

JOURNAL OF COMMISSION PROCEEDINGS
March 16, 2021

Regular City Commission Meeting

Mayor Kelly presiding

CALL TO ORDER: 7:00 PM

Civic Center Gibson Room 212

PLEDGE OF ALLEGIANCE

Due to the COVID-19 health concerns, the format of the City Commission Meeting was held in a virtual video-conferencing environment.

ROLL CALL/STAFF INTRODUCTIONS: City Commission members participated electronically via Zoom Webinar: Bob Kelly, Owen Robinson, Rick Tryon, Mary Sheehy Moe and Tracy Houck. City Staff participating electronically were: City Manager Greg Doyon, Finance Director Melissa Kinzler, and City Attorney Sara Sexe. Park and Recreation Director Steve Herrig, Planning and Community Development Director Craig Raymond, Public Works Director Paul Skubinna, Fire Chief Jeremy Jones and Police Captain John Schaffer were present in the Gibson Room, and City Clerk Lisa Kunz was present in the Commission Chambers.

To honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), modifications have also been made for public participation as follows:

- Attend in person. The City will be following the Cascade County Board of Health and the Public Health Officer Orders. Masks will be required and social distancing will be enforced. Public following these directives may view and participate in the meeting from the Gibson Room. Please refrain from attending in person if you are not feeling well.
- Attend the virtual meeting utilizing Zoom Webinar. Attendees must register in advance for the Commission Meeting: https://us02web.zoom.us/webinar/register/WN_-mWII667Rmqpgf5CRaphoA After registering, you will receive a confirmation email containing information about joining the webinar by Zoom.
- Participate by phone. Attendees must register in advance for the Commission Meeting using the link above. After registering, you will receive a confirmation email containing information about joining the webinar by phone. If you do not have internet access, you may contact the Great Falls Public Library by 5:30 p.m. the day of the meeting at 453-9706 and they can assist with registration.
- Provide public comments in writing. Submit comments via mail addressed to City Clerk's Office, PO Box 5021, Great Falls, MT 59403 or by email to: commission@greatfallsmt.net by 12:00 PM the day of the meeting.
- The agenda packet material is available on the City's website: <https://greatfallsmt.net/meetings>. The Public may view and listen to the meeting on cable channel 190, or online at <https://greatfallsmt.net/livestream>.

AGENDA APPROVAL: City Manager Greg Doyon noted the draft March 2, 2021 meeting minutes were updated after original posting. There were no proposed changes to the agenda by the City Manager or City Commission. The agenda was approved as presented.

CONFLICT DISCLOSURE/EX PARTE COMMUNICATIONS: None.

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COMMUNITY HEALTH INITIATIVES

1. COMMUNITY HEALTH INITIATIVES.

Commissioner Robinson, Board of Health member, reported that it is easier now to sign up for appointments and there are more places to go to get the Covid vaccine.

Mayor Kelly added that Governor Gianforte is going to lower the age to 16, regardless of underlying medical conditions, to receive the vaccine as of April 1, 2021. The effort is to bring in as much of the supply as possible and distribute it to as many people over the age of 16.

The City-County Health Department's website has the latest updates on the Covid-19 vaccine and the locations to receive the vaccination in Cascade County.

**PETITIONS AND COMMUNICATIONS/NEIGHBORHOOD COUNCILS/
BOARDS AND COMMISSIONS**

2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Written communication was received from **Stacy Hopkins**, City resident, facetiously thanking City officials for prolonging and delaying the proposed partnership with the Maclean Cameron Animal Adoption Center.

3. APPOINTMENT TO THE HOUSING AUTHORITY BOARD OF COMMISSIONERS.

Commissioner Moe moved, seconded by Commissioner Houck, that the City Commission appoint Lyle W. LaPree as a Tenant Member for the remainder of a two-year term through June 30, 2022 to the Housing Authority Board of Commissioners.

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

Appreciation was expressed to Mr. LaPree for submitting his application and seeking to become involved in public office.

Mayor Kelly called for the vote.

Motion carried 5-0.

4. APPOINTMENT TO THE AUDIT COMMITTEE.

Commissioner Moe moved, seconded by Commissioner Houck, that the City Commission appoint John Dutzer to the Audit Committee to fill a private citizen position for a three-year term through June 30, 2023.

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

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Mayor Kelly expressed appreciation to Jeremy Trebas for serving two terms on this Committee. The other two applications will remain open for future consideration.

