

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
May 21, 2018 - 6:00 P.M.
City Commission Chambers, Room 330

- Time & Place** A regular City Commission meeting was held on Monday, May 21, 2018 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present** Mayor Collins indicated for the record that Commissioners Farris-Olsen, Haladay, Noonan, and O’Loughlin were present. Acting City Manager Troy McGee, City Attorney Thomas Jodoin, and City Clerk Debbie Havens were present.
- Pledge of Allegiance** Mayor Collins asked those persons present to please stand and join him in the pledge of allegiance.
- Minutes** The minutes of the regular City Commission meetings of May 7, 2018, were approved as submitted.
- Proclamation** PROCLAMATION:
A. Buddy Poppy Month
Mayor Collins read the Buddy Poppy Month Proclamation and presented it to Tom Pouliot.
Mr. Pouliot thanked Mayor Collins for the proclamation and spoke about the history of the poppy movement and about importance of raising awareness about veterans’ issues. Mr. Pouliot and his wife Shirley Pouliot distributed “Buddy Poppies” to Mayor and Commissioners.
- Consent Agenda** CONSENT AGENDA:
A. Claims
B. Resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the City Manager to dispose of the property through consignment of the listed vehicles and equipment to a surplus property public auction. **Resolution 20441**
C. Interim City Manager contract between the City and Dennis Taylor
D. Joint resolution establishing a Helena-Area Regional Trails Steering Committee

Acting City Manager McGee recommended approval of the claims.
Acting City Manager McGee recommended Item D be removed for a separate discussion.
Commissioner Noonan noted that Dennis Taylor was present and could address the Commission.
Mr. Taylor appeared before the Commission to thank the Commission for the opportunity to serve as Interim City Manager.
- Public Comment** Mayor Collins asked for public comment, none was received.
- Motion** **Commissioner O’Loughlin moved approval of Items A - C on the consent agenda.** Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried.

D. Joint resolution establishing a Helena-Area Regional Trails Steering Committee

Prickly Pear Land Trust Executive Director Mary Hollow proposed to amend Section 1 and to strike “or recreation advocacy organization” and replace it with “trust” so that it reads “a representative from a land conservation trust”. Director Hollow stated that the Steering Committee would provide essential direction to the process that the Helena Area Trails Committee will pursue. The intent of the Steering Committee and its establishment was to support further coordination and the efforts of Prickly Pear with the City and the Forest Service regarding the maintenance and management that Prickly Pear performs in the south hills.

Acting City Manager McGee noted that the city staff, Attorney Jodoin and Parks and Recreation Director Teegarden approved this amendment.

Public Comment Mayor Collins asked for public comment, none was received.

Discussion Commissioner O’Loughlin noted that this amendment was consistent with the discussion that the City Commission and County Commission had at the joint meeting. Commissioner O’Loughlin added that this resolution was meant to look at the multi-jurisdictional use of land and that having the Land Trust on this Steering Committee would be important.

Motion **Commissioner O’Loughlin moved approval of a joint resolution establishing a Helena-Area Regional Trails Steering Committee with the amendment to strike “or recreation advocacy organization” in subsection 1 and replace it with “land conservation trust”.** Commissioner Noonan seconded the motion. All voted aye, motion carried. **Resolution 20442**

Communications From Commissioners COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Noonan pointed out that Carroll College was now housing the students from Rossiter School due to the flooding in the valley. Commissioner Noonan emphasized that it was an example of the community coming together to help each other.

Report of the City Attorney REPORT OF THE CITY ATTORNEY
City Attorney Jodoin had nothing to report on.

Report of the City Manager REPORT OF THE CITY MANAGER
A. CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE AWARDED FOR COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR)

Acting Manager McGee reported the Government Finance Officers Association (GFOA) has awarded the City the Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by government and its management. This is the 30th consecutive award for the City of Helena.

Acting Manager McGee expressed recognition for the City's finance staff, Glenn Jorgenson and Liz Hirst, for their work in achieving this award for the 30th consecutive year.

Liz Hirst addressed the Commission and elaborated on the history of receiving the award. She recognized all city staff involved in compiling the report.

