project is approved, he commented that the City will still retain all of those economic benefits, but hopefully move forward to a point that the economy of Great Falls is less dependent on the military.

Mr. Woith commented that the City of Great Falls is a business. The Commission is the elected leader of the business. Discussions have started on what to do in the future. The public has heard from the Commission the possibility of closing a golf course, closing the Natatorium, and that the City cannot afford as many police and fire personnel as those departments have requested. He commented this is just the tip of an iceberg of a problem that confronts the business of running a city. He suggested that options include cutting costs and amenities, raising taxes and fees to accommodate these budget shortfalls, and hope people stay and do business here. The City can expand its economic base so that additional revenues can be generated to cover budget shortfalls and give the City the ability to not just maintain, but grow.

Mr. Woith addressed issues City staff set forth that are specific to the development project:

Public Safety and Connectivity. Mr. Woith commented that the City's primary concern is that new development will overstretch existing resources. He suggested that this concern fails to take into account that new development results in new revenue for the City to develop new resources. He opined that, based on the City's analysis, the City would never approve new developments because current resources are not sufficient to meet future demands. Resources grow with demands which also provide the revenue to meet those resources.

Response times have also been an expressed concern. As pointed out by Great Falls development Authority (GFDA) during previous consideration of this project, multiple developments already approved by the City have response times in excess of those anticipated by the Wheat Ridge project. The response time concern is arbitrary at best and, again, is remedial by new revenue to provide for increased resources.

Another concern expressed in the staff report is the suitability of the proposed asphalt milled surface. A geotechnical review has verified that the proposed asphalt milling surface is capable of supporting the 75,000 pounds. Big Sky Subsurface determined, based on current information and presumptive subsurface conditions, the proposed emergency access road can likely be constructed with crushed, base course asphalt of nine inches. Additionally, the Montana Department of Transportation (MDT) conditions for the approach permit that has been obtained requires seeding in the area of the highway so that it is not used by anything other than an emergency approach. Mr. Woith also addressed the concerns about the maintenance of the asphalt milled road surface proposed for the secondary access road, stating that maintenance will be the responsibility of the development's homeowners association. Maintenance can also be written in the subdivision or annexation improvement agreement for Commission approval.

Storm Water Management. Mr. Woith commented that the City is holding Wheat Ridge responsible for a potential lawsuit, the liability and the lawsuit to which Wheat Ridge is not a party. He reported that he developed a solution to storm water that should address the City's concerns. He proposed a series of retention ponds in which all of the additional storm water flows from the development will be retained and used for irrigation within the development. This plan would

keep storm water velocity and storm water volumes below pre-developed levels, while allowing the same flow through ground and surface water as pre-developed conditions so as not to interfere with existing water rights. Montana Department of Environmental Quality (DEQ), Water Quality Division staff agreed that his proposal is not only workable but has been proven to work in other areas of the state. As of August 10th, storm water regulation is under the jurisdiction of DEQ, and is more stringent than the current City code.

Impacts to Malmstrom Air Force Base (MAFB). The staff report cites the Joint Land Use Study (JLUS) as a land use planning document that has not resulted in revisions to the City's Land Development Code or zoning maps. He quoted a portion of the May 1, 2012, Journal of Commission Proceedings, pertaining to the resolution to accept the JLUS:

“Acceptance of the Final Report does not equate to regulation and does not impact private property rights of any landowners. It is expected that, if Resolution 9965 is adopted, next steps would be for Cascade County to establish a Coordinating Committee, including a representative from the City of Great Falls, to formalize cooperation between MAFB and local governments. At that time, discussions may be held to consider the range of possible implementation strategies. Should those strategies include any land use regulations, the respective jurisdictions would hold public hearings to consider those specific proposals.” The JLUS notes that the final document is not an adopted plan.

To date, no public hearings have been held to adopt specific land use regulations resulting from the JLUS. Mr. Woith commented that the staff report utilizes the JLUS as if it set out specific regulations with which Wheat Ridge must comply in order to accommodate unknown future missions at MAFB. Given that any future missions are an unknown factor, it is impossible for Wheat Ridge to accommodate unidentified potential future uses.

Absent specific land use regulations resulting from the JLUS which are not in place, there is no basis which to use JLUS as a rationale for denying annexation, PUD zoning or the preliminary plat.

Additionally, in 2008, the people of Great Falls spoke with their vote and rejected a bond issue that would have protected development rights by purchasing the property that is now proposed for Wheat Ridge. In 10 years there has been no indication that the citizens of Great Falls have changed that position. Despite this, the staff report now suggests that we must forego development with no compensation for the denial of private property rights.

Mr. Woith further disagreed with the statement in the staff report that the sought annexation is a way around county zoning. He reported that, at the Planning Advisory Board meeting, his counsel explained that he had never attempted approval of the county for this project, nor was there any plan to put this development in the county. He cited ARM 17.36.328(1) and commented that Wheat Ridge is within 500 feet of components of the public system and must connect to the system. He continued that, under Montana wastewater regulations, he has no choice but to request annexation.

Mr. Woith concluded that it is time to move past the potential hope that Great Falls will get another flying mission. Legal and technical issues aside, he urged the Commission to take this chance to move Great Falls forward.

Mayor Kelly asked if the Commissioners had any questions of staff or the applicant/developer.

Commissioner Bronson inquired of staff if he was interpreting state statute and City ordinance correctly: (1) When an application is made for annexation the basic criteria used by the Commission is to decide on the merits; in other words, that it is in the best interest of the City of

Great Falls; (2) City ordinance sets forth criteria for the Planning Board for recommendation purposes and the City for decision making purposes to guide the Commission in making a determination of whether an annexation is in the best interest of the City; and (3) The applicant must satisfy all of the conditions as set forth in the ordinance.

Staff responded affirmatively.

Commissioner Bronson commented that the developer has pointed out that he finds an inconsistency in the City's position with respect to the question of fire response time. He asked staff to explain why they feel they can't meet response times, and whether staff was being inconsistent compared to other projects.

Director Raymond responded that there are other subdivisions with a greater than four minute response time. He explained that in recent years there has been a turnover in staff that has a different view on the City's obligation to the public and level of service to the community. Staff has been consistent about its concern regarding response times. Unique to this project is that staff doesn't accept the design of the secondary roadway for emergency services. There is only one way in and one way out that poses a problem for ingress and egress in an emergency situation.

Commissioner Bronson inquired if staff was ready to respond tonight to what Mr. Woith outlined in general terms was an alternative way of managing the storm water issue.

Public Works Director Jim Rearden responded that Mr. Woith spoke with him a couple of days ago about this approach. Staff has not had time to vet his proposal. Volume is a large component, but also potential ground water impacts. Staff has not seen enough information yet to know if it could work, and would limit the City's liability with regard to the lawsuit.

