

PUBLIC WORKS COMMITTEE REPORT
January 18, 2012 1:45 – 3:15 PM
City Council Chambers

Members Present: Jason Wiener (chair), Ed Childers, Dick Haines, Bob Jaffe, Marilyn Marler, Dave Strohmaier, Jon Wilkins, Cynthia Wolken, Adam Hertz, Alex Taft, Caitlin Copple, Mike O'Herron

Members Absent: None

Others Present: Doug Harby, Monte Sipe, Scott Michell, Steve King, Gregg Wood, Kevin Slovarp, Phil Smith, Shane Stack, Aneta Kurtz-Magee, Tottie Parmeter, Angie Stephens, Karen Rincker, John Rincker, Bob Worthington, Don Sokoloski, Marcia Hogan, Debbie Johnston, John Wolverton, E. Bentley, Jim Walther

I. ADMINISTRATIVE BUSINESS

- A. Approval of the minutes of – To be approved at a later date.
- B. Announcements – Steve King, Public Works Director, discussed the snow plowing efforts of the Street Division. Brian Hensel indicated to him that all available equipment is operating on a 24 hour basis, all crews are being utilized, and Public Works was dedicated to the snow event. Mr. King also reminded citizens about the importance of sidewalk maintenance.
- C. Public Comment on Non-Agenda items – None

II. CONSENT AGENDA ITEMS

1. Resolution to order curb and sidewalk improvements adjacent to properties in the East Broadway Ph. II Area, Project 11-012. (memo) – Regular Agenda (Monte Sipe) (Referred to committee: 12/19/11) (REMOVE FROM AGENDA)

Motion: The committee recommends the City Council adopt a Resolution to order curb and sidewalk improvements adjacent to properties in the East Broadway Ph. II Area, Project 11-012, and to place this project on a list to receive an alternative sidewalk funding option if the Council comes to a decision on one other than that which is currently in place.

Doug Harby, Construction Project Manager for City Public Works, gave a brief summary of the process used for sidewalk improvements in the City of Missoula. Various methods were used in deciding what sidewalk projects were to be installed including the master sidewalk plan and citizen input. Projects consisted of new installation or replacement of sidewalk within a specified area. The project starts by sending notice to the citizens in the project area describing the project, to invite citizens to meet with City Engineering staff on site, and to give citizens an estimate of what their costs would be. Another notice is then mailed out notifying citizens about the first Council meeting that will discuss the project where Council will either recommend approval or denial of the project. If the Council recommends approval then Public Works sends a certified notice letter to the citizens in the project area ordering improvements on all the properties and the individual costs of sidewalk installation are assessed to property owners.

Mr. Harby then requested that any sidewalk project from this project forward be included in whatever funding program the committee came up with, implemented this year, after all discussion had been heard from the Pedestrian Subcommittee and a decision had been made on how to fund sidewalk installation in larger project areas.

Mr. Harby said that once Public Works received approval from Council and the certified letter of order was mailed, competitive bidding of the project occurred and property owners could either hire their own contractor or use the contractor hired out of the City's competitive bidding process. Property owners could choose an 8, 12, or 20 year assessment period and possibly qualify for a special funding program if certain criteria were met.

Once the sidewalk project is bid another letter is sent to the property owner with a cost estimate based off the actual contract bid. The project then comes back to Council for a confirmation request and to award the contract. Once that happened another certified letter was mailed to the property owner that the project was awarded with the schedule. A fifth certified letter was then mailed out with the actual cost of construction and at that time the citizen decided on financing. The following winter the project then became part of the bond sale and the first assessment to the property owner was due the following year in the fall.

Mr. Harby explained that this project had been on the City's to do list for many years. The project started at the Creekside Apartments and ended at Easy Street. At this point Public Works had sent out the first letter and had met with some property owners who pointed out what they wanted to see. A meeting also took place at the Comfort Inn where twenty-five property owners attended. The citizens for and against the project seemed equally split; however, by the end of the meeting more citizens were in favor of the project than against.

Due to the topography of the road curb and sidewalk would only be installed on the south side of Hwy 10. Mr. Harby spoke with the Montana Department of Transportation (MDT) and there was concurrence to narrow the street to two 10 foot lanes (Kevin Slovarp clarified that it would actually be two 11 foot lanes), two 6 foot bicycle lanes, and a 7 foot sidewalk on the south side of the road, along with curb and drainage improvements. This allowed Public Works to move the sidewalk farther out into the road prism away from the borrow pits, which allowed the City to cut the costs to some of the properties, especially the condominiums, by almost half. The action required today was to adopt the resolution to order curb and sidewalk improvements. In total there were seventy properties, sixty-five townhouses with a common area, 3 parks (one City and one County), Montana Department of Transportation (MDT) properties, and one vacant private property.

