

Regular City Commission Meeting

Mayor Winters presiding

CALL TO ORDER: 7:00 PM

PLEDGE OF ALLEGIANCE – Knights of Columbus

MOMENT OF SILENCE

ROLL CALL: City Commissioners present: Michael Winters, Bob Jones, Bill Bronson, Fred Burow and Bob Kelly. Also present were the Deputy City Manager; City Attorney; Directors of Fiscal Services, Planning and Community Development, and Public Works; Police Captain; and the City Clerk.

AGENDA APPROVAL: No changes were proposed by the Deputy City Manager or City Commission. The amended agenda as submitted was approved.

PROCLAMATIONS: Mayor Winters read proclamations for the 50th Anniversary of the 1964 Flood and 60th Anniversary of “under God” in the Pledge of Allegiance.

**** Action Minutes of the Great Falls City Commission. Please refer to the audio/video recording of this meeting for additional detail. ****

NEIGHBORHOOD COUNCILS

1. SWEARING IN CEREMONY

Mayor Winters swore in Aaron Purcell, representative of Neighborhood Council 4.

2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Richard Calsetta, NC 3, updated the Commission with regard to the Council’s May meeting. He also reported that the neighbors that did attend the council meeting oppose the casino that is being proposed in Item 18 of this agenda.

CONSENT AGENDA

- 3.** Minutes, May 20, 2014, Commission meeting.
- 4.** Total Expenditures of \$2,212,289 for the period of May 10-29, 2014, to include claims over \$5,000, in the amount of \$1,974,608.
- 5.** Amended Contracts list.
- 6.** Grants list.
- 7.** Approve 2014 Community Transportation Enhancement Program Projects.
- 8.** Reject bids for 2014 Traffic Counters.

9. Declare equipment as surplus.
10. Award contract in the amount of \$256,653.50 to United Materials of Great Falls, Inc. for the 2013 CDBG 3rd Avenue North Improvements. **OF 1659**
11. Award contract in the amount of \$1,178,749 to Phillips Construction LLC. for the Lower South Side Water Main Replacement – Phase I. **OF 1465**
12. Award contract in the amount of \$125,000 to Hydromax USA for Engineering Services associated with the Sanitary Sewer Trunk Line Inspection. **OF 1674**

Commissioner Burow moved, seconded by Commissioner Kelly, that the City Commission approve the Consent Agenda as presented.

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

Commissioner Burow inquired if the use fee set forth in Item 5A was a fair fee for park usage.

Deputy Manager Reichelt responded that the park usage fees are minimal.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

BOARDS & COMMISSIONS

13. **MINOR SUBDIVISION OF THE AMENDED PLAT FOR PROPERTY ADDRESSED AS 319 24TH AVENUE SOUTH.**

Planning and Community Development Director Craig Raymond reported that the applicants are requesting a minor subdivision of the subject property, which consists of ±1.0 acre. The request is to subdivide the property into two lots. The proposed western lot will become Lot 29A and the proposed eastern lot will become Lot 29B. Proposed Lot 29A will be 0.79 acres and has an existing single-family residence on it. Lot 29B will be 0.22 acres and the applicants intend to build an additional single-family residence. The site plan for the proposed subdivision provides for adequate ingress and egress to each lot. The entire property is zoned single-family and each of the proposed two lots will meet the minimum standards for R-3 Single-Family High Density District.

At its meeting on May 13, 2014, the Planning Advisory Board recommended that the City Commission approve the Amended Plat.

Commissioner Kelly moved, seconded by Commissioner Bronson, that the City Commission approve with conditions the Amended Plat of the subject property and accept the Findings of Fact.

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

Commissioner Burow inquired about a 47 foot space shown on the Amended Plat between the

proposed Lot 29A and Grandview Tracts.

Director Raymond responded that space is for secondary access to Lot 29A.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

14. APPOINTMENTS, TOURISM BUSINESS IMPROVEMENT DISTRICT.

Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission reappoint Scott Schull to a four-year term through June 30, 2018, and appoint Scott Arensmeyer to fill the remainder of a four-year term through June 30, 2015, to the Tourism Business Improvement District Board of Trustees.

