

Regular City Commission Meeting

Mayor Stebbins presiding

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

### **PLEDGE OF ALLEGIANCE**

**ROLL CALL:** City Commissioners present: Dona Stebbins, Sandy Hinz, Diane Jovick-Kuntz and John Rosenbaum. Commissioner Beecher was excused. Also present were the City Manager, Assistant City Manager, City Attorney, Directors of Community Development, Park and Recreation, Public Works, Library, Planning and Fiscal Services, and the Police Chief, Fire Chief, and City Clerk.

**PROCLAMATION:** Mayor Stebbins read a proclamation for National Alcohol and Drug Addiction Recovery Month.

### **NEIGHBORHOOD COUNCILS**

1. There were no reports or announcements from Neighborhood Council representatives.

### **PUBLIC HEARINGS**

**Res. 9680 and Ord. 2978, annexation and zoning for Pine Hill Minor Subdivision, consisting of two lots. Adopted.**

**2A. RESOLUTION 9680 ANNEXES PINE HILL MINOR SUBDIVISION, CONSISTING OF TWO LOTS LOCATED ALONG THE WEST SIDE OF HUCKLEBERRY DRIVE, IMMEDIATELY SOUTH OF BEL-VIEW PALISADE ADDITION.**

**2B. ORDINANCE 2978, ASSIGNS ZONING CLASSIFICATION OF PUD PLANNED UNIT DEVELOPMENT.**

Planning Director Ben Rangel reported that Nancy Clough is the owner and developer of property located along the west side of Huckleberry Drive, just south of Bel-View Palisade. Mrs. Clough proposes to develop a two lot subdivision consisting of an existing home and 13 new single-family homes titled Pine Hill Addition. Mrs. Clough's overall proposal includes the referenced subdivision, its annexation and the establishment of City zoning.

On August 7th, the Commission set a public hearing for this evening. After conducting a joint public hearing, Mr. Rangel requested the Commission adopt Resolution 9680, which would annex the subdivision and to adopt Ordinance 2978, which would assign a City zoning classification of PUD Planned unit development, and approve the subdivision, the Findings of Fact and the annexation agreement.

The City Planning Board/Zoning Commission unanimously recommends Commission approval.

Mayor Stebbins declared the public hearing open. Speaking in favor of Resolution 9680 and Ordinance 2978 was:

**James Clough**, 3700 Huckleberry Drive, stated that he and his wife are proud to present this plan to the City Commission and they feel this will be an asset to the City of Great Falls, and will be a natural extension of the City borders.

Speaking in opposition to Resolution 9680 and Ordinance 2978 was:

**Sheila Sorenson**, 3800 Huckleberry Drive, stated that when this was proposed she spoke with the neighbors in the area and no one is for this subdivision. Ms. Sorenson opined that this will totally change their “ranchette” style homes on acres with deer. She does not want the City extended to that area. Ms. Sorenson stated that 90 percent of the people in the area signed a Petition, but the person that has it is not here this evening.

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

**Commissioner Hinz moved, seconded by Commissioner Rosenbaum, that the City Commission adopt Resolution 9680 and approve the Minor Plat, Findings of Fact and Agreement.**

**Commissioner Hinz** stated that this is logical, rational growth, is contiguous with the current City limits, and will be a natural extension of the City limits.

**Mayor Stebbins** stated that she has reservations because there appears to be some opposition by the neighbors. However, lacking any evidence thereof, she called for a vote.

Motion carried 4-0.

**Commissioner Hinz moved, seconded by Commissioner Rosenbaum, that the City Commission adopt Ordinance 2978.**

Motion carried 4-0.

**Ord. 2972, Amending OCCGF 13, Chapter 2, Section 070(c), tabled until September 18, 2007.**

**3. ORDINANCE 2972, AMENDING OCCGF 13, CHAPTER 2, SECTION 070(C), PERMITTING EXTENSION OF UTILITY SERVICES BEYOND THE CITY LIMITS.**

City Manager John Lawton reported that, because of the increasing growth in the recent past, the City is receiving increasing numbers of requests for

annexation and utility projects from residential subdivisions and commercial properties. Unique or exceptional circumstances where such development may not be conducive to immediate annexation, deems it necessary to amend 13.02.070 (C), OCCGF, to permit such extension of City utility services beyond City limits conditioned upon the developer/land owner agreeing to sixteen criteria inclusive of written consent to annexation on the City's initiative; and, payment for the costs of such extension, service fees and fees in lieu of taxes; and, agreeing to be bound by the rules and regulations of the City's utility system.

Ordinances in Billings, Missoula, Bozeman and Helena have permitted the extension of their utility services beyond their city limits based on certain criteria agreed to in writing by a developer/land owner. Likewise, the City of Great Falls is experiencing increased growth with more industrial requests for utility services beyond City limits that may not be conducive to immediate annexation.

State Statutes authorize a city to establish and operate utility services and also authorize cities to furnish such water and sewer services to "any person, factory or other industry located outside the corporate limits of the city."

The City is simply catching up with State code and what other communities in growth mode are doing.

This will apply to Highwood and will also apply to a number of other special situations in the future.

Mr. Lawton recommended the City Commission adopt Ordinance 2972 on second reading.

Mayor Stebbins declared the public hearing open. No one spoke in favor of Ordinance 2972. Those speaking in opposition to Ordinance 2972 were:

**Richard Liebert**, 289 Boston Coulee Road, stated that he farms and ranches in Cascade County. Mr. Liebert stated that Great Falls is a good city, but thinks it can be greater - that we can make the best better. The City does need to deal with growth, and he thinks it is a tragedy that we no longer have a City/County Planning Board. Mr. Liebert opined that, at face value, Ordinance 2972 is attractive on its merits, but he urged caution that the Commission measure twice and cut once. He stated that the staff report does not articulate the consequences of this decision. He finds missing from the report the \$45,000 Tischler Bise fiscal impact study. He stated that he has the draft copy of the report that was due last January and shows over 14 years a net loss of 1.2 million dollars. In his 30 years in government experience, Mr. Liebert said that he finds it striking that it does not address the study or the consequences or impacts on the county. He stated he is the chair for the Citizens for Clean Energy. Mr. Liebert submitted that it is time

for the community to create a new vision, 20/20 perhaps, to deal with growth. Mr. Liebert urged the Commission to not make ordinances before change in policy, and to work towards a strategic harmony and vision 20/20 for the City and let the County be involved as well.

