

Regular City Commission Meeting

Mayor Stebbins presiding

CALL TO ORDER: 7:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL: City Commissioners present: Dona R. Stebbins, Bill Bronson, John Rosenbaum, Bill Beecher and Mary Jolley. Also present were the City Manager, Assistant City Manager, City Attorney, Directors of Community Development, Fiscal Services, Library, Park and Recreation, Planning, Public Works, the Fire Chief, Police Chief, and the City Clerk.

NEIGHBORHOOD COUNCILS

NC 4 – Golden Corral Staff awarded Good Neighbor Award.

1. Sandra Guynn, Chair of NC 4, presented Deb Hudson and the Golden Corral staff with Neighborhood Council 4’s Good Neighbor Award.
2. There were no miscellaneous reports or announcements from neighborhood council representatives.

PUBLIC HEARINGS

Res. 9807. Adopted.

3. **RESOLUTION 9807, CREATING SPECIAL IMPROVEMENT LIGHTING DISTRICT – CITY-OWNED RESIDENTIAL LIGHTING DISTRICT 1305, WATER TOWER PARK ADDITION.**

Fiscal Services Director Coleen Balzarini reported that the developer of the Water Tower Park Addition has requested that the City create a special improvement lighting district for the installation of five 100 watt lights serving 16 properties in the area.

Mayor Stebbins declared the public hearing open. Speaking in opposition to Resolution 9807 were:

Kathy Gessaman, 1006 36th Avenue NE, believes that there were two people that spoke in opposition at the previous meeting who were not noted in the agenda report. Ms. Gessaman opposes this Resolution because it doesn’t take into account anything to protect the night sky.

Ron Gessaman, 1006 36th Avenue NE, was concerned that the subdivision was being advertised as having street lighting before being approved by the City Commission. Mr. Gessaman commented that it has been a policy in the Riverview area to have limited street lighting. He also noted that this item will be discussed at Neighborhood Council 3’s meeting later this month.

Speaking in favor of Resolution 9807 was **Tim Spencer**, 2720 Rainbow Dam Road, co-developer of the property with Dana Hennan. Mr. Spencer stated that he would like to do whatever makes his potential customers happiest, and thought street lights would be a great benefit to the neighborhood. Mr. Spencer surveyed potential customers and 100% were in favor of street lights for curb appeal and security.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

Commissioner Bronson moved, seconded by Commissioner Rosenbaum, that the City Commission adopt Resolution 9807 creating Special Improvement Lighting District – City-Owned Residential Lighting District 1305.

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

Commissioner Bronson stated that he has been a resident of the Riverview area for a number of years. Mr. Gessaman's criticism is not consistent with his understanding of the history in the area regarding lighting. Commissioner Bronson commented that street lighting adds to public safety.

Commissioner Jolley inquired about protest letters. Ms. Balzarini responded that the request to create the lighting district was initiated by the developers. The developers are the current owners the property, so there is no one to protest within the district.

Motion carried 5-0.

Ord. 3029. Adopted.

4. ORDINANCE 3029 TO REZONE PARCEL MARK CC, SECTION 14, T20N, R3E (CITY-OWNED PARCEL ALONG OVERLOOK DRIVE).

Interim Planning Director Bill Walters reported that Ordinance 3029, if adopted, would rezone a vacant 2.67 acre tract of land owned by the City and located along Overlook Drive between the City Water Treatment Plant and the Warden Bridge from PLI Public Lands and Institutional district to M-2 Mixed-Use District to make the property more marketable for development. The City acquired subject parcel from the Great Northern Railroad in 1972. The City Public Works Department has used the property for several years as a site for depositing snow removed from City streets, although that has not been the case this winter season because of its limited accessibility due to the reconstruction of Overlook Drive. The Montana Department of Transportation has also notified the City that snow plowed off of the Warden Bridge falls onto the northerly edge of this property. Zoning of the parcel will not affect the City's or MDT's ability to use the property for depositing snow. Mr. Walters asked the Commissioners to keep

in mind that the potential sale of the parcel will be considered separately at a future date when the issues related to depositing snow can be further addressed.

At a public hearing held December 9, 2008, the City Zoning Commission passed a motion recommending the City Commission rezone the subject property from PLI to M-2.