Mayor Kelly called for the vote.

Motion carried 5-0.

CITY MANAGER

5. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

City Manager Greg Doyon provided updates on the following:

- With regard to the Aim High Big Sky Recreation Center (OF 1770), the Conditional Use Permit for the facility to be located in Lions Park will be presented to the Planning Advisory Board on March 23, 2021, and their recommendation will then be advanced to the City Commission for consideration during a public hearing.
- The design team sent a letter to the Department of Transportation with a proposed design and alternatives to address traffic concerns.
- Work continues on the site plan and submittal for an environmental review.
- The entrance and concept to the facility was a topic of discussion, as well as working through issues pertaining to sewer line diameter to accommodate the volume of water change over in the pool, storm water pond locations and designs, and parking. There is a minimum of 130 parking stalls required for a facility of this size. They are considering expanding that number to 180 to make sure there is not overflowing traffic out onto the residential streets. There are traffic counters in place in that neighborhood that are being monitored.
- Architectural features are being looked at, and the preliminary design rearranged to address the administrative desk areas and storage areas.
- Concerns about the roof design have been addressed and the current design was modified.
- The architect is working on energy reduction efforts, noting that much of it is driven by the State's energy code.

- The Police Chief recruitment is underway, beginning with internal recruitment until March 19th. There will be public involvement throughout the recruitment process.

- President Biden signed a \$1.9 trillion dollar American Rescue Plan on March 11, 2021, that includes about \$350 billion dollars in direct aid to states, territories, tribes, cities and counties. Some uses that will be allowed include the ability of those jurisdictions to meet some revenue gaps because of Covid. It will be potentially utilized for mitigating economic harm from the pandemic and will allow those jurisdictions to make investments in water, sewer, and broadband infrastructure through a State administrative program. The City is slated to receive about \$20 million dollars in two payments over the course of the next year. Ultimately, the City Commission will determine the course and use of those funds. Suggested potential uses include: address direct economic impact due to Covid, prepare

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for a stronger public safety posture from what we learned from this pandemic and applying that to facility design or employee safety situations, tax relief as appropriate recognizing the economic impact to tax payers in Great Falls, and infrastructure support that may include economic recovery efforts for industry and housing. The City does not have the specifics on how the most recent relief funds can be used, or the restrictions on the \$20 million dollar allocation. He has been working on a prioritized list for the Commission to consider.

- There is new CDBG funds (\$808,000) and HOME funds (\$280,000) available for allocations. Interested parties can apply at the Planning and Community Development Department. Applications must include eligible activities.

Mayor Kelly commented that he looks forward to Manager Doyon's recommendations with regard to the American Rescue Plan funds.

CONSENT AGENDA.

6. Minutes, February 25, 2021, Special City Commission Meeting.
7. Minutes, March 2, 2021, City Commission Meeting.
8. Total Expenditures of \$2,160,631 for the period of February 17, 2021 through March 3, 2021, to include claims over \$25,000, in the amount of \$1,803,208.
9. Contracts List.
10. Approve the application for the Assistance for Firefighters Grant in the amount of \$35,080 for the purchase of software and equipment for the Fire Prevention and Safety Program.
11. Accept the Montana Disaster & Emergency Services grant award in the amount of \$397,749.75, and authorize the City Manager to execute the Hazard Mitigation Assistance Agreement for the Missouri River North Bank Stabilization. **OF 1693.0**
12. Set a public hearing for April 6, 2021 on Resolution 10392, Amending section (4)C of Resolution 10375 establishing the rates, fees and penalties associated with title 10 of the Official Code of the City of Great Falls (OCCGF) pertaining to the City's parking system.
13. Award the construction contract in the amount of \$828,532 to Planned and Engineered Construction, Inc. for the Sanitary Sewer Trenchless Rehabilitation Phase 23, and authorize the City Manager to execute the construction contract documents. **OF 1675.4**

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Commissioner Robinson moved, seconded by Commissioner Tryon, that the City Commission approve the Consent Agenda as presented.

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

Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0.

PUBLIC HEARINGS

14. **RESOLUTION 10386, 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.**

Mayor Kelly declared the public hearing open and asked for presentation of the staff report.

Planning and Community Development Director Craig Raymond reported that the Applicants, Gary and Nancy Martin, together with the majority of affected property owners, have requested that the City vacate the undeveloped alley between 24th Street SW and 25th Street SW from Central Avenue West and 2nd Avenue SW.

