

Regular City Commission Meeting

Mayor Stebbins presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE**

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

**PROCLAMATIONS:** Mayor Stebbins read proclamations for Public Safety Telecommunicator's Week, National Day of Prayer, and the Lewis and Clark National Historic Trail Interpretive Center 10<sup>th</sup> Anniversary Celebration.

**NEIGHBORHOOD COUNCILS**

NC 7

**1A. Aaron Weissman, NC 7,** commented that the council remains concerned about many problems in the lower north and south sides of Great Falls. At a meeting last night, the council discussed the recent crime activity at 5<sup>th</sup> Street and 5<sup>th</sup> Avenue North. Mr. Weissman stated that Patty Cadwell is attempting to set up a town meeting with the neighbors and others in that area to listen to these neighbors' concerns and determine what can be done. Mr. Weissman urged the Commissioners to attend that meeting. The Council also suggested lighting Gibson Park at night. He stated it may be expensive, but it is something that needs to be investigated. Mr. Weissman stated that the Council volunteered and gathered over 2,300 signatures from patrons of the downtown Albertsons requesting that there be a downtown grocery store. Mr. Weissman stated that this represents a market and there is a business opportunity there. Mr. Weissman asked for any help to make that a reality as the Albertson's store closes this week. Mr. Weissman thanked the City for its leadership in traffic safety by approving the installation of a left turn bay at 9<sup>th</sup> Street and 6<sup>th</sup> Avenue South and hoped that it would be installed soon.

NC 4

**1B. Sandra Guynn, NC 4,** thanked Jerry McKinley and the traffic department for installing a yield sign at 54<sup>th</sup> Street and 8<sup>th</sup> Avenue South, and installing a Do Not Park sign by the apartment complex that caused visibility issues. Ms. Guynn stated that one of the agenda items for their next council meeting is the parking problems at the Soccer Park. She invited anyone who is interested in that topic to attend. The meeting will be on April 24, 2008, at 6:30 p.m. at the Heritage Baptist Church.

NC 2

**1C. Robert Mehlhoff, NC 2,** commended the Great Falls Fire Department and the 911 dispatchers for their professional work at a recent fire he witnessed and called 911. Mr. Mehlhoff stated that he met with Chief McCamley a week prior and they talked about the increased number of responses and the Fire Department’s need to get an increase in its budget. They also talked about the possibility of the Fire Department not getting a budget increase. That would cause the fire rating to drop. Mr. Mehlhoff stated that it comes down to giving extra money to insurance companies or to the Fire Department. Mr. Mehlhoff stated that the Fire Department arrived within five minutes at the fire he witnessed. If they hadn’t, the house next door would have also burned. Mr. Mehlhoff asked the Commission to look at the fire and police budgets to find ways to increase those budgets. He doesn’t want to see the personnel put at risk in trying to protect the public.

**PUBLIC HEARINGS**

**Ord. 3002 and Res. 9735, Rezones Lots 1-7, Block 26, Huy’s Addition, and the westerly 250’ of 10<sup>th</sup> Alley South in Block 26 between 20<sup>th</sup> and 21<sup>st</sup> Streets, and vacates a majority of 10<sup>th</sup> Alley South in subject Block 26. Adopted.**

**2A. ORDINANCE 3002, REZONES LOTS 1 THROUGH 7, BLOCK 26, HUY’S ADDITION, AND THE WESTERLY 250’ OF 10<sup>TH</sup> ALLEY SOUTH IN BLOCK 26 BETWEEN 20<sup>TH</sup> AND 21<sup>ST</sup> STREETS FROM R-3 SINGLE-FAMILY HIGH DENSITY DISTRICT TO C-2 GENERAL COMMERCIAL DISTRICT.**

**2B. RESOLUTION 9735, VACATES A MAJORITY OF 10<sup>TH</sup> ALLEY SOUTH IN SUBJECT BLOCK 26.**

Acting Planning Director Bill Walters reported that the Commission will be considering action on four different documents. Ordinance 3002 rezones six existing residential lots along 9<sup>th</sup> Avenue South between 20<sup>th</sup> and 21<sup>st</sup> Streets from an R-3 Residential classification to a C-2 General Commercial classification to accommodate the proposed CVS pharmacy store that will overlap onto those six lots. The second document is an Agreement containing conditions associated with that zone change. The third document is Resolution 9735 to vacate a majority of the alley that exists in the block that is being considered for development of the CVS pharmacy, and the fifth document is an Amended Plat. The Amended Plat will combine the six existing residential lots with the vacated alley together with the frontage that is being acquired on 10<sup>th</sup> Avenue South all into one lot to accommodate the CVS pharmacy store.

The City Planning Board/Zoning Commission conducted a public hearing on this matter on January 22, 2008. Two individuals spoke on behalf of the applicant at that hearing. Two local citizens spoke as proponents and four citizens who reside in the area to the north of the subject property spoke in opposition. At the conclusion of the hearing on January 22, 2008, the City Planning Board/Zoning Commission passed motions recommending the City Commission approve the rezoning, alley vacation and the Amended Plat, subject to specified conditions. The applicant has attempted to mitigate

impact upon the adjoining residential neighborhood by precluding any direct vehicular access to 9<sup>th</sup> Avenue South by providing a 55' wide landscape buffer and a six foot high screen wall along the north side of the project site bordering 9<sup>th</sup> Avenue South. A significant portion of the City Planning Board/Zoning Commission recommendations consisted of the traffic analysis. Staff concluded that the roadways and intersections adjoining the pharmacy site have adequate capacity to accommodate the anticipated additional traffic. Also, the applicant has had a traffic impact study prepared which has been submitted to the Montana Department of Transportation. The preliminary study indicates the pharmacy would not require any significant improvements to mitigate any traffic related impacts.

