

SUMMARY OF ADMINISTRATIVE MEETING

October 12, 2016 – 4:00 p.m.

Room 326, City-County Building

316 N. Park Avenue, Helena

1. Call to order, introductions, opening comments – Mayor Pro Tem Ellison called the meeting to order. Commissioners Farris-Olsen, Haladay and Noonan were present. Mayor Smith was excused. Staff present was: City Manager Ron Alles; Executive Assistant Sarah Elkins; City Attorney Thomas Jodoin; Assistant City Attorney Iryna O'Connor; Police Chief Troy McGee; Administrative Services Director Glenn Jorgenson; Community Development Director Sharon Haugen; Public Works Director Randall Camp; City Engineer Ryan Leland; Engineer David Knoepke; Community Facilities Director Gery Carpenter; Civic Center Manager Angela Poole; Fire Chief Emert and City Clerk Debbie Havens.

Others in attendance included: IR Reporter Al Knauber; HCC Representative Gary Spaeth; Steward Howard; Chad Lee; Lona Carter-Scanlon, Cassie Trost and Lynn McKeever.

2. September 21, 2016 Meeting Summary – The September 21, 2016 administrative meeting summary was approved as submitted.

3. Commission comments, questions –

Upcoming Appointments – Mayor Smith is recommending the following board appointments:

Bill Roberts Golf Advisory Board Appointment of Tyson Lesmeister to the Golf Advisory Board.
First term will begin November 1, 2016 and expire October 31, 2019.

City-County Parks Board Appointment of Steve Baiamonte to the Parks Board as a city
representative. First term will begin upon appointment and
expire September 30, 2019.

Helena Housing Authority Appointment of Stacey Anderson to the Helena Housing
Authority. The unexpired term will begin upon appointment and
expire August 1, 2020.

Commissioner Noonan asked if there is an update from MDT on crosswalk at the corner of Lawrence and Fuller Avenue. Engineer Leland noted the project is closed for construction, it is scheduled to be painted this fall and the yield to pedestrian signs are installed.

Commissioner Noonan asked if the property owners who live in Phase III of the Westside annexation project can do their own hookups at a cost less than what the city is estimating. Manager Alles noted there is a section where the pipes are already in the ground and adjacent property owners can request hook-up which will be cheaper since the pipe is already installed. At this time, there is no reimbursement program in place for the area. Again, there are pipes in the area and residents are allowed to connect.

Commissioner Noonan asked if it will cost the residents double of what the current costs are. Manager Alles noted the city's intention is to recover 100% of the costs to install the infrastructure; excluding the upgrades the city is planning. The costs could be double if there currently is not pipe in the ground that a resident could hook into. Commissioner Noonan asked if he would be correct in saying a few people have the advantage of using the existing pipe and there is no rebate program in place and that is what makes the difference. Manager Alles concurred.

4. City Manager's Report - City Manager Alles gave an update on the following items:

- Quiet Zone – Staff will go back out for bids in November and have a recommendation in December. The project would start in March/April of 2017.
- Capital Transit - 15 bus stops are installed, there are two remaining to complete with the completion date of October 21, 2016. The second fixed route will not be implemented until additional drivers are hired and trained.

- Tenmile South Collaborative Committee met today; the Forest Service is putting out a 4th alternative, which this committee will review. Due to the committee's continued work a recommendation will be brought forward next spring to extend the sunset date of the committee for an additional three years.

5. Department Discussions:

Public Works

Highland/Montana Crosswalk Discussion – City Attorney Jodoin noted he had the conversation with a representative from the Rocky Mountain ADA Center and without a doubt all facilities have to be accessible. The crosswalk and pedestrian access route at this intersection has to be accessible. He did note the Rocky Mountain ADA Center is an advisory group that gives their recommendations. PROWAG has not been adopted by the Department of Justice. At the end of the day his office will defend what the commission decides to do. In abundance of caution, he recommended at a minimum, that curb ramps be installed and potentially sidewalks if they are accessible to the curb ramps. There are inconsistencies between the current curb ramp rule and the Department of Justice technical assistance program. There are no requirements that public access routes have to be installed. This crosswalk is an identified pedestrian access route and there are concerns with safety due to motorists not yielding to pedestrians.