Dave Strohmaier discussed that this area had been a concern of the neighborhood council for years, pedestrian facilities were very inadequate. Mr. Strohmaier then moved the resolution to order curb and sidewalk improvements with the qualifier that if the Council was able to arrive at a funding scheme for sidewalks, different than what was currently in place, that it would be applied to this project.

Jon Wilkins asked why 5 foot sidewalks could not be used in this area. Doug Harby explained that with the 7 foot sidewalks there was a greater buffer between pedestrians and vehicles, it provided an area to deposit snow, and it was required along arterials. Mr. Wilkins then asked how many of the properties would qualify for the City's loan. Mr. Harby explained that he did not know at this time because letters were just sent out to the property owners requesting that they send information back to the City about qualifying for the loan. He did not know who would qualify. Mr. Wilkins wondered if the condos were assessed as a group. Mr. Harby explained that the City was not allowed to do that anymore, the bond council needed a real taxable value for each individual property owner.

Ed Childers added that if the committee decided to extend the benefit to properties being considered for sidewalk construction now before we determine the benefit, property owners would expect a refund. It needed to be made clear that a refund would go to the property owner who owned the property at the time of implementation and may not be the owner who originally paid the bill. He also hoped that the benefit would not be extended to property owners who did not pay taxes or pay into the special road district fund.

Marilyn Marler asked to hear from the public. She was comfortable with the discussion of alternate financing, but it was in such an early stage. She wished the conversation would be further along before more sidewalk projects came before the committee.

Jon Wilkins wanted the property owners in the audience to be aware that the refund option may not even be an option that the committee would decide to implement. It should not be considered part of the equation until Council decided on how sidewalks would be paid for.

Jason Wiener added that he felt it would come to fruition. If the committee did not come up with a funding option by the time this project was constructed, the committee would not be coming to a decision.

Jon Wilkins was in support of sidewalks being constructed in this area.

Doug Harby thought that the assessments in the area would be around \$3,000, which may not be much, but the funding option could really be helpful to property owners on Van Buren and Catlin where assessments would be much higher. He also did not want to hold up construction on these projects, if the committee did not implement a rebate option, maybe a cap or drop dead date of January 1, 2012 could be used.

Jason Wiener asked for public comment.

Aneta Kurtz-Magee stated that sidewalks were necessary; however, the sidewalk in question would be more for the general public since the property is next to the road and property owners would most likely not use the sidewalk. It was an unfair tax to place on adjacent property owners.

Bob Worthington was in support of the sidewalk project. He was an avid walker and used the sidewalk a lot. Residents had stated that the sidewalk did not get much usage, but he felt otherwise. He had had experience with public liability and public issues. Every town had problems with municipal funding and that did not change the process, he supported the process, although it would be great if the alternative funding option was put in place.

John Rincker stated that he had not seen the section of sidewalk in question in the master sidewalk plan. Why was the City jumping ahead on getting it installed? The river trail was also in disrepair and he felt it should be taken care of by the City.

Jaime Yule, President of the Home Owners Association for Phases 1-3, was in favor of the resolution and commended the City. She thought that a funding option for sidewalk installation on this project and for future projects was a good idea. She also clarified that legally the Cobblestones were townhouses. She also indicated that the map that the Committee was provided in the packet labels the Cobblestones as Creekside Condos when they are really described as the Cobblestone Townhomes.

Bob Worthington had one more discussion point and that was to look at the inclusion of deceleration lanes at Cobblestones with this project.

Doug Harby explained that the sidewalk in question was part of the Master Sidewalk Plan but it was listed as a network and not a plan. He then added that he had talked to Donna Gaukler in the Parks Department about the river trail. The problem was that the river bank was advancing toward the buildings off the trail. As far as a grade separated trail there was not enough right-of-way and there were spots where the borrow ditch between the property line and the road was 5 feet deep. In that case there would not be cost savings because of the dirt work involved and sidewalks had a longer lifespan than asphalt. The asphalt would also be right next to trees which could damage the tree roots. He also stated that he had started on the design of the deceleration lane and it should not add any extra cost.