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

Commissioner Bronson commented that there have been questions about the process the Commission uses to appoint people to various Boards and Commissions. In this instance, none of the Commissioners have had any discussion amongst themselves prior to this evening. The information was presented to the Commission in a staff report. The TBID considers those people who want to serve on its board, and Mr. Arensmeyer was recommended by his employer. It was the unanimous recommendation of the TBID that he receive the nomination.

He further noted that the Commission frequently defers to its boards and commissions for guidance and its recommendations.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

15. REAPPOINTMENTS, HOUSING AUTHORITY BOARD.

Commissioner Jones moved, seconded by Commissioners Burow and Kelly, that the City Commission reappoint Jim Weber to a five-year term through June 30, 2019, and reappoint Marquita Ogawa and Dan Price as tenant members to two-year terms through June 30, 2016, to the Great Falls Housing Authority Board.

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

Commissioner Bronson noted that these people are recommended appointments from the Housing Authority Board.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

16. REAPPOINTMENT, LIBRARY BOARD.

Commissioner Kelly moved, seconded by Commissioner Bronson, that the City Commission reappoint Dea Nowell to a five-year term through June 30, 2019, to the Library Board.

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

Commissioner Bronson noted that she was also a recommendation of the Library Board.

Mayor Winters asked if there were any comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

17. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

There were no miscellaneous reports and announcements from representatives of Boards and Commissions.

PUBLIC HEARINGS

18. RESOLUTION 10069, CONDITIONAL USE PERMIT TO ALLOW THE RE-ESTABLISHMENT AND EXPANSION OF A NON-CONFORMING TYPE-1 CASINO.

Planning and Community Development Director Craig Raymond reported that this public hearing pertains to the re-establishment of an existing non-conforming use as a Type-1 Casino. At the conclusion of a public hearing held April 8, 2014, the Zoning Commission passed a motion to recommend that the City Commission approve the Conditional Use Permit (CUP) to re-establish and expand a Type-1 Casino subject to certain conditions.

Director Raymond commented that he would address as many of the questions or concerns that have been raised to clarify the reasoning for staff's recommendation for approval and also why the Commission clearly has the authority to approve or deny this permit. He explained that, to understand the basis of decision, one needs to look to the land development code in order to establish by what criteria a CUP is judged. In this case the appropriate code section is OCCGF 17.16.36.040 titled "Basis of Decision."

The Zoning Commission's recommendation and the City Commission's decision to approve, conditionally approve, or deny an application shall be based on whether the application, staff report, public hearing, Zoning Commission recommendation, or additional information demonstrates that each of the following criteria have been satisfied:

1. The conditional use is consistent with the City's growth policy and applicable neighborhood plans, if any. The proposed Conditional Use Permit is consistent with the overall intent and purpose of the 2013 City Growth Policy Update. This project supports the physical portion of the Growth Policy, specifically the goals to:

1) promote infill development that is compatible with the scale and character of

- established neighborhoods;
- 2) encourage the redevelopment or adaptive reuse of underutilized land; and
- 3) support actions that bring the properties into conformance with the City's Land

Development Code. This particular project significantly enhances the site not only visually but it also brings the site into conformance with respect to landscaping, setback requirements, signage, and parking.

2. The establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort or general welfare. The subject property is located along a developed commercial corridor. By encouraging redevelopment of this site, the City will expand the tax base, eliminating blight and establishing a positive development environment for the sustainability of the neighborhood. Some previous comments expressed concern over the moral benefit or the danger to children in the neighborhood. It should be noted that the Montana Legislature decided long ago that gambling and casinos were a lawful business and therefore the City of Great Falls is significantly limited to the extent which it can regulate these uses.

3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. This site is surrounded by other (C-2) General Commercial sites. The River City Casino was previously established at this site, as well as the Burger Master Restaurant. By replacing the building and use, the surrounding property values should be improved by removing an old blighted structure and replacing it with new aesthetically pleasing structures, landscaping, signage, and parking. Nothing in the proposed project seems to limit the use and enjoyment of neighboring properties.

