

SUMMARY OF ADMINISTRATIVE MEETING

April 18, 2018– 4:00 p.m.

Room 326

City-County Building

316 N. Park Avenue, Helena

1. Call to order, introductions, opening comments – Mayor Collins called the meeting to order. Commissioners Farris-Olsen, Haladay, Noonan and O’Loughlin were present. Staff present was: City Manager Ron Alles; City Attorney Thomas Jodoin; Deputy City Attorney Iryna O’Connor; Police Chief Troy McGee; Community Development Director Sharon Haugen; Assistant Public Works Director Phil Hauck; Engineer Matt Culpo; Utilities Superintendent Kevin Hart; Community Facilities Superintendent Troy Sampson; Administrative Services Director Glenn Jorgenson; Budget Manager Libbi Lovshin and City Clerk Debbie Havens.

Others in attendance included: WGN Engineer Eric Anderson, Roger Peterson, Mike Casey, Heritage Preservation and Tourism Council members Laura Evilsizer and Roger Pedersen; Historic Preservation Officer Pam Attardo, Kate Hampton and County Community Development Director Peter Italiano.

2. March 7, 2018 and April 18, 2018 Summaries – The March 21, 2018 and April 18, 2018 administrative meeting summaries were approved as submitted.

3. Commission comments, questions –

Upcoming Appointments – Mayor Collins is recommending the following appointments:

Helena Housing Authority (HHA)	Appointment of Lanessa Littrell as a resident representative to the Helena Housing Authority. The unexpired term will begin upon appointment and expire August 1, 2018.
Helena Open Lands Management Advisory Committee (HOLMAC)	Reappointment of Eric Sivers to HOLMAC. The second term will begin July 1, 2018 and expire June 30, 2021.
Tourism Business Improvement District (TBID)	Appointment of Kaela Johnson to the Tourism Business Improvement District. First term will begin upon appointment and expired April 20, 2022.

Commissioner Noonan handed out an informational sheet on “Who Does What Downtown” including the walking mall, the rest of downtown and the Great Northern Town Center.

Commissioner Noonan referred to MBAC having someone interested in purchasing the old bus depot and asked if there is a timeframe on when that property would be available. Director Haugen stated she is preparing a Request for Proposals to get proposals for that property and is working with MBAC to do that in May.

4. City Manager’s Report –

Water Plant Pumps – Manager Alles reported the three pumps that were ordered for the Missouri River Water Treatment Plant were due back in Helena last week; however, the semi transporting them turned over and the pumps were ruined. Due to the urgency of needing a pump, Manager Alles authorized the purchase of one pump and get it installed prior to summer; the cost is approximately \$53,000.

Fuller Property Update – Manager Alles reported the City and County have reached an agreement to purchase the property at 404 Fuller, to relocate the Police and Sheriff Departments. A copy of the agreement to lease and sell-purchase was given to the commission for review. He showed a map of the building layout and property and spoke of the highlights of the agreement. The building is approximately 40,000 square feet, with four levels. A boundary line relocation will be required to split the two existing buildings and an agreement with the owners of the adjacent building will have to be signed regarding the shared access points. The first phase will move the Police and Sheriff Departments and the Support Services Division; the second phase will include the Coroner’ Office and possibly City Municipal Court.

Manager Alles stated the cost to purchase the building is 1.2 million, which will be split between the city and county; an additional \$350,000 will be needed to make it a secure building and remodel it. He recommended paying cash out of the 4040 funds to purchase the city's portion of the building. The goal is to get access to the building to begin the remodel by May 1, 2018. An interlocal agreement between the city and county will need to be signed and a board be set up to govern it. He proposed the same board and operation as the City-County Building.

Manager Alles stated a question the commission has is what the continuing maintenance costs will be. Manager Alles noted there are some shared facilities and utilities, including gas and electrical between the two buildings; which an agreement will be prepared and signed between the owners outlining the costs. Manager Alles reviewed the proposed rent to the Police and Sheriff Departments and noted there is an increase in costs for rent; however, there is almost triple the amount of square footage.

Mike Casey, seller representative, noted the city has been well represented through Manager Alles and moving the process along.

