

PUBLIC WORKS COMMITTEE REPORT
June 10, 2009, 1:50 PM
City Council Chambers

Members Present: Jason Wiener (Chair), Ed Childers, Dick Haines, John Hendrickson, Bob Jaffe, Renee Mitchell, Dave Strohmaier, and Jon Wilkins

Members Absent: Pam Walzer

Others Present: Kevin Slovarp, Steve King, Monte Sipe, Doug Harby, Gregg Wood, Brian Hensel, Jim Hausauer, Jeremy Keene, Debbie Johnston, Craig Schaeffer, Keila Szpaller, Will Snodgrass, Stacy Rye

I. ADMINISTRATIVE BUSINESS

- A. Minutes of June 3, 2009 were Approved as Submitted
- B. Announcements - None
- C. Public Comment on Non-Agenda items - None

II. REGULAR AGENDA ITEMS

1. Approve and authorize the Mayor to sign a contract with Montana Department of Transportation (MDT) for maintenance of State routes for street maintenance, weed control, tree maintenance, and traffic control generally located within City limits and described specifically per contract document. (memo).—Regular Agenda (Brian Hensel) (Referred to committee: 06/08/09) REMOVE FROM AGENDA

Motion: The committee recommends the City Council approve and authorize the Mayor to sign a contract with MDT for maintenance of State routes.

Approve and authorize the Mayor to sign an agreement with Montana Department of Transportation (MDT) for City of Missoula Street Maintenance Division to perform large scale paving projects on State Routes as described on the attached Appendix C and in accordance with State route maintenance contract. (memo).—Regular Agenda (Brian Hensel) (Referred to committee: 06/08/09) REMOVE FROM AGENDA

Motion: The committee recommends the City Council approve and authorize the Mayor to sign a contract with MDT for maintenance of State routes.

Brian Hensel stated that the first item was to renew an existing contract with the Montana Department of Transportation that had been in place for many years, for another two years. This contract maintained all the state routes that run through the city in order to fix potholes and maintain anything related to streets. The City of Missoula received a 1.15% increase which was not expected in the existing economy.

John Hendrickson made a motion to approve both agreements with MDT and asked if that would be acceptable to the Committee.

Jason Wiener stated that they could take the two motions together, but split them later if there were questions or conflicts with one or both of them.

Mr. Hendrickson then made the motion again to approve both of the contracts with MDT. Mr. Wiener asked if Mr. Hensel would speak to the second contract with MDT.

Brian Hensel stated that the second contract was for special projects, or more costly larger in scope projects, which contracts had been typical for many years with MDT. These projects required more funding to go above and beyond just filling cracks and potholes. This particular contract was specifically for Russell Street between North Avenue and Longstaff Street. This section of road would be milled and paved and the Street Division had been trying to complete this project for quite some time due to its need for repair. The

projects were a source of revenue for the city and the state benefited from not going through a long contractual process with the city.

Jim Hausauer commented that there was only one place he was aware of where a traffic count had been taken and that was between Mount Avenue and Brooks Street. The traffic count seemed to indicate that the volume in that area could be accommodated by a three-lane system. With the proposed re-milling, as well as the project that Trempers was going to undergo on the backside, he thought if traffic counts could be accommodated by a three-lane system and bike lanes were installed that it would make sense in that area. The lanes behind Ace Hardware were substandard and at Kent Street and Russell Street some of the roadway was less than 9 ft in width. It would be good to look at capacity of the road, traffic counts, and if a three-lane system was feasible in the area.

The motions carried unanimously.

2. Award the bid for the Lolo Street Sewer Improvements Project 09-031 to the low bidder. ([memo](#)).—Regular Agenda (Kevin Slovarp) (Referred to committee: 06/08/09) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council award the bid and return bid bonds for the Lolo Street Sewer Improvements Project 09-031 to LS Jensen for \$63,604.15.

Kevin Slovarp explained that the purpose of the motion was to finish installing sewer on Lolo Street prior to installing the curb and sidewalk improvements which were recently approved by Council. There would be a short piece of main and three stubs in Lolo Street between Gilbert Avenue and Rattlesnake Drive. Six bids were received and L.S. Jensen Construction was the low bidder at \$63,604.15. He then recommended that the committee award the bid to L.S. Jensen Construction.

Jon Wilkins asked if stubs would be available to all the residents in the area. Mr. Slovarp explained that three stubs would be installed to the properties that could not connect at any other location, but only those three properties would receive stubs.

