

A COMMISSION MEETING OF MAY 19, 2014 WHICH WAS HELD AT THE CENTRAL MONTANA COMMUNITY CENTER AND STARTED AT 7:00 P.M.

CALL TO ORDER

Chairman Doney called the meeting to order.

PLEDGE OF ALLEGIANCE

Chairman Doney asked everyone to stand and say the Pledge to the Flag.

ROLL CALL

Present were Commissioners: Berry, Doney, Hewitt, Poss, Putnam and Turk. Commissioner Gremaux was absent.

APPROVAL OF MINUTES

Commissioner Hewitt made the motion to approve the May 5, 2014 minutes and Commissioner Berry seconded the motion. The motion passed unanimously.

COURTESIES

There were none.

PROCLAMATIONS

There were none.

BOARD AND COMMISSION REPORTS

Commissioner Hewitt reported that she attended an airport board meeting on May 7th. There have been 18 planes in the hangars. The farm land has been seeded. The Airport is currently about \$28,000 in the black. Office of Public Instruction has a whole summer of instruction scheduled. The Airport Board is still waiting for a second appraisal from Steve Hall but should be done by the end of the month. The prebids for the milling and pavement maintenance have been opened. The board is considering buying a bobcat to assist with snow removal. Commissioner Hewitt explained that the Airport Board has sent letters to all of the leasees recommending they have liability insurance. The Airport Board does not have insurance to cover personal property.

Commissioner Poss reported that the City County Planning Board met and approved the Knoll Subdivision which is located just north of the Lewistown Heights.

Commissioner Putnam reported that the Park and Recreation District met on May 14th and Ms. Gayle Doney was there and presented the information for the run on July 4th. Ms. Dryn Durley

was there and made the presentation regarding the sow grow share program, which is to plant fruit trees on public land for people to harvest and eat the fruit. The opening day for the pool is June 5th and season passes and swimming pool sign up will be May 28th. Commissioner Putnam reported that the fence for the Redbirds field should be installed by the end of this week. The Redbirds have requested that the field be named the Ryan Sparks field. The Sparks family and the Ryan Sparks memorial paid \$140,000 toward the new lighting. Commissioner Putnam commented that the board looked at a plan for future improvements that included: Kiwanis Park rejuvenation, Symmes Park restroom update, expansion of the East Fork Camp Ground, Fish Hatchery Park upgrade, irrigation system upgrade, Judith Park and looking for a large space for the soccer fields.

Commissioner Turk reported that she was unable to attend the most recent Library Board meeting. There will be a preliminary library budget meeting on 5/28/14. The Author dinner was sold out.

CITY MANAGER REPORT

City Manager Kevin Myhre reported on the following issues:

The Street Department worked with a company to get a demonstration of an asphalt grinding machine on Water Street between 4th Ave and 5th Avenue the surface was milled in place and then bladed and rolled. The City will be monitoring the condition of the street and evaluating the efficiency of the process.

The City Attorney and the City Manager met with the County Commissioners and the County Attorney to discuss the easements relating to the sewer and water project at the fairgrounds. The group agreed to submit an offer to the owner based on the estimated value of the easement. The group also authorized the engineers to begin planning to use an alternate route even though it may create higher costs.

The City Manager has been working with a group of citizens to attempt to assist the owners of the historic site to find a long term management solution for the property that would protect, preserve and still allow a larger number of visitors to enjoy the site on an annual basis. The site has recently been featured in articles in all of the major newspapers in the state. Approximately one thousand people visited the site in 2013.

The Historic Preservation Awards Ceremony was held on Monday, May 19th at 5:30 p.m. at the Yogo Inn.

The Building Inspector and Police Department have been working on complaints about the buildings condition and criminal trespass into the building. The owner has been contacted and put on notice to rectify several issues.

The Park and Recreation staff has been working to get the pool prepared for the summer season. The projected opening date this year is June 5th. The high dive will be removed this year to meet state requirements.

The City Manager commented that it has become increasingly difficult to hear Commissioner comments during Commission meetings. The City Manager requested that Commissioners utilize their microphones when making comments or motions and that Commissioners not speak when someone else has been authorized to speak by the Chairperson or when others are speaking. It is hoped that these measures help to avoid confusion with motions and comments for the Commission, staff and public.