- B. CONSIDER A RESOLUTION DECLARING A STORMWATER INFRASTRUCTURE EMERGENCY AT OR NEAR 11TH AVENUE AND NORTH MONTANA AVENUE AND AUTHORIZING THE SELECTION OF A RESPONSIBLE CONTRACTOR WITHOUT COMPETITIVE, ADVERTISED BIDDING TO COMPLETE THE IMMEDIATE INSTALLATION OF STORMWATER INFRASTRUCTURE AND REPAIR DAMAGE.

Attorney Jodoin gave the legal opinion on the need for the emergency resolution. In order to approve the emergency resolution, it would require four affirmative votes. Attorney Jodoin asked the Commission to explain and elaborate on the need for the resolution so that the public is away as to the reasons. Attorney Jodoin emphasized that the City doesn't have easements for this pipe which is one hundred years old, and the portions that haven't collapsed are in poor condition. If the City were to go through advertised competitive bidding process, it would be several months before the actual construction could begin. Due to the weather conditions with high chance of significant precipitation, this pipe needs to be taken care of as soon as possible.

Engineer Leland showed slides demonstrating the existing 48" pipe, where it has collapsed, and where there is the need to get the pipe reconstructed and a new one installed. The old existing pipe would be abandoned. Engineer Leland emphasized that it would be a big project but not an extreme undertaking. The reason this pipe couldn't be patched was because of the soil and the depth that goes beneath the canopy.

Discussion

Commissioner Haladay asked how long a normal bidding process would take for a project like this. Engineer Leland stated that it would take approximately two months to go through the competitive bid process. Engineer Leland emphasized that he was very uncomfortable with the condition of the pipe and waiting that long.

Commissioner O'Loughlin asked about the estimated costs and timeline of the project. Engineer Leland explained that quotes from five local contractors we received, and out of three proposals that came in, the lowest was \$470,000. The price could increase depending on the scope of the project. If the emergency resolution were to get approved at this meeting, the project would begin on Wednesday, May 23rd, and be completed within three weeks.

Commissioner Haladay asked who the contractor was. Engineer Leland replied that Montana Underground provided the lowest bid.

Public Comment

Mayor Collins asked for public comment.

Will Garvin, Helena resident, asked for clarification on the measurements that Engineer Leland referred to. Engineer Leland clarified that the 48" pipe that goes across Safeway parking lot is 9 to 10' in depth, the 36" older main that goes underneath the gas station is 25' deep. From the area where the pipe had collapsed to the point where the camera could reach was about 100' and that is the length of pipe that is compromised and that goes underneath canopy. This is the area that

would have to be dug. That pipe is 25' underneath the canopy. It was 100' length of pipe that had been TV'ed that was in bad condition.

Motion

Commissioner Noonan moved approval of a resolution declaring a stormwater infrastructure emergency at or near 11th Avenue and North Montana Avenue and authorizing the selection of a responsible contractor without competitive, advertised bidding to complete the immediate installation of stormwater infrastructure and repair damage. Commissioner O'Loughlin seconded the motion. All voted aye, motion carried. **Resolution 20443**

Report from the Helena Citizens

REPORT FROM THE HELENA CITIZENS COUNCIL

There was not an HCC member present.

Regular Items

REGULAR ITEMS:

- A. CONSIDER A RESOLUTION FINDING THAT A BLIGHTED AREA EXISTS WITHIN THE CITY OF HELENA, MONTANA, AND THAT REHABILITATION AND REDEVELOPMENT, OR A COMBINATION THEREOF, OF SUCH AREA IS NECESSARY IN THE INTERESTS OF PUBLIC HEALTH, SAFETY, MORAL, OR WELFARE OF THE RESIDENTS OF HELENA.

Staff Report

Community Development Director Sharon Haugen reported the Helena City Commission has directed city staff to begin work necessary for the possible creation of an Urban Renewal District centered in the Downtown area. This area had been the subject of two previous Urban Renewal Districts that sunsetted in 2005. More than 80 projects were completed using TIF funds generated by the previous TIF increment including the Walking Mall, the Great Northern Town Center, improvements to the Civic Center, library, façade improvements for the businesses in the downtown, and many other improvements. The creation of the district could result in the potential of using tax increment financing (TIF) to make any needed public improvements that might encourage redevelopment and development of the area.