**Charles Boco**ck, 57 Prospect Drive, asked the Commissioners to allow more time to study the ordinance before them as it does pertain to the Highwood coal plant. Mr. Bocock asked questions of the City Council regarding City services and especially the ordinance before them tonight. Mr. Bocock stated that on October 3, 2006, the Commission voted to commission a study about the City services regarding the water, sewage, fire department and police department as it pertained to the coal fired plant. In January 2007, the Commission received this lengthy, detailed report from Tischler Bise concerning the City services. The Commission voted on April 17<sup>th</sup> to pay for this service in the amount of \$40,500. The Commission received additional information from Tischler Bise concerning the water and sewer services and paid them an additional \$5,000 on May 1, 2007. That same evening the Commission voted to pay Tischler Bise for the sewer services study. Mr. Bocock stated the studies don't seem to appear for the public to look at. Mr. Bocock inquired if the Commissioners had reviewed these three studies that they paid for before tonight.

**Commissioner Hinz** stated that she had not reviewed the studies before tonight's meeting, but had in the past.

Mr. Bocock asked for some more study time and to not vote on this tonight. He stated that when the Commission votes on agreements or ordinances that lock in the City for decades, it has an impact on the future generations within the City. These three studies show an incredible cost to the City. Besides the City water and sewer services, the Fire Department and Police Department will have to answer calls to the Highwood Generating Station. Because of the City only having a contractual agreement with SME, it can't collect any taxes until the coal plant is operational and, more importantly, until it is annexed into the City. The Tischler Bise study was for a 14 year period and covers lots of problems. Mr. Bocock stated that, for these three reports, the City paid a total of \$51,000. He asked the City Commissioners to look at this information pro and con before voting on the ordinance before them tonight. Mr. Bocock urged the Commissioners not to hurry and that there is no reason not to use the information that they paid for.

**Kathleen Gessaman**, 1006 36<sup>th</sup> Avenue N.E., stated she is opposed to Ordinance 2972, which could permit unlimited extension of utilities beyond the City limits. The Tischler Bise report shows that the City of Great Falls will lose money on any utility extensions that are not annexed to the City. Mrs. Gessaman opined that at past City Commission meetings the City has taken on a program to force annexation on over 100 properties that receive City services but were not annexed. She considers it to be poor public policy to provide City services to properties without annexation and, at the

same time, forcing annexation of other property that receive services. Ordinance 2972 does not address how developers will pay for extensions. Mrs. Gessaman stated that the citizens of Great Falls should not float along for development outside the City limits that may or may not provide future tax revenue. She inquired if the City is planning to require developers to set up escrow accounts like the 1.4 million account that ECP and the City had to provide SME for its power purchases for the City. She stated it doesn't seem to be outlined in the 16 points. It does say the developer will be responsible, but will the taxpayers have to fund approximately 7 million dollars up front in the case of Highwood or will the developer set up an escrow account.

City Manager John Lawton answered that in the case of each annexation, each one will be evaluated on its merits. The financial requirements will be imposed by the City to cover all costs. So, the City has not negotiated the details of any such agreement at this time. In the agreement with SME, they have agreed to pay the costs for any services they receive – all engineering costs, all costs of utility extensions and so forth. The City will not have to front any of those costs.

Fiscal Services Director Coleen Balzarini stated that there were two Tischler Bise studies that the Commission approved. The first one was a fiscal impact study to evaluate what the impact would be of the Highwood Generating Station on the City on an annual basis. That evaluation looked at annexation versus not annexing. In the event of HGS not annexing, those costs that the City would be impacted by would be repaid to it by SME in an agreement that would give the City payments in lieu of taxes. Rather than just taxes themselves, the City would get a payment that would cover those costs. She stated that the Tischler Bise study was commissioned to find out by somebody else what those costs might be. The second study that Mr. Boccock referred to actually had water and sewer together. That was called the facilities impact study. The City did make two payments on that of \$5,000 for water, and \$5,000 from the sewer fund. Tischler Bise actually determined that there is no facility impact from Highwood Generating Station when you look at the capacity of our water treatment plant and our wastewater treatment plant. The City has the ability to take their return at this point. There was no fee charged by them for the water and wastewater facilities themselves. They actually never really finished that report. They started and they looked at all the information that we sent them, but the fact is they said there is no impact because the City has adequate capacities within those facilities already.

Mr. Lawton stated that when it gets to the point of finalizing these agreements with SME, HGS will have to pay for specific things. One of the things that was discussed is that it may require another fire engine and, if it did, HGS would have to pay for that. At the time those costs are determined and the exact level of services that the City will provide, HGS will have to pay for all of the costs and that will come back before the Commission for

approval.

Commissioner Jovick-Kuntz asked Mr. Lawton if Highwood Generating Station was taken out of this, and if another business outside the City limits wants to use this, is there a public process. Will every one of these need to come before the Commission as far as a public hearing process or is this something the Planning Board would do on their own.

Mr. Lawton answered that each agreement would have to come before the City Commission. Even though it didn't involve annexation, it would require going through the public process and each agreement would have to be approved by the City Commission. The City Commission is the only one that can commit to providing the services and agreements necessary in order for somebody to connect to water and sewer. Each one is treated individually and would be the subject of the public process.

Mrs. Gessaman stated this ordinance doesn't address what happens if the County allows developers to set up a tax increment financing district. Mrs. Gessaman inquired if the City will be able to annex property that has a County TIF on it. In the case of Highwood Generating Station, the County had worked to get a TIF on that piece of property. If it had gone through, could the City annex that property with a county TIF on it.

