

Regular City Commission Meeting

Mayor Winters presiding

CALL TO ORDER: 7:00 PM

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

ROLL CALL: City Commissioners present: Michael Winters, Bill Bronson, Bob Jones, Mary Jolley and Fred Burow. Also present were the Deputy City Manager; Chief Prosecutor; Directors of Planning and Community Development, and Public Works; Taxes and Assessments Technician; Police Captain; and the City Clerk.

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

NEIGHBORHOOD COUNCILS

1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

There were no miscellaneous reports and announcements from Neighborhood Council representatives.

BOARDS & COMMISSIONS

2. PRELIMINARY PLAT AND FINDINGS OF FACT FOR THE AGRI-TECH INDUSTRIAL PARK.

Planning and Community Development Director Mike Haynes reported that this item is a request to approve the Preliminary Plat and Findings of Fact that support the subdivision for the ±196.549 Agri-Tech Industrial Park proposed to be developed in the general vicinity of 18th Avenue North and 67th Street North. At a public hearing held on July 10, 2012, the Planning Advisory Board/Zoning Commission recommended that the City Commission approve annexation and the preliminary plat and assign I-2 (Heavy Industrial) zoning to the subject property.

The next steps in the process for this project are for the City Commission to consider preliminary plat approval, the requested action tonight, and then for the Planning Board to consider approval of the Final Plat. Both of those actions are ministerial, meaning that approval must be granted if the subdivision is established in conformance with local subdivision regulations and the review criteria in state statutes. Following the Planning Board's approval of the Final Plat, the City Commission will be asked to set and conduct a public hearing to consider annexation and initial zoning of the subject property.

Commissioner Burow moved, seconded by Commissioner Jolley, that the City Commission approve the Preliminary Plat of Agri-Tech Industrial Park and the accompanying Findings of Fact subject to fulfillment of conditions stipulated by the Planning Advisory Board.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters asked if there were any inquiries from the public.

Kathy Gessaman, 1006 36th Avenue NE, inquired if the applicant would be required to comply with the Joint Land Use Study (JLUS) agreement. Director Haynes responded that the JLUS is not regulatory in nature. There is nothing in the JLUS agreement that would apply to the project as proposed.

Ms. Gessaman expressed concerns and inquired about costs associated with this project. She commented that it is important not to get the taxpayers involved.

Ms. Gessaman inquired if, as a condition of approval, a requirement could be imposed upon Great Falls Development Authority (GFDA) to grant Mr. Stanek right-of-way to put in his rail spur to progress his project. Commissioner Bronson responded that his understanding of subdivision law is that would be an inappropriate requirement to place on an applicant; it would be illegal.

Ms. Gessaman made suggestions about the rail crossings being signed in accordance with the railroad guidelines rather than blowing whistles by base housing, and that the Commission wait to approve this item until confirmation that the EDA grant is approved.

Brett Doney, Great Falls Development Authority, 300 Central Avenue, thanked City and Planning Board staff for their work at getting to this point.

Stuart Lewin, 615 3rd Avenue North, member of Missouri River Citizens, doesn't believe it is proper for the Commission to take action until the decisions made by City and GFDA staff are given the proper environmental review and considerations made on the impact on Giant Springs. He also expressed concerns he has with Commissioners sitting on the GFDA Board.

Ron Gessaman, 1006 36th Avenue NE, read portions of exhibits attached to the agenda report concerning PPL and Montana State Parks recognizing the Giant Springs area as an important recreational area and economic benefit to the community. He doesn't believe TIF's are fair to the taxpayers.

Mike Witsoe, 510 11th Street South, announced several groups/organizations he is involved with and, on behalf of those groups/organizations, say "no" to this.

Brad Talcott, 2801 4th Avenue North, commented he works at 4415 River Drive North in the North Park Industrial Park established over 30 years ago. His business is in the vicinity of the location being discussed and is equally close to the river. They respect the river and wouldn't do anything to damage it. He sees no reason why this industrial park would be any different. He attended the kick off for updating the growth policy. He believes the only thing that will drive growth in Great Falls is jobs. This is an opportunity to make that question of growth in Great Falls relevant by driving jobs in our area for people to make a living. He requested the Commission approve this item as presented.

With regard to Mr. Lewin's comments about the Commissioners also sitting on the GFDA Board, Mayor Winters commented that his decisions are based solely for the benefit of the City of Great Falls, not on his personal feelings. He would do nothing to harm the river or prevent jobs from coming here.

Commissioner Bronson commented that approval of the preliminary plat is a ministerial act if City

staff and Planning Board believe basic requirements have been met. He thinks the Commission is honor bound to approve the preliminary plat. That does not close the door to more robust discussions about issues when the final plat and annexation agreement are considered. When also serving as the City representative on the GFDA Board, none of the commissioners have participated in the Agri-Tech Park discussions, they have recused themselves from any formal action concerning it, and none of them are bound to agree with GFDA on subjects. There is no need for the Mayor or Commissioners to recuse themselves from voting on such things as the preliminary plat, annexation or anything else concerning the park.