Mayor Collins asked what the size of the adjacent building is. Manager Alles stated it is 22,000 square foot. At this time, the city does not have a need for the additional space. Included in the agreement is the Right of First Refusal to purchase the adjacent building.

Commissioner Farris-Olsen asked what is happening with all the personal property that is in the facility. Manager Alles stated the previous owner has offered the personal property to the city and county and will need to move what cannot be used.

Commissioner O'Loughlin asked if Municipal Court is included in the estimate on what we currently pay for rent. Manager Alles stated Municipal Court is not included in the estimated costs; they pay between \$15,000 and \$20,000 per year for rent.

Commissioner Farris-Olsen asked if future TIF funds could be used to remodel the building. Manager Alles stated yes, if recommended.

Manager Alles stated the building has to be appraised and under city ordinance it requires two appraisals; however, the commission can waive the requirement for the second appraisal. Manager Alles stated the agreement will be on the May 7th city commission meeting agenda.

Attorney Summer Staffing Update – Attorney Jodoin reported two of the four attorneys in the office will be out on parental leave in the months of June, July and August. Any long term projects that can be delayed, he would appreciate it.

Attorney Jodoin reported the court granted the city and MLCT's intervener request on March 30, 2018 and required the city to file substantive pleadings by April 12. We have just received a copy of that order and will be requesting additional time to file our substantive pleadings. There is presently a May 21 hearing on the State's motion to dismiss and we will be presenting our arguments against motion. Proponents of the initiative are still obtaining signatures and the deadline for collecting the requisite number of signatures is June 22 to qualify for the 2018 general election.

5. Department discussions:

City Attorney

Demolition of Historic Buildings Ordinance – City Attorney Jodoin reported Ordinance No. 2639, passed on November 16, 1992, and established the present required review process before a historic building may be demolished.

As part of the passage of the ordinance, the City of Helena and the Lewis and Clark County Board of County Commissioners adopted joint City-County Resolution No. 10099 which outlined the goals with respect to historic preservation as well as the operation and management of a historic preservation council and a historic preservation officer. Lewis and Clark County is a "Certified Local Government Program" for Historic Preservation which enables the County access to state funding and as such the historic preservation officer was made a county employee.

With recent cases such as Central School, the Fire Tower, 125 S. Howie, and Yee Way Cabin, numerous implementation and interpretation questions have arisen as to the application of the ordinance.

Current Situation / General Analysis: The general theme of the ordinance, in response to the urban renewal of the 1970s, is that the City and the community as a whole carefully consider the potential loss of a historic structure before rushing to demolition. This "waiting period" allows the City, along with interested preservation groups, the ability to explore alternative actions, with the property owner, to save the historic building. In that context the ordinance may be thought of as a "shield" rather than a "sword."

The present ordinance requires a permit from the City Commission before a historic building may be demolished. It is critical to note that demolition need not be the total physical removal of a historic building. Rather, a demolition permit is merely required for any act that “destroys, in part or in whole, the historic integrity of the structure or site...or otherwise alters the structure so that it no longer qualifies for primary or contributing status.”

A building or structure is “historic” (ignoring for a moment that properties without structures can also be historic) if the structure (or property) is individually listed on the National Register of Historic Places, or is designated by the State Historic Preservation Office as primary or contributing.

Although the definition of “demolition” does not make specific reference to Helena’s historic districts within which a structure is located, the application requirements in 3-15-6(D), HCC, require a “brief description of the surrounding neighborhood and how the applicant proposes to protect the integrity of the historic district if demolition is proposed.”

The determination of whether a property is primary or contributing and whether the proposed act constitutes a “demolition” has, by past practice, apparently been made by the Lewis and Clark County Historic Preservation Officer (when the HPO was a City employee). However, the present ordinance does not outline specific criteria or factors that are to be considered in making this determination, nor does the joint resolution delineate who is to make the determination.