Commissioner Haladay asked if we choose to install the crosswalk with ramps and to it with minimum sidewalks on the NE and NW corners that would connect with the crosswalk, is there any indication that sidewalks would have been installed to the adjacent properties. Attorney Jodoin stated there is no guidance at this time.

Commissioner Haladay stated the estimate to bring the entire intersection into compliance was \$140,000; if only the bulb outs and minimum sidewalks are installed what would the costs be. Engineer Leland estimated a minimum of \$50,000; if only ramps are installed it would be \$3,000 per ramp. Engineer Leland stated his recommendation would be to install the bulb outs.

Commissioner Haladay asked if it would be possible to restripe the crosswalk as a first portion of the project and then install the bulb outs when a contractor is available. Can we get a solution in place where it shows we are going to install the bulb outs. Attorney Jodoin stated he believes the city could defend that position by explaining that we are working through the process. Engineer Leland noted with the recent storm, the street department may not have the hot tape or paint to install the crosswalk.

Commissioner Haladay stated he would like to move forward with the recommended plan; however, to get the crosswalk painted as soon as possible. Address the immediate need and then follow-up with the entire project.

Commissioner Farris-Olsen concurred with Commissioner Haladay. He would encourage staff to get the crosswalk painted as soon as possible. Commissioner Noonan also concurred.

Public Comment – Mayor Pro Tem Ellison asked for public comment. The following persons spoke in support of installing the crosswalk immediately and follow-up with the entire project: Lona Carter Scanlon, Steward Howard, Chad Lee, Lynn McKeever and Cassie Trost.

Also discussed was the installation of the yellow pedestrian signs, installing a diagonal crosswalk, safety concerns and the impact on adjacent property owners with the installation of sidewalks. Until the project is designed; some of the concerns/questions cannot be addressed.

Engineer Leland stated the project will be designed with bulb-outs and then asked where the funding will come from. Commissioner Haladay asked if it is just the distance that makes the perpendicular recommendation for the crosswalk under the plan. Engineer Leland stated it is the crossing distance and getting the cars to stop in one location. Staff will look at both options for the crossing.

Commissioner Haladay stated the ADA ramps should be paid for by the city and the sidewalks should be paid for by the adjacent property owners. Since we are being forced to put them in, it is a public good and should be the city's responsibility. He is comfortable with ramps and bulb outs.

Commissioner Farris-Olsen asked if there is money available to make these improvements. Manager Alles noted staff will work out the funding for the project.

Commissioner Noonan stated he supports getting the crosswalk painted as soon as possible and install the bulb outs as recommended by staff.

Commissioner Haladay noted the street maintenance fee was increased to complete these types of projects and in addition there are budgeted projects that does not have commission consensus to move forward.

Consensus Direction to Manager – Move project forward, get the crosswalk painted and complete the second phase as soon as possible. Staff will update the commission at the October 26th administrative meeting. Staff will also contact the school district for any possible funding.

Sidewalk Authority on State Highways – City Attorney Jodoin submitted the following memo on the authority to require sidewalks along state highways:

QUESTION POSED

At the September 26, 2016 regular City Commission meeting I was asked whether the City had the authority to require an adjacent property owner to install sidewalks along a Montana Department of Transportation (“MDT”) maintained and operated state highway.

SHORT ANSWER

No, the City does not have the authority to require an adjacent property owner to install sidewalks along an MDT maintained and operated state highway because the planning, design, and construction of any infrastructure on a State highway must be approved by the MDT. Since the City does not have the authority to force the MDT to install sidewalks on its highways, the authority of the City to force the adjacent property owner to do so cannot be practically enforced.

DISCUSSION

In Montana, the State has ultimate authority over streets and sidewalks along state highways. See, *Palfy v. City of Bozeman*, 168 P 108, 110-112, 540 P 2d 955 (1975). Further, the State “bear[s] the ultimate responsibility as owner of the street and sidewalk under Montana law.” *State v. Butte-Silver Bow County*, 2009 MT 414 ¶22, 353 Mont. 497, 220 P.3d 1115.