Commissioner Bronson requested the applicant's response to what he and staff have set forth are the legal standards that the Commission has to follow in deciding whether or not the applicant has met all of the criteria to grant an annexation request.

**Abigail St. Lawrence**, Helena, counsel for Mr. Woith, responded that she agrees the statute is what it is, but where she and her client disagree with the City is whether they have met the criteria.

Commissioner Houck asked staff what the new income for the City would be from this proposed new entity.

Finance Director Melissa Kinzler referred to examples provided in the agenda packet for \$200,000 and \$300,000 houses using FY 18 values. For 37 parcels with a market value of \$300,000, the City would receive \$24,786 per year.

City Manager Greg Doyon added that is the property tax that would be generated for the City's general fund to support police and fire services. He noted the recent budget cycle wherein issues pertaining to staffing, equipment and maintaining the existing facilities was discussed.

Commissioner Houck inquired what lowered the city-wide fire insurance rates, and was it connected to response times.

Fire Chief Steve Hester responded that the criteria and schedule had changed by the Insurance service Organization (ISO) that resulted in lowering the ISO rating from four to two, which saved the community insurance costs.

The City has a great water distribution system, but not such a great number of firefighters. The actual response time is not measured as much as the distance.

Commissioner Houck inquired if a determination was made that a criteria wasn't met, could the developer refine it and come back.

Director Raymond responded that the Commission could direct staff to work with the applicant by the Commission denying all three motions, the applicant could then reapply and work through the issues that the Commission found objectionable, or table this item to a date certain with the direction to work together to find solutions to those objections.

Commissioner Moe referred to Director Raymond's report regarding criteria that had and had not been met.

Director Raymond clarified that staff has four concerns with the applicant's proposal. Two concerns the developer could choose to change and effect those issues. Two other concerns that the developer would not necessarily have the ability to directly effect for the foreseeable future are MAFB and the disposition of adjacent properties.

Commissioner Moe asked Counsel St. Lawrence to specify how she and her client believe all of the requirements have been met.

Counsel St. Lawrence responded that, in two memoranda, the concerns of City staff were answered point by point. It is correct the developer cannot change the location of the project, but she can tell the Commission what it is the developer has to comply with. It was specifically stated that the JLUS was not an adopted land use regulation unless and until the public hearings have been held to put in place ordinances to use it as such. That has not happened. With regard to the storm water issue, after speaking with DEQ's storm water management staff, a new proposal has been discussed with City staff.

In response to Commissioner Moe, Mr. Woith reiterated Big Sky Subsurface's findings that the emergency access road could be adequately maintained. And, from a traffic safety standpoint, Montana Department of Transportation (MDT) felt that 57th and 10th Avenue should be the main ingress and egress out of the development because it has a signalized light. MDT wants the second approach to be gated.

Commissioner Robinson commented that his concern is that, if the one point of access were blocked for some reason during an emergency, would people be able to get out of the second access point as an egress.

Mr. Woith responded that standard City right-of-way is 60 feet wide. What he submitted and is proposing is 100 foot right-of-way. The main ingress/egress is a divided roadway. With regard to connectivity, Walmart dedicated 13th Avenue South, for an additional east/west connector, but that currently connects to a private roadway.

Commissioner Robinson inquired if people were trapped in the subdivision during an emergency, would they be able to get out via the second access road.

Mr. Woith responded it would be under the leadership of the fire and police departments. MDT indicated it doesn't want people driving on that road unless it is an emergency.

Commissioner Bronson commented that he agrees with Counsel St. Lawrence that the JLUS, per se, is not a regulatory document. He inquired if Counsel St. Lawrence would agree with him that that threshold decision whether or not to annex is not purely a regulatory issue, and involves a lot of policy questions for the City.

Counsel St. Lawrence responded that the statute does provide that it is within the discretion of the Commission. Her concern is that there are documents that are being used in this matter in a manner in which they were never intended to be used.

Commissioner Bronson inquired of Counsel St. Lawrence why she states the JLUS was never intended to be used this way.

Counsel St. Lawrence responded that Mr. Woith addressed the citations to the Commission Journal of Proceedings earlier this evening. She added staff is putting use of the JLUS before the process that was supposed to happen to implement it.

Commissioner Bronson commented that, at the time, the Commission did understand that the JLUS was not a regulatory document, but it was going to be part of the growth policies that the City would look to as it made particular decisions down the road. The JLUS talks about compatible and incompatible uses. Staff has set forth that JLUS policy. The Commission can choose to override it in making a decision.

Counsel St. Lawrence responded the Commission could choose to override it. She again pointed out to Commissioner Bronson what is in the Commission records guides how the JLUS is to be used. In this case it is being used in an inappropriate manner.

Commissioner Bronson inquired if she was suggesting that, based on Commission decision tonight, there could be legal action against the City.

Counsel St. Lawrence commented that no decision has been made at this time.

Mayor Kelly referred to page 61 of the agenda packet and read a paragraph pertaining to staff being clear they are not using the JLUS as a regulatory document.

Mayor Kelly commented that, with regard to storm water runoff, there was a capture and hold concept, and also to divert water to the north. It is his understanding that didn't work for the applicant because the applicant was concerned about downstream water rights and opening himself up for legal action by those downstream for capturing their water. The new proposal, to capture the water and use it for irrigation in the development itself, also seems to him to be depriving downstream people of the water.

Mr. Woith commented that he called Director Rearden about his new proposal on Friday. What is now being proposed is capture of a portion of the water. They would still be releasing downstream water that currently leaves the site as it sits as a wheat field today. He proposes that the additional volume from run off from roofs, asphalt and concrete be captured and reused. He talked with DEQ about his proposal prior to calling Mr. Rearden, and just met with Mr. Rearden in Public Works this afternoon.

Mayor Kelly noted that it is significant that on Friday and today the applicant discussed a new proposal with DEQ and Public Works. Being it is one of the four concerns staff addressed and is being presented at the eleventh hour is a concern of the Commission.

Mayor Kelly called a recess at 8:58 p.m. He called the meeting back to order at 9:06 p.m.

Speaking in favor of Resolution 10268, Ordinance 3180 and the Preliminary Plat were:

**Lee Haven**, 6550 Heavens View Lane, Chief Business Development Officer for Loenbro, commented that Loenbro is an energy services construction company that recruits throughout the state. Their typical employee is around 30 years of age, growing families, and looking for homes. He encouraged the Commission to seriously consider and approve this project.

**John Harding**, 3601 Huckleberry Drive, commented that he was on the Planning Board with Commissioner Bronson about a dozen years ago when Walmart was proposed for the first time. The subdivision that is now being proposed was not specifically proposed at that time, but it was part of the dream. Here we are, 12 years later, and nothing has changed. MAFB is no different, the runway does not have a flying mission, and no housing or development on that end of town. He hoped this Commission would have consideration for this development to move our community forward.