Mr. Lawton answered that the City could annex a property with a County TIF on it, but the City could not affect that district. The City would not be able to affect their revenues.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue N.E., stated he is opposed to the passage of Ordinance 2972 in its present format and in the format originally presented on first reading. Mr. Gessaman stated that, despite presentations and protestations by City staff to the contrary, he believed the only reason the City is attempting to relax the current limitations on extensions of utility services beyond City boundaries is to permit the providing of such services to the proposed Highwood Generating Station. Mr. Gessaman stated that the public was left at the August 21<sup>st</sup> meeting with the impression that residential developments were involved. He stated he did not think this was true because in the background section of today's agenda report the comment says the City of Great Falls is experiencing increased growth with more industrial requests for utility service beyond City limits. The Tischler Bise report has a direct connection with Ordinance 2972. The study results were due June 3<sup>rd</sup>, but few members of the public have seen this report. He stated it is not posted on the City's website. However, some of us have seen this and found a few very applicable points. The City is losing money on residential development. If the City is already losing money on every residential development, why would the City consider providing services without annexation and the corresponding collection of tax revenues. The City of Great Falls is expecting to lose about \$90,000 per year for the first 14 years it provides services to the Highwood Generating Station without

annexation. By comparison, the City is estimated to net a little over \$300,000 annually for providing the same service under annexation. Mr. Gessaman stated that he presumes any prudent and fiscally responsible government official would have no problem deciding which scenario to provide services under. During the lengthy construction phase of the proposed Highwood Generating Station, or any other large industrial facility, no tax revenues are collectable. The services must be provided and paid for during the construction period – the result that net annual deficits to the City must be covered by other generous City taxpayers during the construction period. The tax revenues are only collectible after the industrial facility is operational. If the City delays annexation, the possibility exists for the County to create the tax increment financing district and potentially deprive the City in the future of any tax revenue once the industrial facility is annexed. This is not addressed in the ordinance. Mr. Gessaman stated that the passage of this ordinance will not result in a better situation for the citizens of Great Falls.

**Aart Doleman**, 3016 Central Avenue, stated that he opposed the ordinance. Mr. Doleman stated that he is confused because the old version says there are 15 articles, and in reality there are 16. Mr. Doleman suggested that the Commission hold a hearing on the separate article at the next meeting. He stated that changes cannot be made to a public document without notifying the public. Mr. Doleman stated that he was not reassured by Mr. Lawton saying rezoning is perfectly legal because several organizations sought litigation, which resulted in the County Commissioners revising their zoning procedures. Mr. Doleman pointed out that the citizens have lived here as a planned community with the City/County Planning Board. He concludes that the City is having a blank check on expansion. Mr. Doleman stated that it concerns him that this opens the door for litigation and the City should not expose the community to that. He stated that Great Falls citizens live in a great community that has a County growth plan and a City growth plan and wants to know why the two institutions cannot cooperate. He urged the Commissioners that, before the ordinance is passed, a public hearing be held on article 16.

Commissioner Jovick-Kuntz asked Commissioner Rosenbaum if he was the one that suggested the addition of number 16.

Commissioner Rosenbaum stated that he asked about it at the last meeting if the right-of-way easements for utilities language was strong enough. It was discussed and staff thought that it wasn't as complete as it might be. Not that it wasn't there, it just wasn't that complete. Staff decided to do that and add the fire district language for anything that was annexed.

Commissioner Jovick-Kuntz added that this was put on the City's website when it was corrected. Ms. Jovick-Kuntz stated that it was in her Friday packet, so it was made available to the public on the website. Ms. Jovick-Kuntz then asked Planning Director Ben Rangel to give the public a history

of what happened between the City and County, stating she is tired of being blamed for the dissolution of the City/County Planning Board.

Mr. Rangel reported that, in essence, it was a decision made by the County Commissioners to withdraw its support to the former City/County Planning Board operations. They chose to provide their County Planning Board and County staff the authority and responsibility for what was previously referred to as the Four and One-Half Mile Planning Jurisdictional Area.

Mr. Doleman stated regarding item 16, it was Sunday night when he first read it on the internet and thought that was not enough public notice. He thanked Mr. Rangel for explaining the differences between the City and the County.

**Jayne Watson**, 2912 2<sup>nd</sup> Avenue North, stated that she grew up in Great Falls, moved away and did some traveling for awhile, and decided that Great Falls is the best fit for the values she has. She stated she opposes the proposed coal plant. Ms. Watson stated that, even if SME wasn't involved or the coal plant wasn't an issue, she believes this sort of change to a code or ordinance doesn't do anything to benefit the citizens of Great Falls, and only benefits a business, industrial or otherwise. She stated she knows how to balance a checkbook and this doesn't make sense to her. Ms. Watson stated she has attended City and County meetings and believes she is the sort of person this ordinance change will affect, and it worries her. The growth policy that the City has in place is sound. Ms. Watson asked that the Commission wait and do some more research. She stated that she believes decisions have been made when all of the information wasn't available and processed. She quoted E.B. Cummings as saying nothing beautiful ever hurries. She opined that too many things have been changed in our City Charter because of SME's requirements. Ms. Watson asked the Commission to take some time and consideration of this issue.