Since the MDT has the legal liability for state highways it has constructed, the MDT must ultimately approve the construction of any sidewalk placed along a state highway. While the City has technical legal authority to require construction of a sidewalk along streets by the adjacent property owner, the planning, design, and construction of the sidewalk must be approved by the MDT for those streets that are owned and operated by the MDT. Because the City does not have authority over the MDT, at the end of the day, the City’s legal ability to withhold building code-related approval is troublesome.

Unless there is a formal plan for non-motorized transportation facilities adjacent to a state highway which has been accepted or approved by the MDT, I would recommend that the City not condition the “final occupancy” of a building upon the construction of the sidewalk. The City still retains the ability to require adjacent property owners to construct sidewalks along streets adjacent to their property. When a sidewalk project is deemed appropriate by the MDT, the City could at that time require the adjacent property owner to construct the sidewalk without risk of withholding development approval.

Commissioner Haladay asked how this applies to Euclid, Prospect, and Lyndale Avenues. Attorney Jodoin stated the same way, the commission can order sidewalks in. However, with the case of the sidewalk variance, the city was considering conditioning “final occupancy” and requiring the installation of sidewalks. Attorney Jodoin also pointed out that the city should push MDT to address this through the city’s long range transportation plan.

Mayor Pro Tem Ellison noted this sidewalk variance was tabled to the call of the city manager; he asked what the next step would be. Manager Alles noted he will put the sidewalk variance back on an agenda with a recommendation to grant the variance. Manager Alles addressed MDT installing sidewalks with their projects; many times the maintenance of those sidewalks fall onto the city, which falls onto the adjacent property owner.

Consensus Direction to Manager - Manager Alles will place the sidewalk variance on an upcoming city commission meeting agenda.

6. Committee discussions

- a) Audit Committee, City-County Board of Health, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns – No report given.
- b) Audit Committee, Helena Chamber of Commerce Liaison, Information Technology Committee, Transportation Coordinating Committee – Mayor Pro Tem Ellison noted the TCC will begin meeting quarterly.
- c) ADA Compliance Committee, Audit Committee, City-County Parks Board, Civic Center Board – Commissioner Farris-Olsen reported the ADA Committee has met with a full membership.
- d) Board of Adjustment, City-County Administration Building (CCAB), Non-Motorized Travel Advisory Board, Transportation Coordinating Committee – Commissioner Haladay stated the question was asked at the Board of Adjustment on whether or not, based on the language in state statute, could the city commission serve as an appeal body from the Board of Adjustment; if someone is dissatisfied with a ruling from the Board of Adjustment. Attorney Jodoin stated the commission use to do that up until 2008; at that time there was discussion on the need to have a separation of powers. However, he could re-work the appeal process. The applicant always has the choice of going directly to district court. Mayor Pro Tem Ellison stated this topic could be discussed at a future administrative meeting.
- e) Business Improvement District/Helena Parking Commission, Montana Business Assistance Connection, Public Art Committee – Commissioner Noonan reported the Public Art Committee has completed the RFP for the Jackson Street garage; the traffic signal boxes RFP will be ready in the near future. He recognized the work of Mary Vandenbosch for moving these forward.
- f) Helena Citizens Council – HCC Representative Gary Spaeth reported the September HCC meeting was active with three Boy Scout troops attending the meeting; there was a presentation on the jail bond; a recommendation was brought forward to get cities to support passenger service along the southern route; and presentation from the Civic Center consultant.

The HCC is changing the process for filling vacancies on the HCC; they will be active in the upcoming budget cycle and would like each of the city department directors to attend an HCC meeting to explain what they do and where they are located.

7. **Review of agenda for October 17, 2016** – No discussion held.
8. **Public Comment** – No public comment received.
9. **Commission discussion and direction to the City Manager** –
10. **Adjourn** – Meeting adjourned at 5:00 p.m.