

CITY OF HELENA
SPECIAL CITY COMMISSION MEETING
August 1, 2019 - 5:00 P.M.
Room 330, Commission Chambers, City-County Building
316 N. Park Avenue, Helena, MT

Time & Place A special City Commission meeting was held on Thursday, August 1, 2019 at 4:00 p.m. in Room 330 of the City-County Building, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Collins requested City Clerk Havens call roll call: Acting City Manager Jodoin, Commissioner Haladay, Commissioner Wicks and Commissioner O'Loughlin all responded present. Commissioner Noonan and Manager Cortez were excused.

Commission Comments No commission comments received

Public Hearing **A. HELENA-LEWIS AND CLARK NATIONAL FOREST TEN MILE-SOUTH HELENA PROJECT LITIGATION**

Staff Report Acting City Manager Jodoin stated the purpose of the meeting is to explain to the public the difference between the first and second lawsuits; Helena Hunters and Anglers Association and v. Marten et al, Case No. 9:19-cv-00048-DLC and Alliance for the Wild Rockies and Native Ecosystems Council v. Marten et al, Case No. 9:19-cv-00106-DVM and for the commission to provide direction on next steps regarding the second lawsuit. He also spoke on what does the Tenmile-South Helena Project entail.

Water Treatment Superintendent Eric Urban addressed Helena's drinking water quality/quantity response from fire; water collection infrastructure; water treatment demand and current production and Helena's infrastructure needs for fire.

Parks, Recreation & Open Lands Director Kristi Ponzozzo presented information on Helena Open Lands – Wildland Urban Interface; Firefighter and Public Safety and Trails/Recreation.

Discussion Commissioner O'Loughlin asked for clarification on the "roadless rule" and whose rule is it. Acting Manager Jodoin stated he believes it was a Presidential Order or act of congress that designated these areas as roadless areas sometime in the 1980's.

Commissioner Haladay asked if the commission chooses to intervene or file an amicus brief, are there any preliminary injunctions in place. Acting City Manager Jodoin stated not to his knowledge.

Public Testimony Mayor Collins declared the public portion of the hearing opened and called for public testimony.

The following persons addressed the commission:
US Forest Supervisor Bill Avey clarified the roadless rule was a Presidential Order signed by President Clinton; however, it included reasonable treatment within the roadless areas. Mr. Avey acknowledged the Forest Service was contacted by the city regarding mediation and noted they were interested; however, they did not receive a response.

Mr. Avey read a prepared statement regarding the safety of the firefighters and workers; treatment in the roadless areas, including mechanical equipment; and the final environment impact statement.

Mr. Avey submitted a copy of the Tenmile – South Helena Project Record of Decision, Forest Plan Site-Specific Amendment #34. **Sean Logan**, Helena Citizens for the Tenmile/South Project, read a prepared statement and submitted it for the record, which urged the commission to consider a formal response in opposition to this lawsuit.

Rocky Infanger, Wolf Creek, Secretary/Treasurer of the Lewis & Clark Rural Fire Council, spoke in support of the Tenmile/South Project and against the lawsuit.

Pat McKelvey, Retired Fire Wildland Management Director with Lewis & Clark County, spoke on the work the city of Helena has done regarding wildland mitigation. Mr. McKelvey spoke in support of the project and for the city to file an amicus brief in support of the Forest Service.

Sony Stiger, Retired Fire Behavior Analyst, spoke on the effect of fire behavior on treated and untreated areas. Mr. Stiger read a prepared statement and submitted it for the record, on fuels management and on non-treated versus treated areas. He spoke in support of the US Forest Service project.

Jordan Alexander, Vice Chair of Lewis & Clark Rural Fire Council and Chief of Baxendale Fire Department asked the commission to support the US Forest Service and not support the lawsuits. He spoke on the legality of using mechanized equipment in a designated roadless area.

Joe Cohenour, Chair of the Tenmile-South Forest Collaborative Committee, stated the committee was tasked to investigate fire mitigation and protection of the city's water supply and water shed. This committee had over 40 meetings and have submitted comments on the ROD; in which the Forest Service accepted with the exception of the committee's recommendation of no mechanical equipment be used within the roadless areas.