**Dana Huestis**, Kyso Corporation, commented that one year and five months ago he submitted an application for annexation and zoning for Wheat Ridge Estates. Neighborhood Council 5 is on record supporting the application. It has been approved by the Great Falls Planning Board in a 6-3 decision with supporting findings of fact after a six hour hearing. Mr. Huestis commented he was submitting new information - MAFB just published an Environmental Assessment for MAFB for a new mission titled: Weapons Storage Maintenance Facility. MAFB will construct a new nuclear weapons processing, assembly, maintenance, and storage facility at the southwest edge of MAFB property. He submitted a copy of the "Draft Environmental Assessment (EA) for Malmstrom Air Force Base Weapons Storage Maintenance Facility dated August 8, 2018. He continued with his prepared statement that MAFB supports 155 Minuteman III missiles. Minuteman missiles each have a nuclear warhead. The nuclear weapons facility processes, assembles, maintains and stores all weapons. The weapons processing center is a critical piece of the evolving ground based strategic deterrent (GBSD). Initial contracts for GBSD have been awarded. This updated 83 acre weapons facility creates a nuclear footprint on the area that has been closed by base realignment and closure for 23 years. Base realignment and closure (BRAC) was a specific order of the US Congress more than two decades ago. BRAC closed the MAFB airfield. MAFB has been classified a heliport by Federal Aviation Administration (FAA) directive dated May 26, 2016. The FAA specifically requires helicopters to approach and depart in the direction 026 degrees, which is northeast, not southwest over Wheat Ridge Estates. Fixed wing aircraft operating on a nuclear footprint is unthinkable. On May 18, 2007, an aircraft crashed within this very site for the new nuclear weapons area that is also noted in the Draft EA. Air Force nuclear safety decisions are mandatory. The nuclear footprint is sacred.

Mr. Huestis continued that the City Community Development staff report does not recognize that BRAC eliminated the flying mission and does not recognize that the FAA has designated MAFB a heliport, and does not recognize that the FAA prohibits flights over what will be Wheat Ridge Estates.

When MAFB was an installation it adopted a policy known as Air Installation Compatible Use Zone (AICUZ). MAFB is not now an air installation, it is a heliport.

**Lindsey Godwin**, 3220 6th Avenue South, continued with the reading of Mr. Huestis' prepared statement: The purpose of the JLUS was to create accident potential zones and other

encroachment criteria for a new unnamed, unknown, nebulous flying mission at MAFB. Enacted in 1995, BRAC was in place. BRAC was and is now the law of the land.

The Great Falls City Commission, as recorded in the minutes of May 1, 2012, accepted the JLUS final document. The minutes state "Acceptance of the final report does not equate to regulation and does not impact private property rights of any landowners."

There are not now, nor have there ever been, nor will there ever be, accident potential zones on my property. My property is free and clear of any such recordings as would be required if there were.

The JLUS is irrelevant. There is a nuclear footprint at MAFB. There will be no aircraft operations. MAFB has a new mission. The mission is described as evidenced in the *Great Falls Tribune*. The new mission is titled "Ground Based Strategic Deterrent." Ground based, not air based.

This is the time for the City Commission to come forward and support MAFB and its much needed new ground based strategic deterrent (GBSD) mission. Stop advocating a new flying mission at MAFB and approve the GBSD. Advocate instead for community development. Approve the annexation and zoning for Wheat Ridge Estates. Support and respect Neighborhood Council 5 and support and respect the Planning Advisory Board. Accept their actions in support.

**Terry Thompson**, CEO of the Great Falls Association of Realtors (GFAR), 401 13th Avenue South, commented that, on behalf of GFAR, she is speaking in favor of the Wheat Ridge Estates subdivision. GFAR's mission statement includes advocating on behalf of the public to protect private property rights. Several realtors in the room raised their hands in support of the project. Two core values Montanans share make our state great - a deep respect for private property rights as well as a dedication to public land. Defending both of these values is essential to our way of life. Property rights are essential to the liberty in this country and our economy. It is the policy of the United States to encourage, support, and promote private property ownership, and to ensure that constitutional and legal rights of private property owners are protected by the federal government. The Private Property Protection Act is designed to ensure property owner rights as established under the Fifth Amendment to the United States Constitution through the establishment of reasonable standards for takings and a method of relief for landowners whose rights have been taken by excess regulation. The landowner has a clear title and should be allowed to develop this land.

Ms. Thompson referred to page 181 of the agenda packet, an attachment titled "Beyond the Fence, a Realtors Guide to Military Base Closure, Realignment and Encroachment." She commented that the document was created 12 years ago as an information guide by the National Association of Realtors, and is not a GFAR policy. She also referred to the first paragraph on page 184 of the packet and commented that is not applicable to MAFB. The Guide encourages realtors to participate in the JLUS process. She commented that in 2011 GFAR did participate in the JLUS coordinated by Cascade County and the City of Great Falls. On November 23, 2011, GFAR provided nine pages of comment. Therein, GFAR opposed, in part: future use of zoning in order to avoid the need to properly purchase easements from property owners; a dark skies ordinance because there was no information from the military stating that was an issue; all strategies that suggest voluntary compatible development standards; Cascade County adopting local building codes; the creation of regional infrastructure plans; and, opposed restricting all development within a nine mile radius of the base to less than 50 feet.

Ms. Thompson continued that the last plane department MAFB over 20 years ago. The land involved in the proposed subdivision is no stranger to controversy or debate in this community. She asked the Commission to take into consideration that we live in a free market enterprise system that allows landowners the right to develop their land as they see fit as long as it doesn't violate the law. She commented that this landowner has been held hostage from developing his property since November, 2005, when he submitted a letter of intent to the City to build homes. On January 23, 2006, the landowner received a letter from the City Planning Department that stated MAFB officials have indicated the APZ's are no longer in effect because the runway is closed. She concluded that the subdivision would enhance MAFB providing housing to military members within a close proximity, it would grow the tax base, and it would provide jobs and homes for the citizens of Great Falls and MAFB. Great Falls has a flying mission - it is the Montana Air National Guard.

**Eric Ray**, 3401 15th Avenue South, NC 5 Chairman, commented that the east end footprint came to the attention of the retail community with the additions of Russell, Mountain View, Christian, Whispering Ridge and Berkner Heights. The City took that into consideration with the approval of the Walmart development. With the growth pattern of retail and commercial, it is logical to assume there will be additional residential. If this residential is approved, it works as a multiplier to bring in additional retail and commercial. There would be a potential for new commercial property tax dollars in addition to the property tax on residential housing. He discussed the 2013 Commission tasking Neighborhood Councils 4 and 5 with having discussions with the public about the likelihood of supporting an unknown anchor tenant. In March of 2015 the Commission approved the Walmart project. At that time it became apparent to him and others that the green light had been turned on for further growth on the east end. He commented that encroachment issues existed then, and expressed that he was upset at the possibility that this Commission would deny further growth on the east end because of encroachment on MAFB. He concluded that east end growth is important for the City's financial welfare.