4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. The proposed casino will not impede the development and improvement of the surrounding property. As this property is brought into compliance with the landscaping, lighting and parking codes of the City, it will likely encourage the surrounding properties to do the same. It should also be noted that Type-1 Casinos are an allowed use in the C-2 zoning district so it had been pre-determined that Type-1 Casinos were reasonably compatible with the surrounding uses.

5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided. 1905 4th St NE has three established roads surrounding the property with utilities in all three roads. Water is easily accessed from 3rd Street NW. Sewer, water and storm water are located in 4th Street NE. There is also a water and storm water line in Smelter Avenue NE.

6. Adequate measures have been or will be taken to provide ingress and egress so as to minimize traffic congestion in the public streets. The site has access points from each road. This will allow circulation throughout the site with the main access off 4th Street NE. The access on 3rd Street NW is currently a right in, right out only and will remain as is. With the proposed development of the site, a second existing access onto 3rd Street NW was deemed to be too close to 4th Street NE and will be closed and the curb replaced.

7. *The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission. With the exception of City Code Section 17.20.6.140 (D) (1), which reads, "Casinos shall not locate within 600 feet of an educational facility (K through post-secondary), worship facility, park or playground. The distance shall be measured by direct-line, without regard to intervening structures or streets, between closest property boundaries," this property will conform to all applicable regulations for the C-2 Zoning District as well as the Special Exceptions for a Casino Type-1 as found in section 17.60.4.20 (which is the sign code), and 17.20.6.140 (which is special standards for principle uses). The code clearly states that the City Commission has the authority to use its discretion in deciding whether this particular CUP is appropriate for this particular site.*

There has also been some discussion disputing the timing of this project and whether it complies with the time limit specified to re-established non-conforming uses, specifically that pursuant to Section 17.64.030 construction must have been completed within 24 months from the date it was razed. Section 17.64.030 does not apply to this situation as it pertains to non-conforming "structures." The building in question was not known to be non-conforming nor are the applicants requesting any variances insofar as lot area, setbacks or zoning requirements are concerned.

The relevant issue tonight is that the former casino was a non-conforming "use." There is a distinct difference between a "use" and a "structure" as far as regulations are concerned. Clearly the code states that construction of a non-conforming structure shall be complete within 24 months. The code makes no such construction statement pertaining to use. In fact the applicant made significant and tangible steps to re-establish the use prior to the 24 month deadline and the granting of the conditional use permit tonight, if approved, will further re-establish this use.

Further, there has been some confusion between particular provisions in the State regulations for liquor and casino licensing. The City Commission has no authority or obligation to enforce the State licensing regulations. The State Department of Revenue is the agency which processes these State licenses. If the applicant fails to obtain the required State licenses then the Conditional Use Permit shall be null and void. To be sure, the applicant shall abide by and continue to follow both State and City regulations pertaining to liquor licensing and casinos as stated as a recommended condition of approval.

Mayor Winters declared the public hearing open.

Speaking in support of Resolution 10069 were:

Gregg Smith, Attorney at Law, 104 2nd Street South, representing applicant MRO, Inc., presented a petition containing about 500 signatures in support of MRO, Inc.'s plans to re-build the River City Casino. Mr. Smith also presented several photos depicting the site of the former River City Casino. He reported that the 600 foot rule has to do with casinos, not bars. If applicant didn't apply for a gaming license, MRO could open a bar at that location without a conditional use permit to do so. Applicant chose to reestablish a long established historical use on this property. He noted it was clear in the zoning determination made in August, 2012, that the applicant may redevelop the property and were given permission to do so. Applicant will spend significant resources to put in landscaping on the north side, and the word "casino" will not

appear on the side of the building facing the church at issue. He added that this is a commercial corridor that is properly zoned.

Mr. Smith reviewed Montana State Law regarding proximity, specifically § 16-3-306, MCA, "Proximity to churches and schools restricted," and ARM 42.12.129, "Determination of proximity to place of worship or school." As indicated on the application, applicant marked "no" that the entrance doors of the premises proposed for licensing on the same street as, and within 600 feet of, the entrance doors of a building occupied exclusively as a church, synagogue or other place of worship or school. On May 29, 2014, applicant was given conditional approval to go forward to construct the building by the Montana Department of Revenue.

