

**JOURNAL OF PROCEEDINGS
MISSOULA CITY COUNCIL MEETING
December 12, 2016**

I. CALL TO ORDER AND ROLL CALL

The meeting of the Missoula City Council was called to order by Mayor John Engen at 7:00 PM in the City Council Chambers at 140 West Pine Street. The following members were present: Julie Armstrong, Emily Bentley, John DiBari, Annelise Hedahl, Jordan Hess, Gwen Jones, Marilyn Marler, Bryan von Lossberg, Harlan Wells, Heidi West. The following members were absent: Michelle Cares, Jon Wilkins. The following staff members were also present: Chief Administrative Officer Dale Bickell, Mayor John Engen, Central Services Director Steve Johnson, Communications Director Ginny Merriam, City Attorney Jim Nugent, City Clerk Marty Rehbein. The following staff members were absent:

II. APPROVAL OF THE MINUTES

The minutes were approved as submitted.

1. Minutes for the December 5, 2016 meeting

III. SCHEDULE OF COMMITTEE MEETINGS

1. Committee schedule for the week of December 12, 2016

Public Works Committee, December 14, 10:55 – 11:15 a.m.

Administration & Finance Committee, December 14, 11:20 a.m. – 12:05 p.m.

Public Safety & Health Committee, December 14, 1:05 – 1:35 p.m.

Land Use & Planning Committee, December 14, 1:40 – 2:40 p.m.

Committee of the Whole, December 14, 2:45 – 4:30 p.m.

IV. PUBLIC COMMENTS

Bill Evans, 1863 Mount, wished everyone a Merry Christmas and a Happy New Year.

V. CONSENT AGENDA

1. Claims

Recommended motion:

Approve claims in the amount of \$642,225.08 for checks dated December 13, 2016.

2. Jeffery Park Addition – donation and deed

Recommended motion:

Approve and authorize the Mayor to accept and sign the warranty deed for an additional 2.91 acres of park property for Jeffery Park, legally described as Lot 32 in Linda Vista Thirteenth Supplement, and agreeing to maintain the property as public parkland/open space with only such improvements as relate to its parkland status.

3. Lambros-Farran Easements request Kiwanis Park

Recommended motion:

Grant, and authorize the Mayor to sign, two separate underground easements across portions of Kiwanis Park for the benefit of the Lambros-Farran Apartments, LLC, for purposes of connecting and extending under-ground sewer service on a strip of land 20.00 feet wide, and underground power, phone, TV, and internet services on a strip of land 10.00 feet wide, both being portions of Parcel 4 of Certificate of Survey number 3508.

4. Energy & Climate Team By-Laws

Recommended motion:

Approve changes to the Energy and Climate Team By-Laws and the Missoula Greenhouse Gas Energy Conservation Plan to make the Energy and Climate Team more effective.

5. Appointments to the Bicycle & Pedestrian Advisory Board

Recommended motion:

Confirm the Mayor's appointment of Gillian Thornton, Jeff Schmerker and Gene Schmitz to the Bicycle & Pedestrian Advisory Board. Gillian Thornton and Jeff Schmerker terms will commence immediately and expire on September 30, 2019, and Gene Schmitz will complete a vacated term beginning immediately and expiring on September 30, 2017.

6. Mary Avenue - Complete Streets Policy Exemption

Recommended motion:

Approve an exemption to the Complete Streets Policy in order to exclude the preferred facilities for all types of users, specifically bike lanes, on a section of Mary Avenue between Reserves Street and the Bitterroot Trail.

7. Rattlesnake Hills Estates Triplex Design

Recommended motion:

Approve the design of the triplexes of Phase 5 Rattlesnake Hills Estates Planned Unit Development, also known as Mountainwood Estates, located in the Lower Rattlesnake neighborhood, west of Greenough Drive.

8. Reappointment to the Missoula Urban Transportation District Board - MacArthur

Recommended motion:

Confirm the Mayor's reappointment of Don MacArthur to the Missoula Urban Transportation District Board for a term beginning January 1, 2017 and expiring on December 31, 2020.

9. Reappointments to the Impact Fee Advisory Committee

Recommended motion:

Reappointment Nick Kaufman, John Freer and Hank Trotter to the Impact Fee

Advisory Committee for a term to commence immediately and expire on November 30, 2020.

10. Appointment to the Missoula Civic Television Advisory Commission - Robson

Recommended motion:

Confirm the Mayor's Appointment of Megan Robson to the Missoula Civic Television Advisory Commission for a term to begin immediately and expire on December 31, 2019.

11. City Council Meeting Schedule 2017

Recommended motion:

Set the City Council meeting schedule for 2017 and direct the City Clerk to publish the schedule in the Missoulian.

12. Discuss the creation of a new City administered Property Tax Relief Fund for Individuals disproportionately affected by City property tax increases.

Recommended motion:

Direct staff to create a fund offering City property tax relief for qualified Missoula City residents by resolution.

13. Smith River Resolution

Recommended motion:

Adopt a resolution supporting Smith River State Park and expressing concerns over proposed mining activities that may adversely impact the health of the river, the quality of life of Missoula residents, and Missoula's economy.

This item was considered later in the meeting under Item X.2.a.

Mayor Engen said, thank you, Ms. Rehbein. Are there any questions or comments from Councilmembers regarding the consent agenda? Mr. Wells?

Alderman Wells said, could we please move number 13 to staff reports.

Mayor Engen said, and I'm sorry, what?

Alderman Wells said, number 13 to staff reports please.