**Steve Snezek**, Executive Director of the Montana Building Industry Association (Association), Helena, MT, commented that the Association represents 1500 builders and subcontractors across the State of Montana. He was not testifying on behalf of this or any specific project, but wanted to present a study that answers some of the questions as to the economic impact of new housing. He referred to two studies by the National Association of Home Builders: The Economic Impact of Home Building in a Typical Local Area – Comparing Costs to Revenue for Local Governments and Income, Jobs and Taxes Generated. He commented that the markets the Association operates in believes in choice, and that those choices are crucial to our culture, economy and system. Further, that it is the City Commission's job to reasonably provide and facilitate these choices in the markets that they work in. More choices means a healthier market, more affordable housing and a more robust and desirable community.

Mr. Snezek discussed two conclusions from the executive summaries of the studies. The economic impact of building 100 single family homes in a typical local area included \$28.7 million dollars in local income, \$3.6 million in taxes and other revenue for local governments, and 394 local jobs. He went on to discuss the annual recurring local impacts, on average, based on national numbers not specific to Great Falls. With regard to the costs compared to revenue for local government, he commented that in the first year 100 single family homes built in a typical local area result in an estimated \$4 million in tax and other revenue for local governments, \$332,000 in expenditures, and \$2.4 million in capital investment for new structures and equipment undertaken by local governments.



**Dan Rooney**, 1726 4th Avenue North, General Manager of ADF International, commented that for the past five years he has been involved in recruitment on a national basis. One of the most difficult challenges that their applicants find is housing in Great Falls. Prior to his work at ADF, he heard the same thing about housing challenges in Great Falls for 15 years. He commented that it is not something the City has been able to find a solution for, and it is not something that has gone away. Yet, there is a development in front of the Commission today that, along with other developments that are being proposed, help solve that solution. He is in favor of this and other developments that allow Great Falls to grow, and allows good companies in Great Falls to grow in the community.

**Loren Smith**, 1500 51st Street South, Great Falls KOA and Prairie Kraft Specialties, commented that Mr. Huestis is passionate because he has a dream. He also had a dream building a KOA. He was told by the Planning Board 43 years ago that his KOA project was at the wrong place, and was the wrong time. The County Commission approved his project. This Commission has the same choice tonight. He commented that the KOA pays \$50,000 per year in property taxes, and vacant land supplies nothing. With regard to the access road, Mr. Smith commented that United Materials has been laying down crushed asphalt for years and support trucks weighing 80,000 pounds. With regard to the water issue, Mr. Smith commented that his bill for supplemental water from the City will be nearly \$20,000/yr and that he would take the project's excess water for irrigation. He also commented that he flies all over the United States to visit KOA campgrounds. Every state has a MAFB, often with a closed runway or is completely closed. He encouraged the Commission to approve the project, and the dream of his neighbor.

**Trace Timmer**, 1113 41st Avenue NE, commented that he is a builder in the community, and that this town has been hindered by the locations of land that are developable. To the north is the only location currently to build on, other than mismatched lots here and there. To be able to build and develop the east end would diversify Great Falls. Approval of this development will allow Great Falls to grow as a community, and will bring in new revenue to develop new facilities, such as a new fire station.

**John Beer**, 3825 5th Avenue South, commented that he has been a resident for 58 years. All of that time was spent as a consulting engineer. He came here to design the earthwork for the 165 minuteman sites, and has designed over 30 airports in Montana. He commented that MAFB has the poorest soil for an airport with over 60 feet of plastic clay. The last refueling aircraft had to be taken off of the runway because the runway had to be rebuilt. The present runway is impossible to use. It has sat without an aircraft on it or using it for 23 years.

**Katie Hanning**, 327 2nd Street South, Homebuilders Association, commented that one of the great things about her job is that she gets to see small business at work. She commented that there are no available lots to build in Great Falls. Although there has been talk of 700 lots in Great Falls, people do not want to live there. Choice matters. The highest use for land is to build a home for a family. She also noted that military members get recalled and would love to live that close to the base to get back to work on time.

**Greg Maltby**, 1706 Meadowlark Drive, commented that he had four previous clients that chose not to come to Great Falls because they could not find a lot. Great Falls needs lots, and this is a nice development.

**Timothy Peterson**, 3405 Fern Drive, commented that he is a small business part-owner of L'Heureux Page Werner and Enbar Craft Cocktail Lounge. Mr. Peterson commented that of all the engineers he has worked with for 29 years, Spencer Woith is the most "think outside the box" engineer he has ever worked with. He will solve the issues that have been discussed. Great Falls has a lot of areas of really bad soil. This area is perfect for standard foundations for homes.

**Ryan Villines**, 3024 5th Avenue South, pointed out that today's meeting is for annexation of a small parcel, a step forward. Phase II could be many years down the road. The City has control over Phase I and it is a benefit to the City to annex in that land for Phase I. The proper venue to discuss later phases is when it is being proposed. The eastern corridor is prime for development.

**Bruce Moore**, 1200 32nd Street South, #65, commented that he wants his nine year old daughter to be a part of this community, and these types of developments to be things that she recognizes as part of her home, and something that she is proud of. He concluded this is a ground breaking decision that has been fought for years. It's an important one that can help a big growth process without stifling what was.

**Josh Eli**, Stockett, MT, commented that after college he went to work in Bozeman designing subdivisions. The only issue he sees with this project is the emergency access road. In looking at the full build out, the secondary road going west would connect to Mr. Loren Smith's property. The access road is a temporary issue. He urged the Commission to let the town grow. This is a beautifully designed subdivision that would be beneficial to Great Falls going forward.

**Dustin Young**, 1013 Skyline Court, Dustin Young & Co Real Estate, commented that he went to Great Falls High School and wanted his kids to attend that school. The lack of lots on the east end is a real issue. What everyone says about Great Falls gets old. He suggested the Commission start saying "yes."

**John Hubbard**, 615 7th Avenue South, commented that man has a right to expand or sell his property.

**Sherrie Arey**, 2700 3rd Avenue North, commented that the real work begins after the Commission's vote. She challenged the Commission to take all of the comments in support of and opposition to this project into consideration for development and economic development of this community. It's not just one vote tonight, yes or no. It's a bigger discussion that needs to take place, and it can either be this City Commission, or it can be the next one that is voted in.