Mayor Stebbins declared the public hearing open. Speaking in opposition to Ordinance 3029 was **Stuart Lewin**, 615 3rd Avenue North. Mr. Lewin expressed concerns that he doesn't believe the Missouri River Corridor Plan was adequately considered during this process by MDT or City staff. He read portions of the Plan, as well as responses to his letter to the Planning Department.

No one spoke in favor of Ordinance 3029. Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

Commissioner Rosenbaum moved, seconded by Commissioner Beecher, that the City Commission adopt Ordinance 3029.

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

Commissioner Jolley commented that she voted against setting this public hearing because of the letter from MDT and the City employee that expressed concern about depositing snow. Mr. Walters responded that Commissioner Jolley was referring to an email from Mick Johnson at MDT about plowing snow off of the Warden Bridge causing it to cascade down on the edge of this property. There was also a memorandum from Jim Turnbow, City Street Supervisor, expressing concerns about not being able to use the property to deposit snow. Mr. Walters explained that this hearing is to rezone the property. Those concerns can be addressed if the City sells the property in the future.

Commissioner Bronson questioned the value of the land as open space. The criticisms expressed go primarily to the nature of the transportation construct around the area. Nothing that the Commission decides tonight will change that. Those decisions have been made and the State is proceeding with that plan. Upon discussions of selling the property, the Commission will then have the opportunity to put appropriate deed restrictions on its use and take into consideration any other important matters.

Motion carried 5-0.

OLD BUSINESS

**Contract Rate Rider #2
wholesale power rate
adjustment (blended
rate) offer from
Southern Montana
Electric. Approved.**

**5. CONTRACT RATE RIDER #2: WHOLESAL POWER RATE
ADJUSTMENT; WHOLESAL POWER CONTRACT BETWEEN
SOUTHERN MONTANA ELECTRIC AND THE CITY OF
GREAT FALLS.**

Fiscal Services Director Coleen Balzarini reported that this rate rider is an addendum to the existing Wholesale Power Contract with Southern Montana. It doesn't change the term of the contract in regards to its expiration date. It does change the methodology for which ECP is billed for the energy that its customers consume. On August 21, 2008, the Southern Montana Board approved offering this blended rate to ECP. The ECP Board discussed the blended rate offer at its November, December and January meetings. At the December, 2008, meeting the ECP Board recommended that the City Commission accept the blended rate offer. The blended rate will afford ECP a lower rate for the amount of energy consumed than the amount it is currently paying under the pass through structure. The savings between the difference of the pass through and blended rates will be held on deposit with Southern Montana. Ms. Balzarini highlighted that there are no guarantees that the blended rate going forward will be cheaper than the pass through rate. Past performance has indicated that would have been the case and appears that will continue to be the case, even though Southern Montana has approved an eight percent rate increase for all of its members. The water credit that was part of the payment structure expired December 31, 2008, so that is not a factor in this consideration. If the blended rate is accepted, it will go into effect January 1, 2009.

Mayor Stebbins asked if the Commissioners had any questions for Ms. Balzarini.

Commissioner Jolley requested that this item be postponed until after a work session due to the pending litigation that may be settled soon. She commented that it is hard for the public to comment on what the City Commission is voting on if some commissioners have information from the SME Board meetings that the public doesn't have.

Commissioner Bronson stated that everything that was discussed at the meeting he attended about the blended rate was discussed by Ms. Balzarini in her agenda report, and is the same material that has been discussed with the ECP Board.

Ms. Balzarini added that the Exhibit that was handed out sets forth what was verbally described in section B 1-5 of the agreement.

Commissioner Jolley responded that she has a lot of questions about the agreement. She respectfully requested that this matter be postponed until after a work session.

Commissioner Beecher moved, seconded by Commissioner Rosenbaum, that the City Commission approve the Wholesale Power Rate Adjustment (the blended energy rate) offer from Southern Montana Electric G&T and authorize the City Manager and ECP Executive Director to execute Contract Rate Rider #2.

Mayor Stebbins asked if there was further discussion amongst the Commissioners.

Commissioner Beecher commented that he does not share the same concerns as Commissioner Jolley. He believes this is a way to get a better rate.

Mayor Stebbins asked if there were any inquiries from the public.