On November 11, 2017, the City of Helena directed WGM Group, Inc. to identify and document blight factors within the Downtown District, encompassing an area generally described as the area bounded on the north by Lyndale Avenue, on the south by Cruse Avenue, on the west by Benton Avenue, and on the east by Jackson Street as shown on the attached map. WGM Group has completed a Statement of Blight to document the existence of potentially blighted conditions that would meet the definition of blight as defined in MCA 7-15-4206 (2). Based upon the findings in the Statement of Blight, the Commission may want to consider the development of an Urban Renewal Plan for the area. These are prerequisites to allowing the City of Helena to exercise its powers under Title 7, Chapter 15, Parts 42 and 43 of the Montana Code Annotated. The creation of the TIF district allows the City to use the increase in the tax base (tax increment) to help fund improvements in the area.

On March 27, 2018, a public meeting was held the Helena Civic Center to discuss the draft Statement of Blight and the proposed boundary. The proposed boundary was developed based on meetings with MBAC and representatives of the BID and city staff. The draft Statement of Blight was completed after interviews with various city staff, property owners in the district, and through a review of existing information available through the Department of Revenue, the Downtown Master Plan, and various engineering studies. Over 400 notices were sent to the affected property owners, including landowners and other

affected businesses. Advertisements were also in the Independent Record and on the City's website and Facebook page. The School District and the County received separate notices. The draft Statement of Blight was also available for viewing.

Several comments were made about the proposed boundary. They ranged from expanding the scope of the project to include the Myrna Loy and Rodney Street, excluding the residential property between the Great Northern and Benton, excluding Centennial Park, the YMCA and the old Armory building and redrawing the boundary to about that of the Railroad District. An analysis of these comments was completed by the consultants and is attached to this memo.

The consultants are not recommending any increases in the boundary at this time, primarily because the areas of the City recommended to be included were not covered by the Downtown Master Plan. They are also not recommending excluding any of the property for the reasons stated in the analysis. There were also several comments with regard to the Statement of Blight. Several of those comments related to expressed needs in the downtown, how TIF monies can be used, and recommendations for more public outreach. A list of the comments and the consultants' recommendations are also attached to this memo.

The passage of the resolution of necessity will allow for the creation of an Urban Renewal District in the Downtown district and surrounding area and allow the City to exercise its powers authorized in Title 7, Chapter 15, Parts 42 and 43 of Montana Code Annotated allowing the City to use the increase in the tax base (tax increment) to help fund needed improvements.

The passage of this resolution will result in the creation of an Urban Renewal Plan and will enable the use of TIF funds for redevelopment in the area. TIF is one of the few mechanisms that local governments have to encourage investment and to diversify tax base. TIF funds can be used to make infrastructure improvements that benefit the public and allow for orderly growth. All of the uses for TIF funds will be based on the goals and the objectives developed in the Downtown Urban Renewal Plan.

TIF may be available for use to increase the energy efficiency of publicly owned structures and to make possible improvements recommended in the Greening America's Capital report. All of the uses for TIF funds will be based on the goals and the objectives developed in the Downtown Urban Renewal Plan.

The creation of a TIF district freezes the property tax revenues derived from the increased value of any property improvements for the city, county, and the school district for at least 15 years. Any increased costs in overall services will have to be paid for by the existing tax base and increases in the tax base in the other parts of the city.

Director Haugen recommended approval of a resolution finding that a blighted area exists within the City of Helena, Montana, and that rehabilitation and redevelopment, or a combination thereof, of such area is necessary in the interests of public health, safety, moral, or welfare of the residents of Helena.

Public Comment

Mayor Collins asked for public comment.

Helena Business Improvement District Director Micky Zurcher spoke in support of the resolution.

Owner of Montana Outdoor Sports Rex Seeley also spoke in support of the resolution.

Commissioner O'Loughlin thanked Director Haugen and WGM Group, Inc. for providing very helpful analysis. Commissioner O'Loughlin also articulated why the area meets the qualifications under the statute for creation a TIF District.

Motion

Commissioner Haladay moved approval of a resolution finding that a blighted area exists within the City of Helena, Montana, and that rehabilitation and redevelopment, or a combination thereof, of such area is necessary in the interests of public health, safety, moral, or welfare of the residents of Helena.

Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried. **Resolution 20444**

- B. CONSIDER THE RELEASE OF THE CITY'S INTEREST IN A NINE FOOT (9) PORTION OF A FIFTEEN FOOT (15) PEDESTRIAN TRAIL AND UTILITY EASEMENT ACROSS LOT 15 OF THE SUSSEX PARK SUBDIVISION AND THE FILING OF AN AMENDED PLAT DEPICTING THE REDUCTION OF THE EASEMENT.