Based on previous testimony this is a unique situation. In 1952, the property in question was conveyed to Cascade County as an “Easement of Right-of-Way.” In 1954, the property was annexed into the City. Between 1952 and present day, the right-of-way has never been developed and maintained as an alley. Apparently, a few property owners have used it for access to rear yards on unimproved surfaces. Staff is aware that support for the alley vacation is not unanimous. Staff’s understanding is that there have been disputes amongst neighbors as well as code enforcement complaints due to how the right-of-way has been used over the years. It would seem that most if not all of these issues could be cleared up through this alley vacation. Even though access to the property will change, each parcel will be able to maintain access to the public right-of-way along the platted streets and avenues as opposed to an unofficial, unimproved, and unmaintained alley.

Existing utilities will continue to be supported and protected by an easement. As such, the City Public Works Department and NorthWestern Energy are supportive of the vacation.

Applicants, Gary and Nancy Martin, 124 24th Street SW, read a prepared statement that, in summary, included:

- The strip of land has never been maintained or used as an alley by the City.
- The strip of land is their property and they are taxed accordingly.

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- Lots in the neighborhood are not unique to the City of Great Falls in that property owners on 24th and 25th Streets SW have access from the street into their backyards, similar to homeowners in Riverview and Fox Farm.
- Pictures depict vehicles crossing their and other neighbor's property beyond the 20 foot easement boundaries.

If their request for vacation is approved, the Martins concluded that:

- They will be afforded the same right as other homeowners on 24th Street SW to construct fencing or gates.
- They will no longer have to make costly repairs to their property due to damage caused by others.
- It will stop frequent traffic and end parked and abandoned vehicles on their property.
- If they so choose, they will have a marketable piece of property to sell.

Mayor Kelly asked if the Commission members had any clarifying questions.

Commissioner Tryon inquired if the only access to this right-of-way alley was 2nd Avenue SW.

Applicant Gary Martin responded in the affirmative, adding that some owners received permission from the City to put up gates.

Commissioner Tryon inquired if everyone had access to their backyard from 24th Street SW on the east side.

Applicant Nancy Martin responded in the affirmative, adding that they do not have to go across anyone else's property to access their backyards. Every homeowner, except for two, on 25th Street have also provided their own access to their backyards. Applicant Gary Martin added that those two homeowners would also have access from 25th Street to their own backyards if they moved some items out of the way.

Commissioner Moe referred to page 80 of the agenda packet, and inquired if it was a recent development that two lots were removed from the request for vacation and supported by the applicants.

Director Raymond responded that the change was prior to the Resolution of Intention.

Commissioner Moe commented that the key phrase in the Legal Department's analysis is whether the Commission "deems it is necessary." People have talked to the popularity of it, desirability of it, and the fairness of it. How does the Commission weigh the necessity of it?

City Attorney Sara Sexe responded that items one through four in the conclusion section of the memorandum pertain to the evaluation the City Commission could make. She also noted that the Commission could utilize any information that is provided by means of the public hearing process. Necessary is defined in the documents she provided. There are a couple of Montana Supreme

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Court cases that deal with it. The necessity is a political decision to be made by the City Commission.

Commissioner Tryon inquired if there was any legal jeopardy for any kind of future litigation by either side of the issue and, specifically, those opposed, who might be able to use a prescriptive easement argument.

City Attorney Sexe responded that folks can sue or be sued for various reasons, and to look at the totality of the circumstances being dealt with. In this specific instance, the easement itself that is at issue talks about potential abandonment. The process for abandoning it for highway purposes is by official action provided by the statute. If it is abandoned all property rights would immediately revert to the first party, or the party on whose easement it attaches. The legal opinion sets forth the basis for the action, both factually with regard to the specific language of the easement at issue and Supreme Court case law in terms of having grounds to consider this and then reasons to consider as to whether or not reasonable access is maintained by all to protect.

Speaking in support of Resolution 10386 were:

Vicky Laraas, 120 24th Street SW, commented that she resides next to Gary and Nancy Martin. She displayed a video from her iPad of a black truck driving around her shed in her backyard, and commented that people use her driveway and the alleyway access to unload trailers and cars. She has paid \$2,000 for gravel for her property due to the damage caused.

Alan Graf, 28 24th Street SW, provided a 2014 letter from a City official stating he can fence off the property as long as he leaves access to utilities.