The process for the consideration of an application for demolition under HCC §§ 3-15-1 *et seq.* is generally as follows:

- Pre-application meeting conducted between applicant and Lewis and Clark County Heritage Preservation and Tourism Development Council (“HPTDC”) and/or HPTDC staff;
- Application is submitted at some point after the pre-app meeting – City Commission must approve or deny the application “within sixty (60) days after a complete application has been submitted”;
- HPTDC conducts a “legally advertised public hearing”, where it:
“ . . . shall review and evaluate the information provided for the application requirements, the architectural and/or historical significance of the structure, its relationship to the district and/or its relationship to a larger project, consider testimony on the proposed demolition and any other relevant information.”
- After conducting the hearing, HPTDC “shall make a recommendation to the City Commission for the approval or denial of the demolition application”;
- City Commission then holds a public hearing to consider the application, where it:
“ . . . shall consider the information provided to the HPTDC, the HPTDC recommendation and any other relevant information.”

If the City Commission approves the issuance of the demolition permit, the permit is to be issued by the Building Department immediately. If the application is denied, no further application can be considered for the subject property for a six (6) month period from the submission of the initial application.

When the ordinance was approved in 1992 the HPO was an employee of the City and the salary was paid by the City exclusively. The City and the County then decided to hire a joint City-County HPO. The half time FTE position was jointly supervised by the City and County’s Community Development Departments and was funded 50/50 by the City and County.

At some point Lewis and Clark County became a “Certified Local Government Program” for Historic Preservation. The HPO position became a ¾ FTE and an employee of, and under the supervision of, the County. For a period of time the City was allowed input on those activities that were completed on behalf of the City by the HPO.

The specific issues and concerns that have come up with recent cases include:

- Who determines whether a property is covered by the ordinance?
- Who determines work on a historic site is a “demolition?”
- Who determines whether a demolition permit is required?
- Who determines what a complete application is?
- What information is required for a complete application?
- What are the criteria to review a demolition permit?
- Is there authority to require design review of new structures?

Since the conversion of the HPO to a County position, attempts have been made to gain a cohesive mutually agreed upon interpretation of the ordinance and the administration of the process. Such efforts have not been fruitful.

Thus, as part of the ordinance analysis and potential rewrite, the organization of the historic preservation officer as a County employee responsible for processing, analyzing, and making legal recommendations on a city permit process should be carefully reviewed. It may not be desirable to place administrative review and processing of a city permit in the hands of a County employee, nor in the hands of a position where advocacy of historic preservation is paramount. Joint City-County Resolution No. 10099 should be reviewed to update the goals with respect to the promotion of historic preservation (such as an updated inventory of historic properties) as well as the operation and management of a historic preservation council and a historic preservation officer relative to the processing of City historic demolition permits.

Questions Posed: In order to address the issues noted above the following policy issues should be considered:

1. Does the commission desire to implement a regulatory regime wherein the structure constructed in place of a demolished historic structure would be subject to specific design standards aimed at conserving the historic integrity of historic districts and the surrounding neighborhood?

Stated in the inverse, the question may be posed as: Does the commission desire to limit the historic demolition ordinance to strictly a conscientious review of historic structures and sites prior to their demolition with no regard to review of new structures constructed on the site?

Despite the lack of authority to do so in the ordinance, a site plan that shows the location and elevation of proposed new structures has been required as part of the permit application by the HPO.

The rationale for such a requirement is ostensibly supported by the requirement that the applicant describe how they are going to “protect the integrity of the historic district if demolition is proposed.”

This begs the question as to whether the integrity of a historic district can only be maintained through the preservation of individually listed and contributing properties *and* the design review of new structures constructed in place of such properties. Simply stated, does the mere construction of a building that is not built in a certain representative style affect the integrity of the historic district? Notwithstanding, there may be policy goals to be obtained through design review of structures in historic districts, to preserve the neighborhood’s character defining features, regardless of whether that is attendant to demolition of a historic structure or not. If so, limiting design review to only those circumstances where a historic structure is being demolished would leave a large regulatory gap.

From a broader policy perspective, if preservation of historic neighborhoods is desired so that new structures “fit” with the character of a neighborhood, it is advisable the commission implement design standards applicable to all structures in the district, not just those constructed in replacement of a historic structure.

