

SUMMARY OF ADMINISTRATIVE MEETING

July 16, 2014 – 4:00 p.m.

Room 326, City-County Building

1. Call to order, introductions, opening comments – Mayor Smith called the meeting to order. Commissioners Ellison, Elsaesser, Haladay and Haque-Hausrath were present. Staff present was: City Manager Ron Alles; Police Chief Troy McGee; City Attorney Jeffrey Hindoien; Fire Chief Sean Logan; Public Works Director Randall Camp; Assistant Public Works Director Phil Hauck; City Engineer Ryan Leland; Chief Building Official Jon Pallister; Water Utility Superintendent Kevin Hart; HCC Coordinator Judy Garrity and City Clerk Debbie Havens.

Others in attendance included County Health Department Representatives James Wilbur and Jennifer McBroom, and IR Reporter Al Knauber

2. July 2, 2014 Administrative Meeting Summary – Commissioner Elsaesser asked the summary be changed from “two” days to “one” day on page one of the summary. The July 2, 2014 Administrative Meeting summary was approved as amended.

3. Commission comments, questions –

Board Appointments: There are no board appointments on the July 21, 2014 city commission meeting agenda.

Commission Comments – Commissioner Ellison asked if a cyclist is considered a pedestrian or motorist if they walk their bike across the street at a crosswalk. Police Chief McGee stated they would be a pedestrian; however, if they are riding the bike, they are considered a motorist and must abide by all traffic laws.

Commissioner Haladay asked if Charter Communication has remitted any outstanding tax payments. Manager Alles noted he believes payment is forthcoming from both Charter and Verizon.

Commissioner Elsaesser asked how the format on the presentation from Solid Waste Consultant Mr. Bolton will be set up on July 23rd; will all meetings be open to the public. Manager Alles explained staff will meet with the consultant at 9:00 a.m. on the 23rd; the meeting is open, however, it is set up for staff and the consultant to have dialog and no public comment will be accepted. The consultant will then meet with the city and county commissions from 4:00 to 6:00 p.m. and again the meeting is open and public comment will be accepted.

Public Works Director Randall Camp stated the formal will be a PowerPoint presentation to present the draft findings to staff and the commission. An executive summary will be provided to the commission. Commissioner Elsaesser asked if the commission will receive the Executive Summary prior to the meeting. Manager Alles noted staff has not yet received the Executive Summary and will try and get it before the meeting.

Commissioner Elsaesser asked for an update on the transition from the curb to curb service to fixed routes. Manager Alles stated he is prepared to give a presentation at the July 30th administrative meeting.

Commissioner Elsaesser asked for a written update on the Centennial Trail project, specifically pursuing any right-of-way on the west side of Joslyn. He noted nine projects were submitted and he would like an overview of the final CTEP funding report. Manager Alles stated the city has not received final approval on the CTEP projects from MDT.

City Engineer Leland explained the city submitted nine projects to ensure all of the CTEP funding would be expended. MDT does not have a priority list; all nine projects were submitted because of the question on having the adequate right of way for Centennial Trail west. Depending on the bid award on Phase One, there will be approximately \$371,000 in CTEP funding that will be spent on Centennial Trail west and continue to complete other projects as funding is available. Engineer Leland explained MDT waits until September to program the projects, staff is waiting for their process to be completed before moving forward.

Commissioner Elsaesser stated it sound like staff can move forward on some basic design and right of way work but not expend any major funds that CTEP funds would be used for reimbursement. Engineer Leland explained any costs associated with work done prior to MDT programming the projects cannot be reimbursed or used as a match.

4. **City Manager's Report** - City Manager Alles thanked the commission for his performance evaluation; it was a good dialog between himself and the commission.

5. **Department Discussions**

Public Works

Watershed Restoration Planning – Manager Alles introduced the subject and spoke on the nutrient loading and the Tenmile watershed. He addressed the required permitting the city of Helena must receive from DEQ.

Manager Alles introduced Jim Wilbur and Jennifer McBroom with Lewis & Clark County Health Water Quality Protection District, who gave a presentation on the Lake Helena Watershed Restoration Planning that including the following bullets:

1. What is a Watershed Restoration Plan
2. What areas are affected by the Lake Helena Watershed Restoration Plan
3. Why is the Restoration Plan important to the Lake Helena Watershed
4. How will the Lake Helena Watershed Restoration Plan be developed
5. How can I learn more and get involved.