Becky and Andrew Benbow, 116 24th Street SW, commented that the same vehicle shown on Ms. Laraas's video also drives through their yard. The vehicles disrupt the ground and some have been stuck in the snow or mud. The drainage ditch was filled in when houses were built and it now causes all of the water to drain on the 20' easement property and on about 20' of their property. In the summertime there is, at times, one to two feet of water back there.

Speaking in opposition to Resolution 10386 were:

Roxann Settera, City resident, appeared via Zoom and commented that she needs the alley to access her backyard. The video that was displayed is old. Her son has resided in Billings since 2017. He did get stuck back there one time and needed help to get out. She has not accessed the alley or opened the gate since the beginning of October. Because the ditch has been filled in the properties flood. She did haul in gravel last summer and the cops were called on her for trespassing. When her parents bought the property in 1978 it included the easement. She and neighbor Steve Schoeneman, Lots 2A and 2D, cannot access their backyards from the front of their properties and will not be able to do tree trimming or other maintenance in their backyards if the Martins request for vacation is granted. Ms. Settera concluded that she and Steve Schoeneman should not have to suffer or have liabilities if they cannot access their backyards. She requested that the alley easements behind Lots 2A and 2D remain open.

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Bill Levine, attorney representing Roxann Settera, appeared via Zoom and commented that the most important thing the Commission needs to understand is the physical layout of the properties. Ms. Settera's Lot 2D, 123 25th Street SW, and Mr. Schoeneman's Lot 2A, 121 25th Street SW, do not have access to their backyards because of the way the properties have been subdivided and developed. The Commission is faced with a number of lot owners on the 24th Street SW side who do not like the fact that they bought property that is subject to an easement. The easement has been in place for almost 70 years. They are trying to take away their neighbors' access and are neighbors who do not have other access to their backyards. What the 24th Street SW neighbors are trying to do is unfair to Ms. Settera and Mr. Schoeneman. Attorney Levine urged the Commission to acknowledge that this is not necessary. It is a long-standing easement that was in place when they purchased the properties and should remain in place. The proponents asked the Commission to respect their property rights and to enjoy full use of their property including the 20 feet subject to the easement. What they are asking the Commission to do, however, is to take away property rights from the neighbors on the 25th Street SW side. Taking away the public alley would also greatly diminish Ms. Settera and Mr. Schoeneman's property values by limiting how they can develop their property in the future. The neighbors to the north of Mr. Schoeneman have other access to their backyards. He suggested the Commission vacate a portion of the alley to the north of Mr. Schoeneman.

Mr. and Mrs. Martin responded that there is access through a gate on 25th Street SW to those two lots if the owners moved some things that are in the way. An easement is for emergency and utility vehicles only. They were made aware it was an alleyway when they wanted to put up a fence last summer. When they bought the property they knew about the easement and that it could be accessed by them and emergency vehicles. It was not for public use. They reiterated that since 1952 it has never been used or maintained as an alleyway. That piece of property should go back to the people that are maintaining it and the people that are paying taxes on it.

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

Commissioner Robinson moved, seconded by Commissioner Houck, that the City Commission adopt Resolution 10386 to vacate the alley easement as legally described in the staff report.

Mayor Kelly asked if there was any discussion amongst the Commission members.

Commissioner Houck inquired which City department or official signed off on the 2014 letter that was mentioned, and if there was an accident on that property who would be liable.

City Attorney Sexe responded the person responsible for the accident or injuries that occurred would be liable. If there is an alleyway, there is the potential that the City might be included as well.

Director Raymond responded that Public Works Director Jim Rearden signed the 2014 letter.

Mayor Kelly commented that there is a majority of the neighbors in favor of this. He is in favor of granting this for the neighbors to appreciate full use of their properties that they have being

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paying taxes on. There are many homes in Great Falls that do not have vehicle access to their backyards.

Commissioner Moe asked Attorney Levine to give his perspective on “necessary” being the key consideration for the Commission.

Attorney Levine responded that he agrees with City Attorney Sexe that there is not clear guidance from the Montana Supreme Court on what exactly “necessary” means. It is a discretionary call for the Commission. The proponents want it to be vacated; however, he argued that it does not rise to the level of necessity for the City.

Commissioner Moe commented that petitioners have shown that over the course of a long period of time there seems to be no other solution to prevent there being a continuing nuisance, a hazard, a liability, and an intrusion on their property rights.