Neil Taylor, 3417 4th Avenue South, commented that, as he understands the blended rate, extra monthly money will be paid to SME to match the one year equivalent of what the normal fees would be. Mr. Taylor opined that amount would be approximately \$700,000-\$800,000 per year.

Ms. Balzarini responded that the amount of money paid to Southern Montana will be no greater under the blended rate than it is under the current pass through rate. The cash that is not attributable to the cost incurred under the blended rate will be held on deposit with Southern Montana. The cash comes from the pooled cash of the City's operations as a whole. Electric City Power is an operating fund of the City of Great Falls, just as the general, water, golf course and swim pool funds are. All of that cash is pooled for purposes of investment and handling the cash flow needs which vary amongst all of those funds from any month.

Mr. Taylor commented that ECP is \$1.2 million in the hole. He asked how it could come from a pool that has a negative balance.

Ms. Balzarini responded the same way the golf course funds gets pooled cash for its negative operations.

Mr. Taylor questioned the appropriateness of this Commission considering this matter. He reminded the Commission that it approved the Assignment and Assumption Agreement in October, 2007, that assigned certain responsibilities to ECP. One being to purchase and negotiate the wholesale power that ECP has been purchasing. The City Commission retained the right to set the rates for ECP's customers. He contends those rates were not set properly. Otherwise, ECP wouldn't be in the hole.

Larry Rezendes, 2208 1st Avenue North, commented that the analysis presented is inadequate as a basis for the Commission to make a decision as it contains no statement of assumptions nor sensitivity analysis showing what happens under varying demand conditions to serve as a basis for such a decision. Mr. Rezendes suggested that the Commission not count on the continuing availability of the blended rate supported by WAPA in any event because YVEC is likely to prevail in its lawsuit, as it is clear to him that ECP and the City of Great Falls are not entitled to the blended rate based on the current Wholesale Power Contract between the City and SME. Mr. Rezendes believes the total liability of ECP would grow to \$4.3 million by the end of this fiscal year, not including the \$1.8 million in operating losses generated by ECP from inception through November. Mr. Rezendes concluded that the City is violating Ordinance 2925, and continuing the present path is unacceptable.

Kathy Gessaman, 1006 36th Avenue NE, seconded Commissioner Jolley's idea to table this matter until after an in depth discussion at a work session.

Ron Gessaman, 1006 36th Avenue NE, read a portion of the Assignment and Assumption Agreement dated October 2, 2007. Pursuant to that agreement, Mr. Gessaman does not see how rate rider #2 can say the parties involved are the City and ECP, collectively, as the buyer. The City of Great Falls has nothing to do with the purchase of electricity. The Wholesale Power Contract has been conveyed to ECP. Mr. Gessaman inquired why the City Attorney hasn't informed the City Commissioners that they don't have a say in this; that it is ECP's responsibility to go out and buy power and to handle the amendments to Wholesale Power Contract. Mr. Gessaman also noted that the blended rate is higher than his NorthWestern Energy rate. Mr. Gessaman agreed this matter should be tabled.

Stuart Lewin, 615 3rd Avenue North, commented that a \$6 million dollar loss is huge for the City. Mr. Lewin stated that he hasn't seen any numbers that prove the blended rate is better than ECP keeping its current contracts. The blended rate proposal from the same entity ECP is losing money to makes him suspect. The money wasted from the general fund is because of a bad idea, and the pilot program customers getting the benefit of rates being subsidized by the City. Mr. Lewin doesn't believe the Commission is being responsible.

Motion carried 4-1 (Commissioner Jolley dissenting).

NEW BUSINESS

ORDINANCES/RESOLUTIONS

Res. 9809. Adopted.

6. RESOLUTION 9809, REMODEL TAX BENEFITS, 201 2ND AVENUE SOUTH.

Community Development Director Mike Rattray reported that the owner of the property located at 201 2nd Avenue South has renovated the building on that property at a cost of approximately \$650,000. Approval of the Resolution will allow for the taxes generated from the renovation of the structure to be added to the existing tax base over a five year period in increments of 20% each year.

Commissioner Rosenbaum moved, seconded by Commissioner Beecher, that the City Commission adopt Resolution 9809.

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Motion carried 5-0.

Ord. 3030. Accepted on first reading and set a public hearing for March 3, 2009.