He further addressed that the original alcohol beverage license was in place prior to the church building permit being issued; public notice requirements were properly met; and, objections regarding alcohol or drunk driving are not relevant.

Mr. Smith continued that this is the fifth meeting he has attended seeking the City's permission to invest in a building on this property. Mr. Smith concluded that they respect the objectors' moral position, but gambling is legal. This is not the place to be the moral arbiters of a legal activity.

Mr. Smith asked the Commission to consider the property rights of the applicant. The applicant acquired the property at significant cost based upon its use for its business. If the CUP is not approved, it would be a significant infringement on applicant's ability to develop the property. While the use may be offensive to others, it is a use that existed at this location for 30-40 years.

At the request of Commissioner Bronson, Mr. Smith reiterated the steps taken at the state and local level to pursue, ultimately, the development of the property from acquisition of the property to today.

Steve L'Heureux, 1826 3rd Avenue North, reported that L'Heureux, Page, Werner are the design architects for the project. He displayed a rendition of the proposed building. Mr. L'Heureux reported that applicant has exceeded the landscape code requirements and that the partners do business locally.

Doug Palagi, 4500 Lower River Road, commented that the partners have decided to not have any signage on the north side of the building facing the church. Mr. Palagi provided background information of each of the partners in this project. He reported that he and his partners have completed seven commercial projects in Great Falls, employ 55 local people with an annual payroll exceeding \$1 million dollars, and give back to this community through charitable donations and contributions.

He further provided historical use information on the property going back to 1963 when Charlie Miles operated the Riverview Lounge with a beer and wine license.

Brett Doney, Great Falls Development Authority, 300 Central Avenue, commented on the importance of rules and knowing that the rules are going to be fairly applied from a business investor's standpoint to create some certainty in the process. He further spoke in support of redevelopment of the corridor on the west side.

Speaking in opposition to Resolution 10069 were:

Kathy Gessaman, 1006 36th Avenue NE, commented that when the legislature enacted § 16-3-306 in 1937 people were concerned about the distances between schools, churches and parks and businesses that have retail licenses. She read OCCGF 17.64.020 (3) and (4) regarding non-conforming uses. Ms. Gessaman suggested that the applicant should have notified Corpus Christi Church rather than waiting for the Neighborhood Council 3 meeting. She commented that there will not be 600 foot border to border between the church and casino, and the River City Casino sign facing 4th Street NE will be visible from Corpus Christi Church. She feels it is morally offensive. She provided a petition containing 261 signatures opposing the proposed River City Casino locating near a church.

Derek Oestreicher, legal counsel for Corpus Christi Church, commented that the 560' distance between the entrance to the casino and the entrance to Corpus Christi Church is a violation of City Code. On that basis, Corpus Christi Church believes the non-conforming use should be denied. Mr. Oestreicher commented that there is no distinction between a conditional use and a conditional use structure. City records indicate that the former River City Casino discontinued its operation on June 30, 2012. He read OCCGF 17.64.030 (1) and (2), and OCCGF 17.64.020 (4), and concluded that if the operation ceased June 30, 2012, the clock is nearly at midnight for the conditional use structure to be built, and that it's an impossibility to re-establish a conditional use within 24 months in these circumstances.

Mr. Oestreicher commented that there is no distinction between OCCGF 17.64.030 (2) stating that if a non-conforming structure is moved for any reason for any distance it shall thereafter conform with City Code, and OCCGF 17.64.020 (3) stating that a non-conforming use shall not be moved, in whole or in part, and therefore is irrelevant. This structure, as proposed, will be moved. It will be moved so much that it will have a completely new address which he suggests is in violation of City Code. He urged the Commission to deny the Conditional Use Permit.

Sue Dickinson, 620 Riverview Drive East, appreciates the legal aspects that have been discussed because, as City Commissioners, the decisions must be in conformity with the law. Ms. Dickinson commented that her first reaction was "not another casino." She reported that when she was in the legislature she tried to bring forth legislation to have the State take some of the tax money that came from gaming machines to put into the council that helps provide services, support and treatment for people who have gambling additions. Ms. Dickinson suggested it was time to rethink what is appropriate as far as development for the community and use property more beneficial to the community.