Dave Strohmaier made the motion to award the bid to L.S. Jensen and to return bid bonds.

Ed Childers asked why City Public Works was requiring one or two inches of asphalt instead of the 3 inch standard.

Mr. Slovarp explained that after the curb and sidewalk was installed a new fresh surface overlay would be applied to the road. The City only wanted to replace what was removed since a new overlay would be applied and the roadway would be returned to a three inch total depth when the project was completed.

Renee Mitchell asked if the other residents would be required to connect to the sewer in other locations besides Lolo Street. Mr. Slovarp said that was correct.

Jason Wiener called for a vote on the motion and it carried unanimously.

3. Resolution of Intention to create SID 544, Rattlesnake Valley Sewer and set a public hearing for July 6, 2009. ([memo](#)).—Regular Agenda (Steve King) (Referred to committee: 06/08/09) **REMOVE FROM AGENDA**

Motion: The committee recommends the City Council approve the Resolution of Intention and set a public hearing for July 6, 2009.

Steve King gave a little history on the previous meeting with the Council on May 13, 2009, about the Rattlesnake sewer project. The economic stimulus funds, partnered with the sewer utility funds and other available grants totaling \$1.8 million dollars, would allow the City Council to move forward with the newly created SID 544. The intention was to offer loans at the old rate calculated from 2003. The stimulus funds also reduced the city's sewer utility contribution for the extension of the neighborhood collection system. Property owners also had the ability to opt out of the SID and not participate at this time if they chose not to.

Recently staff sent out a certified mailing to over 320 property owners in the central Rattlesnake area. This mailing included a cover letter from Mayor Engen explaining the alternatives to the property owners, a question and answer sheet, and an opt-out form which was for those property owners who chose not to participate in the current SID. This letter also included a checklist noting the consequences of not participating in the SID at this time. This letter asked that the property owners send in their opt-out forms by June 5, 2009. At this time the City Public Works Office has only received four opt out letters back from participating property owners. The four opt-outs indicate that the residents of the Rattlesnake are very interested in participating in the proposed SID.

Mr. King went on to explain that the motion before the Council was to approve the resolution of intention to create SID 544 and set the public hearing for July 6, 2009. The resolution of intention set the legal process in motion for notification, legal publication, and the fifteen day comment period, which would then culminate with a public hearing.

Attached to the Resolution of Intention were several exhibits. Exhibit A identified the four properties that opted out of the SID and identified their assessment in the amount of \$33,475.99 which the city sewer utility would temporarily cover. Exhibit B was a map of the SID area which had the boundaries and parcels within the district and it highlighted the four properties which opted out. The SID excluded the portions of undevelopable properties in the area, i.e. hillsides, creek beds, floodplain, etc. The property being assessed in the SID did not include those undevelopable parts of the property and people were not being assessed for the undevelopable portions of their property.

Exhibit C was a list of all the properties with their individual assessment. The properties average assessments ranged from \$4,000 - \$6,000, with the highest assessments being over \$10,000 for larger more valuable properties. The more property frontage, the more lineal footage of pipe installed, the higher the assessment, the more it cost to serve that property with sewer.

Exhibit D was a summary/explanation of the scope of work including; history, wastewater services, community plans, and costs associated with project implementation. The last page was a schedule noting when each step of the process for the SID implementation was expected to take place. The expectation was to start late summer 2009, with a winter 2009 shutdown, but then start up again spring 2010. Public Works requested that the public hearing be set for July 6, 2009 to move the project along as quickly as possible in order to comply with the time requirements of using the federal stimulus funds for the project.

Jason Wiener's concern was that he would not be able to attend because of a prior commitment and felt he should attend because it was his ward.

John Hendrickson asked if residents in the area would have the opportunity to opt out at a later time in the process.

Steve King stated that the Resolution of Intention would solidify those who are in and those who are out of the SID. A total of 312 properties are in the SID and four opted out, for a total of 316. Mr. Hendrickson congratulated Mr. King and the Public Works Department on a job well done. Mr. Hendrickson then made the motion to approve the resolution of intention and to set the public hearing and asked Mr. Wiener if the 6th of July would be okay with him.

Jason Wiener said he could live with the hearing on July 6, 2009, and that he would watch the hearing on the internet.

Mr. Hendrickson restated that he would move that the hearing be held on July 6, 2009. Mr. Wiener said he would think it over and let the Council know if he changed his mind.