Gene Thayer, 220 40th Avenue S, Great Falls Development Authority Board of Directors, commented that the GFDA has done nothing to be an impediment to the Great Bear project.

Motion carried 5-0.

3. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

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

PUBLIC HEARINGS

4. TOURISM BUSINESS IMPROVEMENT DISTRICT 2012/2013 BUDGET AND WORK PLAN (TBID 1307).

Karen Venetz, Tourism Business Improvement District, inquired if the Commission had any questions about the budget and work plan.

Mayor Winters declared the public hearing open.

Karen Venetz, TBID, and **Brett Doney**, GFDA, spoke in support of approval of the budget and work plan.

No one spoke in opposition to the Tourism Business Improvement District 2012/2013 Budget and Work Plan.

Commissioner Jolley inquired the amount of the increase in the budget. Ms. Venetz reported \$40,000, which means 40,000 more rooms were rented than the previous year.

Mayor Winters declared the public hearing closed.

Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission accept the 2012/2013 Tourism Business Improvement District (TBID) Budget and Work Plan.

Mayor Winters asked if there was any further discussion amongst the Commissioners. Commissioner Jones thanked Karen Venetz and expressed appreciation to the TBID Board.

Motion carried 5-0.

5. **BUSINESS IMPROVEMENT DISTRICT 2012/2013 BUDGET AND WORK PLAN.**

Joan Redeen, Business Improvement District, inquired if there were any questions regarding the budget and work plan presented a few weeks ago. She requested Commission approval of the 2012/2013 budget and work plan.

Mayor Winters declared the public hearing open.

Brett Doney, GFDA, spoke in support of approval of the budget and work plan. He expressed appreciation for the work Ms. Redeen has done over and above running the BID.

No one spoke in support of or in opposition to the Business Improvement District 2012/2013 Budget and Work Plan.

Commissioner Jolley commented that the TIF will be administered by the Downtown Partnership, but the Commission approves or disapproves the funding. Ms. Redeen responded that her understanding is that the Downtown Partnership will be similar to the BID and TBID, and will prepare a budget and work plan each year for Commission approval.

Mayor Winters declared the public hearing closed.

Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission accept the 2012/2013 Business Improvement District (BID) Budget and Work Plan.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

6. **RESOLUTION 9972, LEVY AND ASSESS SPECIAL IMPROVEMENT GENERAL BOULEVARED MAINTENANCE DISTRICT NO. 3570.**

Taxes and Assessments Technician Judy Burg reported that this item is an annual resolution to levy and assess the Special Improvement General Boulevard District. Adoption of Resolution 9972 will allow the City to finance the cost of work, improvements and maintenance conducted each year in the district.

The Park and Recreation Department, Natural Resources – Boulevard Division, is responsible for the care and maintenance of over 15,000 trees located within the district. Staff is recommending that Fiscal Year 2013 assessed amount of \$318,856 remain the same as Fiscal Years 2011 and 2012. This will result in an assessment for the year of \$67.39 for an average size lot of 7,500 square feet.

Mayor Winters declared the public hearing open.

No one spoke in support of or in opposition to Resolution 9972.

Mayor Winters declared the public hearing closed.

Commissioner Jones moved, seconded by Commissioner Jolley, that the City Commission adopt Resolution 9972.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

7. RESOLUTION 9973, LEVY AND ASSESS SPECIAL IMPROVEMENT PORTAGE MEADOWS MAINTENANCE DISTRICT NO. 1195.

Taxes and Assessments Technician Judy Burg reported that this annual resolution is to levy and assess Special Improvement Portage Meadows Maintenance District. Adoption of Resolution 9973 will allow the City to finance the cost of work, improvements and maintenance required to be made each year in the district. The Portage Meadows fund is to maintain the turf, trees, irrigation system and provide snow removal in the green belt park of the Portage Meadows Addition. There are currently 186 parcels that directly benefit and are affected by the upkeep and maintenance of Portage Meadows.

Staff is recommending that Fiscal Year 2013 assessed amount of \$46,922 remain the same as Fiscal Years 2011 and 2012. This will result in an assessment for the year of \$251.28 for an average size lot of 4,501 square feet.

Mayor Winters declared the public hearing open.

No one spoke in support of or in opposition to Resolution 9973.

Mayor Winters declared the public hearing closed.

Commissioner Bronson moved, seconded by Commissioner Burow, that the City Commission adopt Resolution 9973.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

8. RESOLUTION 9974, LEVY AND ASSESS STREET MAINTENANCE DISTRICT.

Taxes and Assessments Technician Judy Burg reported that this annual resolution is to levy and assess the Street Maintenance District. Adoption of Resolution 9974 will allow the City to fund the cost of work, improvements and maintenance performed in the district. All properties within the City limits are assessed street maintenance. The Street Department maintains approximately 383 miles of streets and alleys within the City limits. Maintenance consists of pavement rehabilitation and restoration, street cleaning, snow and ice removal, alley maintenance, nuisance weed program and the Traffic Division. The Traffic Division is responsible for the maintenance of all roadway signs and signals.