Staff Report

City Engineer Ryan Leland reported the City has a 30' wide pedestrian trail and utility easement across the common boundary line between Lots 15 and 16 of the Sussex Park Subdivision. This subdivision is located in the upper westside of Helena. The easement is 15' on either side of the common property line.

A single track pedestrian path and a city water main lie within the easement. The main was installed by Sussex Construction as part of the development of the subdivision. The water main is located at or near the common boundary line between Lots 15 and 16 of the Sussex Park Subdivision. The trail was not accepted by the City during the approval of the subdivision and as such has no responsibility for maintenance or operation of the pedestrian trail.

Sussex Construction recently built a dwelling unit on Lot 15 (535 Sussex Court) for the property owner. A corner of the house was built within the easement that lies on Lot 15. The house and eaves extend approximately seven and a half feet (7'6") by ten feet six inches (10'6") by eleven feet eight inches (11'8") into the abovementioned pedestrian trail and utility easement. The proximity of the house to the water main may already preclude the City from accessing the main out of concern that excavation that close to the house may compromise the structural integrity of the house. As a result, the City may have to abandon the main which would result in two dead end water mains. Dead end water mains are not desirable due to water quality and fire flow concerns. The approved building plans show the house outside the existing easement and the house was not built in the approved location.

In the recent past, it has been documented that Sussex Construction has trespassed and caused damage to City property (Ridgeview and Sussex Subdivision).

The property owners' home would no longer be located within the pedestrian trail and utility easement. However, the city would have approximately seven to eight feet (7'-8') from the eaves of the house to the water main. Current engineering standards require easements for mains on private property to be within an easement that is ten feet (10') on either side of the main. The City may not be able to access the main for maintenance and repair activities, or replacement. The City may face claims for damages to the dwelling unit for maintenance activities or a

water main break. The main may have to be abandoned or relocated which will affect fire flows in the area.

Engineer Leland recommended denying the release of the City's interest in the north nine foot (9') of the pedestrian trail and utility easement across the southern lot line of Lot 15, as shown on Certificates of Survey No. 3115068 and deny the filing of the amended plat depicting the reduction of the easement.

Public Comment

Mayor Collins asked for public comment.

Soren Colbert, Sussex Construction, showed photos of the property and the utility easement from an amended plat application for Commission's consideration. The pictures showed that the 8" water main is located approximately 11.5' feet from the foundation of the house. The trail is straight and curved on the plat. In the opinion of Sussex Construction staff, the 34' easement is excessive for a standard 8" main.

Commissioner Noonan referred to the Administrative Meeting and said that it was explained to the Commissioners that Sussex Construction was at fault. Commissioner Noonan asked Mr. Colbert whether Sussex Construction would agree with that.

Mr. Colbert replied that the majority of the fault lied at Sussex Construction. Sussex drew the setbacks according to the approved site plan, and to the crew's knowledge the setbacks were correct when they were put in. Mr. Colbert provided possible suggestions explaining why setbacks ended up being placed at the wrong distance. Mr. Colbert added that the setbacks were signed off by the City Building Division during the on-site inspection last July. It was Sussex' oversight and the oversight of the City Building Division combined that let the issue go unnoticed until Sussex was trying to get a certificate of occupancy for the homeowners.

Cherche Prezeau, a legal representative for Sussex Construction, pointed out that the City Code requires a 20' easement for water main utility. And in this case, the 30' easement was put in place because of the pedestrian trail, which no longer was necessary. Thus, had this been design solely with the water main in mind, there would have been a 20' utility easement, which would effectively have resulted in 10' of easement on either side of the property line. In this case, as was confirmed yesterday, there are 11.5' from the foundation of the encroaching home to the water line: over the 10' easement that typically would be put in place in a case like this. Ms. Prezeau stated that while she appreciated what Engineer Leland had said, with the re-measurements that were done on May 20 and given the fact that the house is over 1' away from the water main had the 20' requirement was in place, this situation shouldn't cause any issues to the City. The eaves in the encroaching portion of the house are 10'6" above ground; typically this wouldn't be considered an encroachment or, likewise, the City routinely grants encroachment requests for eaves that are slightly in the easement as these are. None of these should hinder City's ability to bring an excavator and make any repairs to the water line should that occur. Ms. Prezeau pointed out that Section 12.4.5 of the Helena City Code provides that City utility easement that are not adjacent to the dedicated public rights of way must have a minimum width of 20', and once this encroachment is carved out, there is more than 20'. Section 4.6.2 of the City of Helena Engineering Designs Standards again refers to 20' easement measurement. There are 15' on one side and 9' on the other, thus there are over 20' of easement on that property.