**James Bull**, 2708 4<sup>th</sup> Avenue South, stated that he has lived here since 1975 and has practiced urology in the community since that time. Mr. Bull has also served as an adjunct professor at the University of Great Falls for several years, and currently is volunteering in microbiology to help them out. He stated that he has reservations about Ordinance 2972. The preface of this ordinance states that ordinances in Billings, Missoula, Bozeman and Helena have permitted the extension of their utility services beyond their City limits based on certain criteria agreed in writing between developers and owners. The aforementioned cities are high growth communities mandating such flexibility to accommodate growth with a reasonable expansion of utility services. Mr. Bull stated that it appears to the casual observer that they are doing it, so why can't we do the same. He stated that he is a physician and not a City planner, but he offered an analysis from the four sister cities' regulations regarding extension of services outside their city limits. Despite the language in the Great Falls ordinance that Billings, Missoula, Helena and Bozeman allow this, he stated that the Great Falls proposed ordinance is significantly different. The primary difference in



Ordinance 2972 is (1) the language regarding future annexation is confusing. To him, it seems poorly crafted and vague. In Helena and Billings the purpose in extending their services is to promote annexation; (2) this ordinance does not include language to require an applicant to waive the right to protest future annexation. The only language in the Great Falls ordinance concerning the waiver is in regards to creation of a special improvement district and not annexation; (3) Ordinance 2972 does not require an applicant to apply for annexation prior to receiving City services, unlike Missoula and Billings; (4) the proposed ordinance does not require the property to conform to local plans, like the growth policy, water services or facility plan, unlike Helena, Missoula or Billings; (5) this ordinance does not require consideration for orderly growth and development of the City, unlike Bozeman, Missoula, Helena and Billings; and (6) according to the proposed ordinance, it needn't be contiguous with City property, unlike Billings. Furthermore, to be in compliance with the proposed ordinance, the property does not have to comply with existing County zoning, unlike Missoula. Mr. Bull provided copies of the relevant sections of the ordinances from the other cities. Mr. Bull requested that the Commissioners table Ordinance 2972 until further studies from these documents and other information can be accomplished.

**Roger Norguaard**, 221 Glenwood Court, stated that he opposes Ordinance 2972. He stated that in the Tribune on November 13, 2006, Richard Ecke wrote an article about annexing property outside the City. He stated that City Planning Director Ben Rangel argued that it is unfair for businesses to use City water or sewer lines without paying City property taxes. Mr. Norguaard stated that this seems to be a gross lack of consistency and fairness if this Commission approves billing City sewer and water to the Highwood Generating Station if they don't pay City taxes. He asked that the Commission take more time in considering passing this ordinance until they have all the facts before them.

**Jeff Monheim**, 3709 20<sup>th</sup> Avenue South, stated that he has lived in Great Falls since 1971. He stated he opposes Ordinance 2972. He quoted from the City Code regarding annexation. The introduction states that, like many other cities, Great Falls has restricted the provision of water and wastewater services to customers inside the City. If anyone outside the City boundaries wants service, annexation is required. This is accomplished by the following language in the City Code. Reasons for the existing policy – City residents have bought and paid for the wastewater treatment plant and the water treatment plant storage facilities and transmission means. The plants at other facilities do not run at full capacity and have room to accommodate growth. If these facilities were used to serve areas outside the City, inequities would be created. First, excess capacity could be used up for people outside the City inhibiting growth inside the City or eventually creating a major cost for plant expansion. Second, there would be no means of buying into a capital plant already paid for by City residents. Next, the basic City services come in a package to a large extent as there are more

homes and businesses to share the cost of this package of services, the cost will be distributed more equitably, and the quality of services will be better. It is fair to all citizens if those who benefit from water and sewer also receive and help share the costs of police services, fire protection, parks and streets. As it is many residents on the fringe of the City use the City services without having to share the cost. Extension and replacement of water and sewer lines requires careful planning consistent with the growth patterns, zoning, and other public infrastructure, such as streets and storm drainage. Having all of these things under the control of one jurisdiction makes orderly growth and development possible. Having them under the control of more than one jurisdiction often encourages disorderly growth and substandard systems that may create health, safety and cost problems later on. Once an individual obtains City water and/or sanitary sewer service independent of annexation, any interest or need in ever joining the City is lost. This creates a formal barrier to future annexation even when it is overwhelmingly in the public interest. An increase in development outside the City, combined with barriers to annexation, could have a long term affect of stifling the City's tax base. Finally, construction, operation and maintenance of the City's water and sewer systems require ordinances covering such things as special improvement districts, connection requirements, and collection and payment procedures. City ordinances are not enforceable outside the City limits, thereby complicating utility operations.

**Stuart Lewin**, 615 3<sup>rd</sup> Avenue North, stated that this particular issue and ordinance goes to the heart of one of the complaints that he has been raising for quite awhile and believes it is an offshoot of what happened with the City and the County splitting up their combined planning. Mr. Lewin stated that we get stuck with the question of what growth policy plan is going to really be applied to make the decision about whether the City services should be extended outside the City limits. This deals with whether or not the citizens have any control about what they want to see the future of the community to look like. He stated when development takes place around us, it should fit in to some kind of an all over plan. That is the purpose of a growth policy plan. Now that we no longer have a City/County Planning Board, the question comes to the City if this ordinance gets passed - how does the City know whether to provide those services. The only growth policy plan to look at is the City's growth policy plan. It can no longer address any of the development questions outside the City limits. Mr. Lewin stated that he asked if he could sit on the County Planning Board and was told no because he lives in the City and cannot get involved in planning in the County. Mr. Lewin stated, if the Highwood Generating Station came to the City to provide services, it is up to the County. Mr. Lewin asked that the Commission hold back on agreeing to this kind of ordinance. He stated that HGS would have to come to the City for those services if they want to build it. He stated that if the City holds off it could force them to come up with a plan where we could have a planning arrangement that is not under the control of just the County outside the City. By passing the ordinance

now, he stated that the City foregoes that opportunity to have that discussion. Mr. Lewin read part of Attorney General Opinion 43, No. 37 (1990). Point 3 of that conclusion states that a municipal governing body may not extend municipal boundaries pursuant to the Planned Community Development Act of 1973 without conforming to a growth policy. Mr. Lewin stated that, to him, before an ordinance can be passed like this and be sure that it would be legal, the City would need the opinion of the Attorney General. He stated that this requirement is not being met. Mr. Lewin asked that the City Attorney submit to the Attorney General a request to determine if he is right in this analysis and whether the City has authority to go forward and pass an ordinance outside its jurisdictional area. Mr. Lewin stated that he has a problem with the study not being open to the public, so that the public would also know what the costs would be. Mr. Lewin stated that still today the public does not know the amount spent by this City on the development of this project. Mr. Lewin further stated that also, the electric corporation set up has been losing money by selling power below cost, and covering it up with future contracts. He stated that the contracts with SME are benefiting private businesses and do not help the taxpayers who may have to pick up millions of dollars to cover this fiasco. Mr. Lewin opined that this ordinance is foolishness and does not fit in the direction the City is heading.