Mayor Engen said, you'd like it moved to committee reports?

Alderman Wells said, committee reports, yes.

Mayor Engen said, okay, we can certainly do that. Any other questions or comments? Anyone in the audience care to comment on any of the items on the consent agenda this evening? Seeing none, we'll have a roll call vote on items 1 through 12.

Upon a roll call vote, the vote on the consent agenda, as amended, was as follows:

AYES: Armstrong, Bentley, DiBari, Hedahl, Hess,
Jones, Marler, von Lossberg, Wells, West

NAYS: None

ABSTAIN: None

ABSENT: Cares, Wilkins

Motion carried: 10 Ayes, 0 Nays, 0 Abstain, 2 Absent

Mayor Engen said, and the consent agenda stands approved.

**VI. COMMENTS FROM CITY STAFF, AGENCIES, BOARDS, COMMISSIONS,
AUTHORITIES AND THE COMMUNITY FORUM**

None

VII. PUBLIC HEARINGS

1. Johnson Street Park and Bitterroot Trail Connection

Recommended motion:

(Adopt/deny) a resolution to expend up to \$390,000 -- the remaining portion of the City's 1995 Open Space Bond -- for the purchase of an approximately 4.5-acre neighborhood park and Bitterroot trail connection as part of the City's acquisition of the 12-acre Johnson Street property from Montana Rail Link.

Elizabeth Erickson, City of Missoula's Open Space Program, said, and the proposal before you this evening is to expend the remaining portions of the 1995 Open Space Bond, City only Open Space Bond, on a project that realizes multiple visions of the Missoula community, which include connecting a trail from downtown Missoula to Hamilton as well as providing much needed parkland in one of the more underserved neighborhoods in Missoula. And this project is for the Johnson Street property, which is a 12-acre piece of property that's owned by Montana Rail Link, and it's situated between North Avenue, to the north and South Avenue to the south and Johnson Street to the west. And, additionally, the Bitterroot Branch line runs along here. And you can see this green line is the one remaining gap in the Bitterroot Trail between downtown Missoula and Hamilton. This project is a partnership with the Missoula Redevelopment Agency, which will provide the remaining funding for the acquisition, and also to construct the trail. So, the City's 1995 Open Space Bond was a \$5 million open space bond. In this language, you can see was actual...the language on the ballot and one notable distinction from the 2006 Open Space Bond, which is the other bond where we still have money remaining, the 1995 bond can be used on developed parkland, recreational playing fields, developed parkland. Additionally, it can be used for acquiring and establishing community trails. The City's Open Space Advisory Committee, which is the Advisory Committee to the City Council, also still reviews projects through whether it's the 1995 bond funds or the 2006 bond funds, and that committee, OSAC, unanimously recommends this expenditure. So, this property in this opportunity to increase the parkland available in the Franklin-to-Fort Neighborhood, it meets a number of goals of the City's 2004 Master Park Plan. So, one of those goals is specifically to acquire and develop additional lands as adequately sized neighborhood parks in underserved neighborhoods. Neighborhood parks have certain characteristics. They're centrally located. They are accessible via walking or bicycle or local sidewalks or trails. They're flat so they can accommodate certain types of developed recreation. And at least half of the park shall be bordered by streets to provide easy public access and just visible surveillance and parking for the property. In this particular area, the 4.5 acres provides all these characteristics of the neighborhood park. So, again, this is located in the

Franklin-to-Fort Neighborhood which per capita, it is one of the lowest served neighborhoods in terms of the actual acreage of developed parkland that's available. And you can see that this property would be located in the Franklin-to-Fort Area, I think is how you describe it, FF2, between North and South Avenue. And these are the recommended levels of service for the Franklin-to-Fort Neighborhood and just for Missoula, in general. Basically, the Master Park Plan recommends that you have 2-1/2 acres of neighborhood parkland for every thousand residents. And, based on 2006 population estimates, which are a little updated, this particular part of the Franklin-to-Fort Neighborhood was deficient by 3.77 acres and the entire neighborhood is deficient by 13.75 acres. So, while this project will not accomplish all or resolve all of that deficiency, it will certainly help considerably. It doesn't mean that the Open Space Program is not going to continue looking at other properties in this area. There are other properties that could come available down the road that we will certainly keep our eyes on if those opportunities arise. But this is a great step in the right direction and it really is the kind of project that these funds have been reserved for so long in the 1995 Open Space Bond. So, again, this is the property. This is in partnership with the Missoula Redevelopment Agency. The entire parcel is a 12-acre parcel and so the Open Space Bond funds will go toward the parkland acquisition, which is outlined generally in green. It's undeveloped. If you drive by, it's just the undeveloped land out here. And, additionally, it helps provide this trail connection. And MRA plans to use tax increment funding for the remaining portion of the purchase price for the property. And this is a very conceptual drawing but this is just to give you an idea of what a developed park in this area could look like. Any sort of plan for this property will go through an extensive public process to actually design the park but this just gives a visual more than a bare lot of how a plan could come together here where you incorporate a trail with some multi-use turf fields and you could have a bike skills park. You can have picnic tables. You can have major base play areas. There are just so many options for how you could develop this. But really the most important thing to remember is that it's going to be up to the neighborhood and up to the citizens who decide that they want to be involved in this park design process. It'll go through the Parks Department typical design process. This is an estimated project budget. The purchase price of the property is \$2 million. The...in addition to that, the trail construction will be part of the short-term project which there's a section between North Avenue and South Avenue that are actually on this property which need to be designed and constructed for that section of trail. The section from South Avenue to Livingston, there's this little gap that's not on the MRL property and that has already been designed and so the construction of that would be included in this. And these are just general estimates as to what park construction could cost based on other similar type of parks, without having any sort of a formal estimate. But the actual amount left in the 1995 Open Space Bond is \$389,533.99, otherwise known as up to \$390,000, and this project would expend that remaining bond funds. And one other thing to note, these open space funds are being leveraged significantly through the partnership with MRA and through working with MRL and it's a great value for what we're getting, using our open space bond funds. And, again, this will connect the Bitterroot Trail, which is a much-loved trail, used by many. And that's all I have. Thank you.