Will Snodgrass stated that he lived in the Rattlesnake and that he felt Steve King, the Public Works Director, was lying to the public. A letter was sent to the residents of the Rattlesnake at considerable taxpayer expense and the letter said that the Rattlesnake Coalition Lawsuit had no bearing on SID 544. Mr. Snodgrass stated that the lawsuit applied to SID 528, 533, 534, 536, along with any other SID that came out of SID 528. The lawsuit still applied to the current SID being proposed. He stated there was evidence of fraud with the Missoula Wastewater Facility's Plan. At this time he did not feel that the fraud extended to members of the current Council, but felt the evidence was actionable in a court of law. He further stated that

Section 201(G5) of the Clean Water Act stated that the City may not receive federal money unless alternate treatment of wastewater is analyzed which conserves water and reduces the spread of pollution. SID 544's plan for gravity main sewer did not comport with that section of federal law.

Mr. Snodgrass further stated that Mr. King and Bruce Bender, the Chief Administrative Officer of the City of Missoula, and perhaps others, have been telling the current Council that the federal lawsuit was moot and it was not. The suit was dismissed by the Ninth Circuit Court of Appeals on the basis of standing because the federal money had not become available to the City of Missoula. Though the money appeared as a matter of federal record in the federal register, it was in escrow and the city could borrow against it.

Mr. Snodgrass explained that the letter Mr. King and/or Mr. Engen sent out at considerable expense to the Rattlesnake residents stated that there was some \$750,000.00 of federal stimulus money available and he did not see that money reflected in the documentation available to the public. He wanted someone to help him find the \$750,000.00, but the money would not be available to the city if it failed to comply with 201(G5) whether the case went to court or not.

The panel of three judges for the ninth circuit court decision made it clear that while they were exiting out the backdoor by way of the standing issue, the Rattlesnake Coalition could come back in the same door once the federal money was available. The federal suit was not decided on the merits of the case, it was decided on a technicality called standing.

Mr. Snodgrass went on to say that Mr. King mentioned the costs to the homeowners in the area. He said an average of \$6,000 with some over \$10,000. Mr. King also stated that some of the assessments could be higher, \$20 to \$30 thousand dollars for a piece of property with one home on it. He asked if it was really fair to assess a person who had lived on a large piece of property for 50 years for all the homes that could be potentially built on it in the future. It was basically a taking and it could drive people out of their homes and force them to sell or subdivide.

Now that Mr. Snodgrass had informed the Council of the fraud, and the fraud that was perpetrated was disclosed in district court in Missoula (he urged everyone to read the transcript of December 18th and 20th), he guessed that Mr. Bender, who was in the room that day had somehow assumed that the information that was disclosed to Judge Douglas Harkin would not make it into the public venue. Mr. Snodgrass assured the Council that it would. He recommended the stoppage of the current plan and the compliance with federal and state law. He also wanted the residents of the Rattlesnake to have the opportunity of informed consent. The deadline for opting out had passed, so how could a citizen in the Rattlesnake make an informed decision as to whether or not they choose to opt out in the absence of the information that came from the hearing. The reasonable and fair thing to do would be to allow people to come to the council chambers to participate in a hearing or at least listen to the information that came from the hearing and then decide whether they want to opt out or not.

Jon Wilkins asked Mr. Snodgrass if he resided within SID 544. Mr. Snodgrass believed he did. Mr. Wilkins indicated that he did not see Mr. Snodgrass' name on the list of property owners. Mr. Snodgrass said he was not the property owner and he did not have to own property in order to live in the SID. Mr. Wilkins asked if Mr. Snodgrass was with an organization within the SID. Mr. Snodgrass said he was and the name of the organization was the Rattlesnake Coalition which was within the SID and city wide.

Mr. Wilkins appreciated Mr. Snodgrass' passion but the Council heard nothing from anyone else within the area and he wondered why. Mr. Snodgrass indicated that the Council wielded these things called waivers of protest and they were used as tools of blackmail to extract from people a promise that they would not protest. Given the fact that since 2003 when the city began wielding these instruments of protest, the number of waivers that had been collected by city officials had increased dramatically. It was common knowledge in the Rattlesnake that no matter how hard the Rattlesnake residents tried to meet the nearly impossible 75% protest that they made in 2003, the council now had enough waivers to beat them down.

Jon Wilkins stated that he did not like the waivers and he did not want to be part of the "you people" Mr. Snodgrass was referring to. He went on to say that people in the area were given an opportunity to opt out and only four people opted out by mail and no one else came forward to discuss the matter at the hearing about the particular SID in question. He wants to hear from the property owners in SID 544 if they have

complaints about the matter, whether there are waivers or not. He also wants to hear from the person that owns the property that Mr. Snodgrass resides on.