Angie Grove, Tenmile South Collaborative Committee commented the committee vetted the issues and she asked the commission to support the ROD.

Sheriff Leo Dutton asked the commission to file an amicus brief in support of the Forest Service. He spoke of his background and experiences with wildland fires. This project is for prevention of wildland fires; the city needs to be part of a team that saves people.

Hoyt Richards, DNRC, stated DNRC encourages the commission to file an amicus brief in support of the Forest Service. DNRC and the city has collaborated on past projects and the city has investment money to complete fuel treatment projects. DNRC has given the city grants to fund these treatment projects. Fuel reduction is necessary, without fuel reduction, firefighters will not be able to access the areas. DNRC funded the collaborative committee in the amount of \$66,000.

Bob Drake, Chief of the Tri-Lakes Volunteer Fire Department, spoke of the current north hills fire and then spoke of the fires that have occurred since 2000. Chief Drake spoke of the importance of the city's watershed and of protecting it. We need to protect our forest and asked the commission not to support the lawsuit and to file an amicus brief in support of the Forest Service. The city of Helena should be taking the lead on fire mitigation, not opposing it.

Ray Prill, Executive Director of Tri-County Working Group spoke of the Tri-County Working groups outreach, education and mitigation efforts in a three county area. He spoke of the various treatment methods that has been used on the south side. Mr. Prill stated the Forest Service project is about forest health, it is overgrown and the fuels needs to be reduced. The commission has the responsibility to protect the citizens of Helena. A neutral decision is a negative decision. He encouraged the commission to file an amicus brief in support of the Forest Service.

Eric Sivers noted he is speaking as a private citizen; however, his viewpoint is formed by 15-years of experience with the Montana Department of Environmental Quality, in water source protection and watershed protection programs. He referred the commission to two documents available on-line, the first is the Source Water Delineation

and Assessment report that was written by DEQ on the city's public water supply; a wildfire in the upper Tenmile watershed is identified as a hazard to the city's municipal water supply. The second document is the Lake Helena Watershed Protection Plan.

Retired Major General Gene Prendergast spoke on the commission's number one responsibility is to protect the citizens of Helena and the firefighters; it is everyone's responsibility to make the city safe. He owns property in the area and he has done fire mitigation on his property. Please make the right decision and make the city of Helena safe.

Doris Davis, HCC member and has been active with the Fire Safe Working Group. Ms. Davis agreed with the previous comments and asked the commission to support moving forward with the project and do the right thing. Be proactive and not reactive.

Gayle Joslin responded to the previous comments; people need to understand that this project is not the city's project, the decision today is to file an amicus brief or not. It is the Forest Service decision to move forward or not.

At the May 20, 2019 commission meeting, there was good representation in support of the lawsuit. Ms. Joslin spoke on her efforts to mitigate the effects of a wildland fire. It is not necessarily government's role to mitigate. She gave her background as a wildland biologist; she participated in the original Tenmile Collaborative Committee and is a member of Helena Hunters and Anglers and Alliance for the Wild Rockies.

Ms. Joslin stated the reasoning behind the litigation was because they could not work out the details with Forest Service who would not listen. She offered to give anyone who is interested a tour of the area, specifically the roadless areas. It is important to keep the mechanized equipment out and do not create any new roads or trails.

Ms. Joslin also addressed the quality of life and the protection of the wildlife; the previous mitigation efforts and mountain bike trails that have not been addressed. Ms. Joslin on behalf of Helena Hunters and Anglers and Alliance for the Wild Rockies formally requested the city maintain support for wild country at the back door of the city.

Jim Posewitz, spoke of the outdoor amenities of our community and noted he has worked hard to protect them. Wildlife abundance is not done by accident, restoration made it possible.

Mr. Posewitz read a prepared statement on conservation ethics of protecting the wildlife. Please support the lawsuit and do not file an amicus brief in support of the Forest Service.

Stan Frasier, President of Helena Hunters and Anglers, stated he has 30-years of experience firefighting for the Forest Service and Baxendale Fire Department and is currently the chair of the Baxendale Board of Trustees. He noted he is not opposed to treatment; what he is opposed to is using mechanized equipment. He emphasized the lawsuit is specifically asking that no mechanized equipment be allowed.