Amy Carlson and her husband, 535 Sussex, homeowners of the property, appealed to the Commission so that some resolution between the City and Sussex Construction would be found. The property owners stated that they spent about 3 years building this house and that they were building it to spend the rest of their lives in it.

Commissioner O'Loughlin referenced the location of the valves and asked about the significance of the location of the valves. Engineer Leland stated the valve is part of the water main and it is very specific on the location; with the eaves, it would be very difficult to bring in an excavator.

Commissioner O'Loughlin asked to confirm whether it was an accurate measurement that the water main was located 11.5' away from the house. Engineer Leland noted that staff didn't go out and measure everything but that measurement was probably close. Engineer Leland emphasized that it is a minimum of 20' easement on flat ground and 30' was required due to the topography as it was not flat ground.

Commissioner O'Loughlin reiterated the explanation of why 30' were needed as opposed to 20': it was a combination of both the trail and the water main, given the grade.

Commissioner Haladay asked whether the Building Department actually checked the foundation distance and whether the Department routinely does it. Engineer Leland stated that he didn't know whether Building department staff went out to do the measurements but that he could ask them. Engineer Leland did know that the City signed off on the occupancy of the house. Commissioner Haladay asked to check if there was a record of the Building Department staff going to the site and doing the measurements before any determination was made.

Commissioner Haladay asked Attorney Jodoin whether an eave would normally be something that could go to the Board of Adjustment for a variance if it were encroaching on a setback requirement or an easement. Attorney Jodoin replied that the City normally does not deal with this type of issue in new construction. After the fact, they propose a plan and then they ask for a variance before it's constructed. The City normally sees encroachments into right of way with existing houses. The City does routinely give variance if the eaves are not within the 10' required easement. An encroachment was proposed by the City for this particular issue and for many reasons was not acceptable to the property owners.

Ron Bartsch, Sussex Construction, acknowledged that this mistake did happen. The error was on Sussex part, the string was strung that showed the 10' offset and the City of Helena came and they saw the house taped before the foundation was poured. Mr. Bartsch stated that he was present when this happened: City staff came, looked at the strings, and concurred that the house was not within the easement. Mr. Bartsch also spoke about ability to excavate in that area. Mr. Bartsch emphasized that it was within the capabilities of excavation and using excavators. Mr. Bartsch pointed out that the City of Helena provides for a 20' easement, and Sussex Construction operates in those easements in excavation work. Mr. Bartsch also stated that he was the developer when this subdivision was created and that the conversation about City requiring a greater easement for the utility portion never came up. At that time Sussex proposed that the trail should become a city trail, and the Commission at that time denied that. Mr. Bartsch expressed hope that the Commission would take all that into consideration and understand that not only there was an opportunity for work and service on this main but also that moving a house would be a significant event.

Commissioner O'Loughlin asked Mr. Bartsch to confirm that if the City were to grant the release and, if in repairing the water main, the City damaged the house, the liability would solely rest with the City. Mr. Bartsch stated that was correct and added that if the City had a contractor with the subcontractor, the contractor would be liable.

Commissioner O'Loughlin asked Engineer Leland about the plat approval and a conversation preceding it regarding why 30' was provided as opposed to normal 20'. Engineer Leland replied that with respect to 30' easement, this information was provided; there was the waterline and trail; it wasn't only a trail easement, it was a waterline and trail easement. At that point, that was what Sussex had proposed. When the trail was not accepted, that easement didn't go away, it stayed at 30', so that was why staff did not state that the city needed an easement because that was still proposed to be 30'; if Sussex would have proposed reducing it, city staff would have said to keep the 30' for the easement.

Commissioner O'Loughlin reiterated that the original site plan was developed by Sussex Construction, they were aware of the 15' easement on each side of the line, and they adhered to this on their original site plan. Engineer Leland concurred and said that those were approved plans that the Building Division reviewed. Engineer Leland emphasized that was the time to really look at the proposed plans and that Sussex staff were aware of the 30' easement; the easement was on the plans and it was approved. Regarding the outline of the house itself, even if it was built exactly according to the original site plans, the house would still be encroaching on the easement.