Commissioner Tryon commented that he considers it necessary to be in favor of this request to restore the property to the people that have been paying property taxes and maintaining the property all this time. From the documentation, it appears this was never intended to be an alley. Since there is no necessity for the public to drive through there to access one street to another it seems to be a simple, straightforward property rights issue.

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

Motion carried 5-0.

15. **RESOLUTION 10387, CONDITIONAL USE PERMIT FOR A “WORSHIP FACILITY”
LAND USE UPON THE PROPERTY ADDRESSED AS 511 CENTRAL AVENUE.**

Mayor Kelly declared the public hearing open and asked for presentation of the staff report.

Planning and Community Development Director Craig Raymond reported that, if adopted, Resolution 10387 would grant a Conditional Use Permit (CUP) to allow for a Worship facility land use upon the property addressed as 511 Central Avenue. The subject property is zoned C-4 Central Business Core, wherein a Worship facility land use is permitted upon receiving a CUP and adhering to any required conditions. The subject property contains several other suites as well. The applicant has been using a suite as a meeting space for The Potter’s House since February of 2020.

In March of 2020, the City received a Safety Inspection Certificate (SIC) request for the applicant to use the subject property as a Worship facility. The applicant and owner were unaware that the Worship facility land use was permitted only through a CUP in the C-4 Central Business Core zoning district. Additionally, the applicant had already signed a lease with the owner prior to filing the SIC request. To allow the applicant some time to consider his options, the SIC was issued with a condition that The Potter’s House was allowed to occupy the space until September 1, 2020,

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at which time the applicant would either need to relocate or apply for a Conditional Use Permit. Although the applicant did submit the application later than September 1st, they eventually complied with the CUP process requirement. The applicant believes the location best fits the mission of the church and has opted to apply for the required CUP to allow a longer-term stay in their downtown location.

Director Raymond noted that the City Commission recently amended regulations related to location of worship facilities and liquor serving establishments. Until that code amendment, liquor-serving establishments could not be located within 600 feet of worship facilities. Under that scenario, understandably, there would be some level of concern regarding the impact a church could have on the issuance of liquor licenses. Given the Commission's action, this is no longer an issue in consideration of this request.

Mayor Kelly asked if the Commission members had any clarifying questions.

Commissioner Robinson referred to the Agenda Report comment that the Safety Inspection Certificate (SIC) was issued with the condition that The Potter's House was allowed to occupy the space until September 1, 2020, at which time the applicant would need either to relocate or apply for a Conditional Use Permit. He inquired if The Potter's House has occupied the space since September 1st.

Director Raymond responded in the affirmative.

Commissioner Moe inquired if any measure has been taken of traffic patterns or their use of the facility on weekdays or times when there is more occupancy on Central Avenue and the adjoining streets.

Director Raymond responded that it did not appear to staff that they intended to use and occupy the space much during the week when there is traffic that is more significant. His understanding is that there is a group of approximately 25 people that use the space. The space is not a very large space and probably could not grow much larger than that.

Commissioner Moe referred to the Resolution, conditions of approval item 1, and inquired if expansion of use of the property require that they consult with Director Raymond.

Director Raymond responded that, if it were a similar number and similar impact, his department would not consider that to be a substantial change.

City Attorney Sexe added that a substantial change would be if they greatly expanded the footprint or the population of those being served on a daily basis.

Appearing via Zoom and speaking in support of Resolution 10387 was **Brett Doney**, Great Falls Development Authority (GFDA). Mr. Doney thanked the Commission for adopting an earlier ordinance that allows for these types of mixed-uses, and that GFDA is not opposed to the church holding many activities downtown. There is plenty of parking available.

No one spoke in opposition to Resolution 10387.

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

Commissioner Moe moved, seconded by Commissioner Tryon, that the City Commission adopt Resolution 10387 subject to the Findings of Fact and Basis of Decision, and the applicant fulfilling the listed Conditions of Approval.

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

Motion carried 5-0.

OLD BUSINESS

NEW BUSINESS

16. LAND EXCHANGE AGREEMENT BETWEEN THE CITY OF GREAT FALLS AND INDEPENDENCE BANK.

Planning and Community Development Director Craig Raymond reported that for years there has been visions of providing enhanced trail connections on each side of the river through the restoration of the 10th Street Bridge. The project has taken several years to bring it to this point and we find ourselves in a position to secure land on the south side of the river which could be used as a connecting point to our renowned River's Edge Trail system.