Mayor Stebbins declared the public hearing open. Speaking in favor of Ordinance 3002 and Resolution 9735 were:

**Mark Macek**, 801 9<sup>th</sup> Street South, stated that this is a very good project for Great Falls. CVS is a national tenant that will take over some very old and dilapidated existing commercial buildings. He believes any time the City gets a project like this and the tenant has the ability to do that and blend into the neighborhood, it would do well to take advantage of that. National retailers find it difficult to develop on half a block on 10<sup>th</sup> Avenue South. Sometimes it is necessary to go into the other side of the block and encroach in the neighborhood. This particular tenant is one of a few that fits into a neighborhood better than others. It provides a convenience aspect to the neighborhood, as well as significant landscape buffering and screening so light and noise are mitigated resulting in minimal impact on the neighborhood. Mr. Macek opined that Walgreens turned out very well and has fit into the neighborhood and is a big asset for the community. CVS bought out Osco and is currently located in the Holiday Village Mall. Osco, and now CVS, have been in the marketplace for many years and have serviced many customers. This will provide customers with better service and convenience than they are getting now. Mr. Macek urged the approval of the Commission.

**Jack Schunke**, of the Morrison-Maierle Office in Bozeman, thanked the Planning staff and members of the City who were involved in the site plan review. Mr. Schunke stated that with their comments, they came up with a better project that will be a real asset to the community. Mr. Schunke stated that he reviewed and agrees with the recommendations and the conditions in the staff report. One condition of the report required that a traffic report be completed and submitted to the Montana Department of Transportation. Mr. Schunke stated that has been completed and, from that report, there may be some other requirements that are impacted by CVS, and they are receptive to working with the City and MDOT to meet those requirements. The traffic report, for the most part, agreed with the previous Walgreens' study and essentially reported that the traffic impacts from CVS will be minimal. Mr. Schunke discussed the circulation and improvements that the CVS store will have. He stated that having no access onto 9<sup>th</sup> Avenue is a plus; a significant

berm area will be well landscaped and buffered from the adjacent community of residents; a significant vertical rise in the area provides an additional buffer from the neighborhoods; consolidating accesses on 10<sup>th</sup> Avenue which is a significant improvement in terms of traffic flow and the access onto 10<sup>th</sup> Avenue is a right turn only in and out. There are also two other accesses into the facility that provide good traffic flow. At the zoning meetings there were concerns with dust and construction activities. Mr. Schunke stated that additional funds have been added to the budget to provide for additional watering to minimize dust, and they are attempting to consolidate the construction activity into a specific period thereby minimizing the disturbance.

Speaking in opposition to Ordinance 3002 and Resolution 9735 were:

**Ron Reis**, 2015 9<sup>th</sup> Avenue South, stated that he has dealt with this since it started. Mr. Reis stated that he is not against progress; he just doesn't want to be a part of it. Mr. Reis stated that no one has talked to him. He has a lot of medical problems. He attended the Planning Board meeting and stated that no one mentioned the residents across the street and how they were dealing with them. He has concerns about the unloading noise at night. He wants them to work with him and not against him.

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, reminded the Commission and Planning staff about the development at Walgreens. Mr. Lewin stated that Walgreens allowed itself to have the buffer on the north side of it work effectively. There were huge trees there. They talked to the City forester and, as part of that project, he made sure the trees were saved. The buffer does work pretty well because of those huge trees. Mr. Lewin requested that they consider the light situation to mitigate the amount of lights that hurt the neighborhood the most.

Commissioner Jolley informed Mr. Lewin that the documents state they hoped that those trees could be saved, and it also addressed the light situation.

**Phyllis Gibson**, 2011 9<sup>th</sup> Avenue South, stated that the plans for CVS do look nice. She resides across the street and she is concerned about the construction dust and the health of her husband, who has COPD and emphysema. She is also concerned about construction after 10:00 p.m. and unloading at night will be noisy. Ms. Gibson stated that the only way to eliminate some noise is a stone fence and that is not what she is hearing. She wants to be assured that the lights that are put in do not shine on the north side of 9<sup>th</sup> Avenue South. She is disappointed that the City has even thought about changing an R-3 residential zoning to a C-2 general commercial. She talked to all of her neighbors on her side of the street, and they are not happy about having the neighborhood ruined, and they are concerned about crime. Ms. Gibson stated that no CVS representatives have talked with the neighbors on the north side of 9<sup>th</sup> Avenue South. Ms. Gibson said that there

are some things they are telling the City that are being taken at face value.

**Sheila Rice**, Executive Director of NeighborWorks Great Falls, 509 1<sup>st</sup> Avenue South, commented that there is an impact on affordable housing with this development, but there doesn't have to be. She has been working with the CVS developers on a voluntary basis to allow NeighborWorks to be given those houses along with some funds to move them and preserve six affordable houses in Great Falls. Ms. Rice encouraged the Commission to make preservation of affordable housing a condition of these kinds of zoning changes. She stated that the City may not always have this kind of a developer like CVS who is willing to work with NeighborWorks on a voluntary basis.

There being no other speakers, Mayor Stebbins declared the public hearing closed, and asked for the direction of the City Commission.