Staff recommends that the Fiscal Year 2013 assessed amount of \$3,630,779 remain the same as

Fiscal Years 2011 and 2012. This will result in an assessment for the year of \$89.51 for an average size lot of 7,500 square feet.

Mayor Winters declared the public hearing open.

Kathy Gessaman, 1006 36th Avenue NE, inquired if businesses in the Business Improvement District or a TIF District had to pay this assessment and was responded to affirmatively.

Commissioner Jolley inquired if the assessment was the same amount whether or not the property included an alley. Director Rearden responded that the assessment is based on square footage of ownership.

Mayor Winters declared the public hearing closed.

Commissioner Jolley moved, seconded by Commissioner Jones, that the City Commission adopt Resolution 9974.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

9. **RESOLUTION 9982 AND ORDINANCE 3095 RELATED TO PROPERTY ADDRESSED AS 1359 13TH AVENUE SW, LEGALLY DESCRIBED AS MARK 1, SUN RIVER BRIDGE GARDEN TRACTS, SECTION 15, T20N, R3E, AND PORTION OF ABUTTING 13TH AVENUE SW RIGHT-OF-WAY AND SUN RIVER.**

Commissioner Jolley moved, seconded by Commissioner Burow, that the City Commission vacate the public hearing related to Resolution 9982 and Ordinance 3095.

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

Motion carried 5-0.

10. **LOT 1AA, BLOCK 1, GREAT FALLS INDUSTRIAL PARK SECTION 2, OWNED BY SHUMAKER TRUCKING AND EXCAVATING, GENERALLY LOCATED EAST OF US HIGHWAY 87 NORTH OF PREVIOUSLY VACATED 34TH AVENUE NE ALIGNMENT.**

A. **RESOLUTION 9978 TO ANNEX SAID PROPERTY AND APPROVE ANNEXATION AGREEMENT.**

B. **ORDINANCE 3092 TO ASSIGN CITY ZONING OF I-2 HEAVY INDUSTRIAL DISTRICT.**

Planning and Community Development Director Mike Haynes reported this item is the public hearing to consider Resolution 9978 for annexation of ±1.79 acres of property, the Annexation Agreement and Ordinance 3092 that would assign initial zoning of I-2 (Heavy Industrial), all pertaining to the Shumaker Trucking property located east of US Highway 87 north of vacated right-of-way for 34th Avenue NE. Shumaker Trucking has significant landholdings on the east side

of US 87 including a truck washbay that has City water and sewer services. The Shumaker Trucking lots are in unincorporated Cascade County and have I-2 (Heavy Industrial) zoning. Section 13.2.090 of City Code requires that property owners of parcels outside City limits receiving water and/or sewer service must consent to annexation as a condition of continuing to receive such services.

The applicant does not want to annex a large amount of property into the City, preferring instead to create a lot that is the minimum necessary to meet City Code. The proposed ±1.79 acre pie-shaped lot meets that minimum standard by containing the washbay, private fire hydrant and utility service lines, providing legal and physical access to US Highway 87, and accommodating reasonable on-site vehicular circulation. The applicant has completed a boundary line adjustment in the County to create this lot, precluding the need for any action on subdivision by City Commission.

At a public hearing held on June 12, 2012, the Planning Advisory Board/Zoning Commission recommended that the City Commission annex the subject property into the City with an initial zoning of I-2. On July 3, 2012, the City Commission approved Ordinance 3092 on first reading and set the public hearing for today.

Mayor Winters called a recess at 8:00 p.m., and reconvened the meeting at 8:10 p.m.

Mayor Winters declared the public hearing open.

No one spoke in support of or opposition to Resolution 9978 and Ordinance 3092.

Mayor Winters closed the public hearing.

Commissioner Bronson moved, seconded by Commissioners Burow and Jones, that the City Commission adopt Resolution 9978 and approve the Annexation Agreement, all pertaining to Lot 1AA, Block 1, Great Falls Industrial Park Section 2 located in the NW¼ Section 31, T21N, R4E, P.M.M.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission adopt Ordinance 3092.

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

Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

11. **NORTHVIEW ADDITION, PHASE 8, LOCATED IN SE¼ SECTION 25, T21N, R3E.**
 - A. **RESOLUTION 9983 TO ANNEX SAID PROPERTY AND APPROVE FINAL PLAT AND ANNEXATION AGREEMENT.**

B. ORDINANCE 3096 TO ASSIGN CITY ZONING OF PUD PLANNED UNIT DEVELOPMENT DISTRICT.

Planning and Community Development Director Mike Haynes reported that this item is the public hearing to consider Resolution 9983 for annexation, the Annexation Agreement and Final Plat of ±2.652 acres of property, and Ordinance 3096 that would assign initial zoning of PUD (Planned Unit Development) to that property, all pertaining to Phase 8 of the Northview Addition residential subdivision.