Mr. Bartsch confirmed that he drew the site plan himself, as part of the city submittal package. If the house was built to the exact specifications, the eaves would still be encroaching on the 15' trail and utility easement. Mr. Bartsch noted that it would not have been an issue because it would have been approved. They often build homes to the edge of setbacks, and the eaves often overhang those easements. Mr. Bartsch stated that he believed there was a provision in the City Code allowing builders like Sussex encroachment agreements that are greater than 10': for new construction or otherwise.

Commissioner Noonan stated, in response to a question from Ms. Prezeau, the homeowners were put in the troubling position and the solution would be dependent on good will. Commissioner Noonan referred to a case that took place a couple of years ago when the City granted a temporary easement on parkland for the Ridgeview Development, and there was a concerned citizen due to damage being done not only to the park but also to his property. That citizen had the intention to take that case to court. Commissioner Noonan noted that kind of situation – when the City was acting on good will several years ago and there were still complaints coming in – concerned him. He would like to support privileges of the homeowners but he still felt cautious about this situation.

Ms. Prezeau informed the Commission that homeowner filed a lawsuit and lost. Ms. Prezeau also stated the following:

As was pointed out, Sussex did reclaim the city property. There were concerns that came up and it was hoped that they had all been addressed. A different developer was involved in the case that Commissioner Noonan referred to, it wasn't Sussex. This was the first time that Sussex has built within the city limits and that they made a mistake of encroaching and building on city easement. But the point brought up by Commissioner Noonan was well taken. There were some homeowners who were understandably very concerned; this was a very unfortunate error. However, given the fact that there still was a 21'

easement, as well as 11'5" from the foundation, that's the most that the city would have anyway. That area has difficult typography and site, but if the city hired an experienced contractor, it would not cause an issue. What's more, if it were to become an issue, it would be a contractor's liability.

Ms. Prezeau also expressed her concern that there was some bad will toward Sussex and that it would be raised in the context of the Ridgeview Development issues. Ms. Prezeau expressed hope that Carlsons would be as happy as other clients of Sussex Construction and emphasized again that 11.5' was still within the City Code.

Commissioner Noonan noted that in his earlier comment he was responding to another issue and that he would not be making a decision based on another situation, but it did give him pause to consider.

Commissioner O'Loughlin asked Attorney Jodoin to walk through the process of an encroachment agreement that Carlsons didn't agree with. Attorney Jodoin stated that Sussex initially requested an encroachment agreement for the city on behalf of the Carlsons. This type of encroachments typically permits the property owner to encroach on the right of way until they city needs to access that area. Language of the encroachment agreement has a standardized notice of 60 days allowing the city to request the removal of the encroaching structure. The property owners were not comfortable with the standard language and requested a permanent solution.

Commissioner Haladay asked whether, if the Commission were to deny the request, the Carlsons would have to move their home. Attorney Jodoin replied that he would not encourage the City to pursue that; however, the issue would be when the City would need to access the main to maintain or replace it. Attorney Jodoin stated that he wouldn't recommend to abandon the mains either. Attorney Jodoin added that he understood that the homeowners wanted a resolution.

Commissioner Haladay asked what would happen if the Commission approved the request and at some point the City would need immediate access and damaged the house. Attorney Jodoin replied that the City would contract with an outside contractor with appropriate insurance and cover the costs thereof.

Commissioner O'Loughlin asked Engineer Leland whether it would be challenging to find a contractor. Engineer Leland replied that if it was a main replacement, a contractor would be hired. Contractors would evaluate the work and bid accordingly. Most likely, the contractors would be found, but it would be more expensive.

Commissioner Haladay noted that it felt somewhat analogous with the agreement with Bryant school (agreement by the school district to bear the costs on the long run) and asked whether something similar could be done to get the homeowners some certainty. Attorney Jodoin stated the encroachment agreement would be with the property owner; the City would probably be looking at Sussex Construction for the indemnification of the City for any additional costs above and beyond. Additionally, if any damage to the property took place as a result of it being too close to the water main, the City would be the place that homeowners would be going to.