**Commissioner Beecher moved, seconded by Commissioner Rosenbaum, that the City Commission adopt Ordinance 3002 and the accompanying Agreement.**

Commissioner Jolley asked if someone could reiterate that they will do everything they can to make sure the lights don't shine on the north side of the street. The project manager for Velmeir Companies answered that the lights will meet the needs of CVS and the requirements of the City. If there is anything else they can do to make the neighbors happy, they will do that too. Commissioner Jolley asked if they would be constructing at night and was informed no. Mayor Stebbins added that there is an ordinance that prohibits construction at night.

Mayor Stebbins asked if there was any further discussion amongst the Commission.

Commissioner Beecher stated that he agreed with Mr. Lewin's comments. He encouraged the developers to look at the light issue seriously and consider the comments of the citizens. He stated that this is a good neighbor as opposed to some of the other uses that could go on that property.

Commissioner Bronson stated that, having gone through this when he served on the Planning Board and Zoning Commission on the Walgreens issue, he can appreciate the comments of those who have questions or concerns about this type of development. As with the Walgreens development, when you have a developer that is willing to make several accommodations to make this project as appropriate and as workable as possible, combined with the fact that, in this community, we just simply don't have a laissez-faire attitude, we put reasonable restrictions on developers to make sure that these projects are constructed in a way that provides the least amount of interference and the least amount of discomfort recognizing that there is always going to be a little bit of that when we do construction like this.

Commissioner Bronson stated his fear, as a citizen, is that when he looks at the status of the property along 10<sup>th</sup> as it is now, with the property that has been abandoned by Cattins, if nothing is done to that area within a reasonable period of time, you will have crime problems. It is a blighted area right now and will have a negative impact on the neighborhood unless there is some type of responsible commercial development in that strip in the very immediate future. They have someone that is willing to step up to the plate to do that and he thinks in the end that it is worth the inconveniences. Commissioner Bronson echoed Sheila Rice's comments that when we have the opportunity to preserve some of those homes and utilize them for affordable housing in this community, he thinks we are setting an example that the rest of the cities in this state should follow.

Motion carried 5-0.

**Commissioner Jolley moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 9735 and approve the Amended Plat of Lots 1-7 and 10-14, Block 26, Huy's Addition to Great Falls, and the accompanying Findings of Fact.**

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

Motion carried 5-0.

**2008/2009 HUD Annual Action Plan. Closed public hearing and set Final Annual Action Plan for May 6, 2008.**

**3. 2008/2009 HUD ANNUAL ACTION PLAN. RECEIVE CITIZEN INPUT REGARDING THE PROPOSED ANNUAL ACTION PLAN REQUIRED BY HUD INCLUDING THE PROPOSED USE OF 2008/2009 COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS.**

CDBG Administrator Chris Imhoff reported that the City of Great Falls is expecting to receive \$917,014 in CDBG funds and \$394,063 in HOME funds from HUD in the coming year. The money will be used for projects in the community that primarily benefit low to moderate income persons. In order to continue to receive annual allocations of these grants, the City is required to submit a plan each year to HUD which includes information regarding how the City intends to use the CDBG and HOME funds. Project applications for the funds were accepted through February 15, proposals were reviewed by the Community Development Council, and funding recommendations were presented at the Commission meeting on April 1. Staff is asking the City Commission to conduct a public hearing allowing an opportunity for citizens to address the Commission with comments related to the Annual Plan and to the proposed use of the funds for the 2008/2009 year. The Annual Plan, including the CDBG and HOME funding recommendations, will be available for citizen review for a 30 day period between April 4 and May 3. A hard copy of the document can be reviewed at the Community Development department or at the Library and an

electronic version of the Plan can be viewed on the City's webpage. No action is required by the Commission this evening. Staff asks that the City Commission consider all the comments received when making the final funding approval on May 6.

Mayor Stebbins declared the public hearing open.

**Joe Boyle**, Chairman of the Housing Authority Commission, urged the Commission for their support of the HOME application for \$250,000. If approved, it will allow the Housing Authority to construct four two-bedroom apartments in the Sandhills property which was recently purchased from the City. These four units will be Phase 1 of eventually 16 apartments that will be affordable for low to moderate income citizens who cannot afford the current market rents in this community. The Housing Authority's waiting list shows that the most pressing need is one and two bedroom apartments. February's waiting list, for example, numbered 299 households. Two hundred and eleven of those households are waiting for one and two bedroom apartments. Twenty-nine of those waiting are seniors and the disabled. Mr. Boyle stated that the apartments will be constructed to accommodate the elderly and the handicapped, but small families may also benefit because of the area. It is very close to the University of Great Falls, MSU-COT and Benefis Hospital. Since there will be no federal subsidy that is attached to these apartments, there are no incentives for the private sector to meet this need. Without the use of HOME funds, the Housing Authority could not afford to put the units up and keep the rents affordable. The Housing Authority will contract with an architect to begin design as soon as the HOME funds are secured. Construction of Phase I is expected to begin this Fall. Mr. Boyle urged the approval of the HOME funding for the Great Falls Housing Authority and thanked the Commission for its consideration.

**Nancy Wilson**, Director of Meals on Wheels, thanked the Commission and Chris Imhoff for their past support. Ms. Wilson stated that Meals on Wheels is growing every day and their grocery bills are going up like everyone's. Ms. Wilson urged the Commission's continued support. She stated when she first wrote her proposal, she had 250 meals going out each day in Great Falls. January through March averaged 263 meals every day. They have their own kitchen and staff and can prepare meals on demand. Great Falls is the only town left in Montana that doesn't put anyone on a waiting list. That is because of the support that comes from this grant allocation to help them over the hump when they have a crisis. For example, one day in December they provided meals to 300 people. She urged the Commission's support of CDBG funds for Meals on Wheels.