2. How does the commission wish to structure the role of the HPO?

As explained above, currently the HPO is hired as a County employee, and the City reimburses the County \$20,000 annually. Under the ordinance the HPO is charged with processing applications. As described above, it is unclear who makes the final determination as to certain legal questions regarding the applicability of the ordinance and the process to be followed. For that reason, it may be advantageous to the City and to historic preservation to bifurcate the advocacy of historic preservation from the processing of historic demolition permits and requests for tax abatements. Such a bifurcation could result in the City Community Development staff processing and reviewing applications for historic demolition permits similar to other land use applications. This would be critical if the commission were to adopt historic preservation design standards. The HPTDC would still hold a public hearing and make a recommendation to the City Commission. The HPO would present information relevant to the historic structure proposed to be demolished and the historic district to the HPTDC and City Commission. If design standards were adopted, then the only question in analyzing whether a demolition permit should be granted or denied is whether the proposed act destroys, in part or in whole, the historic integrity of the structure, site, or historic district.

Commissioner Noonan asked if the new downtown zoning code would lead into design standards for historic districts. Attorney Jodoin noted there are several designated historic districts which have some design elements, but do not have design standards that have been adopted by the commission.

Commissioner Haladay stated he believes the language in the ordinance needs to be cleaned up; we could move forward with the ordinance clean-up and put aside the larger question on whether we

should be creating design standards for historic districts as a whole. Attorney Jodoin stated that is correct; however, the issue with Central School specifically said a site plan; it was his understanding the purpose of requiring a site plan is we can then engage in the design review of the elevation of the buildings. His concern is we are going to adopt the site plan into the ordinance re-write. If the city does not have the design standards, the site plan should be left out of the ordinance. Commissioner Haladay asked what would be the problem with using standards from the State Historic Preservation office. Attorney Jodoin stated that is possible; however, he reminded the commission there is a court decision that the city cannot regulate building materials; we need to make sure any decision on a site plan does not run afoul of that decision. We still have the issue of reviewing buildings that are built right next to an historic structure, that are not going through the historic demolition permit process and do not have to meet the design standards.

Commissioner Haladay stated he does not disagree with buildings not being compatible; the purpose of the demolition ordinance is to protect certain structures and their contributing nature to the neighborhood. Design standards would be nice to adopt; however, the ordinance could be cleaned up and require it for the historic properties and recognize a new structure could be built right next door that would not have the same design standards.

Manager Alles asked Attorney Jodoin if we look at the current ordinance and modify it in a way that it becomes clearer and fine tune some of the language. Attorney Jodoin stated you certainly make the argument that within the current ordinance the site plan review was contemplated; it is a bit of a stretch with the intent of the language, but again there are gaps in the ordinance. He recommended cleaning up the language to include the intent of the commission and staff. It should not be a difficult ordinance to re-write. We still need to have the discussion on who is going to make the decision on the demolition permit application and the role of the historic preservation office.

Manager Alles recommended bifurcating the role of advocating and the process review and the language should be included in the ordinance. Attorney Jodoin concurred there should be clearer language in the ordinance and stated the City Manager should have supervision authority over the employee who is processing a city demolition permit application.

Historic Preservation Officer Pam Attardo stated whatever the commission does with the position; you need to have someone who has the expertise to make the recommendations. There are federal design standards that apply with tax abatements and demolition permit applications. Helena has design guidelines for historic neighborhoods; however, the guidelines have not been approved by the city commission. The guidelines are available for individuals who want to make the changes to historic structures/properties. Ms. Attardo stated it does not matter who supervises the position.

Commissioner Farris-Olsen asked if the city needs design guidelines. Historic Preservation Officer Attardo stated yes.

Commissioner O'Loughlin asked if one way to start adopting guidelines is to take the state's historic guidelines and reflect any changes we see as necessary. Attorney Jodoin concurred; however, he hasn't looked at this option and noted other communities have guidelines that he will look at.

Commissioner Haladay stated the one thing structurally that concerns him is when he thinks of the issues that have driven us to have this discussion it is the Firetower, Central School, Hill Park Fountain and an upcoming tax abatement; much of the discussion has been the historic nature and the advocacy came externally and as a city we were in support of the process in reviewing the application and approving it for demolition. Commissioner Haladay stated he would be okay with a city office doing the review of the demolition permit application; however, he is not clear it would have the independence necessary. If we create this office and we have the ordinance, we start with the presumption the office is there advocating for the preservation of these sites, or at least maintain the historic nature. He is worried we would lose some of the independence and asked how we maintain the level of advocacy and independence. Attorney Jodoin stated the advocacy versus the legal sign off of the permit is the issue. A non-city employee is making decisions on a city ordinance. The advocacy function should stay with the Heritage Preservation and Tourism Development Council; however, city staff would review the actual application and process it. A policy could be written on how an application will be processed to include a review from the Heritage Preservation and Tourism Development Council.