Mrs. Carlson provided a clarification relative to the financing of the house: they have a construction loan, which would expire sometime in the summer, and the bank would not give them long-term mortgage for the house with the encroachment; when the construction loan is up, they need to convert it into the mortgage. Mrs. Carlson added that her and her husband wouldn't agree with the encroachment either. As far as

Mrs. Carlson was aware, it was the bank who discovered the original encroachment.

Commissioner O'Loughlin asked Commissioner Haladay and Attorney Jodoin whether common ground could be found if the Commission tabled the request at this meeting and had a discussion later in search for a resolution.

Attorney Jodoin said that he could draft a separate agreement between the City and Sussex Construction for the indemnification and coverage of the City; however, Attorney Jodoin pointed out that one of the considerations the Commission would have to worry about was that Sussex Constructions may not be around forever.

Commissioner Haladay said that his preference would be to table this request. Commissioner Haladay reiterated his request for confirmation on Building Division inspection before Commission would make a determination, one way or another.

Commissioner Farris-Olsen emphasized importance of Commission coming back to this discussion in a timely manner to ensure that the homeowners get financing.

Motion

Commissioner Haladay moved to table the release of the City's interest in the north nine foot (9') of the pedestrian trail and utility easement across the southern lot line of Lot 15, as shown on Certificate of Survey No. 3115068 and table the filing of the amended plat depicting the reduction of the easement to the call of the City Manager. Commissioner Noonan seconded the motion. All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

- A. CONSIDER A RESOLUTION GRANTING A HISTORIC PROPERTY TAX ABATEMENT FOR NEW CONSTRUCTION ON HISTORIC PROPERTY LOCATED 330 AND 332 PINE STREET.

Staff Report

Director Haugen reported Matt Culpo and Christine Thennis, owners of the properties located at 330 and 332 Pine Street, are applying for tax abatement under provisions of state law for restoration, rehabilitation, expansion, and new construction of certified residential and commercial properties located within national register historic districts and properties listed in the National Register of Historic Places (MCA 15-24-16 et seq.). This location is legally described as Lots 15 and 16 and the east 10' of Lot 17 in Block 10 of the Original Helena Townsite (geocode number 05-1888-31-2-17-17-0000).

Mr. Culpo and Ms. Thennis are building a duplex with a garage and a house with a garage on the property which is currently under construction.

Under these provisions of MCA 15-24-1603, historic property undergoing rehabilitation, restoration, expansion, or new construction that meet criteria established by the review process described in 15-24-1605 or 15-24-1606 may receive a tax abatement up to 5 years following completion of the construction. The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

At the April 18, 2018, meeting, the Lewis and Clark Co. Heritage Tourism Council (HTC) voted unanimously to approve the historic tax abatement application with 3 recommended changes: 1) shiplap siding on the front (south) elevation be changed to the board and batten, 2) the balcony on the front elevation be modified to a porch with the portico that

spans the front half of the upper exterior floor, and 3) the historic streetlamps on the property not be placed on the front lawn and an alternative location in the boulevard be explored. Both City and County Commissions are holding public hearings to consider the tax abatements and the HTC's recommendations.

Nancy Everson, the County Finance Director, has completed an analysis of the value attributable to the tax abatement and a copy of that analysis is attached to this memo.

The applicant requests the City to grant a tax abatement for the new construction of 3 dwelling units located at 330 and 332 Pine Street.

The use of the tax abatement for renovations, rehabilitations, and new construction of buildings that meet such as these may encourage the redevelopment of historic districts and buildings and provides some infill opportunity. However, for the term of the abatement granted by the City Commission, there will be no increase in tax revenue derived from the increased value of the improvements.

Director Haugen recommended the following:

If approved, move to approve a resolution granting the tax benefits to Matt Culpo and Christine Thennis for the property located at 330 and 320 Pine Street in Helena Montana for the increase in taxable value to be assessed for tax years 2019 –2023 pursuant to the taxable value scheduled outlined in 15-24-1601.

If denied, move to deny the tax abatement application for Matthew Culpo and Christine Thennis for the property located at 330 and 320 Pine Street in Helena, Montana.

Discussion

Commissioner Haladay asked whether, if the resolution was approved today with an added condition that later would not be complied with, it would be an automatic clawback or whether the Commission would need to add a clawback for approval. Director Haugen referred the question to Attorney Jodoin and added that the building inspectors don't go out and cannot do enforcements on those details to insure that they are done. Attorney Jodoin noted that state law has provisions that if the plans are not followed as approved by the governing bodies, the property owner has to pay back the taxes that would otherwise not be abated.