Commissioner Jolley inquired how much Meals on Wheels was being awarded. Ms. Wilson responded \$25,000.

**Sheila Rice**, Executive Director of NeighborWorks Great Falls, thanked the Commission for many years of support of NeighborWorks Great Falls. Ms.

Rice stated that she wanted to open a dialogue with this Commission and City staff regarding this City's role in affordable housing. Ms. Rice provided a chart that shows the decline in overall support for NeighborWorks Great Falls from the City of Great Falls. In fairness, she stated what it does not show is there is a lot less money overall than there used to be. The second thing it does not show is the impacted program income. Sporadically, NeighborWorks Great Falls will receive repayment of a deferred mortgage that they can deploy into another deferred mortgage. It also does not show NeighborWorks Great Falls' production. For many years they did nine or 10 houses per year. Three years ago they did 20 units. Last year they did 34 units. This year they are on target for an additional 20 units. It also does not show the increase in taxes that can be attributed to the construction work of NeighborWorks Great Falls. Conservatively, once a vacant lot has a house on it, it has a \$1,000 tax bill. The 216 houses that they built or renovated is \$216,000 per year tax base added to the City of Great Falls, the school district and the County. Lastly, it does show the impact of affordable housing on economic development. Ms. Rice stated that recently they had front page news that a Bozeman technology plant is hopefully moving to Great Falls because their employees can still afford to buy a house in Great Falls. Ms. Rice thanked Chris Imhoff and asked the City Commission to examine its role in affordable housing. It is five out of the seven priorities in the Annual Plan, but a mere 25% goes to affordable housing.

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, commended Sheila Rice's fine work since she has taken over this project. He was at a meeting recently where she talked with people in the housing program about how to manage their finances in such a way that they could afford to continue to pay for these houses. One of her recommendations was they need to have a fixed interest rate mortgage. Mr. Lewin stated that advice was super and has saved a lot of people that are marginal out of the current situation.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue N.E., stated that he would like to correct something that Sheila Rice said when she mentioned the tax base would increase by \$216,000. Mr. Gessaman stated that he believes she meant to say the tax revenue had increased by \$216,000. The tax base for these houses is about a \$16 million dollar increase.

Mayor Stebbins expressed kudos to Sheila Rice and stated that Neighborhood Housing Service, a/k/a NeighborWorks, has been doing foreclosure prevention for 13 years now.

Commissioner Bronson asked Park and Recreation Director Marty Basta about two grant requests for the Community Recreation Center and one of the recommendations that came out of CDC was not funded but the other one had an increase of almost twice the amount for the heating and cooling system upgrade. Commissioner Bronson asked why the CDC recommended a higher allocation for that and none for the other. Mr. Basta responded that the Park and Recreation Department originally requested funds for an



electrical upgrade at the Community Recreation Center. After talking with the Review Committee, it was determined that by purchasing a higher efficiency heating system, the needs for the upgrade in the electrical system would be reevaluated. They felt it was more important to have a high efficiency heating and cooling system in that facility, and they would forego the electrical improvements until they could see the load change those improvements would have on the electrical needs of the building.

Commissioner Jolley stated that last year Mr. Boyle's recommendation for CDBG funds was for a triplex at Sandhills and now it is a fourplex. She asked for a reason why that changed. Great Falls Housing Authority Deputy Director Kevin Hager responded that they were initially looking at three four plexes on that site. After looking at the size of the lot it was determined that four would fit. Due to the cost of construction going up and looking at economics, building more units without effecting concentration on the property made more sense. Commissioner Jolley inquired about the start of construction in September. Mr. Hager stated that it will be under construction this Fall. They are starting to talk with an architect about site plans. The property was just acquired within the last few weeks.

Commissioner Jolley thanked Sheila Rice for the graph. She asked as the NeighborWorks support went down, has the City, through the Great Falls Housing Authority, taken more of the CDBG grants. Mr. Hager answered that they have not taken any CDBG funds, but they have received HOME funds to acquire the land last year and then the request this year is for HOME funds also.

**Commissioner Rosenbaum moved, seconded by Commissioner Bronson, to close the public hearing and schedule the Final Annual Action Plan for May 6, 2008.**

Motion carried 5-0.

**Res. 9742, Vacate Cul-de-sac in 15<sup>th</sup> Street Bridge Addition. Postponed and Reset Public Hearing for May 6, 2008.**

**4. RESOLUTION 9742, VACATE CUL-DE-SAC IN 15<sup>TH</sup> STREET BRIDGE ADDITION.**

Public Works Director Jim Rearden reported that he now has the awaited and completed amended plat and it will be presented for final action on May 6, 2008.

Commissioner Jolley asked if Mr. Rearden had an appraisal on the City Recycling Center and for what amount. Mr. Rearden responded that Phil Rowen appraised the property for \$550,000. Commissioner Jolley asked if that would be advertised in the newspaper. Mr. Rearden responded that when any City property is sold it has to go out for competitive bid. Commissioner Jolley inquired if it would appear in the Great Falls Tribune and not just on a bulletin board. Mr. Rearden responded that it will be advertised and will go through the public process.

**Commissioner Bronson moved, seconded by Commissioners Rosenbaum and Beecher, that the City Commission postpone and reset the public hearing for May 6, 2008.**

Motion carried 5-0.