Eric Grove stated he appreciates the opportunity for a redo of the May 20 executive session and referenced his email of July 16. He clarified there are no mountain bike trails in the Tenmile South proposal; there are multi-users trails, for bikes and pedestrians. Mr. Grove stated the city has a compelling interest in the lawsuit for both watershed protection, public safety and the safety of the firefighters. The city needs to intervene and file an amicus brief.

Brian Kahn, Attorney, stated he facilitated the first collaborative effort and gave his professional background and experience with wildland fires. Mr. Kahn stated he considers himself both a sportsman and conservationist. Mr. Kahn stated mitigation is necessary, he does not

believe the project will harm the wildlife. Firefighters, law enforcement and the citizens of Helena are in potential jeopardy. It is time for the city to act.

There being no further public testimony, Mayor Collins closed the public portion of the hearing.

Discussion

Acting Manager Jodoin reviewed the following four options regarding the second lawsuit: 1. Intervene in lawsuit 2. File amicus brief 3. Mediate between parties and 4. No action. He recommended before the commission decides on what option, they choose the appropriate format for the discussion, open meeting or executive session.

Acting Manager Jodoin stated the city commission may close portions of this agenda item to the public pursuant to Section 2-3-204, MCA, to discuss litigation strategy to be followed with respect to Helena Hunters and Anglers v. Marten et al, Case No. 9:19-cv-00047 DLC and Alliance for the Wild Rockies, and Native Ecosystem Council v. Marten et al, Case No. 9:19 –cv-00106-DWM, if the commission determines an open meeting would have a detrimental effect on the litigating position of the city.

At this time and from his perspective, the city is not at a place to close the meeting. The initial discussion is does the city want to become involved and with making the initial decision, the meeting should not be closed.

Commissioner O'Loughlin asked Mr. **Cohenour** if he is speaking on behalf of the Collaborative Committee and a follow-up question it is her understanding of Mr. Cohenour's position is to support the Record of Decision. Is that something the Collaborative Committee reached consensus on. Mr. Cohenour stated he is here as chair of the Collaborative Committee and stated the committee has not met to discuss the Record of Decision.

Commissioner O'Loughlin referred to the Record of Decision, Page 18, Alternate 2 and asked if that is the Alternate the Forest Service has decided to move forward with. She asked Forest Supervisor Avey how the Forest Service made the decision to go with Alternate 2 (Proposed Action) versus Alternative 4 (Preferred Alternative). Mr. Avey stated the ROD speaks for itself and the decision was made after all public comments were considered.

Commissioner O'Loughlin thanked everyone for their comments and noted at the May 20 meeting, public comment was offered and the commission concurred to hold off making a decision until everyone had the opportunity to be heard. She acknowledged there has been concern and frustration the commission did not hear from everyone at the May 20 meeting. The commission also wanted to see if mediation was an option.

Commissioner Haladay stated he would take the advice of Acting City Manager and not to go into executive session; we have not heard any legal analysis of anything we are talking about and have heard public comment on the process and where the ROD ultimately got to where it is today. What we did get is a significant amount of policy pitches from all sides. Commissioner Haladay stated he does not recall any testimony regarding any legal issues that would cause the commission to go into executive session.

Commissioner Haladay referenced the lawsuit from the Alliance for the Wild Rockies lawsuit and when you are talking about a policy approach, we have a collaborative committee and we have that committee for a reason, we are relying on individuals who hopefully will provide recommendations on the policies and procedures we should be

supportive of. Commissioner Haladay stated other than a small piece the ROD ultimately is the city's position on policy. As a matter of policy, he believes the Alliance for the Rockies lawsuit is contrary to the city's position. For him, do we get involved directly on the Forest Service side, as matter of law we are going to fight these specific claims against the Forest Service's process and he cannot answer that as he not seen any legal analysis. If we think about how the city addressed our compelling interest in an ROD that we are 95% in support of, how do we best weigh in and state the true compelling interest.

Commissioner Haladay noted Judges Christion and Meloy do not care if the city becomes involved; they will care on the document the city will bring regarding our specific interest, the history, the policy and the reasons we reached consensus in certain areas. Again it is not legal it is a policy approach where we inform the court of the history. We need to explain the history to the court on why the city thinks the ROD is almost a fit with regard to the Alliance lawsuit. This purely is policy and not legal. He would provide the court with objective facts, history and policies.