Mr. Wilbur recognized and thanked city staff for their work moving this project forward. This plan is a requirement to receive the 319 Grant.

Commissioner Elsaesser asked if there is any concern with invasive species coming into the watershed. Mr. Wilbur stated there are concerns with evasive species throughout the state in all watersheds. Invasive species (noxious weeds) on landscape have always been a major issue. It is not a major player with this project, but staff has to pay attention to it. Commissioner Elsaesser stated he is always interested in what can be done to improve the watershed. He then thanked Mr. Wilbur for the presentation and for the work that has been done.

Mr. Wilbur explained how other smaller projects have been accomplished through collaborative efforts. Commissioner Elsaesser again stated he is interested in anything the city can assist to continue with this project. The city has successfully protected the open lands and he would like to similar success with the watershed.

Mayor Smith commented the previous Public Works Director estimated in regards to nitrogen/phosphate the city contributes approximately 18% to the TMDL; he then asked if that is still the case. Mr. Wilbur stated he believes that continues to be the estimate; however, the city has made major improvements and the wastewater affluent level could be lower.

Mayor Smith asked if the two new facilities in Bozeman have received their permits from DEQ and EPA. Director Campbell stated they have received their permits.

City Attorney

Quasi-Judicial/Ex Parte Discussion – City Manager Alles referred the commission to the memo from former City Attorney David Nielsen in reference to Ex Parte Communications. If the commission is asking for another opinion, he asked them to explain to Attorney Hindoien what outcomes they are looking for.

Attorney Hindoien stated he would like further discussion from the commission prior to him going out and refining the research to get the opinion as focused as it can be. Attorney Hindoien reported he met with the Heritage Preservation Commission to discuss ex-parte communications regarding the anticipated demolition permit application for Central School. Although a demolition permit has not been received, the Helena School District has indicated one will be submitted in the near future. Attorney Hindoien noted there has been a community discussion for some time on what the School District's proposal will be for certain schools; however, the demolition permit application has recently been discussed. Attorney Hindoien stated he is not concerned with any discussions a commission member as a private citizen has engaged in on the overall plan of the School District. However, going forward the safest thing to do is to recognize that at some point a public hearing will be held on the demolition permit application and the commission will make a decision based on what is presented at the hearing.

Mayor Smith stated he has read the memo from David Nielsen and has used in many times. He asked Attorney Hindoien if the memo is still good sound advice. Attorney Hindoien stated at this time, yes. The safest course of action is to advice anyone that there is a process and to please attend the public hearing or submit written testimony to the City Clerk's office.

Commissioner Haque-Hausrath thanked Attorney Hindoien for his approach. She asked Attorney Hindoien to analyze whether this situation is distinct from other quasi-judicial situations on two bases: 1) as opposed to conditional use permits, there is no criteria in the ordinance, which if met, would give the school district the right to a demolition permit; and 2) is this the same situation as a private property owner, where we have a public entity with elected officials as the owner, and the entity will use tax dollars to do the work.

Commissioner Haque-Hausrath stated she believes they are very similar types of analysis. The reason she asked is there are two ways the demolition permit and somewhat the tax abatement differs from the analysis. One of the most important ones is that, it is her understanding of the law, with subdivisions and conditional use permits if certain criteria in the law are met, the applicant has the right to approval of the application. However, with the demolition permit of an historic building the intent of the ordinance is to protect historic structures. If there is criteria in the ordinance on whether the demolition permit should be granted or denied, she would be interested in hearing what it is.

Commissioner Haque-Hausrath asked where this demolition permit application is being submitted by a public entity and not a private citizen/business does that affect the analysis. City Attorney Hindoien thanked Commissioner Haque-Hausrath for highlighting her concerns and questions. He stated there is distinction in Montana law between legislative acts and what is called administrative acts. Attorney Hindoien will do a more refined analysis on the quasi-judicial/ex parte criteria.

Commissioner Haque-Hausrath noted she would use the intent of the ordinance as a starting point.