CONSENT AGENDA

Commissioner Turk made the motion to approve the acknowledgement of the claims that have been paid from May 1, 2014 to May 13, 2014 for a total of \$92,955.39 and Commissioner Hewitt seconded the motion. There being no comments the motion passed unanimously.

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion item: Mr. Doug Flament request to address the Commission regarding annexation of his property

Mr. Jim Hubble addressed the Commission stating that he represents Doug and Jill Flament and is here to discuss the City Manager's proposal to annex the Flament's property on Castle Butte Road. Mr. Hubble explained that in 1997 the Flamments bought 75 acres on Castle Butte road with the intention of one day moving out there and opening a business and a place to keep their horses. The Flamments built a house and have been living there since 2003. The property was bought for them to live in the country and to establish and build a dog breeding and training facility. Mr. Hubble further explained that when they first moved out there they had a well for water and hooked up to City water in 2007. Mr. Hubble explained what happened in 1996 when the City was working to run the new water line. Mr. Bill Shaw, City Public Works Director, came and talked to Mr. Flament and explained that if he let the City run their water line across their property we would give you a curb stop. Mr. Flament asked Mr. Shaw what the City would pay him for the easement. Mr. Shaw replied that the City would not pay anything for the easement but will give you a curb stop and you will be able to hook up to City water. Mr. Hubble commented that there has been no talk of annexation in the conversations and Mr. Shaw did not mention anything with regard to annexation. The Flamments gave the City their easement so that the City could have their water line up Castle Butte Road and in exchange for a curb stop. Mr. Hubble explained that Mr. Flament hooked up to City water in 2007 and at the time went to the City office and paid whatever needed to be paid and has City water ever since. Mr. Hubble went on to explain that in the spring of 2013 Mr. Myhre approached the Flamments about the possibility of annexing their property. Discussion was held regarding the Flamments dog business. Mr. Hubble commented that much of the property's value is in the ability to run and expand the current business of raising and selling golden retriever dogs. Mr. Hubble stated the annexation of the property would have a serious adverse affect on the value of that property because City ordinance states they can't expand their business. Mr. Hubble stated that Mr. Shaw did not say to Mr. Flament that if you take the curb stop you could be annexed later on and had Mr. Shaw told the Flamments that at the time they would not have hooked to City water. Mr. Hubble commented that there has been some negotiation with the Flamments and the City regarding the

annexation of property and frankly we have reached an impasse, which is why we are here tonight to tell you why we do not want to be annexed. Mr. Hubble stated he is sure that Mr. Myhre and Mr. Boettger will be bringing a proposal to the Commission for a decision and he wanted to take the opportunity to tell the commission a few things that should be considered when deciding if Flaments 75 acres should be annexed into the City. Mr. Hubble stated that from the very start they have been told the reason for the annexation is because the Flaments have City water and Mr. Hubble does not feel it is relevant because there are other citizens who have City water in the County and are not being annexed and probably will never be annexed. Mr. Hubble stated that having City water or not having City water is irrelevant. Mr. Hubble stated the Flaments have been paying water bills since 2007, therefore, they are not getting something for free and it is not like they did not give something up to get water because they gave the City an easement. Mr. Hubble stated that this is probably a contractual matter that the City said if you grant us an easement for the water line the City will give you a curb stop. Mr. Hubble stated that the Flaments performed because they gave the City the easement and the City performed and gave the Flaments a curb stop. Mr. Hubble explained that Mr. Boettger has told us that we can disconnect from City water but feels there is a contract in place for the City to provide water and them to provide the easement. Mr. Hubble explained there is a motion in the law called estoppels and in his opinion the City should estopp from annexing because they do not have clean hands. One because Mr. Shaw did not tell them they would be annexed if they hooked to water and two there is a question of equal protection meaning government is to treat everyone equally. Mr. Hubble continued by saying that annexing the Flaments will not be doing that because by annexing them they would be treated differently than the next door neighbor who is not getting annexed. Mr. Hubble stated that some citizens that have City water have signed a waiver of protest of annexation, which means they waive their right to annex and they also signed a utility service agreement when they got City water. Mr. Hubble commented that the Flaments did not sign the waiver or a utility service agreement. Mr. Hubble explained that the Flaments property is not contiguous to the City of Lewistown, which is one of the statutes that can be used for the purpose of annexation. Mr. Hubble further explained that in order for the Flament property to be contiguous Castle Butte Road must be annexed. Mr. Hubble finalized by stating the Flaments do not have to be annexed and he has presented the reasons why. Mr. Myhre stated that the City has ordinances regarding annexation into the City and there are ordinances regarding the connection to services and there are state laws regarding connection to services and annexation. Mr. Myhre further stated that any action the City takes should follow the laws in place. Mr. Myhre commented that the issue being discussed this evening is that Mr. Flament would like City water and not be annexed. Mr. Myhre further commented that a waiver of annexation and a utility service agreement have been mailed to Mr. Flament and he has chosen not to sign either one of the documents. As a result the Commission will have to decide how they want to proceed, because typically if someone does not sign a utility service agreement their services are disconnected. This has not been up to this point but does not mean that it can't be done or won't be done. Mr. Myhre stated that he would like the City Commission to take this under advisement as we move forward with annexation. Commissioner Doney explained that this is not an action item, but a discussion item that was brought before the Commission by Mr. Doug Flament and Mr. Hubble. Further discussion followed. Mr. Craig Flentie asked for an annexation summary and the lack of information of how the areas would be affected if annexed. Mr. Flentie stated that the City does have an obligation to provide front loaded information of what the city plans to do if the area is annexed. Mr. Boettger explained that City staff is working