Mayor Engen said, thank you, Ms. Erickson. And, with that, I will open the public hearing. Anyone care to comment on this expenditure of up to \$390,000 for the purchase of this parkland? Ms. MacDonald?

Ethel MacDonald, 316 West Central Avenue, said, I'm speaking as a member of the Open Space Advisory Committee, known as OSAC. And I've been on the committee for nearly 15 years and I would say for at least 10 years we have been talking about trying to get these last few blocks of the trail there, which is MRL land, and they have not been ready and now they're ready. And at the same time that we have been talking about this trail we thought we've also been very cognizant of the fact we still had nearly \$400,000 in the 1996 bond that had to be spent in the City parks and trails and particularly we were cognizant of the fact that the Franklin-to-Fort area really needs a park. So, this could not be a more

perfect project, really. And I meant to thank, in the beginning before I started, thank you to the Council for all the support you have given to every project we've brought to you, since I've been on OSAC, and also to MRL and the City for its support so far on this project. I know that the City has been supportive. So, I also speak, of course, as a bicyclist who uses this trail and for me it's not a real problem. I know how to get from one part of the trail to the other. But I also host through a program of bicyclists who host other cyclists. I have hosted close to 200 people now, cyclists coming through Missoula. And just this past summer I was trying to tell some of them how to get from Adventure Cycling downtown to the trail, to Hamilton. And it's exciting now because that last bit between Missoula and Lolo is finished and that was the worst part of people's trip. But here's what I would have to say, the way the trail is now. Get on the trail, you know, from the trail, say, California Street bridge, that area, get on the Bitterroot Trail, go south a mile and a half or so and then North Avenue turn right, then at Johnson Avenue turn left, then at South Avenue turn right, then in the first block turn left and then in the first or second block turn left and there's the trail all the way to Hamilton. So, I also speak as the mother of a, what do I...the proper term, disabled, mildly disabled, developmentally disabled son, adult, who bicycles everywhere and he has never tried to bike from the trail to, say, the Mall because that's too complicated with that little section. He lives near the California Street bridge which is also near, I think it's called the Bruce Blattner Home for many, many wheelchair people. With this completion people can get on...use their wheelchair, probably a motorized one, to go on the trail all the way to the Mall and even on out, I guess, farther if they want to go to Hamilton. So, it is a wonderful project and I know many of you already know that but, hopefully, everybody does and they will find a lot of community support. Thank you.

Mayor Engen said, thank you, Ms. MacDonald. Anyone else care to comment? Alright, with that, I will close the public hearing. Are there questions from Councilmembers this evening? Mr. Wells?

Alderman Wells said, for staff, just a quick one, I know that MRA's been working on some Phase 1 environmental studies. Do you know where we are with those, I guess, want to make sure by authorizing this if it turns out we find out there's some expensive cleanup that we're not bound to use this money for that parkland.

Elizabeth Erickson, City of Missoula's Open Space Program, said, I don't know that status of the Phase 1 assessments, but I do know the purchase and sale agreement, I think, would be contingent on some of that. And this money would not be expended if the property is not acquired by the City.

Mayor Engen said, other questions? I have Ms. Jones.

Alderwoman Jones said, Elizabeth, could you go back to the map where you show the green section that's still not completed on the trail. And from, I know we just talked about this in committee but I just wanted to go over it again, that from South Avenue to Livingston that portion of the trail that will be constructed is included in this budget but do we have an easement already or what is the legal status of that?

Elizabeth Erickson, City of Missoula's Open Space Program, said, yes. The City has an easement with MRL for that particular section and it's similar to some of the other easements that are in the MRL right-of-way, just alongside the tracks basically. So, it's similar to other sections of the Bitterroot Trail.

Mayor Engen said, Mr. Hess?

Alderman Hess said, thanks. If the environmental phase finds things that need to be remediated and maybe the parkland is better suited at other areas of the parcel, is that authorized to move the specific areas of park around or is it tied to that particular corner of

the parcel?

Elizabeth Erickson, City of Missoula's Open Space Program, said, I don't think it's necessarily tied to only to that particular corner of the parcel. The approximate acreage in looking at the undeveloped land on the site is 4-1/2 acres and the bond funds need to be used toward that park expenditure but I do think there could be some flexibility, yeah.

Mayor Engen said, further questions? Alright, Mr. von Lossberg.

Alderman von Lossberg said, thanks, pardon me, I have a raspy voice. I move Council adopt a resolution to expend up to \$390,000, the remaining portion of the City's 1995 Open Space Bond for the purchase of an approximately 4-1/2-acre neighborhood park in Bitterroot Trail connection as part of the City's acquisition of the 12-acre Johnson Street property from Montana Rail Link. May I speak to it briefly?

Mayor Engen said, Mr. von Lossberg?