Speaking in opposition to Resolution 10268, Ordinance 3180 and the Preliminary Plat were:

**Dave Bertelsen**, 325 Fox Drive, commented he is a local businessman. As a business, why would the City do anything to jeopardize such a huge asset on the east side of MAFB. He is in favor of the development, but not at the proposed location in the middle of the APZ1. Mr. Bertelsen commented that the City couldn't send a clearer signal to the DOD in what MAFB means or doesn't mean to Great Falls is if the Commission approves this development. He commented that the \$24,000 in tax revenue is not worth losing \$400-\$500 million dollars a year. He supports the military and is pro-development.

**David Weissman**, Montana Defense Alliance (MTDA) Chairman, 100 1st Avenue North, commented that MTDA's key strategy is to advocate for MAFB and MANG to retain, attract and enhance missions that exist. To do so, MTDA works with the Pentagon, major commands, congressional delegation, and the governor. Together they work together to stay prepared in the

event of another BRAC. MTDA is a pro-growth and pro-development organization. It's the proximity that is concerning to MTDA. He explained that, in a memo from MAFB published the 26<sup>th</sup> in *The Electric*, it stated that a residential or commercial development on undeveloped land southwest of the base could impact current mission operations. It's the "current" part that is concerning. It also stated that areas affected include helicopter movement area and a drop zone with current usage of 1,232 flights and 1,696 sorties per year, 42 functional flight checks for helicopter operations, 500 training bundles and 500 heavy drops that are done by MANG's C-130's. Flight hours have increased 25% over the last year from 3,200 to 4,000 hours that occur about 500 feet above the proposed development.

Mr. Weissman continued that the development could impact currently used arrival and departure flight tracts. Another concern is light noise pollution due to the use of night vision goggles and formation during night operations. What the Commission is considering tonight will jeopardize current operations at MAFB and MANG. MAFB and MANG provide thousands of jobs in Great Falls and Cascade County and approximately \$367 million in taxes.

He reported that MTDA works closely with our delegation giving them information that helps them pursue additional missions. The headline in the *Great Falls Tribune* on May 18th was about Senator Daines acting on information MTDA had shared with him, asking the Air Force to consider MAFB for future missions. Senator Daines quoted the Chief of Staff of the Air Force General David Goldfein about the strategic advantages and budgetary efficiencies that are enjoyed when an ICBM base works alongside a bomber base. That is happening at Minot, North Dakota. In the same article, Mayor Kelly is quoted as saying, "We welcome any opportunity to host a flying mission." On January 18th Senator Tester then asked the Air Force about changing MAFB's runway status to active. He quoted the answer, "The 341st Missile Wing and the community of Great Falls have been responsible stewards with respect to development in and around the air field, and adjacent areas off installation." Mr. Weissman inquired why the Commission would reverse all of this work. Encroaching with an incompatible land use would do just that.

Encroachment does affect MAFB regardless of a runway. Basing decisions are not made at MAFB. Some will say it is cost prohibitive to reopen the runway. When the Air Force makes a strategic basing decision, it will find the resources it needs. He added that an example is all that is going on at MANG for the C-130's.

Yesterday, Secretary of the Air Force Heather Wilson announced at the Air Force Association Air and Space Conference in Washington, DC, that the Air Force needs to increase its capacity by 25% to meet the emerging threats. That includes five more bomber squadrons, seven more space squadrons, seven more fighter squadrons, and 14 more tanker squadrons.

Mr. Weissman commented that Cascade County's Board of Adjustment application process must meet their satisfaction before a permit can be granted, states: "A development must help retain the presence of the US Military."

The National Association of Realtors knows encroachment is a bad idea and has an encroachment guide that was referenced earlier, *Beyond the Fence*. A quote therefrom sets forth that people do want to invest in new homes, but they don't want to find out that a major employer is leaving town. Mr. Weissman suggested that, if this development is to move ahead, it cannot be undone. The Commission is in a position tonight to preserve the ability to grow MAFB or potentially endanger its entire future. He urged the Commission to do the right thing - preserve our

heritage by staying strong under pressure and sending the right message to the DOD that Great Falls stands behind its airman, missions, MAFB and MANG.

**Len Watkins**, 204 Skyline Drive NE, commented that he has been a family business member in this community since 1965. He agreed with others that this town does need to grow.

To compete with Bozeman, Missoula and Billings, Great Falls needs to be known as the best business friendly community in the state. When a development project such as this comes along, it is easy to get excited about it. Although houses don't bring a lot of tax money into the City, Great Falls needs the jobs and the housing. The problem is the location. There are other wide open spaces. He suggested that people need to get together to find another location for this project and not jeopardize MAFB's current missions or stop any potential future missions. Great Falls is dependent on the military in Great Falls. Everyone would like to see the economy diversified even more. This community needs to send a message to the Pentagon and the Defense Department that Great Falls is open for business. Great Falls will continue to do what it takes to protect MAFB, is open for expanding missions, and open for new ones. We support the military in our hometown and love the sound of freedom. He urged the Commission to show Great Falls' largest employer that we are behind them 100% by voting no to this housing development in its current location.

**Joe Briggs**, Cascade County Commissioner, commented that he submitted the letter authored by the County Commission and the testimony regarding the JLUS to the City. Throughout this process there has been a factual error propagated that somehow the JLUS created the APZ's. He commented that the APZ's were created in 1973 by action of the DOD for all runways of military status. The APZ's are, in essence, a safety corridor. The safety corridor is needed because there are still flight operations at MAFB, and C-130's drops. If the assault strip is created, it would be adjacent to the existing runway and the APZ's would be used as the flight approach in and out. The helicopters still need a flight corridor. The question becomes, since a flight corridor needs to be maintained anyway, why wouldn't the one that allows viability of the runway, be maintained. The runway itself is under much speculation. Yet, from time to time the DOD sends a team to MAFB to do a structural analysis of the runway in case it wants to reopen it. It is not a dead issue as far as the DOD is concerned.

Commissioner Briggs further noted that it has been alluded to that somehow Great Falls is safe now because MAFB has been listed for GBSD. The reality is GBSD is an unfunded, un-designed missile system. A point of concern that has been raised by Strategic Command (Stratcom) is the transit of nuclear assets up and down 10th Avenue South. During GBSD there will be a full replacement cycle of the warheads. The preferred method of transport is air craft. He suggested that it made more sense for the community if the nuclear assets were landing right at the secured area of MAFB rather than at Great Falls Airport and be transported back and forth on 10th Avenue South.

Commissioner Briggs commented that he knows the value of flexibility as a businessman and as a government leader, and that he wouldn't cut off options for the future. In his mind, as this subdivision sits in the APZ off of the south end of the runway, it curtails the potential for a new flying mission. MAFB is a nuclear certified base and is in the running for the new B21 bombers.

Commissioner Briggs concluded that this is not a fight the City Commission has to take on. The proposed project is currently located in county jurisdiction. It is absolutely discretionary whether the City Commission chooses to annex or not. If the City Commission chooses to annex, then encroachment of the runway becomes the City Commission's issue.