Will Snodgrass stated that false information on the federal and state laws have been given to the residents of the Rattlesnake and the residents do not need to attend the meeting to render their opinion to the Council. The residents do not want the sewer, 75% have protested the sewer. The residents of the Rattlesnake know the deck is stacked against them. The real question was why the council did not trust the residents enough to make the decision.

Jason Wiener stated that his constituents are clearly in favor of sewer being installed in the Rattlesnake area. His contacts went door to door collecting signatures on a petition long before the stimulus money was available for the current SID project. The overwhelming majority of the people want this to happen.

Dave Strohmaier stated that he has had the same experiences as Mr. Wiener had. Within the last few weeks one resident told him that the life expectancy of her septic system was September 2009, so she was very interested in having city sewer. Mr. Strohmaier definitely supported moving the issue forward for the health and safety of the residents.

Jon Wilkins strongly supported the motion.

The motion carried unanimously to approve the resolution of intention and to set the public hearing for July 6, 2009.

4. [Resolution](#) of intention to close and vacate certain portions of Miller Creek Road and Lower Miller Creek Road generally located between Briggs and the "Wye". ([Resolution A](#)) ([Resolution B](#)) ([Staff Report](#)) ([map-6](#)) (**MB file size**) ([memo](#)) ([PW](#)) ([4-Lane](#)) ([Presentation](#)) (Returned from Council floor: 4/13/09) (**HELD IN COMMITTEE**)

Kevin Slovarp gave a status report on the Miller Creek roadway project. This project was being brought back to Council based on new information that the city received last Wednesday from the Board of County Commissioners. City Public Works now felt that it had a clear direction from the County as far as what their intentions were for this project and how they wanted to proceed. He also wanted to discuss what the city had done to reduce the footprint of the road and to minimize the impact to city and county property owners along Miller Creek Road.

In the last two months City Public Works looked at the design. Originally the concept was for a four lane road with the extra 30 ft right-of-way, but with the submittal of the petition to vacate that right-of-way, City Public works was sympathetic to the request of the residents to vacate that property. The city then came up with a four lane design and footprint recommending what City Public Works thought would be a validated footprint for the future four lane road. Since that time, County Public Works had commented that the city's current four lane design still impacted the residents too much. City Public Works then decided to look at the design again, based on the county's urging, and came up with a new plan which Jeremy Keene from WGM Group presented.

Jeremy Keene, from WGM Group, presented his PowerPoint presentation. He stated that the roadway had serious safety issues with no facilities for pedestrians or bicycles. WGM looked at the 2007 traffic analysis and estimated a future development of 2100 new units for the area with 31,000 more vehicles traveling the existing route per day. Without any new routes in and out of the area, a three lane road would be at capacity. In the future, if a secondary access was not created, the city and county would have to consider a four or five lane system for the area. Mr. Keene went on to say that the county had requested that the boulevards be eliminated, but City Public Works felt that the boulevards were important and they were not willing to give them up unless there were serious right-of-way constraints. Advantages of a boulevard sidewalk were an improved walking environment, snow storage, reduction of runoff, an area for utilities, light poles; ADA ramps work better with boulevard sidewalks, etc.

Mr. Keene then discussed a three lane typical section which would require a minimum right-of-way width of 72 feet, plus slope and utility easements outside of that. Some areas would be greater than 115 feet once the slope and utility easements were factored in. The approach was to widen to the east as much as possible where there was less developed land.

After discovery of the new found road right-of-way, which was approximately 30 feet on the west side of the road, there was a vacation request from several property owners that would have been significantly affected by that right-of-way acquisition. When vacating right-of-way, both the city and the county were sensitive to the needs of the property owners. City Public Work's recommendation was to preserve right-of-way for a potential four lane road, which was brought forward to the City Council and the County Commissioners. As a compromise, the city proposed to vacate to within two feet of the sidewalk for the four lane road and that would preserve enough room to install sidewalk, but would not include room for slopes. This meant in the future more right-of-way would have to be acquired in order to have slope easements or retaining walls would have to be used.