Commissioner Haladay stated if the majority of the commission wants to discuss litigation strategy, we might want to go into executive session.

Commissioner Wicks agreed with the comments of Commissioners Haladay and O'Loughlin. There have been two separate meetings and she appreciates the public comments. She then asked if an amicus brief would provide the history of the City of Helena's interaction with this specific project or projects of this nature that would provide some type of context for the current ROD. Commissioner Haladay stated he thinks that would be the way to articulate the reasons why the collaborative committee ultimately came to consensus on these points; why it felt these matters are important; we can provide that in an accurate, well-documented way that is compelling rather than coming in and making identical legal arguments to the Forest Service.

Mayor Collins thanked everyone for their public testimony and stated it is concerning to him. He asked Acting Manager Jodoin to explain the amicus brief if we were to file one. Acting Manager Jodoin explained if the city were to intervene, we would have to ask for permission to do so. If the city was granted permission, we could participate as a party to the lawsuit; an amicus brief is a way to explain the non-legal context of why their position is important. With intervener status, the city would argue the Forest Service did or did not follow the correct process and procedures to get to the ROD. An amicus brief would give the court the history and background they would like the court to consider.

Commissioner Haladay spoke on the correct process; an amicus brief will allow the city to offer history and information and convey the city's invested interest in the entire process.

Commissioner O'Loughlin asked Acting Manager if he could confirm Lewis & Clark County is filing an amicus brief. Acting Manager Jodoin stated he is not 100% sure.

Commissioner O'Loughlin stated she supports filing an amicus brief as we do have a compelling interest in protecting the city's watershed and the safety of the firefighters. It is helpful knowing the historical content of what the collaborative committee decided in 2009 and what the city's interest are. Commissioner O'Loughlin stated she supports Commissioner Haladay's recommendation.

Mayor Collins stated he takes this seriously and does not want firefighters and law enforcement to be in danger. He believes the city should be more involved than filing an amicus brief.

Commissioner Wicks asked if the commission were to discuss getting more involved than filing an amicus brief, would there be a need to go into an executive session. Acting Manager Jodoin stated he could not say for sure what litigation may be discussed; discussion of the merits of intervening is not enough to close the meeting.

Commissioner Wicks thanked everyone who testified and who are out there fighting the fires. She realizes this is a very serious issue. She agrees with Commissioner Haladay to file an amicus brief in support of the ROD. She is open to additional discussion.

Commissioner Haladay stated historically when we talked about these things; we have done them through consensus. Assuming we can move forward, we can retain counsel and at that time, the commission would schedule an executive session. Acting Manager Jodoin concurred.

Commissioner O'Loughlin asked if staff has enough direction from the commission. Acting Manager Jodoin stated yes.

Commissioner Wicks summarized the discussion; we will not take action on the Hunters Anglers lawsuit, but on the Alliance for the Wild Rockies/Native Ecosystems Council lawsuit. Acting Manager Jodoin concurred with Commissioner Wick's statement.

Commissioner Haladay stated if written correctly this amicus brief would cover both lawsuits and would be tailored toward Helena needs.

Motion

Commissioner O'Loughlin moved to instruct the City Manager to draft an amicus briefing that provides the historical content and interest of the City of Helena in the Helena Hunters and Anglers Association and v. Marten et al, Case No. 9:19-cv-00048-DLC and Alliance for the Wild Rockies and Native Ecosystems Council v. Marten et al, Case No. 9:19-cv-00106-DVM lawsuits.

Commissioner Wicks seconded the motion.

Mayor Collins again stated he believes the city should be doing more than filing an amicus brief.

Vote

City Clerk Havens called a roll call vote, as follows:
Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. **The motion carried, 4-0.**

Public Communications

PUBLIC COMMUNICATIONS – Mayor Collins asked for public comment. No public comment received.

Adjournment

There being no further business to come before the City Commission, the meeting adjourned at 6:10 p.m.

/S/ WILMOT COLLINS

MAYOR

ATTEST:

/S/ DEBBIE HAVENS

CLERK OF THE CITY COMMISSION