Father Ryan Erlenbush, Corpus Christi Parish, commented that he is not challenging people's morals that frequent casinos, but is opposed to the casino being next to this parish of young families and children. He stated that the moral conscience of this city knows that we ought not to have casinos next to churches and places where there are children, and that is the reason for the 600 foot rule. Father Erlenbush commented that applicant made a business commitment, but there is a certain amount of associated risk. He concluded that the Commission is under no moral obligation to approve applicant's request.

Keith Johnson, 690 Millegan Road, commented that he feels the area would be better served with some other type of revenue generating business.

Bob Gerlach, 4104 Sour Dough Road, member of Corpus Christi Parish, reviewed by area the number of bars and casinos in Great Falls from the 2012/2013 Russell Country Phone Directory. He suggested convincing the property owners to use the property for a use good for the community and not something that distracts from society.

Tracy Johnson, 690 Millegan Road, member of Corpus Christi Parish, commented that Corpus Christi regularly hosts Alcoholics Anonymous meetings. People come to the parish for healing from their addictions. She believes that a bar and casino located close to the parish would be detrimental to that healing process.

Diana Crocker, 836 29th Avenue NE, suggested not compromising City Code for a business.

Sarah Zook, 3917 14th Avenue South, member of Corpus Christi Parish, commented that several of staff's responses were not related to the issues at hand and were not related to the facts of the case. She commented that citizens are here to say this proposal does not preserve the character of the neighborhood or follow the intent of the law. Ms. Zook referred to the zoning determination letter dated August 20, 2012, and stated that was for the original location, not the Burger Master location. What is being proposed now has moved over and expanded on an additional site. City Code does not say it is okay to expand a non-conforming site if the applicant chooses to make it aesthetically pleasing. Ms. Zook further commented that the reason casinos exist is because they make a profit, and that profit comes at the expense of our citizens.

Bill Ross, 85 Chisholm Trail, Cascade, MT, member of Corpus Christi parish, asked the Commission to consider that it also has the ability to reject this project. Mr. Ross commented that the casino is proposed within the 600 foot buffer. Approval of this project would adversely affect the enjoyment of the parish's use of adjacent property. Mr. Ross concluded that it's not too late to vote in opposition of this project.

Richard Calsetta, 56 32nd Avenue NE, commented that there is a responsibility according to the conditions of the Conditional Use Permit, specifically 3 that reads, "The establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort or general welfare." Mr. Calsetta noted that Jaycee Park is greatly utilized by youth. He opined that there is an added potential of someone coming out of the proposed facility without the ability to drive correctly. He believes there to be a moral issue with alcohol and gambling problems. He encouraged the Commission to give just as much weight to the neighbors' concerns as City Code. He concluded that the property should be used for the neighbors' enhancement.

Charna Seibert, 221 21st Avenue NW, member of Corpus Christi parish, commented that when she moved back to Great Falls she was overwhelmed with the number of casinos. She feels it is an eyesore in the community. As a banker in the community, she deals with customers and sees firsthand the troubles from alcohol and gambling problems.

Patricia Mooney, 223 Cooper Drive, Cascade, MT, member of Corpus Christi parish, concurred with Charna Seibert's comments. She added that she lost a husband due to a direct cause of gambling and alcohol, and her son did one year in prison because of casinos and gambling.

Ron Gessaman, 1006 36th Avenue NE, commented that visitors don't have a very good image of

Great Falls. Mr. Gessaman read OCCGF 17.64.010. He commented that approval of the project would allow the non-conforming use to continue. The new proposed casino is being proposed on a different, larger parcel and is a huge expansion. City Code does not allow the expansion of a non-conforming use. He also expressed disappointment that the church wasn't directly notified.

John Hubbard, 615 7th Avenue South, commented that gambling is an addition, and that approval of this project would be due to additional tax monies.

Margie Ross, 85 Chisholm Trail, concurred with prior speakers in opposition. She urged the Commission to consider all comments made and not approve this project.

Written correspondence in opposition to Resolution 10069 was received from **Anita Hunter**, no address provided.