Independence Bank has purchased a tract of land along the Missouri River located in between the 9th Street North Bridge and the old 10th Street Bridge. This tract of land is located to the west of the old Falls Construction site and the Missouri River Diner. The City was approached by the bank to engage in a land swap for unusable land along the Missouri River for a piece of vacant land that the City owns along River Drive. The intent of the land swap is for the land along the river to be acquired by the City to facilitate a future trail connection to the 10th Street Bridge and for the bank to gain additional land needed for parking.

The property that the City would convey to the bank will not include property immediately off River Drive. Without knowing what specific improvements may be contemplated, staff feels this is critical land to preserve for possible transportation improvements.

There have been a lot of moving parts to this project and it is a complex project that has demanded significant amount of staff time to ensure the public's interest is served. In order to be transparent, we are aware that the bank has requested additional changes to the agreement in order to accommodate their desire to do a 1031 exchange with this property. This requested change was subsequent to the deadline for staff to submit agenda reports for tonight's meeting. At this point, staff supports the proposed subdivisions and land swap with the bank.

Commissioner Moe moved, seconded by Commissioner Robinson, that the City Commission set a public hearing for April 6, 2021 on the Exchange Agreement of City owned property which is anticipated to be subdivided from a larger parcel and will be described as Lot 1 of the 10th Street Bridge Minor Subdivision in exchange for Independence Bank owned property which is anticipated to be subdivided from a larger parcel and will be described as Lot 2 of the Independence Bank Minor Subdivision.

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Mayor Kelly asked if there were any comments from the public.

Appearing via Zoom and speaking in support of Resolution 10387 was **Brett Doney**, Great Falls Development Authority (GFDA). Mr. Doney commented that GFDA has been working on this site for a number of years through the Brownfield Program trying to move it towards redevelopment.

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

Commissioner Tryon inquired if it was a requirement that City property be vacated before considering a land swap.

City Attorney Sexe responded that staff has followed the ordinance with regard to the consideration of this item. There is no requirement for vacation of the property. It is not dedicated parkland, but land maintained by Park and Recreation.

Commissioner Tryon inquired how the properties were valued at approximately \$65,000.

Director Raymond responded that the properties have been appraised but staff is awaiting the final reports.

Commissioner Tryon requested that the appraisals be included when this item is considered at the public hearing.

Commissioner Robinson commented this is a win-win for everybody. It opens up River's Edge Trail to the end of the bridge.

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

Motion carried 5-0.

17. **CIVIC CENTER FACADE PROJECT (OF 1525.2).**

Planning and Community Development Director Craig Raymond reported that City staff has been working on planning a façade renovation of the Civic Center in earnest at least since 2011. The City Commission has made significant investments in the project to this point through awarding design and construction drawing contracts and putting the project out for competitive bid.

The City conducted the bid opening on March 3rd. Six qualified bids ranging in price from \$7,973,789 to \$5,411,682 were received. The anticipated budget for the project was closer to \$5.5 million. Normally, staff would automatically suggest awarding the bid, but with a project of this magnitude, staff recommends postponing award of the bid until April 6th for more time to interview the apparent low bidder and to conduct reference checks, etc.

Commissioner Tryon moved, seconded by Commissioner Robinson, that the City Commission postpone the construction contract in the amount of \$5,411,682 to Talisman

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Construction Services, Inc. for the Civic Center Façade, and authorize the City Manager to not execute the construction contract documents.

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

Mayor Kelly received confirmation that the bid was considered good until the date set to execute the contract documents.

Commissioner Robinson reported that he wrote to Manager Doyon that Talisman did some of the work when he opened another office in Spokane. He concurs with staff's request for additional time to do their due diligence and supports the motion.

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

Motion carried 5-0.

18. CITY FINANCE OFFICE REMODEL CHANGE ORDER # ONE (OF 1750.0).

Planning and Community Development Director Craig Raymond reported that the City awarded a contract to Wadsworth Builders on November 17, 2020 to remodel the Finance Office area of the Civic Center in order to optimize work space and provide additional work areas for the City legal department. When construction commenced issues were discovered that are not unusual when embarking on remodel projects. While staff was aware that there is asbestos within the Civic Center, it was the hope that it would be left undisturbed in place. That obviously did not work out and appropriate testing and inspection personnel were engaged in order to conduct appropriate testing and monitoring of the abatement of the asbestos and lead materials. The contractor also ran into some unforeseen electrical issues that are addressed through this change order.