on the preliminary information that would need to be brought before the Commission to act on. Mr. Boettger explained that the procedure would be that City staff would bring a proposal before the City Commission of an area that would be recommended for annexation. If the Commission agreed to the proposal then the citizens would be notified that the Commission is considering an area for annexation. Further discussion followed. Commissioner Doney thanked everyone for the concern but this is a little premature and the Commission does not have the answers at this time. Mr. Myhre read the following from the Montana's Annexation Law: historically the purpose of Montana's annexation statutes have been simply to provide expanding communities with: a united and effective single form of government, orderly growth through uniform regulations such as building codes, planning and zoning standards and an equal sharing of community resources and financial responsibility by people living in an area united by social, political and economic interests. Mr. Myhre commented that he understands that is a general explanation but that is the whole goal of annexation and by living right on the edge of the City that make you part of the Lewistown community. Further discussion followed. Mr. Flentie thanked the Commission for their time. Commissioner Doney explained that when the Commission has more information the public will know and thanked everyone for attending the meeting.

2. Discussion and action on approving a City business license for Freedom Plumbing LLC

Mr. Myhre explained that as part of the process of issuing a business license to a plumber it must come before the City Commission for approval. The business is aware that it must be approved by the Commission and a temporary license has been issued until final approval by the Commission. Commissioner Turk made the motion to approve a City business license for Freedom Plumbing LLC and Commissioner Putnam seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

3. Public hearing to hear comments on Ordinance No. 1747, an ordinance amending Title 11, Chapters 2,3 and 4 of the Lewistown City Code zoning regulations defining storage containers (shipping containers) and permitting their use only in C-3 Highway Commercial, M-1 light industrial, and M-2 heavy industrial zoning areas

Chairman Doney opened the public hearing to hear comments on Ordinance No. 1747, an ordinance amending Title 11, Chapters 2,3 and 4 of the Lewistown City Code zoning regulations defining storage containers (shipping containers) and permitting their use only in C-3 Highway Commercial, M-1 light industrial, and M-2 heavy industrial zoning areas. Mr. Myhre explained that the Zoning Commission is recommending an amendment to the definition and location of storage containers. The proposed amendment would specifically exclude storage containers as an accessory use in residential zoning districts. Mr. Brian Lewis addressed the Commission stating that he currently lives on Castle Butte Road and if that area is annexed would he be able to keep his storage containers in place. Mr. Myhre stated that yes that would be grandfathered in however; it is considered a nonconforming use and if he were to discontinue the use of the container for 18 months or more they would not be allowed back into the area. Chairman Doney asked for comments and there being none, the public hearing was closed.

4. Discussion and action first reading of Ordinance No. 1747, an ordinance amending Title 11, Chapters 2,3 and 4 of the Lewistown City Code zoning regulations defining storage containers (shipping containers) and permitting their use only in C-3 Highway Commercial, M-1 light industrial, and M-2 heavy industrial zoning areas

Commissioner Poss made the motion to approve the first reading of Ordinance No. 1747, an ordinance amending Title 11, Chapters 2,3 and 4 of the Lewistown City Code zoning regulations defining storage containers (shipping containers) and permitting their use only in C-3 Highway Commercial, M-1 light industrial, and M-2 heavy industrial zoning areas and Commissioner Putnam seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

5. Discussion and action on setting street improvement priorities for 2014

Mr. Myhre explained that the list is comprehensive and the amount of improvements will depend on funding and priorities. Commissioner Putnam asked about the condition of 4th Ave S between Brassey and Cook. Mr. Myhre explained that he does not think it has ever been paved and there is some curb and gutter. Superintendent of Operations Holly Phelps commented that it has never been paved and there is a lot of hodgepodge of minimal improvements. Mr. Myhre commented that a curb line could be established then it would help with the repair of the streets.