### **OLD BUSINESS**

**Consulting Agreement, Water Right Solutions, Inc., and First Amendment to Agreement. Tabled for May 6, 2008.**

#### **5. CONSULTING AGREEMENT, WATER RIGHT SOLUTIONS, INC., AND FIRST AMENDMENT TO AGREEMENT.**

Fiscal Services Director Coleen Balzarini reported that Water Right Solutions (WRS) has been acting as a consultant for the City of Great Falls since 2002, to look at the City's general water rights status, review and evaluate the water rights, and to assist the City in filing documents with DNRC. The first project WRS completed in 2002 was a booklet itemizing the City's water rights. One of the issues discovered by WRS was that there were places of use and points of diversion that didn't match up with where water was at. Some of the documents were written in the late 1800's and the early 1900's. A thorough review showed that was something the City needed to amend and correct. The City became involved with WRS when the Malting Plant had a need for industrial water. In order for the Malting Plant to access the water a change in place of use and point of diversion was required. That was the first time that the City exercised use of its water reservation. WRS also performed services related to the Highwood Generating Station. When the scoping meetings were held that were required by the RUS, WRS appeared to discuss and have available information on the water that was available for use. Since the contract had been in place since 2002, it was time to review and update it in terms of fees and types of work they would be doing for the City. The first item WRS will address is to review the City's water rights as they are going through the preliminary decree through the State and how they relate to all water rights within the 41Q and 41QJ basins. There are over 2,500 water rights within the basins. Ms. Balzarini stated that the Commission is asked to approve a new contract as of 2008 and to approve the first amendment allowing Water Right Solutions to review 41Q and 41QJ as it relates to the City's water rights.

**Commissioner Beecher moved, seconded by Commissioner Bronson, that the City Commission authorize the City Manager to execute a Consulting Agreement and First Amendment to the Agreement with Water Right Solutions, Inc.**

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

Commissioner Jolley asked for public comment.

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, commented that he is an attorney and that he spends quite a bit of his time in the water rights area representing farmers and ranchers. Mr. Lewin stated that he has been following the adjudication process since he came to this area, and it is a complicated issue. Mr. Lewin stated that he reviewed this contract and is well aware of this group that was hired, and they do quite a bit of this work in this state. He stated that he is also aware that Commission Bronson has recommended that this agreement and amendment be approved. Mr. Lewin stated that he has been trying to review the City records as to water rights with former manager, Mr. Lawton, and was told the extensive files are with the people in Helena. He stated that he understands the City is now working on arrangements for him and others to go to Helena to review the records. Mr. Lewin stated that it is impossible for him to make any kind of evaluation about what those water rights experts are telling the City or what they are doing for the City. Mr. Lewin stated that he thinks he can provide the Commission some enlightenment about the contracts, and he is opposed to the Commission adopting the contract and the amendment. He finds that there are things in the new agreement that are completely unacceptable and he hoped that would result in the Commission tabling this new contract until it can be considered more at length. The main issue he finds troublesome is number 15 of the contract, and this item was not in the prior contract that was signed in 2002. Mr. Lewin read the indemnification clause. Mr. Lewin stated that this clause is basically saying that any work that the consultants are doing in Great Falls the City will cover them for. He believes that this agreement was poorly drafted and not what was intended. Mr. Lewin stated that Ms. Balzarini said that the City has been operating under the prior agreement for quite a long time and it was time to update it. Mr. Lewin said if this new agreement isn't approved tonight, it doesn't mean that work can't be performed under the old agreement. Mr. Lewin said the August 4<sup>th</sup> deadline is very important for all objections to be filed. Before the City should agree to pay double the amount it paid WRS before, it should see if there are other consultants that should be given consideration. Mr. Lewin stated that the consultants are experts and not attorneys, and suggested that the City hire a water rights attorney.

**Cheryl Reichert**, 51 Prospect Drive, commented that what we are talking about today is not old business. This is a whole new chapter. Paris Gibson recognized that water is the life blood of the community. As Mr. Lewin indicated, the detailed information has not been made available to the public. She finds it surprising that the original files reside in Helena and there are no duplicate copies here to review. Ms. Reichert stated that she is also concerned that there have been no competitive quotes. She spoke with Mary Sexton who directs the Department of Resources and Conservation and she asked her if this was because there aren't many people around who do this sort of thing. Mary told her this is a very active area throughout the State of Montana. Ms. Reichert believed it would be wise for the Commission to obtain competitive quotes. As previously stated, there are over 2,500 water rights in this basin. Ms. Reichert asked if Water Right Solutions represents

any of these other clients and, if they do, isn't that a potential conflict of interest. Regarding the indemnity clause, Ms. Reichert stated that as a physician she has to carry malpractice insurance. She can't ask patients to sign off on something that she did and hold her harmless. She believes that democracy benefits from active participation of the citizens. This is a complicated area with a steep learning curve. Ms. Reichert finds it reasonable to table or postpone this agreement and set a public hearing on this issue after providing adequate time to research this topic.

City Manager Gregory T. Doyon stated that, based on comments he heard tonight and concerns he has, he requested a second review of this item. Mr. Doyon recommended, if it is the Commission's pleasure, to withdraw the motion to allow time to look into the concerns raised tonight.

**On the recommendation of the City Manager, Commissioner Beecher withdrew the motion until this matter can be reviewed further.**

Commissioner Jolley asked that a work session on water rights be scheduled before this comes before a Commission meeting.