**Carol Fisher**, 500 53<sup>rd</sup> Street South, stated she is confused about things that happened prior to the ordinance being passed. Ms. Fisher stated it is her understanding that City government is designed to work on a set of orderly procedures – before “b” can happen, “a” must happen. In October 2006, the Commission approved a contract for the Tischler Bise study to evaluate the fiscal impacts of extending City services to the Highwood Generating Station. She thinks the order from there would be to get the final study, evaluate the findings, bring a proposal before the Commission, and after receiving approval from the Commissioners the City Manager would sign an agreement with SME to extend the services. She stated the ordinance has to be passed before an agreement could be reached. She stated she wants to know why this order isn’t being followed. She stated this has to do with an agreement that was ratified at the last meeting. She stated that she doesn’t understand how the agreement can be ratified before the ordinance is passed. Agreements have been passed or ratified for water service and wastewater treatments with SME. There was no final report from the Tischler Bise study. There was a draft dated January 3, 2007, indicating a cumulative net deficit of 1.2 million dollars for maintaining those services if annexation doesn’t occur. Ms. Fisher stated there is not a set date for annexation to happen, and that is extremely vague in the ordinance. She thinks that big of a possible deficit would be a huge red flag. But, on May 30, 2007, Mr. Lawton signed agreements with SME to extend those services. On June 5, 2007, the City Commission voted to approve those agreements. She stated she wants to know if it is legal for the City Manager to sign those types of agreements prior to Commission approval and, if so, why even go through the pretense of having a Commission vote. She asked how can agreements

be made before an ordinance allowing it having not been passed.

**Cheryl Reichert**, 51 Prospect Drive, stated that after leaving for a couple of decades she came back in 1987 to practice pathology and to serve as a Deputy Medical Examiner for North Central Montana. Ms. Reichert stated she believes that we live in the best of the last best places, and that is why she chose to come home. Ms. Reichert stated the decision that the Commission makes tonight about future growth will determine our quality of life for ourselves and future generations. She stated that she knows the Commission's intentions are good, but it is the unintended consequences that she fears. She appreciates the dedicated public servants. She submits that this is democracy in action. Not always comfortable, but certainly superior to other systems of government. She appreciates the hard work of the City administration. She gives credit to many improvements to the town to City Manager John Lawton. She recognizes the rights of individuals to come to different conclusions regarding the best course of the future of Great Falls. The underlying assumption is that everyone has access to all of the relevant information. The process of serving the public good is in good faith, and that it is honest and transparent. Ms. Reichert stated sadly, that is not the case for this issue. She stated the Commission heard today about a dozen problems with this ordinance. First, the rules are being written three months after the June 5<sup>th</sup> contracts to supply water and sewer were authorized for SME, having been buried as Consent Agenda Item 21 to that agenda. Two, the contracts to provide the services may not be legal, because they were signed by the City Manager six days before the Commission voted on them. Next, the conclusion of the Tischler Bise studies that the Commission authorized actually authorized a total of \$80,500 on October 3, 2006, weren't made available to the public, possibly because during the 14 years of their projection the City would suffer from a cumulative net deficit by their figures of 1.2 million dollars under the contracted services scenario as opposed to annexation that would bring in the property taxes. The separate Tischler Bise study about the water and sewer capacity was never made public and it is not even clear if it was given to the Commission, even though the fees for a portion of that \$10,500 were paid to the consultants on the Consent Agenda on May 1<sup>st</sup>. Although the synopsis of this ordinance states that our City is just catching up to Missoula, Billings, Bozeman and Helena regarding extension of City services, the reality is quite different. Fifth, there is no mention of utilizing City police as part of the City services even though in the Tischler Bise study it is anticipated that the City will respond to 15% of the calls, even though they are covered by the Sheriff's Department, possibly adding another police officer. The overall volume of police calls can be expected to go up substantially. In one community in Wyoming it went up 30%, given the experience of other boom and bust communities with construction phase man camps. Sixth, it is far from clear that our City wastewater plant can handle this type and volume of industrial effluent. She stated she is in the process of studying that issue with the Department of Environmental Quality at this time. Seven, the ordinance that appears before the Commission today is different than the ordinance that

was accepted on first reading on August 21, 2007. Eighth, it is unclear whether the proposed ordinance conforms with Montana Code Annotated and other legal precedence cited by the Attorney General. Nine, the ordinance is not in conformance with City codes that currently exist nor with the growth policy. Ten, it is far from clear how such a ruling will affect Cascade County and the TIF district that it is trying to create to pay for coal plant infrastructure. Eleven, in the event of a bankruptcy, and that is a real possibility with a financially risky thing like a coal plant, the present policy of providing City services on contract puts the City in a weaker position than services provided through annexation. Twelve, this ordinance is unfair and creates a double standard and contradicts the Commission policy as recently at 10 months ago when there were 138 business and residential properties in the County receiving City services and they were forced to choose between being annexed because they were receiving water and sewer, or not getting those services. Finally, there is no need to rush to judgment. On October 31<sup>st</sup> an Associated Press article appeared across the state, except it wasn't published in Great Falls, and it was acknowledged that funding from the coal plant will be delayed while it is in litigation at the State and Federal levels. The coal plant is under litigation in Federal Court and the air quality permit is being challenged in State Court. It is not like this thing is going to disappear tomorrow. The issue will come indirectly before the voters of Great Falls on November 6<sup>th</sup> where there is a potential of electing a new majority of commissioners or not. Ms. Reichert opined that it would be prudent to have such long term decisions made after the election. She provided a conclusion of an independent study commissioned by Citizens for Clean Energy. Private citizens paying for this study to give the Commission a different perspective. Ms. Reichert requested that the Commission delay action on this ordinance until they have the opportunity to study the materials.