Commissioner Haladay stated he would be curious if there are any distinctions specifically between city ordinances and administrative rules. In some cases there are no criteria for these things; it seems it is to be entirely the use of discretion; tax abatement specifically.

Commissioner Haladay stated he would also be curious to know if land-use variances, tax abatements, spot zoning and annexations fall under ex-parte communications. Commissioner Haladay would like Attorney Hindoien to address his comments.

Commissioner Haladay asked if the demolition permit application has not been received, does it constitute ex-parte communications. Attorney Hindoien stated he is not certain; however the commission knows the application is forth coming and he would advise the commission not to have conversations regarding the demolition permit. At this time the School District has not submitted a formal demolition permit application to either the city or the Heritage Preservation and Tourism Council. Attorney Hindoien stated zoning is by law a legislative action.

Mayor Smith commented until the commission receives further information from City Attorney Hindoien, he will rely on the 2002 memo from David Nielsen. Mayor Smith stated he believes the commission draws the distinction between the use of discretion and the abuse of discretion.

Commissioner Ellison asked if the demolition permit application is received and goes through the process, when would the commission consider it. Manager Alles stated there is a sixty day turn-around once the application is received. Commissioner Ellison asked if the sixty days would require both the Heritage Preservation Council and the City Commission to hold public hearings.

Attorney Hindoien reviewed the timeframe and the proceedings that will need to take place within the sixty days. City staff will assist the school district in scheduling the appropriate meetings.

Commissioner Ellison asked if the city commission would consider the demolition permit application if the Heritage Preservation Council recommends denial. Attorney Hindoien noted the Heritage Preservation Council will move forward a recommendation for approval or denial; they cannot stop the process.

Commissioner Elsaesser asked where is in the process does the original authority come from and what is the criteria in considering the application. He addressed the difficulty of telling constituents that you cannot take their comments and that they need to attend the public hearing or submit their comments in writing. Attorney Hindoien concurred the commission members cannot not accept comments; however, they need to be aware of the public process with the public hearing.

Commissioner Haque-Hausrath asked if the commission approves the demolition permit application, can it be conditioned on the school bond passing. Attorney Hindoien stated he will research the question and report back to the commission.

Commissioner Haladay clarified his earlier point on the use of discretion was in the content of legal terms in regards to the review of a specific issue. He then asked for clarification if there is a

distinction between when the commission has a standard of review to apply and weighs evidence versus when someone is entitled to approval if all outlined conditions are met.

Mayor Smith and Attorney Hindoien stated they appreciate the clarification and will assist in refining in finding what impact it will have on the analysis. There are instances when the city commission has the discretion in their decision.

Commissioner Haque-Hausrath referenced the city ordinance requiring the city commission's approval of the demolition of an historical structure and the intent to protect and preserve the historical and archeological heritage of Helena. Commissioner Haque-Hausrath stated she will be using the ordinance as criteria when considering the demolition permit.

Commissioner Elsaesser stated he will ask anyone who wants to submit public comment that they forward it to the city clerk. Manager Alles concurred and would recommend all correspondence be forwarded and included in the public record.

6. Committee discussions

- a) Audit Committee, City-County Board of Health, Civic Center Board, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns – No report given.
- b) Audit Committee, Board of Adjustment, Helena Chamber of Commerce Liaison, Information Technology Committee, Transportation Coordinating Committee — No report given.
- c) Intergovernmental Transit Committee, Non-Motorized Travel Advisory Board, Transportation Coordinating Committee – No report given.
- d) ADA Compliance Committee, Business Improvement District/Helena Parking Commission, City-County Parks Board, Montana Business Assistance Connection – No report given.
- e) Audit Committee, City-County Administration Building (CCAB), Public Art Committee – No report given.
- f) Helena Citizens Council – HCC Coordinator Judy Garrity reported there are two open positions, one each in District 4 and 5. Coordinator Garrity noted the items discussed today are very much on the HCC list of important issues.

7. Review of agenda for July 21, 2014 City Commission meeting – No discussion held.

8. Public Comment – No public comment received.

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

10. Adjourn – Meeting adjourned at 5:00 p.m.