Alderman von Lossberg said, thanks. Thanks, as always, for the good work from Elizabeth Erickson and I'll simply was going to recognize OSAC, but I would add to that that I can't do any better job of advocating for this than Ethel MacDonald just did so, Ethel, thank you for your words on behalf of this project and thank you for your continued good service. Your work and the rest of the OSAC group's work makes these much easier for us to deal with because of your good vetting and such, so thank you for that and proud to support this.

Mayor Engen said, Ms. Bentley?

Alderwoman Bentley said, I'm excited to support this too. This neighborhood definitely has a lot of green space and I think it will really make a difference for the people who live there in terms of their overall health. I also wanted to point out that historically the City has sometimes been criticized for building trails one section at a time and having them not connect and it takes vision and leadership to be able to know and have faith that eventually they all will be connected and the cards will fall in the public's favor. And so I wanted to thank Ethel for her leadership on this and Mayor Engen for his long-term vision about these trails. I mean, this thing has been patched together for over a decade or way more than a decade and it's because it takes vision and it takes faith and I appreciate that.

Mayor Engen said, Ms. Marler.

Alderwoman Marler said, I'm also really excited about this project. I'm really grateful to everybody who worked on it. It's near my house. It is part of the ward that I represent where, as everyone so far has mentioned, that there is not enough parkland. And from the time when I was first thinking about even running for City Council I was aware that this was a big break in the trail network and hundreds of people in my running club are acutely aware of that little strange jog in the trail. I mean, this is a really, really important connection and I'm just really happy that it's here tonight so thanks. I'm very excited to vote for this.

Mayor Engen said, Mr. Hess?

Alderman Hess said, thanks. This is a great piece of business and I'm really excited about it. My first connection with this was as a freshman at the University of Montana where I got lost somewhere in the North Avenue area, I think, on the trail about a week after moving to town, but this is great for our trail system. It's great for the development opportunities on the parcel. It's great for the park aspects that have been mentioned and I want to echo all the thanks that my colleagues have mentioned.

Mayor Engen said, further discussion? Seeing none, I'll quickly mention my appreciation to Mike Halligan and Larry Simpkins and Tom Walsh of Montana Rail Link and Washington Companies for working with the City to make this happen. Much appreciated and thank you all. We've had a public hearing, we'll have a roll call vote.

RESOLUTION 8121

MOTION

Alderman von Lossberg made a motion to adopt a resolution to expend up to \$390,000 -- the remaining portion of the City's 1995 Open Space Bond -- for the purchase of an approximately 4.5-acre neighborhood park and Bitterroot trail connection as part of the City's acquisition of the 12-acre Johnson Street property from Montana Rail Link.

Upon a roll call vote, the vote on Resolution 8121 was as follows:

AYES: Armstrong, Bentley, DiBari, Hedahl, Hess,
Jones, Marler, von Lossberg, Wells, West

NAYS: None

ABSTAIN: None

ABSENT: Cares, Wilkins

Resolution 8121 carried: 10 Ayes, 0 Nays, 0 Abstain, 2 Absent

Mayor Engen said, and the motion is approved. Thank you, folks.

VIII. COMMUNICATIONS FROM THE MAYOR

None

IX. GENERAL COMMENTS OF CITY COUNCIL

Alderman von Lossberg wanted to thank one of his constituents who came forward and contacted him. Unfortunately, like many other folks in the community, he received some of the Nazi Party literature on his doorstep and at his neighbor's house and Mr. von Lossberg appreciates meeting with him and taking the time he took to report that to a lot of groups and several people have been affected by this. The community is working on a positive, broader response but he did want to acknowledge that that happened.

X. COMMITTEE REPORTS

1. Administration and Finance Committee Report
 - a. December 7, 2016 Administration and Finance report
2. Committee of the Whole Report
 - a. December 7, 2016 Committee of the Whole report
Consent agenda item #13.

Alderwoman Marler said, I move that we adopt a resolution supporting the Smith River

State Park and expressing concerns over proposed mining activities that may adversely impact the health of the river, the quality of life of Missoula residents, and Missoula's economy, and I'd like to speak to the motion.

Mayor Engen said, Ms. Marler.

Alderwoman Marler said, I'm grateful to Mr. von Lossberg and Ms. West for bringing this forward into MontPIRG who I think are here in the room today, for bringing this forward so that we have a chance to join what I hope is a coalition of cities starting with us in Helena, Helena first, saying that we think that the future of Montana's economy is based on a clean and healthy environment and the wonderful things that we have here, and that's our real future. I'll stop there. Thanks.

Mayor Engen said, further discussion on the motion? Seeing none, anyone in the audience care to comment on the motion? Seeing none...yes, sir?

M.J. Rosher said, I am on the Board of Montana Public Interest Research Group or MontPIRG and I was part of the Helena City Commission as the coalition you were talking about and I was also at the committee. So, first off, I was wondering if I'd be able to pass out some petitions we have collected for this resolution. Can I give those to any of you?

Mayor Engen said, you may certainly give them to Ms. Rehbein please.

M.J. Rosher said, should I do that now or...

Mayor Engen said, at your convenience.

M.J. Rosher said, okay.

Mayor Engen said, or Representative Bennett can get all over that.

M.J. Rosher said, I appreciate that.

Mayor Engen said, he's got the skills. He's got the technology. Thank you, Bryce.