Northview Addition Phase 8 will contain 12 residential condominium lots accessed from an avenue proposed to be called Northview Avenue to be constructed between 40th Avenue NE and 41st Avenue NE. Later phases of the Northview Addition subdivision will include construction of 12th Street NE that will ultimately connect 36th Avenue NE to 41st Avenue NE providing a second vehicular access point to the subdivision.

At a public hearing held on June 26, 2012, the Planning Advisory Board/Zoning Commission recommended that the City Commission annex the subject property into the City, approve subdivision of the property as previously outlined, and assign PUD zoning to the property.

On July 17, 2012, the City Commission accepted Ordinance 3096 on first reading and set the public hearing for today.

Mayor Winters declared the public hearing open.

Speaking in opposition to Resolution 9983 and Ordinance 3096 was:

Ron Gessaman, 1006 36th Avenue NE, discussed what he believed to be errors in the agenda report and findings of fact, and he read Section 17.32.090(E) of the City Code. Public Works Director Jim Rearden responded that the turn arounds provided until the street connects serves the same purpose as a cul-de-sac.

No one spoke in support of Resolution 9983 and Ordinance 3096.

Commissioner Jones moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 9983 and approve the Final Plant and Annexation Agreement, all pertaining to Northview Addition, Phase 8.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

Commissioner Jones moved, seconded by Commissioner Bronson, that the City Commission adopt Ordinance 3096.

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

Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

12. **1517 17th AVENUE SOUTHWEST, LEGALLY DESCRIBED AS LOTS 26 & 27 AND VACATED ALLEY, BLOCK 17, UNIVERSITY ADDITION AND ABUTTING PORTION OF 17TH AVENUE SOUTHWEST ALL LOCATED IN SECTION 15, T20N, R3E.**
 - A. **RESOLUTION 9984 TO ANNEX SAID PROPERTY AND APPROVE ANNEXATION AGREEMENT.**
 - B. **ORDINANCE 3093 TO ASSIGN CITY ZONING OF R-3 SINGLE-FAMILY HIGH DENSITY RESIDENTIAL DISTRICT.**

Planning and Community Development Director Mike Haynes reported this item is the public hearing to consider Resolution 9984 for annexation of the ±0.15 acre single-family lot at 1517 17th Avenue SW and a ±0.38 acre segment of 17th Avenue SW right-of-way, the Annexation Agreement and Ordinance 3093 that would assign initial zoning of R-3 (Single-family high density) to the subject property. The residential lot contains a single-family home and is located mid-block on 17th Avenue SW in the University Addition residential subdivision. The subdivision is located just north of the Marketplace and accessed from 14th Street SW. The City's jurisdictional boundary lies just to the east of the residential lot on the same block so annexation of the right-of-way is needed to achieve contiguity. Annexation into the City would allow the property owner access to water and sewer services.

At a public hearing held on June 12, 2012, the Planning Advisory Board/Zoning Commission recommended that City Commission approve annexation and assigning R-3 zoning to the subject property.

On July 17, 2012, the City Commission adopted Resolution of Intent 9980 to annex the single-family residential lot at 1517 17th Avenue SW and a segment of the 17th Avenue SW right-of-way, accepted Ordinance 3093 on first reading, and set the public hearing for today.

Mayor Winters declared the public hearing open.

No one spoke in support of or opposition to Resolution 9984 and Ordinance 3093.

Mayor Winters closed the public hearing.

Commissioner Jolley moved, seconded by Commissioner Jones, that the City Commission adopt Resolution 9984 and approve the Annexation Agreement, all pertaining to 1517 17th Avenue SW.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

Commissioner Jolley moved, seconded by Commissioner Jones, that the City Commission adopt Ordinance 3093.

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

Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

13. **1527 17TH AVENUE SOUTHWEST, LEGALLY DESCRIBED AS LOTS 28, 29 & 30 AND VACATED ALLEY, BLOCK 17, UNIVERSITY ADDITION, SECTION 15, T20N, R3E.**
- A. **RESOLUTION 9981 TO ANNEX SAID PROPERTY AND APPROVE NEXATION AGREEMENT.**
- B. **ORDINANCE 3094 TO ASSIGN CITY ZONING OF R-3 SINGLE-FAMILY HIGH DENSITY RESIDENTIAL DISTRICT.**

Planning and Community Development Director Mike Haynes reported this item is the public hearing to consider Resolution 9981 for annexation of the ±0.22 acre single-family lot at 1527 17th Avenue SW, the Annexation Agreement, and Ordinance 3094 that would assign an initial zoning of R-3 (Single-family high density) to the subject property. The residential lot contains a single-family home and is located mid-block on 17th Avenue SW in the University Addition residential subdivision, adjacent to and west of the property at 1517 17th Avenue SW that the City Commission just took action on. Annexation of the 17th Avenue SW right-of-way, as part of the previous action, will provide contiguity for this property. Annexation into the City would allow the property owner access to water and sewer services.

At a public hearing held on June 12, 2012, the Planning Advisory Board/Zoning Commission recommended that the City Commission approve annexation and assigning R-3 zoning to the subject property.