**Brett Doney**, 3048 Delmar Drive, stated that, from an economic development perspective, the more that can be preplanned regarding the ring around the City so that developers can anticipate what the future zoning would be, the better it will help the City secure development. Mr. Doney stated positive steps have been taken in that direction with the City and County planning staff working together on the proposed Industrial Park area by the Malt Plant and with the Malmstrom Runway Protection Zone. The pre-development monies are the hardest to come by because it is the riskiest. Mr. Doney stated that there are areas by Centene where there will be growth, but there is some ambiguity as to what the zoning will be. If the City can do a ring plan so that investors can anticipate what the zoning will be, it would fuel the investments they are trying to attract. Mr. Doney opined that all will be glad when the Highwood issue gets resolved because it colors everything. He stated this is a very useful tool for economic development. Obviously, it should be used sparingly. There will be circumstances where we want to attract an investment and we will want some flexibility. It has to be carefully considered. Each deal would come before the City Commission and the 16 points would be looked at. Mr. Doney stated there are

possibilities for investment that we want to attract and this will give us some flexibility. They are rare, but when they come up this is a useful tool. Mr. Doney stated he thinks that is why the other cities have put this in place so they can foster development, particularly phase development. The Industrial Park is a good example of that, where we are trying to work in partnership with the City and the County, but we are looking at a phased plan and we want to know what the zoning is going to be in the future. So we want an agreement with the City, but it may not be time to annex because of the cost of annexation.

**Gloria Smith**, 8 Cheyenne Drive, stated she is not opposed to growth. She is opposed to the wrong kind of growth. She is opposed to little pockets of industrial areas around the City, where you will have to go outside the City to build residential. She stated that these people are not going to be allowed to protest annexation. Ms. Smith asked what are the people going to be allowed to do. She stated that we are talking about a 30 year commitment, signing an agreement to deliver. Ms. Smith asked how many gallons of water per minute is the City going to commit to this plant.

Mayor Stebbins informed Ms. Smith that her question has nothing to do with the matter that is before us right now.

Ms. Smith stated that it does because we are going to sign an agreement to give them – passing an ordinance to allow these people to have City water. Ms. Smith stated that (he) already signed an agreement with them that we are going to do this. Ms. Smith asked if the City doesn't have enough water to provide in 30 years, can the City be sued for not providing the full amount? Ms. Smith stated this doesn't apply to just this plant, it applies to other plants coming in.

Mayor Stebbins answered that this will be on a case by case basis. Whether the City decides to use this as a growth tool or not, it will be decided case by case and all those things will be considered.

Ms. Smith asked if she heard right that (he) signed something already. Ms. Smith asked if HGS would buy a fire truck, would they pay the salaries of the extra firemen that the City will need to man those fire trucks?

Mr. Lawton answered that if we are talking about the power plant itself, that project will be required to pay the costs of all City services that they use. That means everything. Mr. Lawton stated that an agreement has not yet been negotiated, that we have not yet analyzed what they need. He stated that we have only kicked this around in a very conceptual way. None of those issues have been decided. It states in the agreement with SME and in this ordinance that the costs of services and facilities will have to be paid by the developer. Those costs are costs determined by the City and not the developer.

Ms. Smith stated that it seems to her the cart is being put before the horse.

**Mike Witsoe**, 615 3<sup>rd</sup> Avenue North, stated that this sounds a lot like “Randyland” – speaking about the casino where the neighbors complained about on the west side. Mr. Witsoe stated there is a conspiracy – a blanket word that can cover one and all, the City, County, SME and developers to develop a large industrial complex at the Highwood Generating site. The County made a mistake and then backed up, and this is going to cost big bucks. Mr. Witsoe stated that he has recorded testimony from people years ago at the sewer plant that tell him about the malt plant problems that were never brought to the public about pumping the residue. He stated a recorded statement on video is subject to testimony in court and this is a public hearing and the Commission is all subject to such.

Commissioner Hinz asked Mr. Gliko about the Attorney General Opinion that Mr. Lewin eluded to wherein the AG ruled that we can’t do what we are trying to do.

City Attorney Dave Gliko stated that when the City adopted its growth policy, he did review all of the Attorney General Opinions relative to it and he believes that the AG’s point was that the City had to adopt, by a certain date, a growth policy. After that, unless they hadn’t adopted a growth policy, annexation might be challenged. But the City has adopted a growth policy. Mr. Gliko stated he doesn’t think that the issue is relevant at this point since the City has adopted a growth policy.

Commissioner Hinz inquired about waiving the right to protest and doesn’t see that in the 16 points.

City Manager John Lawton read paragraph 1 of the revised Ordinance.

Commissioner Hinz stated that, essentially, they are waiving their right to protest.

City Attorney Dave Gliko stated that the fact that the applicant must give consent is actually stronger than waiving protest. At the outset in making an agreement they do agree to annexation. He submits that it is stronger than waiving protest.

Commissioner Jovick-Kuntz inquired about why there are no time lines for annexation. She inquired if it should be made more formal as to a specific time frame.

City Manager John Lawton answered that there could be a number of reasons for not putting a time line on it. He stated, for example, if we annexed an area to provide water and sewer to an industrial facility and the growth of the City boundary was not really close enough so that the planning department was comfortable in annexing at a certain time, we

might set criteria when annexation reaches such and such a point, then the City might annex. That probably would be the case with the power plant where we would set criteria in the agreement with SME as to when annexation might take place. The other issue is to coordinate and consult with the County. The circumstances may vary regarding these kinds of service provisions and we want to leave ourselves the flexibility to coordinate and consult with the County on these issues.

Commissioner Hinz asked if it was urgent that they deal with this issue tonight.

City Manager John Lawton stated there is no particular urgency. There is no immediate decision on the horizon. On the other hand, it needs to be considered in a reasonable time frame.