M.J. Rosher said, so we have collected well over 2,700 petitions, signatures as well as public comments specifically for this resolution and also the public comments were just submitted to the Department of Environmental Quality. You know, basically, what we entitled this campaign for ourselves is "Save the Smith River Campaign" and that's what we truly feel that what we're doing. We've looked at it from multiple perspectives. You know, if we look at it from an economic perspective, we can agree that the operation does, have some enticing values, but judging from their past mining history in Montana, I don't agree with that. I feel that sustainable recreation brings in enough revenue according to the Smith River website. It's approximately \$10 million a year and that could be perpetual because it's sustainable and it's enjoyable for everyone including Missoulians. We can look at it from an environmental perspective and it's kind of a no-brainer. According to the Department of Environmental Quality, there are currently 11 active superfund sites all for mining and also one of their statistics, I felt pretty alarmed, was that for every successful mining operation in Montana there are approximately 12 disastrous ones, and I don't want to gamble with that. We can look at this from a historical perspective and say that Smith River has always been very prominent in Montana, even going back to the indigenous era which is who we are also representing. And Missoulians are very passionate about this and evidenced by the public comments we have collected and accumulated and I just thank Missoula City Council for allowing us to speak on behalf. By the way, I'm on the Board of MontPIRG, I believe, as of just recently and so I'm looking forward to passing this resolution and once again thank you for having us and have a good evening.

Mayor Engen said, thank you, sir. Anyone else care to comment this evening? Sir?

Alec Underwood said, thank you, Council, for having me. My name's Alec Underwood and I'm a board member with the Western Chapter of Trout Unlimited. We are a nonprofit volunteer-led organization that aims to conserve, protect and restore cold water fisheries in the area. We have nearly 900 members in Missoula alone. We are the largest TU Chapter in the state. Not only does the Smith River contribute millions of dollars to the local economy each year, but it will continue to do so if protected. The Chapter and its members recognize that the Smith River is a national treasure as well as a local treasure and that it needs to be protected for future generations. We fully support this resolution and would like to thank you again for allowing me to speak here. Thank you.

Mayor Engen said, thank you, sir.

Bonnie Gestring said, I am here on behalf of Earthworks. We're a conservation organization and I'm based here in Missoula and I'm here to express support for the resolution. On a personal level, I grew up floating the Smith River. We're up in Great Falls and spent a lot of time on the river and I continue to do so whenever I get the opportunity. And I think, like most Montanans, we think it's a pretty amazing place and a place that all Montanans should have a voice in expressing support for the protection of this resource far into the future. On a professional level, I worked on hard rock mining issues for well over 15 years and I've reviewed a lot of mine permits, commented on a lot of mine permitting processes and one thing you learn very quickly is that deposits like the Ten Tina Deposit, which is a copper porphyry deposit and is a particular risk in terms of water resources because these types of deposits are prone to developing acid mine drainage, which is a substantial risk to aquatic life. I authored a report in 2012 looking at copper porphyry deposits, copper porphyry mines operating in the United States, representing roughly 90% of copper production in the U.S. and found that 100% of those mines resulted in spills or other accidental releases that resulted in water quality impacts. We also found that 92% failed to control mine seepage resulting also in significant water quality impacts. So, it's important to recognize that despite modern technology, these impacts continue to occur. As I mentioned, these were all currently operating copper porphyry mines as of 2012. So, promises are one thing during the permitting process but delivering on those promises are an entirely different thing so I think the resolution language is warranted and I urge your support for it. Thank you.

Mayor Engen said, thank you, Ms. Gestring.

Bonnie Gestring said, and I have a fact sheet that summarizes the [off microphone, inaudible] report.

Mayor Engen said, thank you. Anyone else care to comment this evening? Yes, sir?

Caleb Horton said, I am the campus organizer with MontPIRG and I'm also here today to just say that I support the passing of this resolution. I know that this is going to better a lot of things for the state of Montana and being a student that is really active on campus when it comes to protecting environmental rights, I'm really, really passionate as a personal reason and also as a professional reason to see this pass so I thank you guys for your time.

Mayor Engen said, thank you, Mr. Horton. Yes, ma'am?

Melissa Glueckert said, I'm a board member with MontPIRG and I support this resolution. I think that for the future of Montana we just need to protect our environment and letting Ten Tina who's out of country, a mining company, come in and mine our river is not going to be

a very smart decision for Montana and I think we've seen that from past rivers or past mining experiences that have happened.

Mayor Engen said, thank you, ma'am. For the record, may we trouble you for your last name as well?

Melissa Glueckert said, Glueckert.

Mayor Engen said, thank you. Yes, sir?

Kevil Hill said, I'm an intern with MontPIRG as well and I would just like to say that I fully support this resolution. I think it's a very good idea to weigh your options here. Like said before, this river produces over \$10 million to the economy of Montana. And although this mine may be lucrative in the beginning for the first few years, you really have to weigh those options. This river can produce that \$10 million a year economy for generations. And once the mine is depleted, we've got to think about how's that going to affect our aquatic life? How's that going to affect our children, any future generations, any drinking water quality outfitting agencies, anything on that river? Thank you very much.

Mayor Engen said, thank you, sir. Representative Bennett?

Bryce Bennett said, I just wanted to touch on the resolution specifically for a moment. I noticed that something that hasn't been mentioned yet is that there are over a thousand fellow Missoulians here in Montana, or in this city who applied for permits or who applied for permits to Smith River just this last year. There are countless businesses here in Missoula specifically that count on the Smith River being healthy for them to be able to succeed in their business and for them to be able to make a living. So, I hope you will keep them in mind as you vote for this resolution. I hope that you'll think about the many people that live in each of your wards that depend on the Smith River and its generation of opportunities when you're thinking about this resolution. Thank you.