Commissioner Hewitt asked if more streets could be added. Mr. Myhre answered, yes, but the changes should be sooner than later because of funding and timing. Further discussion followed. Mr. Myhre explained that he is asking for approval by the Commission so that the City can move forward to bid the improvements. Mr. Myhre further explained that some minor changes may be made depending on the quantities and cost but wanted to give the Commission a chance to weigh in on the street improvements. Commissioner Turk made the motion to approve the Street Improvements as submitted for 2014 and Commissioner Poss seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

6. Discussion and action on approving an hourly bid for tree removal, trees that are diseased and/or hazardous to be removed from the City's right of way

Mr. Myhre explained that bids were requested for the removal of trees. Only two bids were received from Avidity Inc and Davey Tree Service. The City has worked with Davey Tree Service before and they were very good to work with. Commissioner Putnam made the motion to approve the hourly bid from Davey Tree Service for tree removal, trees that are diseased and/or hazardous to be removed from the City's right of way and Commissioner Hewitt seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

7. Discussion and action on Resolution No. 3848 a resolution to adopt amendments to the 2006 Lewistown Growth Policy including tax increment financing as an implementation resource

Mr. Myhre explained that the City is continuing with the process to get a Tax Increment Financing (TIF) District in place. The process includes making changes to the growth policy,

annexation boundaries in place and zoning in place to allow for a TIF. There will be more public meetings in July before the TIF can be created. Mr. Myhre reported that at the last meeting a resolution of intent was passed and this is the motion adopting the amendments. Commissioner Poss made the motion to approve Resolution No. 3848 a resolution to adopt amendments to the 2006 Lewistown Growth Policy including tax increment financing as an implementation resource and Commissioner Berry seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

8. Discussion and action on Resolution No. 3849, a resolution to adopt amendments to the 2006 Lewistown growth policy establishing the land use designation for the Yogo/Railroad annexation No. 2014-1, Document 114163

Mr. Myhre explained that the City of Lewistown it annex several pieces of land located south of the Yogo Inn. Mr. Myhre further explained that now that the annexation has been completed and the intent to adopt amendment to the growth policy to establish land use designation the resolution being acted on now is to adopt the amendments and establish the land use designation for the newly annexed property. Commissioner Poss made the motion to approve Resolution No. 3849, a resolution to adopt amendments to the 2006 Lewistown growth policy establishing the land use designation for the Yogo/Railroad annexation No. 2014-1, Document 114163 and Commissioner Turk seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

9. Discussion and action on second reading of Ordinance No. 1746, an ordinance of the City Commission of the City of Lewistown, Montana, adopting the zone map amendment to establish the initial zoning classification for the area generally located east of Daws Street and South from the Yogo Inn property along the railroad land, known as the Yogo/Railroad Annexation No. 2014-1, Document 114163

Mr. Myhre explained this is referring to the property the City annexed behind the Yogo Inn and establishing the initial zoning classification for the area. Commissioner Poss made the motion to approve the second reading of Ordinance No. 1746, an ordinance of the City Commission of the City of Lewistown, Montana, adopting the zone map amendment to establish the initial zoning classification for the area generally located east of Daws Street and South from the Yogo Inn property along the railroad land, known as the Yogo/Railroad Annexation No. 2014-1, Document 114163 and Commissioner Putnam seconded the motion. Commissioner Doney asked for comments from the audience and Commission. There being none, the question was called for and the motion passed unanimously.

CITIZENS' REQUESTS

There were none.

COMMISSIONER'S MINUTE

Commissioner Poss commented that Mr. Myhre did an excellent job this evening with regards to the annexation issues. Commissioner Poss stated that Mr. Myhre was very direct and polite.

ADJOURNMENT

Chairman Doney adjourned the meeting.

Dated this 19th day of May, 2014.

Gayle Doney, Commission Chairman

ATTEST:

Nikki Brummond, City Clerk