Commissioner Jovick-Kuntz stated she wanted time to get Mr. Bull's questions answered concerning other cities' ordinances and the things, perhaps, we didn't take into consideration when we drafted this ordinance. Commissioner Jovick-Kuntz stated that she wants to look at the different ordinances. Also, if the public doesn't feel they had enough time with the addition of #16 and wants time to read and study it, she has no problem moving it to another date. Commissioner Jovick-Kuntz stated she also wants the legal staff to make sure this ordinance is perfectly legal, so as not to open the City to a lawsuit.

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

**Commissioner Jovick-Kuntz moved, seconded by Commissioner Hinz, that the City Commission table Ordinance 2972 for September 18, 2007.**

Commissioner Rosenbaum opposed resetting this matter. He stated that the anti-coal plant folks have drawn their conclusions and have modeled this to meet their needs. They had ample time for the last two weeks to call. Commissioner Rosenbaum stated that he did not receive any calls. He stated to come to these meetings and expect service immediately is a lot of what we are seeing here of late, and that it is frustrating to him to not have the information in front of him. He stated all have researched this, staff researched it, and he has researched it and he knows as much about water extensions and subdivision development as anybody. Commissioner Rosenbaum stated it is one that fits a lot of other things besides the coal plant, but that is the agenda these folks have and two weeks is not going to change anything either way.

Motion carried 3-1. (Commissioner Rosenbaum dissenting.)



**Res. 9684, To Levy and Assess Properties for Unpaid Utility Services. Adopted.**

**4. RESOLUTION 9684, TO LEVY AND ASSESS PROPERTIES FOR UNPAID UTILITY SERVICES.**

Fiscal Services Director Coleen Balzarini reported that properties in the City of Great Falls which had utility services provided to them prior to June 30, 2007, but remain unpaid, are subject to the City's right to lien the property for the amount owed. The Fiscal Services Department reviews the accounts quarterly and notifies property owners of the delinquent charges and the right to lien the property. The legal owners of the properties were last notified in a letter dated July 5, 2007 that, unless these charges were paid within 30 days, they would be levied as a tax against the lot or parcel. These properties also receive the normal monthly billing statements. A final letter stating the date and time of the Public Hearing was sent August 22, 2007, and a public notice was published August 24 and 31, 2007. This tax will appear on the tax bill received from Cascade County.

Ms. Balzarini recommended that, after conducting the public hearing, the City Commission adopt Resolution 9684 to levy and assess charges of unpaid utility services against certain properties.

No one spoke in favor of or opposition to Resolution 9684.

**Commissioner Rosenbaum moved, seconded by Commissioners Hinz and Jovick-Kuntz, that the City Commission adopt Resolution 9684.**

Motion carried 4-0.

**Res. 9685, Cost Recovery, 2608 1<sup>st</sup> Avenue North. Adopted.**

**5. RESOLUTION 9685, COST RECOVERY, 2608 1<sup>ST</sup> AVENUE NORTH.**

Community Development Director Mike Rattray reported that the owners of property at Lot 3, Block 337, Great Falls 11th Addition, Great Falls, Cascade County, Montana, were issued a "Notice of Hearing" before the City Commission of Great Falls to appear at 7:00 p.m., September 4, 2007. The hearing is to show cause why the owners of the property should not be liable for the costs incurred in abating property known as 2608 1<sup>st</sup> Ave N. This property has been a problem property for the neighborhood for the past year. Four citations were issued for junk vehicles and rubbish. The property owner refused to clean up the property and the City was forced to hire a contractor to clean up the property.

Mr. Rattray recommended that, after closing the public hearing, the City Commission adopt Resolution 9685 and assess the total charges of \$ 709 against the property itself with interest and penalties on the unpaid balance.

No one spoke in favor of or opposition to Resolution 9685.

**Commissioner Hinz moved, seconded by Commissioners Rosenbaum and Jovick-Kuntz, that the City Commission adopt Resolution 9685.**

Motion carried 4-0.

**Res. 9686, Cost Recovery, 4747 2<sup>nd</sup> Avenue North. Adopted.**

**6. RESOLUTION 9686, COST RECOVERY, 4747 2<sup>nd</sup> AVENUE NORTH.**

Community Development Director Mike Rattray reported the owner of property at Lot 3, Block 3, Great Falls Heren Addition, Great Falls, Cascade County, Montana, was issued a "Notice of Hearing" before the City Commission of Great Falls to appear at 7:00 p.m., September 4, 2007. The hearing is to show cause why the owner of the property should not be liable for the costs incurred in abating property known as 4727 2<sup>nd</sup> Ave N. This is a trailer that has been a nuisance to the neighborhood for an extended period of time. The property owner refused to cooperate in any clean up efforts and staff was forced to hire a contractor.

Mr. Rattray recommended that, after closing the public hearing, the City Commission adopt Resolution 9686 and assess the total charges of \$1,329.00 against the property itself with interest and penalties on the unpaid balance.

No one spoke in favor of or opposition to Resolution 9686.

**Commissioner Jovick-Kuntz moved, seconded by Commissioner Hinz, that the City Commission adopt Resolution 9686.**

Motion carried 4-0.

**OLD BUSINESS**

**NEW BUSINESS**

**Consent Agenda.  
Approved as printed.**

**CONSENT AGENDA**

7. Minutes, August 21, 2007, Commission meeting.
8. Total Expenditures of \$1,739,980 for the period of August 14 through August 29, 2007, to include claims over \$5,000, in the amount of \$1,542,360.
9. Contracts list.
10. Approve agreement with Great Falls Community Ice Foundation concerning cost sharing and responsibilities for the extension of City utilities.
11. Approve Change Order No. 1 and Final Payments of \$2,778.54 to Lapke Construction LLC and \$28.06 to the State Miscellaneous Tax Division for the 2006 CDBG Sidewalk Replacement.

12. Award construction contract to Kuglin Construction in the amount of \$75,215 for the 2007 CDBG Handicap Ramps.

Mayor Stebbins inquired if there was any comment from the public regarding the consent agenda. No one spoke with regard to any item on the consent agenda.