Mayor Engen said, thank you. Anyone else this evening? Sir?

Bill Neff said, good evening. I'm Bill Neff, a long-time resident, retired electrician and a taxpayer. And I kind of feel like I'm talking to the wall but here goes. I've been here before on this water company deal. We start out at \$40 million and \$500,000 legal fees, plus or minus \$100,000.

Mayor Engen said, so...

Bill Neff said, and suddenly we're well north of \$100 million. Forty thousand water company's customers, 70,000 citizens. We need some transparency. How much is this going to cost us? Can we get a little bit of accounting at this point, what it costs us now and in the near future, like a year from now and maybe even we should vote on this at this point. It's like ordering a new truck and you're spending \$50,000. That's a lot of money. Your truck comes in, they say, hey, we made a mistake, it's \$150,000. That's a big difference. This isn't the same thing we talked about, we did the push-pull. This is a different animal. Let's treat it as such. Let's have transparency. How much is this going to cost in dollars and cents for the citizens, and let's vote on it to see if people really want to spend this money for this vision to own our water company. Thank you, folks. Have a happy holiday.

Mayor Engen said, thank you, Mr. Neff. You, too. So, in future, that was a public comment on a non-agenda item. We're actually talking about the Smith River resolution.

Bill Neff said, well, I couldn't hear...

Mayor Engen said, so I let you go tonight. Nope, my turn.

Bill Neff said, I'm sorry. What you're saying with the mics, I'm hard of hearing.

Mayor Engen said, yeah.

Bill Neff said, a lot of noise in my lifetime.

Mayor Engen said, okay. So, next time you're more than welcome to comment on that item.

Bill Neff said, I apologize for being out of order.

Mayor Engen said, appreciate it, sir.

Bill Neff said, thank you.

Mayor Engen said, next time we'll just do it during public comment. Thank you. Anyone else on the Smith River question?

Bill Neff said, I'm sorry?

Mayor Engen said, so now we're on the question of the Smith River resolution.

Bill Neff said, I love the Smith River. I floated the Smith River before.

Mayor Engen said, fantastic.

Bill Neff said, it's a great thing.

Mayor Engen said, we'll take that. Thank you, Mr. Neff. I appreciate that. That made up for the last thing. All good. With that, anyone else on the Smith River? Alright. Alright, with that then, any further comment? Mr. Wells?

Alderman Wells said, so I put this on the committee not because I'm necessarily against it. We talked a little bit about this in committee. I want to give the local economy there, the local city a chance to speak. I think they did send out an email to everybody about just where their support was for economic development. Growing up, my grandmother had a saying, think globally but act locally. And on this one I particularly am torn because I do see the economic impact that Missoula may have, but at the same token, every two years Missoula gets in a defensive position for things we're looking for when we have state legislatures across the state that are essentially are under the mindset, well, Missoula's kind of put their nose in our business so I'm not going to vote no...yes; I'm not going to vote no, I'm just going to abstain on this, but I just wanted to get my concern of us as a local legislative body doing resolutions that effect the economies or other local governments within the state trying to do economic development. I think Bryce, as his role as a state legislator, you're right on and then I think that's the more appropriate place for this to be happening. That's all I wanted to say. Thank you.

Mayor Engen said, Ms. Marler?

Alderwoman Marler said, in response to Mr. Wells' comments, you're, you know, articulate and clear. I hear what you're saying. That's sometimes a tough thing to vote but for the room and the rest of Council we have new people on Council and for people watching, we're elected by our wards to represent them and vote and I think it's a pretty important

responsibility and we're only supposed to recuse ourselves from voting and abstain when we have a direct conflict of interest. I will leave that out there.

Mayor Engen said, with that, barring further discussion, we will have a roll call vote on the resolution.

RESOLUTION 8022

MOTION

Alderwoman Marler made a motion to adopt a resolution supporting Smith River State Park and expressing concerns over proposed mining activities that may adversely impact the health of the river, the quality of life of Missoula residents, and Missoula's economy.

Upon a roll call vote, the vote on Resolution 8022 was as follows:

AYES: Armstrong, Bentley, DiBari, Hedahl, Hess,
Jones, Marler, von Lossberg, West

NAYS: None

ABSTAIN: Wells

ABSENT: Cares, Wilkins

Resolution 8022 carried: 9 Ayes, 0 Nays, 1 Abstain, 2 Absent

Mayor Engen said, and the resolution is approved.

3. Land Use and Planning Committee Report

a. December 7, 2016 Land Use and Planning report

Clark Fork Terrace #1 and #2 Subdivisions Phasing Plan Extension

Recommended motion:

Conditional approval of the phasing plan extension request for the Clark Fork Terrace #1 and #2 Subdivisions, extending the final plat submittal deadline for Phase 1 to December 31, 2017, and retaining the deadlines for Phase 2 at December 31, 2017, Phase 3 at December 31, 2018 and Phase 4 at December 31, 2019 subject to the amended conditions of approval shown in Exhibit #3 and the following additional amendment to condition of approval #6:

6. Plans for improvements to Deer Creek Road adjacent to the subdivision shall include curb/gutter and paving to a 15.5 foot width from back-of-curb to centerline of right-of-way, and one of the following two options, subject to review and approval by City Engineering prior to Phase 1 final plat approval:

a. Plans shall include a 7 foot wide landscaped boulevard and 5 foot wide concrete sidewalk along Deer Creek Road adjacent to the subdivision. With this option condition of approval #15 requiring the 8 foot wide meandering asphalt walkway within the common area parallel to Deer Creek Road is deleted and references to the 8 foot wide walkway are deleted from conditions of approval #16 and #27; OR

b. Pedestrian facilities are provided with the 8 foot wide meandering asphalt walkway within the common area parallel to Deer Creek Road per preliminary plat approved condition of approval #15 in lieu of the standard 7 foot wide boulevard

and 5 foot wide sidewalk within the Deer Creek Road right-of-way. Installation of the road improvements including pedestrian facilities shall occur prior to final plat approval of each phase. The final plat shall show a 5' Deer Creek Road right-of-way expansion adjacent to the subdivision, to be reviewed and approved by City Engineering prior to final plat approval of each phase.