Commissioner Haladay noted a city staff person could deem an application complete and when it comes before the commission, they could disagree and the only choice then would be denial. Attorney Jodoin stated that is true; however, you have the same issue with a subdivision review. Administratively it would be city staff making the decision if the application is complete.

Commissioner Noonan stated he appreciates the discussion on the separation of advocacy versus determination on the process. That part of the discussion on Central School was not necessary, there were accusations that were not necessarily true. Commissioner Noonan stated he thinks there has to be clear advocacy and a clear sense on processing an application. It was problematic and disruptive conversation during the Central School discussion.

Commissioner Farris-Olsen stated he shares the same concerns of Commissioner Haladay and agrees we need some kind of neutral third-party advocacy for historic buildings. He understands the need to bifurcate the advocacy and review process and that can be accomplished by the neutral third party and the Heritage Preservation and Tourism Council.

Manager Alles summarized the city will continue to use the Historic Preservation Officer and the Heritage Preservation and Tourism Council as the advocacy group and city staff will process the application to determine completeness and forward to the Historic Preservation Officer.

Commissioner Haladay stated he understands the concerns with liability; however, he has found the current process to be relatively functioning. He would look for a recommendation from staff that would have the Heritage Preservation and Tourism Council still consider the application and make a formal recommendation to the city. He will need to see the recommendation prior to making a decision on how to move forward.

Attorney Jodoin stated in recent history the issue has been the Historic Preservation Officer is making the decision if a demolition permit is or is not required. For consistency purposes, the city needs to understand why the decision is being made. However, there needs to be consistency on all applications, staff is being excluded on the decision of whether a demolition permit is required. He referenced what the HPO required for Central School.

Historic Preservation Officer Attardo noted there are two processes used to determine the completeness of a demolition permit application and tax abatement application for historic structures/property.

Commissioner Farris-Olsen stated he is okay with the function staying outside the city; however, clearer standards need to be written.

Commissioner O'Loughlin asked how the management structure is handled with the joint city/county IT&S Department. Manager Alles stated the department is governed by the IT&S Board, the employees are county employees and the Director is supervised by both the City Manager and County Administrator.

Attorney Jodoin stated he has a problem with an advisory board making the legal determination to move an application forward. The process could include a list of required items the Heritage Preservation and Tourism Council would like included when reviewing the application. He does not think the state and federal standards get into that level of detail that the HPO has required.

Commissioner Haladay stated he would like to see something more tangible to assure the application is reviewed; the policy needs to include language that assures the comments from the HPO and Heritage Preservation and Tourism Council are heard and considered; they need to remain part of the process. If we can figure out a way to make it work, he will consider it. The comments provided on previous applications were appreciated.

Commissioner Noonan asked what the structure of the Heritage Preservation and Tourism Council is. HPO Attardo stated there are seven members, three appointed by the city, three appointed by the county and one jointly appointed.

Public Comments – Kate Hampton, Montana State Historic Preservation Office stated she works with certified local governments regarding historic preservation. Ms. Hampton noted she has dealt with many demolition permit questions and different communities handle the process differently. The most successful has been when a committee of interested parties have worked together to make recommendations on the update. Ms. Hampton offered to support any type of effort and noted it is important to have the correct inventory of historic structures and properties in each Helena's Historic Districts.

Attorney Jodoin stated it is his understanding the commission would like to see an ordinance that keeps the advocacy and a process where a recommendation would come from the Historic Preservation Officer and the Heritage Preservation and Tourism Council when considering a demolition permit for historic structures.

Commissioner Haladay asked how we are doing it currently with applications coming in. Director Haugen noted very few demolition applications are received. Currently she is working with the Historic Preservation Officer and the County Community Development Director to work out the details for

completeness. The process begins once an application is received through the Building Division to demolish a building.

Commissioner Noonan asked if when to require a site plan is part of the discussion. Director Haugen stated when a site plan is required is one of the issues being discussed.