Commissioner Beecher commented that he doesn't understand the reason for the indemnify clause. However, from a standpoint of this particular consultant, Mr. Schmidt has a wealth of knowledge and background about the City's position on water rights. This is just a proposed amendment to the existing contract. To throw that out seems not to be very good business. If we put this out for bid, the other water right folks would have the same potential for conflict of interest.

Commissioner Bronson clarified the statement in Ms. Balzarini's report about his recommendation. He stated that it should be clear that his recommendation did not concern this contract. The contract was just presented to the Commission within the last few days. His recommendation went to a previous memo that was submitted to all the Commissioners and the Mayor by Ms. Balzarini that brought to their attention the terms of the Temporary Preliminary Decree issued by Judge Loble. His response was that it was prudent for the City to be a participant in assessing all the claims that are made in connection with that Temporary Preliminary Decree. Commissioner Bronson stated that WRS provides research with respect to hydrology, and with respect to whether or not these rights will interfere with the quantum of rights that are involved. Commissioner Bronson echoed Commissioner Beecher's comment that this company has a very excellent track record in providing very good services to this community. With that being said, Commissioner Bronson stated that he has reviewed the contract, and he does have some questions about some of the terms and conditions contained therein. For that reason, he is comfortable with putting off any final discussion about this particular contract or whether they go forward with this company or somebody else. However, he emphasized to everyone concerned about this, that they need to get on top of this issue as soon as

possible. They have a date certain in August to respond to the Preliminary Decree. He urged the City Manager to take whatever steps were necessary to get this expedited and back to the Commission as soon as possible.

Commissioner Jolley reiterated that about a month ago she requested what Commission action was taken to modify the historic Gibson water rights. She stated that there have been no public hearings on water rights, no discussions like this about water rights until tonight. Commissioner Jolley stated she also wanted to know what Commission actions were taken with regard to the PPL settlement. She stated that it was her understanding that in 2005, Dave Schmidt said the City had ample water under the existing water rights to run the City and, even if the City were to grow, there would be enough water to meet the increased demands. In 2006, Mr. Schmidt said the City's reserved water right equated to that of a small irrigation ditch. Commissioner Jolley asked Ms. Balzarini if water files were kept in Martha Cappis' office. Ms. Balzarini responded no.

Fiscal Services Director Coleen Balzarini responded that the indemnification clause perhaps was not as good as it could be, but it was added at the recommendation of the City's Risk Manager. Item 14 of the contract talks about the insurance that the consultant was required to have, which included comprehensive general liability and professional liability insurance. Ms. Balzarini stated that for the part WRS was responsible for if there was a lawsuit, their insurance would cover it, and the City's insurance would cover anything we are responsible for. This consultant has significantly more insurance in these areas than the City requires in other contracts. Ms. Balzarini stated that the items Commissioner Jolley is asking for regarding the PPL amendment and the agreement, were part of the filing for the change in the point of diversion for the Highwood Generating Station. Ms. Balzarini stated that she believed Commissioner Jolley asked the City Clerk for a copy of the filing that was sent to DNRC and was, in fact, what she was provided. Ms. Balzarini explained that DNRC is the custodian of original water records for the State of Montana. The State of Montana owns the water and the City simply has a right to use it. Commissioner Jolley said Ms. Balzarini was misunderstanding what she was asking for. She is asking for what Commission action, this body, had taken when they gave the authority and by what method. Ms. Balzarini stated that she already responded to that. She informed Commissioner Jolley if she wanted to know what Commission actions were taken, the City Clerk has a record of all Commission actions. Commissioner Jolley stated that she has looked through the record on the website and couldn't find any. Commissioner Jolley again stated she wanted to know how decisions were made in the past on this important subject. Ms. Balzarini stated that this was not the first public session. There were work sessions that were publicly noticed, all of the Commission were in attendance, and Mr. Lewin and a number of people have commented at them. Commissioner Jolley stated there was no Commission action at a Commission meeting that dealt with water issues. Her question was how were these things accomplished, in a local government, without the public

knowing what was going on.

Commissioner Beecher interrupted and stated Commissioner Bronson can correct him if he is wrong, but at this point in time there has been no issue that has required Commission voting in regards to the water rights review or even where they are diverting an intake of water from one point to another. It has not required a policy type vote. Commissioner Jolley responded that work sessions, memos or emails don't decide Commission action. Commissioner Beecher disagreed and suggested they move on. Ms. Balzarini stated that there were two definite actions that were taken when they entered into raw water agreements with the Malting Plant and with Highwood Generating Station. Both of those make reference to raw water and the activities that needed to be done with regard to the City's water rights.

**Commissioner Rosenbaum moved, seconded by Commissioner Bronson, that the City Commission table this matter until May 6, 2008, to allow the City Manager to review the indemnification clause in the Consulting Agreement with Water Right Solutions, Inc.**

Commissioner Rosenbaum echoed what Ms. Balzarini said. He stated when he contracts with people he indemnifies them, and has the insurance requirements. The language in the contract was almost identical to what he has in all of his construction contracts.

Mayor Stebbins requested that a work session on water rights be scheduled. City Manager Gregory T. Doyon responded that, at a minimum, what is in order is that the Commission hear from the current consultant to get a progress report and update to refresh everyone's memory where we are at and where we are needing to go. Maybe that would establish some level of comfort with continuing with WRS, or give the Commission a better position to assess whether or not they want to put it out to bid. Mr. Doyon stated that he would work to resolve any issues on this before it is brought back before the Commission. It is very likely going to take another period of time, not consistent with the work sessions, to do this. He stated he would be in touch with them in short order to determine some other dates so there is enough time to cover, at least on an initial basis, some background information and get everybody up to speed.