Bob Jaffe asked if the committee could wait on voting on the project for awhile, even though he was comfortable moving forward because he was confident a proposal would be coming from the subcommittee on sidewalk funding at some point. Mr. Harby stated that if the process for the project was not started in the next month or two the project would not get done in 2012. He wanted the

committee to keep in mind that the bond sale would not happen for a year, then it would be 6-8 months before the assessment was issued, and then several more months before anyone would be assessed.

Mr. Jaffe asked if there would still be an opportunity to cancel the project. Mr. Harby stated that Council/Committee would have four opportunities to cancel the project.

Jon Wilkins explained that he only supported the project because of safety concerns. He also asked if the State would be responsible for financial contributions in the area. Mr. Harby said that the right-of-way in question was in the City limits; however, the State was contributing \$50,000 because there was a State parcel being assessed for sidewalk. There was also other funding being applied for street paving. Property owners were only paying 30% of the total cost.

Adam Hertz saw a need for the sidewalk because of safety issues, but he did not support the project because it was more related to a social problem of drinking and driving. He also was concerned that the committee did not know what the funding option was at this point. The committee should think about installing sidewalk in those areas where the sidewalk is heavily utilized. He felt community wide sidewalk funding was not a high priority.

Jason Wiener asked for a vote on the amended motion. Upon a voice vote, the motion carried. The committee then agreed to place the item on the consent agenda.

2. Approve resolution authorizing the Mayor to sign project agreements with Montana Department of Transportation for implementation of the Russell Street Project. ([memo](#)) ---Regular Agenda (Steve King) (Referred to committee: 12/05/11)(**REMOVE FROM AGENDA**)

Motion: The committee recommends the City Council approve the [Resolution](#), as amended, authorizing the Mayor to sign the Project Development Agreement, as amended, with the Montana Department of Transportation for implementation of the Russell Street Project contingent upon City Attorney and the Montana Department of Transportation's concurrence, striking the two hold harmless clauses from the agreement in Section 15, and striking out "and all amendments to this agreement," from the "Now, therefore be it resolved clause" from the resolution.

Steve King stated that many items had been discussed since the committee last met on this item and he recommended approval of the resolution in order to allow the Mayor to sign the finalized Project Development Agreement once the final wording was resolved and legal counsel on both sides was satisfied.

Jason Wiener discussed the public involvement process and the consultant selection process. Some consultants expressed to the Montana Department of Transportation (MDT) that they wanted to work in teams, however it was determined that it would not work through the hybrid selection process. The Consultant Selection Committee reports to the Consultant Selection Board, which is an MDT board in which the City has one vote, but both the City and MDT have to approve the consultant that comes out of the process. The Technical Design Committee meets on a monthly basis to review the design elements, the City has two representatives on this committee, one appointed by City Council and one appointed by the Mayor, and it is a body that works on consensus giving each party a veto. The Decision Team has three representatives which are the Mayor, the Director of MDT, and the Federal Highways Division Administrator. The City does not have an equal voice on that Committee, but the City is said to have a universal voice in these processes.

Mr. Wiener further explained that representatives from MDT were at the meeting to add comment and he believed that there had been a change in culture at MDT. The resolution was also very broad at this point and he suggested the committee revise the resolution to have the Construction Agreement come in front of them in order to amend the agreement they were currently authorizing. The legal issue in question had to do with the last clauses in Section 15 regarding the Hold Harmless provisions. In the January 13th draft those provisions were not struck and MDT legal had asked that the committee strike those provisions.

Steve King offered that Jim Nugent stated that there were other reciprocal indemnification and hold harmless clauses within the agreement related to City and State responsibilities which were not limited to the prior agreement. They covered the entire scope of the agreement which included the termination of the prior agreement.

Jason Wiener asked if there was a motion, and if so, he asked that it be amended to remove the two clauses on counsel's advice.

Alex Taft made the motion to accept the agreement and to speak to the motion. Mr. Wiener asked if the enabling resolution was included. Mr. Taft said yes, he authorized the Mayor to sign the agreement in accordance with the resolution presented. He also supported Mr. Wiener's concern about the resolution and the partnership being continued with the City Council and the Mayor.

Jim Walther stated that he was a Preconstruction Engineer for MDT. He stated that he was at the committee on behalf of MDT to answer any questions. He had worked for MDT for 21 years participating in quite a few projects in Missoula and felt it was important to MDT to move forward with better relationships with the City of Missoula.