This change order also addresses design changes that were requested by the finance department and ADA compliance changes that were addressed at permit plan review subsequent to the award of project contract.

Commissioner Moe moved, seconded by Commissioner Houck, that the City Commission approve Change Order # One in the amount of \$45,344.88 and increase the total contract amount from \$297,000 to \$344,044.88 for City Finance Office Remodel.

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

Mayor Kelly inquired if there was an opportunity to utilize Brownfield funds for this project.

Director Raymond responded in the negative, due to having to pause construction on the project in order to apply for grants or loans.

Mayor Kelly commented that this is an old building and some of this is expected to find things during demo/construction. He noted they could see the same thing with the façade and roof as they

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dig deep into the history of this building. He inquired if there are federal grant programs that the City could look at now that might help mitigate asbestos related or pollutant related costs that might be incurred.

Director Raymond responded that given the nature of the work with the façade it is unlikely asbestos or lead materials would be disturbed, but he will ask the architects and engineers their thoughts.

Mayor Kelly referred to the second paragraph of the agenda report and commented that he would think ADA requirements are at the front of all building contracts and especially in the public service sector. He inquired if the things in the change order were not foreseen.

Director Raymond explained that prior to the plan review the front counter area that faces the public was not going to be modified. All the work to the other space was compliant with current ADA regulations. When the plan review was done it triggered the thought of ADA and building code regulations as they exist today pertaining to new work and/or 20% of a certain dollar amount that has to go towards other elements of ADA improvements.

Commissioner Tryon requested clarification regarding the language in the agenda report pertaining to the opportunity to blend the hallway aesthetics together to provide a more cohesive look. He requested clarification regarding how much of the change order was attributed to blending the hallway aesthetics and who decided that was a necessary part of the remodel.

Director Raymond responded that aesthetics was not the priority. Director Kinzler requested that glass be removed from the doors and part of that area for safety considerations in an effort to make the area more secure. The glass was replaced with drywall and blended in with the rest of the hallway. In addition to ADA costs, the remodeling of the payment window is set forth in the revised cost proposal #6 in the total amount of \$6,482.97.

Commissioner Tryon expressed concern that it looks like it is unnecessary use of taxpayer money.

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

Motion carried 4-1 (Commissioner Tryon dissenting).

19. ODDFELLOWS PARK RESTROOM IMPROVEMENTS (OF 1740.4).

Park and Recreation Director Steve Herring reported that this project is being funded by Park District dollars. The project will include the demolition and removal of the existing restroom in Oddfellows Park, as well as utility and site work for the new restroom. A previously purchased concrete restroom will replace the aging restroom located in Oddfellows Park and will be delivered and installed by CXT of Spokane in conjunction with this project. The new restroom will include an Americans with Disabilities Act (ADA) toilet stall, 4 toilet stalls and 2 sinks on the women's side; and an ADA toilet stall, 2 toilet stalls, 2 urinals and 2 sinks on the men's side. It will also include an ADA drinking fountain unit on the exterior of the building. The prefabricated restroom was purchased from CXT, Inc. and approved by the City Commission on May 19, 2020.

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Commissioner Houck moved, seconded by Commissioner Tryon, that the City Commission award a contract in the amount of \$151,308 to Kuglin Construction for the demolition of the existing restroom in Oddfellows Park, utility and site work for the new restroom, and authorize the City Manager to execute the construction contract documents.

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

Commissioner Robinson expressed concern about how long Oddfellows Park would be without a restroom. He suggested that the phasing order be changed so that the sanitary sewer work and platform be in place before tearing down the current restroom.

Director Herrig responded that the pad and stub ups are a priority to be in place before the restroom arrives. He will discuss the suggestion with the consultant. His understanding is there will be rented porta-potties if the current restrooms are taken out of service prior to opening the new restroom.

Commissioner Moe commented that this is a great example of the Park District at work and is a needed ADA facility.

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

Motion carried 5-0.

20. VALERIA WAY STORM DRAIN PHASE 2 PROJECT (OF 1463.1).

Public Works Director Paul Skubinna reported that this project was initiated to replace aging infrastructure, and reduce surface flooding issues. The original Valeria Way storm drain was installed in the 1920's along the historic Montana Railroad line. The existing 100-year old storm drain line shows signs of deterioration and is generally in poor condition.