Alderwoman Bentley said, I move conditional approval of the phasing plan extension request for the Clark Fork Terrace #1 and #2 Subdivisions, extending the final plat submittal deadline for Phase 1 to December 31st, 2017, and retaining the deadlines for Phase 2 at December 31, 2017, Phase 3 at December 31, 2018 and Phase 4 at December 31, 2019 subject to the amended conditions of approval shown in Exhibit #3. May I speak to the motion?

Mayor Engen said, Ms. Bentley?

Alderwoman Bentley said, so I made the motion different from what's on the agenda because I spoke with Jim Nugent since the meeting and I believe that state law is ambiguous if we're allowed to have, well, it's clear that we're not allowed to have a second crack at the nut and so the upgrades to the street are that there's a section that's ambiguous about whether we can have upgrades to come to current standards. So, I thought this was not a good subdivision to accept precedent on. It's unfortunate because I think there's a lot of people on Council and I definitely believe that it's not a very good subdivision and needs to not be in existence at all. But I also, for the same reason I didn't want to set precedent with upgrading to the road standards, and I don't want to set precedence with denying the subdivision, Council has traditionally for years been extending them. We've never denied one since I've been on Council, an extension request, and I believe the best way forward is for Council to craft a policy that has clear criteria about which subdivisions will be extended in which with criteria that's weighted so that developers can see clearly if they're going to be extended and know coming into the process with some predictability, I think that's a better way to govern. There's a number of reasons why I think this subdivision should not be in existence, including its location and the way that it was designed, including lot size and the fact that many of the characteristics of it don't fit our current standards. But I made the motion that way to protect the City from what I believe is a vulnerability and a lawsuit.

Mayor Engen said, that motion is in order. Is there discussion on the motion? Mr. Hess?

Alderman Hess said, thanks. And I just wanted to say since in committee I expressed a desire for flexibility in the road arrangements. My impression during the committee was incorrect and that was that the developer builds out the entire road width, where in actuality, it's just from the center line. So, I'm happy with the conditions as amended and presented by Ms. Bentley. And I'd like to echo your sentiments, as well, about the character of the subdivision and from a pure standpoint of the merits of this subdivision, I stand wholeheartedly with Mr. DiBari. I think there's a lot of issues and I think that a lot of things have changed in our development environment and in our governing documents, our policy documents, our Focus Inward policy and their policies that lead me to have some unease about this project. But I think, as Ms. Bentley said, for the sake of consistency and for the sake of fairness, we need to work to develop a policy regarding these phasing plan extensions so I'll support the motion and I look forward to helping craft that policy.

Mayor Engen said, and I know Mr. DiBari has a number of questions and concerns. Mr. DiBari?

Alderman DiBari said, yeah, I had a chance to speak during the committee meeting about what I think regarding the request and I definitely appreciate what Jordan and Emily just

said. I think I do have some questions for staff and for Mr. Nugent because even though they're largely rhetorical questions, as you can find the answers in our Subdivision Regulations, I think it's really important to get on the record what our Subdivision Regulations say with regard to subdivision extension requests, so I'd like to kind of just work through the questions. They're mostly yes/no kind of answer questions, but as I said, I think it's important we get on the record what our current regulations say and describe what City Council's responsibility is in this regard. So, for the first question, Mr. Nugent, it's for you and you may need to consult your sub regs if you have them, but do the Subdivision Regulations, as they're currently written enable the City Council to deny an extension request?

Mayor Engen said, Mr. Nugent?

City Attorney Nugent said, there's a broad spectrum of facts, and of course, there could be, it depends on if it's going to be a case-by-case analysis and there could be a time where you don't agree to allow a time extension. As I've pointed out, the state law says mutually agreed to time extension so mutually agreed means that both parties have to agree to the time period that's agreed to extend the time.

Alderman DiBari said, sorry, and we can talk about that a little bit later because I'm not sure how we resolve that chicken-and-egg argument but as I read through the Subdivision Regulations, it looks like there's a number of different criteria's that Council can use to evaluate a particular request, and, as I understand it, one of those tools is the applicant's letter requesting extension. Is that correct?

City Attorney Nugent said, you know, you should ask the staff that processes it because our office is not involved in the processing of this.

Alderman DiBari said, okay.

City Attorney Nugent said, I haven't seen the letter.

Alderman DiBari said, I was just asking about this [inaudible]

City Attorney Nugent said, so Mary McCrea is here. You should ask Mary on these questions.

Alderman DiBari said, okay, then I'll ask Mary.

Mayor Engen said, Ms. McCrea?

Alderman DiBari said, so I'm asking about the criteria that Council can use in order to evaluate a proposal. Is one of those evaluated with tools...the submittal request that the applicant provides?

Mary McCrea, Development Services, said, yes, that is.