7. ORDINANCE 3030, ASSIGN CITY ZONING TO CASTLE PINES ADDITION, PHASE VII.

Interim Planning Director Bill Walters reported that the City Commission approved the preliminary plat of Castle Pines Addition, Phases VI-VIII, at a meeting held last March. The developer of Castle Pines Addition, Harold Poulsen, has requested approval of the final plat and annexation of the final phase of the preliminary plat. The subdivision consists of 13 single-family residential lots along 28th Avenue South and 16th Street South. Ordinance 3030 assigns a City zoning classification of R-3 Single-Family District to Castle Pines Addition, Phase VII.

Mr. Walters requested the City Commission accept Ordinance 3030 on first reading and set a public hearing for March 3, 2009, to consider the final plat and annexation documents.

Commissioner Bronson moved, seconded by Commissioner Rosenbaum, that the City Commission accept Ordinance 3030 on first reading and set a public hearing for March 3, 2009.

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Motion carried 5-0.

Consent Agenda. Approved.

CONSENT AGENDA

8. Minutes, January 20, 2009, Commission meeting.
9. Minutes, January 28, 2009, Special Commission meeting.
10. Total expenditures of \$1,643,409 for the period of January 15-28, 2009, to include claims over \$5,000, in the amount of \$1,469,887.
11. Contracts list.
12. Lien Release list.

13. Set public hearing for March 3, 2009, on Resolution 9813, Conditional Use Permit to allow a Wind Turbine on Lot 2A, Block 1, Vo-Tech Addition (MSU-College of Technology).

Commissioner Jolley moved, seconded by Commissioner Bronson, with the exception of items 10 and 11, that the City Commission approve the Consent Agenda as presented.

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Motion carried 5-0.

With regard to Item 10, Commissioner Jolley asked if this was the first payment to A. Dashen & Associates for financial advisory services in 2005 and was responded to affirmatively by Ms. Balzarini. Regarding the audit for the ECP fund, Commissioner Jolley asked if this payment would increase the amount owed. Ms. Balzarini answered this payment will reduce the \$356,000 by the \$83,144.56.

With regard to Item 11, which also involves Southern Montana, Commissioner Jolley requested clarification because she doesn't believe it was within the Commission's power or legal under state law to approve a contract longer than 10 years. Commissioner Bronson responded that because the City Commission has self governing authority, the Commission exercised its authority to extend its rights out to enter into longer term contracts that are normally not allowed under state law to general government power cities. City Attorney Dave Gliko agreed and added that an Attorney General's Opinion also supported that. Commissioner Jolley requested that City Attorney Gliko provide her with a copy of the Attorney General's Opinion.

Commissioner Beecher moved, seconded by Commissioner Rosenbaum, that the City Commission approve Items 10 and 11 of the Consent Agenda.

Motion carried 5-0 for Item 10.

Motion carried 4-1 for Item 11 (Commissioner Jolley dissenting).

BOARDS & COMMISSIONS

Marion Smith appointed to the Great Falls Transit District Board.

14. **APPOINTMENT, GREAT FALLS TRANSIT DISTRICT BOARD.**

Commissioner Bronson moved, seconded by Commissioners Beecher and Rosenbaum, that the City Commission appoint Marion Smith to fill the remainder of a four year term through November 30, 2010, to

the Great Falls Transit District Board.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

**Russell Motschenbacher
appointed to the Park
and Recreation Board.**

15. APPOINTMENT, PARK AND RECREATION BOARD.

Commissioner Jolley moved, seconded by Commissioner Bronson, that the City Commission appoint Russell Motschenbacher to the Park and Recreation Board to fill the remainder of a three year term through December 31, 2009.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

CITY MANAGER

17. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

City Manager Gregory Doyon appointed Mike Rattray as Acting City Manager for February 20, 2009. No one objected.

PETITIONS AND COMMUNICATIONS

18. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Stebbins opened the meeting to Petitions and Communications.

HGS.

18A. Stuart Lewin, 615 3rd Avenue North, commented that it is cause for celebration that the coal plant will not be built as reported in the *Tribune*. Mr. Lewin opined that it was poor involvement of the Commission that was a factor that helped opponents accomplish their ends in opposing the coal plant. He suggested the appropriate location for the proposed gas plant should have been thought about at the beginning of this process. Now, there is already an investment in the current location that he doesn't believe is the right place to build a gas fired plant.