Mayor Stebbins stated with the upcoming deadline, this should rise to the top of the priorities list.

Motion carried 5-0.

**NEW BUSINESS**

**ORDINANCES/RESOLUTIONS**

**Consent Agenda.  
Approved as printed.**

**CONSENT AGENDA**

6. Minutes, April 1, 2008, Commission meeting.
7. Total Expenditures of \$995,868 for the period of March 25-April 9, 2008, to include claims over \$5,000, in the amount of \$815,821.
8. Contracts list.
9. Grant list.
10. Award Construction Contract in the amount of \$73,327 to Pipeline Inspection Services, Inc. for the Water Treatment Plant Flume and Sanitary Sewer Manhole Lining Project. OF 1519.4
11. Approve Engineering Services Contract Amendment with NCI Engineering Co. for the North Park Sewer Lift Station #27 in an amount not to exceed \$47,310. OF 1374.5
12. Award Construction Contract in the amount of \$227,500 to Dick Anderson Construction, Inc. for the North Park Sewer Lift Station #27 Replacement. OF 1374.5
13. Approve final payment to Ed Boland Construction, Inc. and the State Miscellaneous Tax Division in the amount of \$12,823.42 for the 9<sup>th</sup> Street N.E. Storm Drain extension. OF 1476.1

**Commissioner Beecher moved, seconded by Commissioner Bronson, to approve the Consent Agenda as presented.**

Mayor Stebbins asked if there were any comments from the public. No one responded.

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

**Commissioner Jolley asked that Item 7 be removed for further discussion.**

Mayor Stebbins called for the vote.

Motion carried 5-0.

Commissioner Jolley stated that Item 7 involves a payment to SME for January expense charges. She stated if there is an ordinance that says it shall sustain itself at all times, then she would like it to do that. Commissioner Jolley inquired if we have any contracts with customers that go past 2012 yet. Ms. Balzarini responded no.

Mayor Stebbins called for the vote with regard to Item 7.

**Commissioner Beecher moved, seconded by Commissioner Bronson, to approve Item 7 on the Consent Agenda as presented.**

Motion carried 4-1. (Commissioner Jolley dissenting.)

**BOARDS & COMMISSIONS****14. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.****CITY MANAGER****15. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Gregory T. Doyon stated that he has had the opportunity to participate in some Military Affairs Committee activities over the last week and enjoyed getting to know the command staff that are serving at MAFB to better understand their role in the community. He has also been to the departments to get familiarized with the facilities. He reminded the Commission about some performance goals for him and suggested maybe talking about that at the next work session. As discussed with the Commission, Mr. Doyon stated that he will be attending his first SME meeting on Thursday and Friday of this week.

**CITY COMMISSION****16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.****PETITIONS AND COMMUNICATIONS****17. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins opened the meeting to Petitions and Communications.

**Agenda Item 5. ECP.  
HGS.**

**17A. Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, stated that he finds comments made by two Commissioners tonight were inaccurate. Mr. Lewin stated that Commissioner Beecher's statement that the contract discussed tonight was only an amendment was not true. He stated that this is actually a new agreement. In the agreement it states that this agreement revokes all prior agreements. Mr. Lewin told Commissioner Rosenbaum if he can find any indemnity clause that looks like this one, he would like to see it. Mr. Lewin stated what has happened with the plant and all the issues and what is going on with ECP is completely out of hand. The Commission needs to take control of it. Mr. Lewin stated that the fall out of the HGS is going to be huge for the community. Montgomery Energy made a proposal and ECP said they couldn't even consider it because they have an agreement with SME that doesn't allow us to consider anything else from anybody else. He described it like putting your hand in a meat grinder.

**Ord. 2887 and Res. 9537.**

**17B. Richard Liebert**, 289 Boston Coulee Road, thanked the Commission for allowing public comment on the water rights. He welcomed Mr. Doyon to the community and stated that he follows in the footsteps of Paris Gibson who also



came from Maine and New England. Mr. Liebert also thanked the City for sponsoring Earth Day on the 26<sup>th</sup> of April. He hoped the City could take advantage of the new hydroelectric power that is going to come out of the Gibson Dam. Four years ago the Commission went global and went green. The Commission adopted Ordinance 2887 along with the State to implement the International Energy Conservation Code. Several years ago the Commission established Resolution 9537 which directed the City Manager to produce a Development Agreement. That was over three years ago. Mr. Liebert read a portion of the resolution. Last week when Mr. Gregori spoke he stated that we don't need a Development Agreement. Mr. Liebert stated that Mr. Gregori doesn't sit in the Commission's seat, he doesn't speak for the City Manager or the people here. He finds it disturbing that for 27 months a Development Agreement wasn't completed before Mr. Lawton left. He discussed a section of Item 5E and Item 7 on Exhibit A. Mr. Liebert also read a definition for joint venture. He stated that he doesn't think SME's by-laws provide the contractual protection that members would have to protect their rights and also the rights of the entire SME corporation. Mr. Liebert concluded with a quote from Abraham Lincoln.

