

From: [Lisa C. Kunz](#)
To: [Bob Kelly](#); [Mary Sheehy Moe](#); [Owen Robinson](#); [Rick Tryon](#); [Tracy Houck](#)
Cc: [Greg Doyon](#); [Charles Anderson](#); [Krista Artis](#); [Craig Raymond](#)
Subject: FW: Gibson room 212 @7pm Feb 2,2021
Date: Monday, February 1, 2021 2:28:11 PM

Good Afternoon – see comments below for consideration of Agenda Item 13.

Lisa

City Clerk/Records Manager
406.455.8451

From: Lisa C. Kunz
Sent: Monday, February 1, 2021 2:27 PM
To: 'Steve C' <ishkeez@gmail.com>
Subject: RE: Gibson room 212 @7pm Feb 2,2021

Hi Mr. Schoeneman – thank you for submitting comments pertaining to Agenda Item 13 for consideration by the City Commission tomorrow evening. Your comments will be shared with the City Commission and appropriate City staff. I want to clarify that, if adopted tomorrow evening, Resolution 10385 gives notice of the City's intention to take action at the March 2, 2021 Commission meeting to vacate or not vacate the alley easement.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Steve C <ishkeez@gmail.com>
Sent: Monday, February 1, 2021 2:12 PM
To: commission <commission@greatfallsmt.net>
Subject: Gibson room 212 @7pm Feb 2,2021

I am writing in response to the meeting being held on Feb 2, 2021, at 7 pm in the Gibson room 212, Great Falls Civic center.

My name is Steve Schoeneman
Property Owner 121 25th Street SW

When we purchased this home 18 years ago, it had alley access to the rear of the property. The city did not maintain the alley, however it did exist.

I AM NOT IN FAVOR OF ANYTHING THAT WOULD CHANGE THIS.

ACCESS NEEDS TO REMAIN " AS IS " DUE TO PROPOERTY ACCESS FOR UPKEEP, POWER WIRE SERVICE, AND CABLE SERVICE, ALSO FOR FIRE AND POLICE SERVICES.

This should not even be brought up or held in a meeting or any other forms due to property owner ship locks the land.

Please do not consider this alley removal fact nor any other, while the property's are owned by residents.

Thank you, Steve

January 31, 2021

Dear Commissioners:

I am writing in regards to notice of Resolution of Intention 10385. I reside at 123 25th St SW Great Falls and have since 2001. My parents owned the property since 1978.

I am one of the owners that would suffer a hardship and be land locked if this requested Resolution were to be adopted. I nor my neighboring neighbors would not be able to access our back yards to do any landscaping or maintenance of our current landscape. The wood haulers have been harassed by these neighbors across the alley and will no longer deliver wood here until this is resolved. I have had the police called on me this last year (2020) three different times for trespassing. I have already submitted that letter to Lonnie. North Western Energy was called by the Martins to find the pins. What came out of that was Martins had to remove their chained up trailer to the NW Energy guild line to the pole next to my property. This would be problematic for insurance purposes also, ex: trees that have not been maintained to prevent damages from our frequent high winds. I seen my neighbors signature on Martins letter and he has no recollection of signing that as he to would be land locked by this request from Martins. I appreciate your consideration in this matter and to deny this requested Resolution.

Sincerely:

Roxann Settera



2 Railroad Square, Suite C • P.O. Box 1525
Great Falls, Montana 59403-1525
P: (406) 268-1000 • F: (406) 761-2610
email@marralawfirm.com • marralawfirm.com

February 2, 2021

Great Falls City Commission
P.O. Box 5021
Great Falls, MT 59403

RE: Agenda #13
Resolution of Intention 10385, Intention to vacate the alley easement legally described as the west 20 feet of Lots 1B, 1D, 1C, 1G, 1FF, 1FA, 1FB, 1FC, 1FD, and 1FE of Sun River Park Addition in Great Falls, Montana

Dear Commissioners,

I, William J. Levine, am an attorney writing on behalf of my client Roxann Settera in opposition to vacating the alley that accesses the rear of her lot. Ms. Settera is the owner of, and resides at, 123 25th Street SW, Great Falls, MT 59404, which is Lot 2D, Sun River Park Addition. She opposes vacating the alley for the following reasons:

1. Vacating the alley would be detrimental to her and her neighbors.
2. Vacating the alley is contrary to City policy.
3. Vacating this alley does not meet the standard of § 7-3-4447(2), MCA.
4. Vacating the alley would put her and her neighbors in a precarious legal position.
5. Vacating the alley would put NorthWestern energy in a precarious legal position.
6. Rather than vacating the whole alley, the Commission can vacate portions of the alley.

These reasons are more fully addressed, in turn, below.