**Shane Etzweiler**, President/CEO of the Great Falls Area Chamber of Commerce (Chamber), 100 1st Avenue North, commented that the Chamber advocates for and supports businesses in the Great Falls area to enable growth and prosperity. While the Chamber fully recognizes a need for additional housing, a greater concern is for affordable housing to meet the needs of the current work environment and their cost of living. The Chamber is focused on the economic development of Great Falls, as well as what could potentially sever one of the economic drivers of the Great Falls economy. MAFB is an economic driver with an impact of \$300 million dollars annually. Because the proposed housing development, in its current stage, would encroach the APZ at MAFB, it would impact current missions, potential future missions, and would put MAFB higher up on the list of the looming concern of BRAC. A BRAC would then have a severe economic and financial impact on the Great Falls' economy, and thereby be a detriment to the growth and prosperity of Great Falls. The Chamber strongly recommends the City Commission vote against the proposed development. The Chamber does encourage the Commission to continue discussions, bring the parties together to discuss with the developer several options, and then present them in the future to the City Commission. The Chamber would like to partner with the developer in vetting out several proposed options. Options that would not impact MAFB and potentially the economic future of Great Falls. Mr. Etzweiler concluded that, based on the potential negative economic impact this proposed development might have on the future of Great Falls the Chamber would recommend a no vote at this time on this proposed development.

**Steve Grooms**, President/CEO of First Liberty Federal Credit Union, 137 Riverview Drive E, commented that he brought his family here 20 years ago. He stands in support of a development in Great Falls. It is an important part of keeping the City vibrant. But, he is standing in opposition to the Wheat Ridge Development that is being proposed ensuring that Great Falls puts the Air Force on notice that we no longer want them here. He quoted General Rand, Commander of the Air Force Global Strike Command, stating three years ago that communities that have failed to protect from encroachment in their communities have lost their base. Once encroachment has taken place, it guarantees no future mission going forward and it significantly puts the base at risk when the BRAC committee looks at bases to close at the next go around. It is imperative to prevent encroachment to protect the base.

Mr. Grooms commented that he believes strongly that Great Falls needs to continue to develop affordable housing needs for community members. He concluded that it goes against common sense to approve an annexation request when the County has identified it as a protected area, encroaching in the APZ as identified and protected in the JLUS. It goes against common sense to jeopardize the current mission and put at risk 40% of our economy that is generated by the 4,500+ jobs that support our community. He suggested looking at the trade-offs of this decision and ensure we can live with the consequences either way it goes. As a local businessman he cannot comprehend what the City would look like without the great men and women at MAFB and their strong support of our community. Approving the annexation request is too big a risk that benefits a few in the short run, but may change Great Falls forever in the long run.

Mayor Kelly noted that the Commission did receive a letter from the Congressional Delegation Steve Daines and Greg Gianforte and read a portion of the letter expressing their concerns and opposition.

There being no one further to address the Commission, Mayor Kelly closed the public hearing.

Mayor Kelly again asked if the Commissioners had any questions of staff or the applicant.

Commissioner Houck requested clarification about a comment made that the applicant was mandated to request City annexation.

Director Raymond responded that an applicant is mandated to connect to City utilities when a subdivision is within a certain proximity to City utilities. It doesn't mean that the City is mandated to annex a piece of property or that the City actually provide those utilities.

Manager Doyon added that the owner has the ability to develop the property under current zoning code in the county. In order to accommodate all the requirements for septic systems and issues that go along with a subdivision, the owner would need to request to come into the City in order to have those utilities and maximize that property,

Commissioner Bronson asked staff to clarify whether there are other developable lots within the City.

Director Raymond responded that there are acres annexed into the City that could basically amount to hundreds of potential lots, and there are very few developable areas around the City that have the base issues.

Mayor Kelly asked Mr. Woith if he wanted to respond to a comment made pertaining to this being a small annexation request, and to ignore the rest of the project.

Mr. Woith commented that he didn't make application for the entire development, but he wanted to show everyone what his entire vision was for the property. The application before the Commission is for the first 37 lots. The red lines shown on the aerial map comprise Phase 1, and do encroach upon what has been identified as APZ1.

Director Raymond added that approximately 89% of the larger parcels is in the APZ. There is slightly less than 30% (or seven acres) in the APZ for the proposed 21.10 acre annexation and subdivision request.

Commissioner Bronson reiterated that a portion of what is being requested to annex tonight is implicated by the APZ.

Mayor Kelly asked if the applicant wished to respond to any comments made during the proceeding or submit any additional information.

**Abigail St. Lawrence** commented that she wanted to touch on the three lesser concerns: storm water, public safety and connectivity. And then address MAFB.

With regard to storm water, Counsel St. Lawrence commented that what was presented in this case is an excellent defense. Mr. Woith proposed, at a late hour, to reduce both the volume and the flow rate of storm water release to less than pre-development release rates.

With regard to public safety, Counsel St. Lawrence commented that to say there isn't a secondary access is incorrect. Wheat Ridge proposes an access that will be reserved solely for emergency access with a road base demonstrated to be sufficient to support a fully loaded fire engine. Also, Mr. Woith proposed an egress that is 40 feet wider than existing right-of-ways within the City.

Mr. Woith addressed connectivity and transportation in his last comments. This is a phased development. Infrastructure is developed over time taking advantage of the revenue that is coming in from the development.

Counsel St. Lawrence pointed out that this development is not within MAFB development easement. The citizens rejected the attempt to purchase those rights. There is no documented impact to current missions. The 10.21 acre airfield easement is not disturbed. The environmental analysis on the proposed assault landing zone had a finding of no significant impact with no off base impacts. The environmental analysis on the proposed weapons storage facility was the same. This included taking impacts into consideration on private property. She emphasized that the environmental assessments prepared by the Air Force and DOD found no impacts off base. She again read a sentence from page 2012.63 Journal of Commission Proceedings: "Acceptance of the final report does not equate to regulation and does not impact private property rights of any land owner." How to consider the impacts to Malmstrom is a policy decision for this Commission. She further read comments Mr. Dan Rice set forth in his submitted letter.

Counsel St. Lawrence urged the City Commission to listen to the Planning Advisory Board, Neighborhood Council, and citizens. Move this community forward so that her classmates, and future graduates, can come home, can stay home in a growing and revitalized community with a diversified economy.

Mayor Kelly explained the next process includes three particular pieces of action. The first is to annex the 21.1 acres. If that fails there is no reason to go forward. If it is adopted, the Commission would consider the ordinance to establish PUD zoning and accept the accompanying findings of fact submitted by the Planning Advisory Board. The third action is to consider approval of the preliminary plat of the 40 lot major subdivision and the accompany findings of fact.

**Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission adopt Resolution 10268 to annex the 21.10 acre tract identified as Parcel 1 on Certificate of Survey #5162 and the accompanying Findings of Fact, pending the storm water solution that was described to the Commission as a reduction to both flow and rate worked out, and the emergency egress road worked out between the City and the applicant.**

Mayor Kelly asked if there was any discussion amongst the Commissioners.

Commissioner Moe commented that she thinks options for Great Falls' future lie in this development. She doesn't think this is a community that can be in waiting and letting other options for the future be cut off all while the City has a good relationship with MAFB now, and believes that relationship will continue. She explained that her added conditions to the motion was to make sure that the emergency egress and storm water issues were fleshed out before consideration of final approval.

Commissioner Robinson commented his concern is public safety. If the Commission approves more developments and ignores the public safety factor, a significant piece is missing. But, he didn't want to hold up development. He, too, thinks it is time to move ahead.

Commissioner Bronson expressed opposition to the motion for two reasons: One, due to late developing information from a developer regarding aspects of this proposal, it would be more appropriate to table the resolution and bring it up later for discussion. The same thing applies to the public safety concerns addressed by Commissioner Robinson; and two, the Commission has a

statute and ordinance to follow and he doesn't believe the developer has made an appropriate case, in his view, for annexation of this property. There has been substantial testimony and documentation presented to the Commission that the impact that encroachment, not only on existing but future missions of MAFB, would be a potentially drastic impact on the future. Missions change with the circumstances and with the times we live in. We live in dangerous times in this world.

Commissioner Houck commented that she also would have rather the Commission table the motion. The Commission is being asked to consider making a significant change to the community. As a Commissioner, she had four areas to consider and was told all of them must be met. In her mind, storm water is an issue and an area that has not been met. She wants to see Mr. Woith's late storm water proposal come back to the Commission. She also expressed concern about public transportation. She witnessed an airplane crash at MAFB and knows why there are APZ's and reason for concern.

Discussion followed regarding tabling the motion on the floor to a date certain.

Director Raymond recommended a date certain be the first meeting in January. The applicant has an enormous amount of work to do to bring it to the City to demonstrate that the late proposal will work. Then City staff has a lot of work to do to review that proposal and bring it to the Commission. He also expressed concern about the motion on the floor being a conditional annexation.

After further discussion between the Commission and staff, **Commissioner Houck moved, seconded by Commissioner Bronson, that the City Commission table the pending motion on Resolution 10268 until January 15, 2019.**

Mayor Kelly asked if there were any comments from the public on the motion to table.

**Ryan Villines**, 3024 5th Avenue South, commented that the people deserve an answer. He suggested the Commission vote and not kick the can down the road.

**Brad Livingston**, 2704 Big Ranch Road, commented that there is nobody in this room, including him with 41 years serving in the military, that really understands APZ's and how they work. He recommended that if the Commission does vote to table, that individuals very familiar with current APZ's be contacted for clarity.

There being no further public comment, Mayor Kelly asked if there was any discussion amongst the Commissioners.

Mayor Kelly commented that discussion is not about the beginning or end of development on the east end. The discussion is about a particular piece of property adjacent to Walmart. He pointed out there is land further east along that corridor that is available for marketing and real estate development, and is not factored into the JLUS or APZ. As Commissioner Bronson pointed out, if this development was sitting in another available area, there wouldn't be all of the complexity to it. Tabling allows the Commission to put this off for a little while and bring in others for discussion. He would like to find out in relevant terms across the country if that property as it sits is still considered encroachment or if the APZ has been reviewed and reestablished for the current types of military situations. The applicant said himself he came up with better ideas that bear being listened to and worked on. The Commission's intent is to get it right.



There being no further discussion, Mayor Kelly called for the vote.

Motion carried 4-1 (Commissioner Moe dissenting)

Mayor Kelly called for a recess at 11:16 p.m., and called the meeting back to order at 11:21 p.m.

**Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission table motions II and III of agenda item 12.**

Mayor Kelly asked if there were any comments from the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

**13. Ordinance 3188, Repealing and Replacing Title 10, of The Official Code of The City of Great Falls (OCCGF), Pertaining To Vehicles and Traffic.**

City Attorney Sara Sexe reported that, in an effort to update the OCCGF, City staff has assembled input from the different departments to continue a comprehensive revision of the Code. The Ordinance under consideration would repeal and replace OCCGF Title 10, pertaining to vehicles and traffic. The vast majority of the amendments are non-substantive. Non-substantive changes include chapter re-designation to put chapters in correct numerical order, typographical errors, and reformatting of subsections.

Substantive changes include:

- Relocating all definitions applicable to the Title to Chapter 1.
- Specific penalty provisions throughout the Title.
- Updating payment options for parking meters and amending parking violations to include violation of parking facility lease rules.
- Adding the requirement for Montana Department of Transportation (MDT) approval for traffic control devices placed on MDT rights-of-way.
- Allowing the City Parking Administrator, in consultation with the Parking Advisory Commission, to add meters in City Commission established parking districts.
- Allowing the Parking Administrator to remove commercial loading zones when loading zones are creating traffic hazards.
- Allowing the Public Works Department, in conjunction with the Great Falls Police Department, to remove vehicles that are parked in construction zones.

The ultimate goal of the Ordinance under consideration is to create consistency within the OCCGF, and where applicable, the Montana Code Annotated and the ARM.

Mayor Kelly declared the public hearing open.

No one spoke in support of or in opposition to Ordinance 3188.

Mayor Kelly closed the public hearing.

Commissioner Bronson noted that he inquired of staff what criteria the City Manager would use to deny a toll request as was proposed in Title 10, Chapter 18. After staff review and discussion, staff provided updated proposed changes to Chapter 18 - Toll Locations.

City Attorney Sexe clarified that, based upon the concerns that were raised, staff withdrew the proposed substantive changes to Title 10, Chapter 18, with the exception of the numeric changes.

Commissioner Moe referred to OCCGF 10.9.210 - Passenger loading zones serving schools, and inquired how drivers would know the loading zones would have to be observed during certain hours of the day.

City Attorney Sexe responded via signage, and whether or not school is in session.

**Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission approve the changes presented (Title 10, Chapter 18) and adopt Ordinance 3188.**

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

## **OLD BUSINESS**

## **NEW BUSINESS**

## **ORDINANCES/RESOLUTIONS**

### **14. Resolution 10248, Levy and Assess Properties within the Business Improvement District (BID).**

Finance Director Melissa Kinzler reported that the BID was originally created in 1989, renewed in 1999, and re-created for a third term in 2009, each for periods of ten years by petition of the property owners within the District. The BID's overall purpose is to improve and revitalize the downtown area by utilizing and directing the assessment dollars collected through the BID tax assessment.