HGS.

18B. Ken Thornton, 31 Paradise Lane, commented that for the past three years he has discussed the cost of CO₂. He believes the HGS plant never did have that cost. Without knowing that cost the banks turned down financing. Mr. Thornton stated that the Commission was given wrong advice. Millions of dollars were wasted on this project because proper

investigation was not done on what this plant would cost. He believes the gas plant is a great idea. With technology changing to a green future, he suggested hiring the Rocky Mountain Institute firm in Colorado for expert advice so that more money is not wasted.

SME Bylaws.

18C. Ron Gessaman, 1006 36th Avenue NE, stated that the City of Great Falls is a Class A member of SME. Page 2 of SME's bylaws sets forth that membership in the cooperative shall not be transferable. Mr. Gessaman doesn't believe the duplicate certificate of membership he recently received conforms with SME's bylaws. Mr. Gessaman commented that he understands there was 5-0 vote at a special SME meeting held last Friday to change from a coal fired plant to a gas fired plant. A member of City staff went to that meeting. According to SME's bylaws, a vote of each member of the cooperative shall be cast by its duly authorized representative evidenced by an instrument in writing executed by its president or secretary under its corporate seal pursuant to a resolution duly adopted by a board of trustees. Mr. Gessaman stated that in this case the president is the mayor and the board of trustees is the commission. He doesn't believe this commission has ever provided anyone with those specific voting authorizations. The SME bylaws further state that a trustee of SME shall either be a director, trustee or a city manager. Since the City of Great Falls is a municipality, he believes the City Manager would serve as the person on the SME Board. He understands another member of City staff is attending the meetings and voting for the City. Mr. Gessaman stated he thinks the Commission is guilty of violating the law, as well as the City Attorney for not properly advising the City Commission.

HGS.

18D. Neil Taylor, 3417 4th Avenue South, commented that hindsight is 20/20. He urged the Commissioners to put HGS on the ballot.

**HGS, Pine Beetles,
legislation, and
constitutional rights.**

18E. John Hubbard, 615 7th Avenue South, congratulated CCE and thought all the money wasted on the coal plant was a sin. Mr. Hubbard commented about the proposed gas plant and stated there is a geothermal problem at Yellowstone. Mr. Hubbard asked what could be done about the pine trees. Commissioner Jolley responded that there was a recent article in the newspaper stating that drug stores would have a product available. Also, the City Forester did have a work session on the subject. Park and Recreation Director Marty Basta informed Mr. Hubbard that the product the stores will carry is called Verbenone. If purchasing Verbenone packets, it needs to be applied to trees that are not infested by mid-April. Infested trees need to be cut down and disposed of. Those trees can be taken to the City's compost site at no charge. Mr. Hubbard thought it would help people if legislation was passed to insure the person, not every vehicle; and, that filing bankruptcy to avoid a personal injury judgment should be prohibited. Mr. Hubbard feels when he was escorted out of a prior meeting that his rights were infringed upon. He contacted an office regarding disabled rights and was told to place a complaint with the Great Falls Police Department.

HGS litigation.

18F. Kathy Gessaman, 1006 36th Avenue NE, commented that, with regard to the economic realities and the coal plant being converted to a gas plant, there are still ongoing litigations.

CITY COMMISSION**19. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Commissioner Jolley commented that she attended the ECP Board meeting on February 2. With regard to how to proceed on the case with the Public Service Commission, the Board discussed recommending that the Commission file an appeal in District Court, and also contact Harley Harris in Helena about going before the legislature for clarifying language. Commissioner Jolley thought the Commission discussed not hiring a lobbyist. Commissioner Beecher responded that any lobbyist hired would have to be approved by the City Commission.

Mayor Stebbins thanked Neighborhood Council 4 for their Good Neighbor Award. She believes it went to a very deserving group of people. She is proud they are a part of the community and that they place volunteerism very high on their priority list.

ADJOURNMENT**Adjourn.**

There being no further business to come before the Commission, **Commissioner Beecher moved, seconded by Commissioner Rosenbaum, that the regular meeting of February 3, 2009, be adjourned at 8:40 p.m.**

Motion carried 5-0.

Mayor Stebbins

City Clerk

Minutes Approved: February 17, 2009