On July 17, 2012, the City Commission accepted Ordinance 3094 on first reading and set the public hearing for today.

Mayor Winters declared the public hearing open.

No one spoke in support of or opposition to Resolution 9981 and Ordinance 3094.

Commissioner Jolley moved, seconded by Commissioner Jones, that the City Commission adopt Resolution 9981 and approve the Annexation Agreement, all pertaining to 1527 17th Avenue SW.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

Commissioner Jolley moved, seconded by Commissioner Jones, that the City Commission adopt Ordinance 3094.

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

Hearing none, Mayor Winters called for the vote.

Motion carried 5-0.

14. SALE OF CITY-OWNED PROPERTY: MED-TECH LOT 3E, PARCEL 1079544, ADDRESSED AS 2100 21ST AVENUE SOUTH.

Planning and Community Development Director Mike Haynes reported this item is the public hearing to consider the sale of city-owned property; specifically, the ±1.31 acre Lot 3E in the Med-Tech Park addressed as 2100 21st Avenue South. City Code sets forth procedures for the disposition of City property that requires the City to obtain an appraisal of real property to establish a minimum bid price, offer the property for bid, hold the bid opening and then set and hold a public hearing to allow the City Commission to take action.

Lots in the Med-Tech Park were appraised by McKay Rowen Associates in July 2006 at \$4.00 to \$4.50 per square ft. Lot 3D was sold in 2006 for \$4.00 SF. Lot 3F was sold in 2008, and Lots 3G and 3H were sold in 2009 for \$4.25 SF. It was determined to offer Lot 3E for sale at the high end of the appraised value of \$4.50 SF.

An Invitation to Bid was advertised in the *Tribune* on Wednesday June 27, 2012, for a bid opening to be held at 2pm on July 6, 2012, in the City Clerk's Office.

The bid opening was duly held and one bid was received from Mark Macek on behalf of Bresnan Communications, LLC (Optimum, LLC). At \$4.50 per square feet, the minimum bid price was set or \$256,786 for the ±1.31 acre lot and the offer made was for \$265,000 accompanied by a cashier's check for 10% of the bid price; \$26,500.

Optimum proposes to develop the site with a retail center, offices, warehouse and the cable signal distribution center. The offer is contingent on Optimum receiving conditional use approval for the telecommunications component of the project.

Staff recommends that the City Commission approve the sale of said City-owned Lot 3E in the Med-Tech Park. The benefits to the City of this sale include recouping development costs, relieving the City of maintenance responsibility for the lot, accommodating new development and getting the property on the tax rolls.

Mayor Winters declared the public hearing open.

No one spoke in opposition to the sale of city-owned parcel 1079544.

Ron Gessaman, 1006 36th Avenue NE, **Mark Macek**, 801 Fox Drive, and **Brett Doney**, GFDA, spoke in support of the sale of City-owned parcel 1079544.

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

Commissioner Bronson moved, seconded by Commissioners Jolley and Jones, that the City Commission approve the sale of property at 2100 21st Avenue South (Parcel 1079544) to Bresnan Communications, LLC, and authorize the City Manager to execute the necessary

documents.

Mayor Winters asked if there was any discussion amongst the Commissioners. In response to Commissioner Jolley, Director Haynes reported that the Conditional Use Permit will go through the Planning Board process and City Commission for final action.

Motion carried 5-0.

15. SALE OF CITY-OWNED PROPERTY: PARCEL 1906600, ADDRESSED AS 1220 38th STREET NORTH.

Planning and Community Development Director Mike Haynes reported this item is the public hearing to consider the sale of City-owned property; specifically, the ±10.64 acre property at 1220 38th Street North adjacent to the Eagles Falls Golf Course. City Code sets forth the procedures for the disposition of City property that requires the City obtain an appraisal of real property to establish a minimum bid price, offer the property for bid, hold the bid opening and then set and hold a public hearing to allow the City Commission to take action.

The property was appraised by McKay Rowen Associates in July, 2011, at \$385,000. An Invitation to Bid was advertised in the *Tribune* on Sunday June 24, 2012, for a bid opening to be held at 2pm on Tuesday July 3, 2012, in the City Clerk's Office. The bid opening was duly held and two bids were received. The first bid opened was for \$600,000 from SBC Archway, LLC in Billings accompanied by a cashier's check for 10% of the bid price; \$60,000. Their bid is contingent on the award of a GSA contract to construct a building for the Forest Service/BLM. The second bid opened was for \$287,500 from Erik Sletten and was accompanied by a cashier's check for 10% of the bid price; \$28,750. The bid has no contingencies.

Staff recommends sale to SBC Archway, LLC; the high bidder, for \$600,000. While this sale is contingent on SBC Archway, LLC being awarded the GSA contract and the bidder would have 210 days to exercise their purchase option, they were the successful bidders on Lot 3E in the Med-Tech Park in 2006 and constructed the Social Security Building for GSA and were the successful bidders on Lot 3F in the Med-Tech Park in 2008 and constructed Homeland Security Building for GSA under similar circumstances, so they have an established track record.