1. Vacating the alley would be detrimental to Ms. Settera and her neighbors.

Ms. Settera relies on the alley to access the rear of her lot for deliveries of firewood and in order to access her rear yard for maintenance and repair purposes. Indeed, because of her alley access,

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Joseph R. Marra (1924-2015) • Thomas A. Marra
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LEGAL ASSISTANTS Vicki Evjen • Sharon E. May
ACCOUNTS Connie Manning

she has built across almost the entire width of her lot. Vehicular access to the rear of her lot from 25th Street SW is impossible. Other neighbors also rely on the alley to provide access to the rear of their lots and have developed their lots in reliance on being able to have continued access from the alley. It is unfair for the City to take away alley access from Ms. Settera and her neighbors after the City allowed the lots facing 25th Street SW to be subdivided to their current, narrow dimensions and then allowed the owners to develop their lots so as to fill the width of the lots.

2. Vacating the alley is contrary to City policy.

The Great Falls Municipal Code encourages property owners to access their lots from the alley: “Alleys may be used to provide access to the rear yard. When an alley is available, vehicular access to the lot is encouraged from the alley and not from the street.” § 17.32.100(A), Official Code of the City of Great Falls. Despite this clear policy, the City is now proposing to vacate an alley that is relied upon by Ms. Settera and others to access their lots. Although the alley is not used as the primary means of access, it still provides an invaluable alternative access route, especially for maintenance and repair purposes.

3. Vacating this alley does not meet the standard of § 7-3-4447(2), MCA.

The legal standard to apply when deciding whether or not to vacate an alley is necessity: “When it deems necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.” § 7-3-4447(2), MCA. In this case, Petitioners Gary and Nancy Martin have not made any argument for why it is necessary to vacate the alley. Indeed, the petition does not offer any argument for why the alley should be vacated beyond the Martins’ recently having discovered that the City has an easement for the alley.

Before the City agrees to vacate this or any other alley or right of way, the City needs to carefully examine the benefits and burdens of keeping the alley in place versus vacating it. In this case, it appears that the only benefit to vacating the alley is that the Martins and some of their neighbors want the alley vacated for unspecified reasons. On the other hand, Ms. Settera and her neighbors want the alley to remain to continue to provide access to the rear of their lots for deliveries, maintenance and repairs, and emergencies. On balance, the benefits of keeping the alley in place outweigh the benefits of vacating the alley. Far from being necessary as required by statute, vacating the alley would be detrimental.

4. Vacating the alley would put Ms. Settera and her neighbors in a precarious legal position.

As long as there remains a public easement for the alley, it is clear that Ms. Settera and her neighbors have the right to use the alley. Their rights could potentially be put in jeopardy if the alley were vacated. If the City vacates the alley, then the public’s right to use the alley would be eliminated, but “the right-of-way and easement therein of any lot owner is not impaired thereby.” § 7-3-4448(3), MCA. This provision appears to mean that a property owner whose lots adjoins a vacated alley has the same right to use a vacated alley as she enjoyed while the alley was a public alley. Unfortunately, it does not appear that this particular provision has been addressed by the

Montana Supreme Court or by any District Court that I could find. Perhaps instead of unfettered access, the statute would force Ms. Settera to prove the existence and scope of a prescriptive easement. If the alley is vacated and the Martins attempt to prevent Ms. Settera from using the alley, Ms. Settera would be forced to go to court to prove her easement rights, and there would be no guarantee that she would prevail. The Martins have previously attempted to prevent Ms. Settera from using the alley, and so this is not idle speculation. The City should not jeopardize the continued access that Ms. Settera and her neighbors currently enjoy.

5. Vacating the alley would put NorthWestern energy in a precarious legal position.

Similar to Ms. Settera, vacating the alley would put NorthWestern Energy in an uncertain position. There is a NorthWestern powerline that runs the length of the alley and provides electricity to all property owners along the alley. The City is apparently proposing “for a 20 foot wide utility easement to remain to accommodate these public utilities.” It is unclear what the legal basis would be for the City to vacate the alley but grant in its place a utility easement. In all likelihood, NorthWestern Energy has a prescriptive easement for the powerline, but the City cannot unilaterally create a utility easement because it thinks it would be beneficial. Rather than coming up with “creative” solutions like unilaterally changing the scope and easement holder of a 70 year-old easement, the City can best protect its interests, NorthWestern’s interests, and the property owners by preserving the existing easement.

6. Rather than vacating the whole alley, the Commission can vacate portions of the alley.

The City should not vacate the alley at all. However, the City has the option of vacating parts of the alley only. For example, the original petition sought to vacate the entire alley, but that has since been modified to vacate only the north-south portion of the alley, in order to leave the east-west portion of the alley in place to provide continued access for 2402 Central Avenue West. The lots that border the alley vary significantly in size and in how they were developed. Some, like Ms. Settera’s are narrow and have been built up in such a way that vehicular access to the rear yard is not possible from the street. Others are wider or have easy vehicular access to the rear yard from the street. The importance of the alley therefore varies greatly from lot to lot. In general, the lots at the south end of the alley have a greater need for the alley than the lots in the middle. An alternative that the City should therefore consider would be to vacate only the middle portion of the alley, while retaining the southern portion of the alley.

Thank you for your consideration.

Very truly yours,

MARRA, EVENSON & LEVINE, P.C.



William J. Levine

Email: wlevine@marralawfirm.com