**HGS.**

**17C. Pamela Morris**, 2201 8<sup>th</sup> Avenue North, stated that her son is an attorney with the City of St. Paul. Ms. Morris stated when she told him her concerns a couple of years ago about the Highwood Generating Station and expressed frustration with getting information from City officials as to the particulars, her son said to her to remember that the other side are good people too. She believes that Great Falls has been sold a bill of goods. She hopes they can reestablish a trust. Ms. Morris stated that in April, 2005, Resolution 9476 was passed regarding interim financing for Highwood Generation Station. It was to be reimbursed through bonds. Ms. Morris stated in the interim there have been several requests for bond issues and she foresees a real protest if the citizens don't get answers as to how the money is being allocated and budgeted from one item to another. Resolution 9537 states that, upon the completion of negotiations, the City Manager will present a substantial final form of a Development Agreement to the City for final approval. She stated that is far tardy. Ms. Morris requested that resolution provisions happen in a timely manner in the future.

**Earth Day.**

**17D. Kathleen Gessaman**, 1006 36<sup>th</sup> Avenue N.E., stated that she is excited for the celebration of Earth Day. Ms. Gessaman provided information from the U.S. Conference of Mayors regarding energy and the environment.

Commissioner Jolley stated that when some speakers give something to the City Clerk and the Commission never gets to see it. She stated when they speak to the Commission and provide something in writing, it should appear in their Friday packets. Mayor Stebbins responded that she thinks everything that has been given to the City Clerk for dissemination has been put in the Friday packet. Commissioner Jolley disagreed. Commissioners Beecher and Bronson agreed that the information has been included in the Friday packets.

**Water Rights.**

**17E. Charles Bocock**, 51 Prospect Drive, commended the Commissioners for having a work session on water rights and the problems of adjudication. He encouraged the City Manager to formulate an educational work session that would explain water rights as opposed to water reservations and the legality of adjudicating water rights as opposed to adjudicating water reservations. Paris Gibson didn't have any water reservations listed in any of his history, only water rights. This is incredibly important. Mr. Bocock stated that he believes the people the City is working with, or if it goes out to bid and get a different water consultant, that the water experts or advisors make sure that the City understands the legal ramifications of giving away water rights that it already has or water reservations. He said it was his understanding that one of the whole ideas of having the Highwood Generating Station was to prove up on water reservations because they weren't a right yet.

**HGS. Electricity rates.**

**17F. Ed McKnight**, 906 3<sup>rd</sup> Avenue North, stated that the minutes don't accurately reflect what happens here. Mr. McKnight stated the last time he was here he asked two test questions of Mayor Stebbins regarding the cost of electricity. He stated that she did not know the answers but he did. Mr. McKnight stated that the contract states there is a 2% penalty for not investing in the Highwood Generating Station at all, which would be \$20,000. Mr. McKnight opined that the City has \$10 million dollars tied up in HGS, when the total amount to be saved in the beginning predicted by the former City Manager was around 6% to 10 % of that \$1 million dollars. Mr. McKnight stated that the City does not pay residential rates for electricity. But, when you examine all the documents of the City, it always cites residential rates. Mr. McKnight stated that the problem was that Electric City Power does not have a cost of power that it claims it has. When you run the figures, the cost of Electric City Power is actually 10-15 percent more than it is claiming.

**Inflation, downtown grocery store, insurance settlement.**

**17G. John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that on the news tonight he watched people trying to make a living in this country. He doesn't believe this country was founded for everyone to have to work 24/7. Commissioner Jolley interrupted Mr. Hubbard stating that when she was watching the news tonight Brigitte Bardot was on trial again in France for the fifth time for speaking derogatorily of muslims. Commissioner Jolley stated Mr. Hubbard reminds her of Brigitte Bardot. He asked how the poor people are supposed to live in this country. He said he gets no answers and only hears crickets. Mr. Hubbard inquired about getting a new grocery store downtown. He said that was important because a lot of poor people went there. Mr. Hubbard said he was also upset about the television air wave thing, because the poor people won't be able to watch TV. Mr. Hubbard stated that he just received his second insurance answer and is owed \$3,497,437, but is allowed zero by liquidation.

**Public meetings, water right files, Agenda Item 5.**

**17H. Ron Gessaman**, 1006 36<sup>th</sup> Avenue N.E., commented that Ms. Balzarini said work sessions were public meetings. Mr. Gessaman asked if that meant the public now gets to speak at work sessions because that has never happened in the past. Mr. Gessaman stated at a prior work session someone from Water

Right Solutions specifically said there were about 30 inches of water right records in the Fiscal Services Department. He wondered where those records were at now. Mr. Gessaman stated that Agenda Report 5 took two tries before the correct information was presented in the agenda report. Mr. Gessaman requested that 24 hours be given before the meeting when agenda items are changed. Mr. Gessaman also stated that items 14 – 16 of the contract attached to that agenda report have a different format. Mr. Gessaman said one of the representations made is that we didn't need a Development Agreement as called for by Resolution 9537 because we had the Assignment and Assumption Agreement with ECP. Mr. Gessaman said the Assignment and Assumption Agreement has nothing to do with the Highwood Generating Station and its development, it has to do with the purchase and sale of electricity by contracts owned by the City. That contract is dated October 2, 2007, and says that the City is the member of SME, not ECP. The Commission passed an Ordinance on June 18, 2002, asking the City Manager to arrange a contract with Water Right Solutions. At that point, the contract had already been signed by the previous City Manager. He fails to see how the City Manager can sign that contract before the Commission even authorized him to do it. Mr. Gessaman stated that this City administration needs to wait for direction from the Commission before they sign contracts.

### **ADJOURNMENT**

#### **Adjourn.**

There being no further business to come before the Commission, **Commissioner Beecher moved, seconded by Commissioner Bronson, that the regular meeting of April 15, 2008, be adjourned at 9:30 p.m.**

Motion carried 5-0.

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Mayor Stebbins

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City Clerk