Driveway grades were another issue that needed to be addressed with the future widening. It would create a lot of uncertainty for landowners once Miller Creek Road became a four lane. The County Commissioners challenged WGM and the City Public Works Department to go back and look at a reduced four lane design and they made some suggestions. The recommended approach was to preserve right-of-way for the four lanes, preserve sidewalks wherever possible, hold on to the minimum city standard for an arterial street, and minimize impacts on property owners. The idea was to also construct the sidewalks and slopes to accommodate a future four lane road within the three lane prism which was currently being discussed. At this time it was important to resolve problems with any fences, any encroachments, and resolve any clouds on titles which were preventing property owners from refinancing or selling their homes. Mr. Keene went on to discuss the rest of the PowerPoint presentation.

Kevin Slovarp stated that the County Commissioners had made a recommendation to vacate all the portions outside of the 77 ft of right-of-way, but anything outside of that right-of-way footprint would include slope easements for all the county property owners. There were five properties within the city on the west side that would be affected. From looking at the conceptual four lane design drawings, it looked like parcel 15 was affected and the city would retain any of the 30 foot right-of-way for the four lane design. The other four properties were inside of the existing right-of-way, so this meant very minor affects to those properties. City Public Works wanted to go to the property owners to create the slope easement documents and then get those signed to ensure that the slope easements were in place. Once those were completed, within the next 60 days City Public Works would come back to the County Commissioners and the Council in order to vacate all of the right-of-way outside of the four lane conceptual right-of-way. The slope easements were very important to get resolved.

Dick Haines stated that Steve King, Kevin Slovarp, and Jeremy Keene worked very hard to get this proposal figured out and that he had heard nothing negative from the citizens in the area about the project. Both the city and county have compromised and the three lane alternative seems to be an acceptable solution to the problem.

Renee Mitchell stated that the residents in the area had been in limbo for nine years and she was very encouraged when staff took the encumbrances on the property owners into consideration. Steve King, Kevin Slovarp, and Jeremy Keene will come up with a workable solution. She knew the affected property owners were very concerned about slope easements if the county would not give up the newly found right-of-way. The affected property owners were willing to work in good faith with the city and the county and they were not too opposed to the option. The affected property owners were willing to go along with the slope easements in order to eventually widen the road. They were also agreeable to retain the property even though they could not build on it which could destabilize the road. It was great to see people working hard to mitigate a hard situation, but the residents wanted to be assured that the county and city would give up the right-of-way.

Jon Wilkins asked in the future if Dick Haines and Renee Mitchell could provide information to the Council on what the residents in the area had said to them about the project.

Jason Wiener stated that City Public Works was looking for guidance on how to proceed.

Dick Haines said to go ahead with the proposal outlined and that he and Renee Mitchell would speak to the residents in the area to see how they felt about the proposal. He felt that they now had a solution to the problem and that the right-of-way issue might now be resolved.

III. HELD AND ONGOING AGENDA ITEMS

1. Discussion on the sizes of grease interceptors for the restaurant industry ([Grease Interceptor PowerPoint](#)) ([memo](#)).—Regular Agenda (Stacy Rye and Bob Jaffe) (Referred to committee: 04/21/08)
2. Consider restructuring the city's Sewer Loan Program along the lines of the recently approved change to the Sidewalk & Curb Loan Fund.—Regular Agenda ([Chapter 3.16 – Sidewalk & Curb Loan](#)) ([Chapter 3.18 Sewer Loan](#)) ([Ordinance 3344](#)) (Ed Childers) (Referred to committee: 06/26/06)
3. Discussion item to consider vacating portions of an 1896 petition County road on the westerly side of Miller Creek Road. ([memo](#)) (Monte Sipe) (Referred to committee: 10/6/08)
4. Discussion item regarding complete streets. ([memo](#)) (Jason Wiener) (Referred to committee: 10/27/08)
5. Information item to present the City's Master Sidewalk Plan. ([memo](#))—Regular Agenda (Doug Harby) (Referred to committee: 01/12/09)
6. Discussion of local, city-sponsored energy production ([memo](#)). (Ed Childers) (Referred to committee: 12/22/08)
7. Authorize speed limits ([memo](#)) ([Speed Limits Memo – Steve King](#)) ([Presentation Maps](#)).—Regular Agenda (Ed Childers) (Referred to committee: 12/08/08)
8. Change the speed limit on George Elmer Drive to 30 mph throughout. ([memo](#)) (Bob Jaffe)
9. \$500 rebate or coupon toward connection of sewer through December 31, 2009 for existing homes. ([memo](#)) ([SDF Ordinance Changes](#)) ([SDF Analysis](#)) (Returned from Council floor: 05/18/2009)

IV. ADJOURNMENT

The meeting adjourned at 3:03 p.m.

Respectfully Submitted,

Heidi J. Bakula
Program Specialist
City Public Works Department