The benefits to the City of this sale include the cash benefit accruing to the Economic Revolving Fund, relieving the City of maintenance responsibility for the property, accommodating new development and getting the property on the tax rolls.

Mayor Winters declared the public hearing open.

Speaking in opposition to the sale of City-owned parcel 1906600 were:

Kathy Gessaman, 1006 36th Avenue NE, believes this property should be retained for future growth of the City.

Ron Gessaman, 1006 36th Avenue NE, commented that the area is basically a recreational area; it doesn't make sense for commercial development. He is opposed to rubber stamping, and opposed to the sale of this property.

Mike Witsoe, 510 11th Street South, questioned the timing of the bidding process. Mr. Witsoe commented that this is the City's most valuable and prestigious property that has a million dollar view. He opined that condominiums will be built by the golf course.

Speaking in opposition to the sale of city-owned parcel 1906600 to SBC Archway were:

Martin Becker, 1000 25th Street N, Executive Vice-President and general counsel for Sletten Companies, commented that SBC Archway's bid is not an offer to purchase. All the City has from SBC Archway is a statement, which he read, that doesn't even identify the government lease. It is a contingency. SBC Archway has other property optioned in town for the same purposes. The situation is SBC is tying up huge amounts of property in an area that has been identified as a possible government leaseback; it is minimizing the competition without any risk whatsoever. The City would be actively supporting SBC Archway against other businesses who will be participating in the competitive bid process on the government project. Mr. Becker emphasized that the only offer the Commission has to consider is the Sletten offer. The idea that someone could be allowed to put in a contingency that has no penalty whatsoever if they fail to close it, is abhorrent to everything the Commission should be looking at with regard to the development of this City. He urged the Commission to deny staff's recommendation, and accept a motion to sell the property to the only bidder with no contingencies and for a cash price that is above the appraisal.

Erik Sletten, 1734 Alder Drive, President of Sletten Construction Company, echoed Mr. Becker's comments. He inquired if there were any questions posed from the letter he authored and that was delivered to the City last Thursday. He was appalled by staff's recommendation. SBC Archway's bid makes a mockery of the bidding process. The City has a sincere offer from Sletten Companies. Sletten looks forward to closing on this property to be able to develop this property. He encouraged the Commission to make a motion to sell the property to Sletten to move forward with a great project for Great Falls.

Brett Doney, Great Falls Development Authority, 300 Central Avenue, commented the issue of whether the property should be used for commercial development was resolved when it was zoned for that use a number of years ago. It is an economic development property, should be put to use, and GFDA is in favor of it selling. Mr. Doney commented that SBC is a good company with a good reputation, and has done a good job at Med-Tech Park. However, he cautioned that if the City gets involved in accepting a speculative offer, it is getting involved in the speculative real estate business. He reported that there are a lot of experienced developers competing for the GSA contract. There is no guarantee that the City will have any offer on the table if SBC doesn't get the GSA contract; or, if they get the contract and choose to build on another site. He added that the request was for bids, not for offers with options.

Mike Young, counsel for Mr. Sletten and Sletten Companies, commented that the invitation for bids was solicited asking for a price. It did not ask for a development proposal. The invitation stated a minimum bid price of \$385,000. Mr. Sletten's bid was \$387,500. The only other requirement was a bid bond in the amount of ten percent. Sletten has met every requirement. Mr. Young noted that City Code 3.04.050 requires that the sale of said property be made to the highest responsible bidder. The SBC Archway bid offers nothing concrete. If they can't work out all the appropriate points with the review committee at GSA and they can't negotiate a final deal, then the City has absolutely nothing. They wouldn't even forfeit their bid bond. Mr. Young further pointed out that this could have been bid differently per City Code 3.04.060 wherein the City can require a

development proposal for the sale of property which may include and be limited to designation of a specific use or condition established by the City Commission. That was not done in this case. "In the world of public contracting/public bidding, you can't change horses in the middle of the stream." Mr. Sletten's bid met the specifications; it is solid; and, there is no contingency. If Sletten does not get the bid for the GSA project, development on the parcel will go on. Mr. Young objects to the SBC Archway proposal because it leaves "no skin in the game whatsoever." He strongly recommended the City Commission reject SBC Archway's bid, and accept the bid by Erik Sletten.

Commissioner Bronson commented that, in the interest of full disclosure, he and Mr. Young use to practice law together, and have been personal friends for a number of years. Commissioner Bronson inquired of Mr. Young if the City was foreclosed from considering option agreements in every situation like this. Mr. Young commented that City Code says the City can do it, but it has to be advertised as such and, under section 3.04.060, the Commission has to decide what the specific uses and conditions are. It has to be bid that way so everyone is on the same level playing field.

Commissioner Bronson received confirmation from Mr. Young that his contention is that SBC's proposal would have been more appropriately bid under 3.04.060.