There being no one further to address the Commission, Mayor Winters closed the public hearing.

Commissioner Bronson inquired if OCCGF 17.64.020(A)(3) applies to this project.

Director Raymond noted the conflicting language. He responded that he took into consideration the entire section of the code, and felt the best approach to address the situation would be to use the Conditional Use Permit provision and go through this process to let the Commission determine if it was appropriate or not. He read OCCGF 17.16.36.040(7) and concluded that the Commission may determine if this application is appropriate in this particular situation given all of the facts.

City Attorney Sexe concurred that some of the ordinances have some internal inconsistencies, but it grants the Commission the discretion to make the decision under the circumstances.

Mayor Winters commented it appears there is confusion on both sides of this issue.

City Attorney Sexe commented that there was some discussion regarding Montana Code and Administrative Rules of Montana that deal with something different than the Official Code of the City of Great Falls which is what the Commission is dealing with this evening.

Commissioner Kelly moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 10069.

Mayor Winters asked if there was any further discussion amongst the Commissioners.

Commissioner Burow inquired if there were plans for a restaurant in the proposed casino and was informed by the applicant there were not.

Commissioner Bronson commented that his personal beliefs based upon his religion are not a basis for him to vote against a proposal like this. As the City Code makes clear if an applicant comes before this body with a request for the Commission to approve a conditional use permit, the Commission has to consider seven criteria. In order to grant the permit, the Commission has to make a finding that the applicant has met all seven of those criteria. It's not a question of moral judgment or conscience, but what the law requires the Commission to consider. Staff

responded to this application in a professional and thorough manner and followed the process.

Commissioner Bronson reviewed criteria set forth in OCCGF 17.16.36.040 Basis of decision. With respect to paragraphs 1, 4, 5, and 6, the evidence clearly preponderates in favor of approving the Conditional Use Permit. There was more discussion regarding whether the conditions of 2, 3 and 7 have been met. After balancing and considering everything that has been said, he thinks those conditions are also satisfied.

Commissioner Bronson reported that in 1972 the voters in the State of Montana voted by an overwhelmingly majority to allow the legislature to regulate gambling. He understands that offends many people's sense of conscience and morality. The forum to address those issues needs to be taken up with the Montana State Legislature.

He pointed out that this area is already zoned C-2. But for the issue of the proximity to the church, the applicant could have located a casino there without a CUP. The only thing from his review that made this a non-conforming use was the fact that an ordinance was passed in 2005 adding a requirement which, if the Commission were to ever consider a casino again, the Commission would have to consider the possibility of the 600 foot rule.

The Constitution of the State of Montana recognizes the right of citizens to own and use property. It also provides corresponding responsibilities that an owner and user of property must recognize. The Commission is tasked with balancing the rights of the property owners to develop the property as they so choose with the other community interest, subject to the State already having preempted the subject of whether or not gambling is going to be permitted. Considering all of the factors, he doesn't think condition two was violated.

He believes condition three was met as well. The site that is going to be used for this casino, and that is already surrounded by similar properties, had a bar and casino there for several years even before the actual start of the church in the mid-1960's. He has heard no evidence that would suggest that adjacent properties are going to be specifically damaged in some way.

Condition seven seems to be where the issue of the 600 foot requirement and the issue of whether or not this non-conforming use has been discontinued in some way. The Commission is allowed to make modifications in regulations if the Commission deems it appropriate given all the circumstances. With respect to the issue of the non-conformity, the most appropriate interpretation of the ordinances is there has not been a change in ownership, they have taken affirmative steps to redevelop the property within the period of time required by the ordinance. He further reported that there is a lot of case law in land use issues that indicates when the Commission is interpreting its ordinances about discontinuance of a use, the Commission has to be mindful of what the intent of the property owner was at the time. If there is any indication that it was not the intent to abandon the property and to redevelop or continue with that use and that they take affirmative steps within the time required, he believes a court would conclude they have not discontinued the use within the time period.

With regard to the 600 foot rule, there was a prior use here and the only thing that has made it non-conforming was the adoption of an ordinance in 2005. Commissioner Bronson concluded that he is reluctant to apply the 600 foot requirement in this particular situation given the particular history, and given the other legal ramifications.