Residents have complained that during short duration high intensity rainfall events they are subject to flooding and damage resulting from it. Flooding most notably occurs near the intersection of 26th Street North and 6th Avenue North.

Phase 1 of this project began at approximately 19th Street North and 1st Avenue North, and ended near the intersection of 22nd Street and 3rd Avenue North. The project installed 30-inch Reinforced Concrete Pipe (RCP) and Manholes that connected the two lines. Phase 2 of this project is intended to connect to the work completed under Phase 1, and extend to the intersection of 26th Street North and 6th Avenue North. This phase will also involve adding additional inlet capacity at the intersection of 26th Street North and 6th Avenue North.

Commissioner Robinson moved, seconded by Commissioner Moe, that the City Commission award a contract in the amount of \$1,642,200 to Western Municipal Construction, Inc. for the Valeria Way Storm Drain Phase 2 project, and authorize the City Manager to execute the necessary contract documents.

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

Commissioner Robinson expressed concern about closing 25th Street.

Director Skubinna responded that it is his belief that one lane of traffic on 25th Street will remain open.

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

Motion carried 5-0.

ORDINANCES/RESOLUTIONS

21. RESOLUTION 10389, ADOPTING A POLICY FOR THE USE OF AN AUTOMATED LICENSE PLATE READER FOR PARKING ENFORCEMENT AND STATISTICAL DATA-GATHERING PURPOSES.

Planning and Community Development Director Craig Raymond reported that on November 4, 2020, the City Commission approved the purchase of new parking enforcement equipment and software. The equipment includes new pay stations along Central Avenue which will replace some of the old parking meters, and License Plate Recognition (LPR) cameras that will be mounted on a vehicle that patrols the parking enforcement district. Staff is currently working with vendors to configure the equipment for installation as well as the accompanying software that ties it all together. It is the intent to increase public awareness about the changes and help the community adapt to changing systems. The final action is to adopt the use policy related to the LPR system.

Montana Code Annotated § 46-5-117 sets forth that prior to putting a License Plate Recognition system into service, an agency shall adopt and publicize a specific written policy governing its use. The policy shall at a minimum address the following: A) Use of any database to compare data obtained by the automatic license plate reader system; B) Retention of data associated with the automatic license plate reader system; C) Sharing of the data with another law enforcement agency; D) Training of automatic license plate reader system operators; E) Supervisory oversight of automatic license plate reader system use; F) Access to and security of data; G) Access to data obtained by automatic license plate reader systems not operated by the law enforcement agency; and H) Any other subjects related to automatic license plate reader system use by the law enforcement agency.

The policy attached to Resolution 10389 represents the policy that City staff as well as the City's designated and contracted parking enforcement contractor will be required to adhere to at all times.

Commissioner Robinson moved, seconded by Commissioner Moe, that the City Commission adopt Resolution 10389, adopting a policy for the use of an automated license plate reader for parking enforcement and statistical purposes.

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

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Commissioner Robinson inquired if the policy would come before the Commission for approval.

Director Raymond responded that the policy is attached to the Resolution for approval.

In response to Commissioner Moe's inquiry, Director Raymond noted that the other cities in Montana that have similar policies are Missoula and Bozeman.

Commissioner Tryon inquired if Director Raymond has heard any significant privacy concerns.

Director Raymond responded that is why the state law was adopted and why the City is adopting a policy for use and not misuse.

Commissioner Houck commented that she is promoting this and it will be a benefit to make parking fair and available.

Commissioner Moe added that the Parking Advisory Commission also did a good job of asking questions about this that Director Raymond was responsive to.

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

Motion carried 5-0.

CITY COMMISSION

22. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS

Mayor Kelly suggested the Commission go back to meeting in the Civic Center at the first meeting in May. As of April 1st, anyone over the age of 16 in the State of Montana can sign up to receive the vaccine that will be a great benefit to the community.

Commissioner Robinson concurred, but suggested that masks be required for another month or two.

Commissioner Moe commented that it is helpful for the Commission and the public to have a date certain. She suggested that the phone is a convenient option that should be continued to accommodate public comments.

23. LEGISLATIVE INITIATIVES.

None.

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ADJOURNMENT

There being no further business to come before the Commission, **Commissioner Moe moved, seconded by Commissioner Robinson, to adjourn the regular meeting of March 16, 2021, at 9:14 p.m.**

Motion carried 5-0.

Mayor Bob Kelly

City Clerk Lisa Kunz

Minutes Approved: April 6, 2021