Commissioner Bronson commented that the concern he has is that by rejecting the bid from SBC Archway, is the Commission creating precedent in terms of how they are defining the term "responsible" when talking about highest responsible bidder. Mr. Young responded that precedent is not being created. The City could change the specifications on any subsequent bid under these City Codes. In this case, the election was already made. The request was for a firm price, not a development option. The GSA contract will be very competitive. The difference is if Sletten doesn't get the GSA contract, the City gets its money regardless. If SBC Archway doesn't get the GSA contract, the City gets nothing, not even a bid bond.

Martin Becker added that the Commission would be taking sides in the bidding process for a government project upcoming by accepting SBC's contingency. There would be no reason to ask for bid security if it wasn't for the purpose of keeping it upon failure.

Speaking in support of the sale of City-owned parcel 1906600 to SBC Archway was:

Mark Macek, 801 Fox Drive, representing SBC Archway, commented he thinks it is unfair to be casting SBC Archway as a villain that is here to take advantage of the City somehow. This property was advertised, SBC made an offer, and the offer has contingencies in it. It is an option agreement. Like many deals in real estate there are contingencies. This is a two part process. Not only does GSA and the government have to select a site, they have to select a contractor as well. SBC has already done two GSA projects in Great Falls on Great Falls' property. They have proven that they have a track record of being awarded these projects. They are a reputable company, do good work, and get these projects from time to time. Mr. Macek urged the Commission to consider the sale price that was significantly higher than the advertised price. SBC is willing to pay that, but it is contingent on them getting the project.

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

Deputy City Manager Jennifer Reichelt commented that new issues were brought up this evening since she spoke with the City Attorney. If the Commission had concerns or wasn't comfortable

voting tonight, she wanted the Commission to be aware that they have the option to table or postpone action on this item until they could get legal advice from the City Attorney.

Commissioner Jolley moved, seconded by Commissioner Burow, that the City Commission approve the sale of property at 1220 38th Street North (Parcel 1906600) to Erik Sletten in the amount of \$387,500, and authorize the City Manager to execute the necessary documents.

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

Commissioner Jolley noted that she questioned the high bid at the agenda setting meeting. After getting and reviewing the documents in the Friday packet, it doesn't make sense to her financially. She chooses not to go with contingencies. She is comfortable going with the lower bid because there are no contingencies and it is a sale.

Commissioner Bronson agreed with Commissioner Jolley. The problem he has with staff's recommendation is the option agreement in this context. Given the circumstances, he is concerned that the Commission would be put in a position, even though it wasn't their intent, to be essentially partnering with someone else. He could not support going with the SBC proposal.

Commissioner Burow noted he also questioned the deposit at the agenda setting meeting and was informed the \$60,000 would be returned. He is not in favor of contingencies.

Commissioner Bronson added that he does not have a problem with contingency agreements. But, he agrees with Mr. Young's analysis that those are better bid under 3.04.060 of City Code and dealt with that way either as part of a development agreement or something comparable. This is not the case.

Mayor Winters concurred.

Mayor Winters asked the will of the Commission with regard to Commissioner Jolley's motion to award the sale of the property to Erik Sletten.

Motion carried 5-0.

OLD BUSINESS

NEW BUSINESS

ORDINANCES/RESOLUTIONS

CONSENT AGENDA

16. Minutes, July 17, 2012, Commission meeting.
17. Total expenditures of \$5,825,066 for the period of July 12 through August 1, 2012, to include claims over \$5,000, in the amount of \$5,309,992.
18. Contracts list.
19. Set public hearing for September 4, 2012, on Res. 9975, Restoration, Rehabilitation, Expansion, and

New Construction of Qualified Historic Properties Tax Abatement for Lawyers, Guns, & Money, LLC, located at 114 3rd Street South.

20. Set public hearing for September 4, 2012, on Res. 9977, New or Expanding Industry Tax Benefit for Montana Eggs.
21. Set public for September 18, 2012, on Res. 9990 to Levy and Assess Properties within Special Improvement Lighting Districts.
22. Award construction contract in the amount of \$43,450 to Cascade Electric Company, Inc. for the WWTP RAS Pump Upgrades. **OF 1457.7**
23. Award construction contract in the amount of \$908,975 to Planned and Engineered Construction, Inc. for the West Interceptor Trenchless Rehabilitation, Phase III. **OF 1639**
24. Award construction contract in the amount of \$222,565 to Western Slope Utilities, LLC for the Sanitary Sewer Trenchless Rehabilitation, Phase 16. **OF 1566.3**
25. Approve Change Order No. 1 in the amount of \$2,781.07 and Final Payment in the amount of \$3,248.66 to Phillips Construction, LLC and \$32.81 to the State Miscellaneous Tax Division for the Great Falls Wastewater Treatment Plant Heating Pipe Replacement. **OF 1457.6**

Commissioner Jolley moved, seconded by Commissioner Bronson, that the City Commission approve the Consent Agenda.

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters asked if there were any inquiries from the public.