Mayor Winters added that he has been a member of St. Luke's Church (now known as Corpus Christi) since its inception. However, the Commission cannot legislate morals. The property owners have a right to construct what they want on that piece of property as long as it falls within the parameters of what Commissioner Bronson has pointed out.

Commissioner Jones commented that it's a reestablishment of a prior use dating back to 1963 and that needs to be taken into consideration.

Commissioner Kelly noted his appreciation for the concerns expressed and the level of civility.

Commissioner Burow reiterated concerns that were raised and Director Raymond responded.

There being no further comments, Mayor Winters called for the vote.

Motion carried 5-0.

OLD BUSINESS

NEW BUSINESS

ORDINANCES/RESOLUTIONS

19. **CORRECTED RESOLUTION OF INTENTION 10077, INTENTION TO VACATE 26TH AVENUE SOUTHWEST.**

City Attorney Sara Sexe reported that before the Commission is Corrected Resolution of Intention 10077, regarding the property being proposed by the Hilton Garden Inn. The public hearing date was corrected, and well as clarifications made regarding vacation of a street versus closure of the street to clearly indicate the intent.

Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission adopt Corrected Resolution of Intention 10077.

Mayor Winters asked if there was any discussion amongst the Commission or comments from the public. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

PETITIONS AND COMMUNICATIONS

20. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

- A. **Brett Doney**, Great Falls Development Authority, 300 Central Avenue, reported that Lo-N-Bro announced its expansion of a fabrication shop and purchase of a 52-acre site, and that Avmax and Emteq continue to grow. He further reported that the employment rate is down to 3.8% in Great Falls. Part of that is to make sure there is housing available so that Great Falls can continue to be an affordable community as it grows. To that end, the GFDA loan committee recently approved a bridge loan for the Talus Apartment Complex to get that project under construction. Mr. Doney concluded that for the eighth consecutive year, Great Falls climbed 11 spots in the ranking of economic strength of all 381 US metro areas.

- B. **John Hubbard**, 615 7th Avenue South, commented that the people of Great Falls approved the school levy resulting in higher taxes. Mr. Hubbard opined that increases in water and sewer rates are for increases in pay to staff rather than replacing old water and sewer lines.

CITY MANAGER

21. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Deputy City Manager Jennifer Reichelt reported that the topic for the June 17th Work Session is a presentation regarding the new Convention & Visitors Bureau (CVB) plan for operations at the Visitor's Center starting in July. Brett Doney, Carol Lindseth and Karen Venetz will discuss the new plan. She also announced that the public is invited to a visioning session at the Visitor's Center on Thursday. No changes were proposed by the Commission.

Deputy Manager Reichelt reviewed future Work Session topics that include the budget, licensing fees of the Planning and Community Development and Fire Departments, a risk management annual report, a Montana Defense Alliance update, a child abuse update, and quarterly budget updates. No changes or additional topics were proposed by the Commission.

With regard to Commissioner Burow's inquiry regarding park fees, Deputy Manager Reichelt clarified that the going rate for park rentals starts at \$35 dollars.

She also announced that Neighborhood Council 6 is hosting an ice cream social tomorrow at 7 p.m. at Verde Park in celebration of new playground equipment installed at Verde Park.

She further announced that the Water Park opens Friday, the Animal Shelter is running a promotion "9 lives for \$9 the entire month of June," and that on June 12th there will be an anniversary event of the 50 year flood being held in the Gibson Room.

CITY COMMISSION

22. **MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

In response to Mr. Hubbard's comments regarding increases in water and sewer rates, Commissioner Burow reported that pipes have been replaced significantly reducing the number of water main breaks, as well as installation of sewer liners resulting in cost savings. He concluded that there were also millions of dollars of upgrades at the water and sewer plant.

23. **COMMISSION INITIATIVES.**

There were no Commission initiatives.

ADJOURNMENT

There being no further business to come before the Commission, **Mayor Winters adjourned the regular meeting of June 3, 2014, at 9:48 p.m.**

Motion carried 5-0.

Mayor Michael J. Winters

City Clerk Lisa Kunz

Minutes Approved: June 17, 2014