Direction to Manager – Staff will draft an ordinance that keeps the advocacy through the Heritage Preservation and Tourism Council and the Historic Preservation Officer in the process and during the application review process. Attorney Jodoin stated he cannot commit on when a draft will be ready for commission review.

Public Works

Stormwater Master Plan – Engineer Culpo introduced WGM Engineer Eric Anderson who reported the city of Helena contracted WGM Group in August 2016 to prepare an update to the City's Storm Water Management Plan (update) which was last updated in 2003. The contract amount for this update is \$249,813.00.

Engineer Anderson gave a PowerPoint presentation on the update. The general purpose of update is to provide functional improvements and additional detail to the 2003 Plan. The work generally consisted of the following:

1. Existing condition evaluation for comprehensive understanding of the existing system conditions, capacity, water quality performance, and flood hazards.
2. Future system planning efforts to develop a stormwater infrastructure plan for future build-out of the drainage basins that are tributary to Prickly Pear Creek and Ten Mile Creek.
3. Development of a revised stormwater system improvement plan comprised of projects that focus upon the replacement of major infrastructure and modifications to regional stormwater management facilities.

Engineer Anderson showed a project priority list being recommended and reviewed each of the projects and estimated costs.

MS4 Waiver – Engineer Culpo reported as part of the Storm Water Master Plan Update, the effectiveness of the City's existing regional storm water ponds to treat their tributary area was evaluated. Treatment is considered capture and treatment of the runoff from the 0.5 inch rainfall event as regulated by the General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (General Permit). The update demonstrates that a significant portion of the City's area is effectively treated by the City's Regional Storm Water Ponds. The General Permit allows for offsite treatment where certain criteria are met. When allowed, utilizing off-site treatment would benefit certain re-development and small subdivisions when they are located within a regional water quality treatment basin.

Staff believes that the Department of Environmental Quality, who administers the General Permit, will not individually act on requests to allow offsite treatment, and instead, will require the permittee to evaluate and track requests and use of off-site treatment.

Staff is looking for direction to either begin establishing a policy and process within the Engineering and Design Standards to allow off-site treatment, or not to allow offsite treatment. If the direction is to create a policy and process, it will be developed and presented to City Commission prior to implementation.

Commissioner Haladay asked if something like the mall being redeveloped would trigger off-site treatment. Engineer Culpo noted any development could look at it, the mall would be an example of where it would work. Commissioner Haladay asked if there is a policy to encourage off-site treatment, is there a need for the city to obtain land for the additional ponds. Engineer Culpo noted he will continue to work with the consultant and do a further evaluation on the current ponds to see if there is extra capacity in regards to new development and re-development.

Manager Alles summarized the waiver we are discussing is to provide assistance to property owners for redevelopment and new development that would provide off-site stormwater through regional ponds.

Commissioner O'Loughlin asked if staff has a sense on what we can expect with the snow run-off this year. Engineer Eric Anderson stated there is a whole area of peak flows caused by snow melt and

rain; problems occur when both happen. It is a difficult science to determine the peak flows included in the model results.

6. Committee discussions

- a) Audit Committee, City-County Board of Health, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns -- Mayor Wilmot Collins – No report given.
- b) Mayor Pro-Tem, Audit Committee, Helena Chamber of Commerce Liaison, Information Technology Committee, Public Art Committee - – Commissioner Andres Haladay – No report given.
- c) Board of Adjustment, Civic Center Board, Non-Motorized Travel Advisory Board, Transportation Coordinating Committee – Commissioner Rob Farris-Olsen – No report given.
- d) ADA Compliance Committee, Business Improvement District/Helena Parking Commission, City-County Administration Building (CCAB), Montana Business Assistance Connection – Commissioner Ed Noonan – No report given.
- e) Audit Committee, City-County Parks Board, Transportation Coordinating Committee - Commissioner Heather O’Loughlin – No report given.
- f) Helena Citizens Council – No HCC report given.

7. Review of agenda for April 23, 2018 Commission meeting – No discussion held.

8. Public comment – No public comment received.

9. Commission discussion and direction to City Manager – No discussion held.

10. Adjourn – The meeting adjourned at 5:50 p.m.