Ron Gessaman, 1006 36th Avenue NE, commented that it is long past time for the activated sludge pumps to have variable frequency drives with regard to Item 22. Mr. Gessaman questioned and received clarification on Contract List Items 18 (L), (M), (Q) and (R).

Mike Witsoe, 510 11th Street South, inquired if Item 19 was a tax abatement resolution. Commissioner Bronson responded that there are certain tax credits available to certain buildings that have historic value. Mr. Witsoe also questioned the Contract List Items 18 (Q) and (R). Director Rearden clarified that other than the \$140,000 that the Commission targeted for that project, the project is being paid for by funds other than the City's. Commissioner Jones also clarified that most of the construction going on today is Conoco-Phillips' drain area on 52nd Street before 18th Avenue North. He doesn't believe the Great Falls Development Authority is doing any construction work on the Agri-Tech property at this time.

Brett Doney, Great Falls Development Authority, 300 Central Avenue, confirmed that no work on the project is being done at this time. He also noted that he is confident the permanent easement will get approved by the Air Force. He will make any business that connects aware of the 25 year easement.

There being no one else to address the Commission, Mayor Winters called for the vote.

Motion carried 5-0.

PETITIONS AND COMMUNICATIONS

26. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Winters opened the meeting to Petitions and Communications.

- A. Richard Liebert**, 289 Boston Coulee Road, commented that he thinks an effort needs to be made for recycling options. With regard to higher compensation for the City Commissioners, he believes it is a reasonable argument for the time involved. Maybe it would encourage younger people and people from different spectrums to participate in City government. Mr. Liebert commented that he thinks both Ag-Tech projects can succeed.
- B. Brig. Gen. Brad Livinston**, 2704 Big Ranch Road, thanked the citizens of Great Falls for their support and for being good neighbors the past 65 years. This week the Montana Air National Guard (MANG) celebrates its 65th anniversary. He hopes MANG has been a good neighbor to the City and looks forward to being a good neighbor the next 65 years.

Mayor Winters commented that he and Commissioners Jones and Bronson were at the facility today. The improvements to the facility and program he put on today, were outstanding.

Richard Liebert added that on Saturday there is a job fair for veterans at MANG.

- C. Ron Gessaman**, 1006 36th Avenue NE, commented he was pleased to finally see the Complaint for Declaratory Judgment was filed. He understands there is a letter from the GFDA requesting \$250,000 from the City for utility work at the Agri-Tech Park. With regard to comments made about the ethanol plant, Mr. Gessaman commented in his personal opinion as a professional engineer butanol is the fuel of the future, not ethanol. With regard to the editorial in Sunday's paper regarding City Commission compensation, he commented that the Commission has to do something to earn money. He expects them to donate their time as volunteers.

Commissioner Jolley pointed out that the Commissioners did not ask the *Tribune* to write the article and the Commissioners did not author the article.

Mayor Winters took exception to Mr. Gessaman's comments. He encouraged Mr. Gessaman to run for office. Mr. Gessaman responded that he takes umbrage with Mayor Winters.

- E. Mike Witsoe**, 510 11th Street South, announced recent State Fair events and upcoming local events. He doesn't think certain Commissioners listen to the public. Mr. Witsoe commented that the Ag-Park is going to come back and bite the Commission. He thinks the Commission just gave away a piece of property for over \$200,000 that was worth \$1 million dollars.

City Clerk Lisa Kunz called a point of order stating that some of our home viewers might find Mr. Witsoe's language offensive.

Brett Doney, Great Falls Development Authority, 300 Central Avenue, commented that many people do appreciate the thankless long hours the Commission puts in even if they don't always agree with the Commission. In response to comments made by Mr. Witsoe, Mr. Doney explained

that the undesignated water and sewer funds that were requested would not go to GFDA and were not for the Agri-Tech Park. It was to put in a competitive offer to put in what the TIF wouldn't cover.

Commissioner Jolley clarified that \$150,000 is a new request not yet considered by the Commission, not to be confused with the \$140,000 already approved by the Commission.

CITY MANAGER

27. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Deputy City Manager Jennifer Reichelt reported that there was a great turn last night at the community open house for the kick off of the growth policy update. There is information about the growth policy and a survey at www.greatfallsmt.net. She reminded everyone that the cell phone ordinance is in effect. She also thanked the Commission for the employee picnic.

Commissioner Jolley inquired about the Animal Shelter classics. Deputy Manager Reichelt reported that the Animal Shelter is promoting animals over six years of age can be adopted for \$40 and they includes spayed or neutered.

CITY COMMISSION

28. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Winters announced that he sees more people putting items for free on their lawns. He agreed with Mr. Liebert's comments about a recycling program.

29. COMMISSION INITIATIVES.

There were no Commission initiatives.

ADJOURNMENT

There being no further business to come before the Commission, **Commissioner Jolley moved, seconded by Commissioners Bronson and Burow, to adjourn the regular meeting of August 7, 2012, at 10:09 p.m.**

Motion carried 5-0.

Mayor Winters

City Clerk

Minutes Approved: August 21, 2012