**Commissioner Rosenbaum moved, seconded by Commissioners Hinz and Jovick-Kuntz, that the City Commission approve the Consent Agenda as presented.**

Motion carried 4-0.

**13. BOARDS & COMMISSIONS MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

**14. CITY MANAGER MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

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

Mayor Stebbins commented that she attended the Labor Day picnic and it was very well attended.

**PETITIONS AND COMMUNICATIONS**

**16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins opened the meeting to Petitions and Communications.

**Highwood Generating Station.**

**16A. Gudren Linden**, 1019 5<sup>th</sup> Avenue North, stated that she has been following the debate on the Highwood Coal Plant. She stated she doesn't pretend to know all the angles of this very involved and complicated issue. Ms. Linden stated this is where we sadly stand now with attorneys involved on both sides at the highest level and judges to be leveling decisions at a considerable price, monetarily and emotionally. Ms. Linden opined that this was caused by big corporations and City officials and aligned and locked itself in with big money and in the process involved the unwilling citizens of Great Falls in this unfortunate situation. Ignoring that in a democracy every citizen is entitled to an informed choice. The subject of this magnitude should have been totally transparent, debated right from the start, and after that brought up for a vote. Don't forget that corporations look at the bottom line first and foremost. That is the obligation to their stock holders. Never mind the quality of life or health concerns for those that have to live with the consequences of their ambitions. After the facts of the proposed coal plant became known to the public, a few alert citizens understood what was at stake and formed a grass roots organization to bring some light to this murky situation.

Knowledgeable professionals and concerned citizens who have the health and welfare of the population of our City and beyond in mind made it their goal to speak out for that. The dedication and volunteer hours that the Citizens for Clean Energy have donated to this cause have been remarkable and should be appreciated, not ignored. CCE members have shown the Commissioners many red flags, that should have given pause, the serious health issues, environmental issues, monetary issues, etc. Ms. Linden asked who is going to pay for all of this when the coal plant does not fly. Are the Great Falls citizens going to be responsible for the considerable amount already spent. Bozeman, Helena and Missoula all have declined this venture and we don't want this coal plant either. She stated the intentions may have been well meaning, but very little thought has been given to the above-mentioned. She stated she read in the paper that a new City Manager is to be elected by December of this year. She asked why is this issue being forced now. She stated she wants the election to happen first, then let the new members of the commission get acquainted. Let them take their time in the search for a new qualified City Manager with a clean slate and no agenda, so he or she can serve the citizens of Great Falls in an unbiased way.

**Electric City Water Park.  
Fortune 500 Company.  
SME.**

**16B. Brett Doney**, 3048 Delmar Drive, stated that he and his son helped close out the Electric City Water Park yesterday and commended the City Park and Recreation Department and their wonderful staff. Mr. Doney stated that the Great Falls Development Authority is in competition for a Fortune 500 company and is competing with a community with a bigger labor market than ours. He stated the company consistently ranks as one of the leading employers in the country. He encouraged people to network and get the word out that these opportunities could be coming. He said they are in partnership with the Job Service and they are taking applications. Mr. Doney responded to a comment made about SME that let's remember that we can disagree about the coal plant, but let's remember SME is not big business. It is Montanans taking care of their own power needs. This is not being driven by any nefarious agenda. These are rural coops that are a part of us in Montana.

**SME.**

**16C. Jeff Chafey**, stated he works for Bison Engineering out of the Helena office, and he works for SME for the Highwood Generating Station project. Mr. Chafey commented about the status of the air permitting process for the Highwood station. He stated they are fairly far along in that permitting process. An air quality permit has been issued for the project. It has been challenged and will go before the Board of Environmental Review at the State level in January, 2008, to be further considered in terms of those challenges. An Environmental Impact Statement was jointly issued by the Rural Utility Services of the Federal Government and the Montana Department of Environmental Quality this May, and that has also been the subject of a Federal lawsuit in July, which will wind its way through the process as well. A number of other water, voluntary solid waste license, and other issues have been worked through. Now we are in the mode right now where the challenges are being brought, which isn't uncommon with energy projects. We expect to work through those and follow the process to its conclusion. He

commented about the carbon capture and storage strategy that SME has been working on. There is a team in place working actively on that issue. There isn't any technology right off the shelf for a coal fired plant or a natural gas plant. There are a lot of things under development being worked on and they are working hard with the Big Sky Carbon Sequestration Partnership out of the University of Montana, Bozeman, on finding potential storage sites for that carbon. They have good options and will do their best to work pro-active and work forward on that.

**Forest Fires. HGS.  
Global Warming.**

**16D. John Hubbard**, 615 7<sup>th</sup> Avenue South, read a portion of a newspaper article on August 13, wherein it showed images taken from the space shuttle of the forest fires that can be seen from outer space. Mr. Hubbard stated that the trees are the lungs of the world and if the City builds this choking monster it will cause global warming. He stated that Montana had 17 days of over 100 degree weather. Mr. Hubbard stated that greedy Northwestern Energy is seeking a 42 million rate hike, and that is what happens when you let greedy people have a free hand in the market. They take advantage of you and they keep pushing. People on a fixed income cannot live. Mr. Hubbard opined that the power companies are still getting their way and (you) won't arrest them. If you can repeal prohibition, you can repeal that. All the money goes to fuel terrorism.

**Autism Walk. HGS.**

**16E. Mike Witsoe**, 615 3<sup>rd</sup> Avenue North, stated that a good thing will be happening on September 23 – the 3<sup>rd</sup> annual autism walk. Autism is caused by mercury poisoning, like the coal plant is going to put out. Mr. Witsoe asked if the City would sponsor a group meeting with all the incumbents and non-incumbents at a speaking fest.

Commissioner Jovick-Kuntz informed Mr. Witsoe that is not the way the City does business.

**ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Jovick-Kuntz moved, seconded by Commissioner Rosenbaum that the regular meeting of September 4, 2007, be adjourned at 9:15 p.m.**

Motion carried 4-0.

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Mayor Stebbins

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City Clerk