Director Haugen elaborated further on her response to Commissioner Haladay's question: HTC would have to do the actual inspections of the recommended conditions because Building Division inspectors cannot go out and ensure that those two provisions were followed. Additionally, Building Division staff would need to contact Public Works Division in regards to the placement of the street lamp on the boulevard, since it may or may not be outside of the standard practice.

Commission Haladay asked whether it would be possible to simply require the homeowner to provide proof that the conditions have been met. Attorney Jodoin stated this was the first historic tax abatement application he had encountered and that he had not considered how the City would assure compliance with the approval and conditions thereof. Attorney Jodoin noted that he would need to get back to the Commission with an answer.

Commissioner Haladay commented that part of the problem with abatements historically was that there is no real way to assess whether the property owner follows through with recommended conditions. A bigger question would be: how the City would ensure actual compliance if the Commission granted abatement.

Public Testimony

Mayor Collins opened the public hearing and called for anyone wishing to address the commission.

Matt Culpo, applicant, asked to grant the abatement. Mr. Culpo submitted a revised site plan for the property per the recommendations of HCT and stated that he would make the recommended changes, follow through, and work closely with Ms. Attardo to make sure that the project would be done correctly. Mr. Culpo acknowledged that the light got damaged in the process of work.

Historic Preservation Officer Pam Attardo stated that the changes were based on the guidelines for historic neighborhoods in Helena and elaborated on them. Officer Attardo referred to her own experience with being granted tax abatement on her home and how she complied with the conditions.

Discussion

O'Loughlin stated that she shared Commissioner Haladay's questions and concerns about tax abatements and whether granting those would incentivize behavior to build in a historic neighborhood. Commissioner O'Loughlin noted that she felt comfortable moving forward with the tax abatement.

Commissioner Farris-Olsen noted that it seemed that the owner was going to comply with the recommendations but he was inclined to include those conditions within the motion.

Commissioner O'Loughlin noted that the third issue that was raised by the Preservation Officer regarding the street lamp was no longer an issue.

Motion

Commissioner Farris-Olsen moved approval the tax abatement application for Matthew Culpo and Christine Thennis for the property located at 330 and 320 Pine Street in Helena, Montana for the increase in taxable value to be assessed for tax years 2019-2023 pursuant to the taxable value outlined in 15-24-1601, subject to the first two conditions proposed by the Historic Preservation Council. Commissioner Haladay seconded the motion.

Discussion

Commissioner Haladay expressed his agreement with Commissioner O'Loughlin's comments and expressed appreciation for the property owner willing to meet the conditions.

Commissioner Farris-Olsen thanked Mr. Culpo for working with the Historic Preservation Council.

Vote

All voted aye, motion carried. **Resolution 20445**

Public Communications

PUBLIC COMMUNICATIONS

Will Garvin spoke about beginning the process where City of Helena would communicate with the Congress regarding a proposed amendment to the Constitution that would clarify two things: (1) the rights of natural persons only and (2) that speech is communication from a natural person. Over 600 cities and towns have passed resolutions in support of such an amendment. Mr. Garvin stated that he would attend the June 25th City Commission meeting with proposed language for the resolution.

Commissioner Farris-Olsen explained that the Commission would not be able to act on proposed resolution at the Commission meeting and suggested Mr. Garvin submit the text ahead of time so that an agenda item would formally be placed on the agenda for the administrative meeting. Mr. Garvin would need to work with the City Manager's office. Attorney Jodoin noted that Mr. Garvin could do what

Commissioner Farris-Olsen had suggested or he could introduce it at the June 25th meeting; however, if the Commission wanted to act on it at the June 25th meeting, then he would need to see the text of the proposed resolution as soon as possible.

Mr. Garvin stated that how soon the Commission would act on the resolution did not matter to him.

***Meetings of
Interest***

MEETINGS OF INTEREST

The Budget Work Sessions are scheduled for May 23 and 30, Administrative Meeting is scheduled for June 6, City-County Joint Work Session is June 7, and the next Commission Meeting is June 11, 2018.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:00 p.m.

/S/ WILMOT COLLINS
MAYOR

ATTEST:

/S/ DEBBIE HAVENS
CLERK OF THE COMMISSION