On July 17, 2018, as required by MCA Section 7-12-1132 (3), the BID presented a proposed Work Plan and Budget and recommended a method of levying an assessment on the properties within the District that best ensures the assessment on each lot or parcel is equitable in proportion to the benefits to be received for Fiscal Year 2018/2019. Following the public hearing held on July 17, 2018, the City Commission moved to adopt the 2018/2019 Work Plan and Budget for the BID.

The actual assessment for 2018/2019 based on the assessment formula will generate \$244,964.84 in assessment revenue.

Staff recommends that the City Commission adopt Resolution 10248 to levy and assess properties within the Business Improvement District.

**Commissioner Bronson moved, seconded by Commissioner Houck, that the City Commission adopt Resolution 10248.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners.

The Commission expressed appreciation to the BID for its great work.

Mayor Kelly called for the vote.

Motion carried 5-0

**15. Resolution 10249, Levy and Assess Properties within the Tourism Business Improvement District.**

Finance Director Melissa Kinzler reported the TBID was originally created in 2008 and was renewed for a second term in February, 2018, for a period of ten years by petition of the property owners in the District. The District's overall purpose is to promote tourism, conventions, trade shows and travel to the City of Great Falls by utilizing and directing the assessment dollars collected through the TBID tax assessment.

On July 17, 2018, as required by MCA Section 7-12-1132(3), the TBID presented a proposed Work Plan and Budget and recommended a method of levying an assessment on the properties within the district that best ensures the assessment on each property is equitable and in proportion to the benefits to be received for Fiscal Year 2018/2019. Following the public hearing held on July 17, 2018, the City Commission adopted the 2018/2019 Work Plan and Budget for the TBID.

The actual assessment for FY 2018/2019 will generate \$380,373 in assessment revenue.

Staff recommends that the City Commission adopt Resolution 10249 to levy and assess properties within the Tourism Business Improvement District.

**Commissioner Robinson moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 10249.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners.

Commissioner Houck noted that the Commission hears frequently from the BID and TBID, and what has been presented by both has been fully vetted.

Mayor Kelly called for the vote.

Motion carried 5-0

**16. Resolution 10269, repealing Resolution 10241 adopted August 21, 2018; Resolution 10270, fixing the Annual Tax Levy.**

Finance Director Melissa Kinzler reported the City Commission is required to fix an annual tax levy by setting mills to generate property tax revenues to fund city operations. The City received its original taxable valuation from the Montana Department of Revenue (MTDOR) on July 30, 2018, and a revised valuation on August 6, 2018. With this valuation, the City computed its annual mill levy. At its August 21, 2018 meeting, the City Commission adopted Resolution 10241 to fix the annual tax levy in mills for the fiscal year beginning July 1, 2018 and ending June 30, 2019.

On August 31, 2018, Cascade County Commissioner Joe Briggs notified the City that the County Commission received notice from the Montana Department of Revenue that the revised valuation had a major error in the 2018 Taxable Market Value and 2018 Total Taxable Value.

The Total Taxable Value that was in error was \$111,473,256. The revised value received on September 4, 2018, was \$99,201,290. This means that without the recertification of the mills, the City would lose \$12,271.97 per mill (\$1,837,959 in total).

The value of the mill went down from original certification, so the City needs to levy more mills to get the same amount of revenue from the original certification. The mills went from 177.84 mills to 201.24 mills. The newly taxable property amount went up by \$91,466. The impact on a \$100,000 taxable property house will remain the same - \$1.84 for the inflationary factor, and \$4.30 for the permission medical levy. The total increase will be \$6.14.

**Commissioner Bronson moved, seconded by Commissioner Moe, that the City Commission adopt Resolution 10269.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners.

Commissioner Bronson noted his displeasure with the Montana Department of Revenue and how it has handled this \$10-\$11 million dollar error.

Mayor Kelly called for the vote.

Motion carried 5-0

**Commissioner Bronson moved, seconded by Commissioner Moe, that the City Commission adopt Resolution 10270.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

**17. Ordinance 3192, Amending Title 17, Chapter 16, Article 2, Section 050 of The Official Code of The City of Great Falls (OCCGF), Pertaining to Burden of Proof.**

City Attorney Sara Sexe reported that Ordinance 3192 revises Title 17, Chapter 16, Article 2, Section 050 of the Official Code of the City of Great Falls to be consistent with most legal practices in quasi-judicial or judicial proceedings. After the first reading there were some amendments made to clarify the language that were incorporated in the attachment to the agenda report.

**Commissioner Houck moved, seconded by Commissioner Moe, that the City Commission adopt Ordinance 3192.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

**18. Ordinance 3193, to assign PUD Planned Unit Development zoning to the properties legally described as Lot 4B and 4C of the Amended Plat of Lot 4 of the Medical Tech Park Minor Subdivision.**

Planning and Community Development Director Craig Raymond reported that the applicant, NeighborWorks Great Falls, is proposing the annexation, establishment of Planned Unit Development zoning, and preliminary plat of a major subdivision on two parcels of land that total approximately 20.5 acres. The subject properties are undeveloped land located in Cascade County adjacent to Great Falls along 20th Street South and 24th Avenue South. The applicant is proposing an 85-lot subdivision, fully developed with the establishment of several proposed roadways and alleys to access the lots, sidewalks to create pedestrian circulation, and City utilities to provide services to the subject properties.

City staff and the developer have worked through a detailed Improvement Agreement which defines the roles and responsibilities of the developer and the City. The Agreement spells out what improvements are required by the City and who shall pay for them. For the most part, the developer shall pay for all street, water, sewer and storm water improvements which are necessary to support this development. The City, will pay for upsizing of utility lines as may be specifically requested by the City for utility continuity and future growth. The City also intends to purchase one of the subject lots to keep in reserve for a possible future water pump station that may be needed in the future.

**Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission accept Ordinance 3193 on first reading and set a public hearing for October 16, 2018.**

Mayor Kelly asked if there were any comments from the public or discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 4-0-1 (Commissioner Bronson abstaining)

## **CITY COMMISSION**

**19. Miscellaneous reports and announcements from the City Commission.**

Mayor Kelly announced that the Commission and many City staff members will be attending the Montana League of Cities and Towns meeting next week in Butte.

Future of the Falls, a young people's conference, is scheduled for October 3rd to discuss what they would like to see happen in Great Falls.

Commissioner Moe announced that the History Museum is debuting a film on Saturday titled "Under the Thundering Sky" regarding the history of Malmstrom Air Force Base and Montana Air National Guard.

20. **Commission Initiatives.**

None

**ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Houck moved, seconded by Commissioner Moe, to adjourn the regular meeting of September 18, 2018, at 11:46 p.m.**

Motion carried 5-0

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**Mayor Bob Kelly**

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**City Clerk Lisa Kunz**

**Minutes Approved: October 16, 2018**