Adam Hertz asked if the motion included striking the language that Mr. Wiener has spoken about. Jason Wiener said it was not spelled out explicitly, so he clarified that the first thing would be whether to construe the motion as striking the two hold harmless clauses from Section 15 that the attorneys have agreed to strike. Alex Taft concurred.

Bob Jaffe asked about the part about consultant selection in the agreement, or Section 7. He wanted clarification on the last sentence which read "The final selection of the consultant will be approved by both the City and MDT." Where the City has two representatives, assuming all are in agreement, as far as contract language went it was ambiguous.

Jason Wiener explained that the Consultant Rating Panel had two City representatives, and that panel provided information to the MDT Consultant Selection Board which the City has one representative on.

Mr. Jaffe asked if any part of the agreement went sour how would it play out and did Council have a role or was this the last time the Council would see the agreement. Steve King stated that he understood that issues can come up, but that was why it was important to have the best agreement for both parties and to have flexibility within the agreement to work out any issues that came up. Mr. Jaffe explained that it still seemed as if Council was delegating all its authority by approving the motion.

Bruce Bender explained that there would be a council member on the Technical Design Committee who could update the Council as other representatives would. He was hopeful that any issues would be resolved through the Technical Design Committee and the Decision Team was another tier.

Jim Walther explained that if a big issue came up there would be an opportunity to perform a supplemental environmental impact study or reevaluation and that would place all scenarios back on the table.

Jason Wiener stated that one option would be to amend the resolution to state "Be it resolved the City Council that the Mayor is authorized to sign the Project Development Agreement with MDT," and place a period at the end of that sentence. It currently states "and all amendments to this agreement" and he recommended that the committee not create an agreement which authorizes unilateral amendment after this agreement. He was leaning towards also asking that the committee not approve the Construction Agreement in particular because the Construction Agreement will include things such as traffic management during the project. There will be big decisions to be made when the bridge is replaced. He does not want his constituents to believe that he gave away his power to affect change.

Bruce Bender explained that the Construction Agreement was a boilerplate agreement and any issues that came up would be an element of the design process. The Construction Agreement was the final yes to go ahead with the project. Jim Walther added that issues that came up because of the agreement would be resolved in the design process.

Mr. Wiener indicated that he felt better about the Construction Maintenance Agreement after Mr. Walther's explanation.

Mr. Bender explained his concern was that if it took more than two years to get a construction agreement by that time there could be a change in Council members who are not invested in the prior process.

Bob Jaffe stated that he was still concerned that council would not be participating in amendments to the agreement.

Bruce Bender believed that the resolution was speaking to amendments to this particular agreement only. Maybe the point is valid that any amendments to this agreement should come before the Council. The intent of the resolution was to say any amendments to this agreement.

Jason Wiener explained that he was considering removing the language from the resolution that indicated the Mayor was authorized to sign the Project Development Agreement with MDT striking "and all amendments to this agreement." Mr. Bender thought that that was valid.

Alex Taft accepted the amendment to the motion as a friendly amendment.

Jason Wiener restated that the motion, as amended, was to strike the two hold harmless clauses in the agreement from Section 15, and to strike out "and all amendments to this agreement," from the "Now, therefore be it resolved clause" from the resolution.

Mr. Wiener asked for public comment.

John Wolverton, of the Bike Walk Alliance for Missoula, lives off of Russell Street. He appreciated the due diligence in making sure the City was in a fair and equitable position moving forward on the project. He reminded the committee that there was only money available to complete the project to 2nd Street, as he understood it, and that was within a five year window. It could take a long time to get to Mount Avenue and that was not acceptable to the neighborhood and he wanted the project to get completed.

Mr. Wiener asked for public comment and discussion. Hearing none he called for a vote and the motion carried unanimously as amended.

III. HELD AND ONGOING AGENDA ITEMS

1. Resolution to change the speed limit on Reserve Street between Brooks and 39th Street. ([memo](#))—Regular Agenda (Wayne Gravatt) (Referred to committee: 01/24/2011)
2. Discuss the timing of various traffic lights around the city. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 09/26/2011)
3. Discuss the school speed zones. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 09/26/11)

IV. ADJOURNMENT

The meeting adjourned at 3:15 p.m.

Respectfully Submitted,
Heidi J. Bakula, Program Specialist
City Public Works Department