Alderman DiBari said, okay. So, and the reason why I'm talking about this is because we didn't have a chance in committee to come and talk about the actual submittal that Mr. Brugh submitted for this extension request, and I think it's important that we can get at that question. So, in terms of that letter of request, does that letter need to provide sufficient information for the Council to make a decision regarding whether the request has merit in relation to the review criteria?

Mary McCrea, Development Services, said, yes. One of the criteria or the standards in the regulations states failure to sufficiently document any of the applicable elements in the

criteria in each extension request shall constitute a sufficient reason to deny the extension request.

Alderman DiBari said, thanks. So, that's actually where I was going to wind up with this at some point. So when I looked at Mr. Brugh's submittal, there are five different elements that needed to be addressed. Not just his application, anyone who comes in for an extension request needs to do this. And in this particular case the answer to the first of those criteria centered on basically economic conditions and why it wasn't feasible to move forward and what conditions may be changing in order to get to the point where an extension would be necessary or in the developer's interest. And, clearly, the answer that he provided to that question is speculative in the sense that we have no idea where we're going to be in terms of the economy in 18 to 36 months, which is the request that he had made. So, I think the first answer to that question is a little bit, I guess, I'm not sure there's a real hard and fast way of evaluating that one. But for each of the remaining four criteria those were addressed with one word and that answer was correct. Each of the four remaining criteria or elements that needed to be addressed just had the word "correct" after them. So, in staff's opinion, do you think that those answers are sufficient and/or even accurate?

Mary McCrea, Development Services, said, I think that each applicant can answer these questions the way they see their project coming forward. We did a bit of a staff analysis focusing primarily on the regulations or policies that it changed and that was included in the referral. You know, perhaps Mr. Brugh wasn't aware of all the policies and changes that had happened since he submitted his application but we provided that information for Council's consideration.

Alderman DiBari said, great. Yeah and I totally agree in the sense that, you know, the applicant has the opportunity to provide the information that he or she thinks is useful. My question is, you know, do the responses sufficiently address the criteria in a way that can help Council make an informed decision and I guess my answer to that would be no, but I'm going to be asking you that in a second. You know, one of the criteria that need to be addressed is that the preliminary plat is not in conflict with recently change Subdivision Regulations or policies or regulatory plans listed and in a different spot of the Subdivision Regulations that include the Growth Policy and transportation plans and zoning and things like that, adopted by the City Council that would undermine...be undermined by the further time extension. And, as I mentioned, the response to that element was "correct" and I think you answered this just a second ago but is it the staff's opinion that "correct" is an accurate statement in this regard?

Mary McCrea, Development Services, said, there are several policies and regulations that have changed. We outlined them in the referral. Basically, the Growth Policy has a Focus Inward strategy that appears six or seven places throughout the Growth Policy and that wasn't in place at the time the Subdivision was approved, initially approved. The zoning changed with the adoption of Title 20. Density at the time the Subdivision was approved was RLD-1 and RLD-2 allowed just a density calculation, no minimum lot size, and the current R20 and R40 have minimum lot sizes. So, if you were to review that today in R20 and R40 probably fewer lots would be approved because you wouldn't be able to fit that many lots on the site. And road standards have changed. There's complete streets policy and also just the road standards in the Subdivision Regulations have changed and they're based on the amount of traffic generated by the subdivision itself and the standards are just more specific than they were when the subdivision was approved originally.

Alderman DiBari said, so, as you had said just a second ago, Section 2(C) of the Subdivision Regulations state that failure to sufficiently document any of the applicable elements in this section of the regs, which is 4-070-2.B, and each extension request shall constitute a sufficient reason to deny the request. So, I guess, given the fact that our

Subdivision Regulations are clear, in terms of what City Council needs to evaluate and what the requirement is for our evaluation, is it reasonable, in your estimation, that the City Council deny this subdivision request. I'm sorry, this extension request?

Mary McCrea, Development Services, said, you know, I think there's a lot of criteria for Council to look at and certainly in terms of regulations that have changed, that's one of them. I also think it's a discretionary decision on Council's part having to weigh all the different pieces and deciding whether it's appropriate for this particular subdivision and request.

Alderman DiBari said, I mentioned this during the...and I'm done with my questions, so thank you, but I mentioned this during the City...during our committee meeting is that I think it's sort of unfortunate that this is the subdivision that's before us in this regard but in many ways, as Ms. McCrea had mentioned and as we discussed in committee, the City of Missoula has moved past what we approved in this subdivision plat. As Ms. McCrea mentioned, we have a new Growth Policy that we spent 18 months creating that talks about what our vision for the community is. We have abandoned Title 19 and adopted Title 20, which has different standards with regard to how we use land and how we incorporate transportation in subdivisions. We adopted a complete street policy and recently reaffirmed that policy and made it stronger. And I think as a community, has just passed this subdivision by in terms of how it's...how it was created nine years or so ago. And I think, you know, for a long time City Council has been struggling with what to do with subdivisions like this or requests like this for extensions, because we've been for the last several years in the midst of a recession and clearly conditions have changed. But that set of conditions, I think, doesn't apply anymore. Just before we talked about this in committee on Wednesday, we had Urban Fringe Development Update and in the eight years previous to 2016, 204 units have been...were built in East Missoula. So, it's not like no development was taking place there. It's just probably the kinds of development that was taking place there is different than what was in the subdivision, which I think illustrates that kind of where we are in this community; we've moved passed that at some level. Anyhow, I think we...I think we've been struggling as a City Council with what to do with regard to these subdivisions but when I went back and took a look at what our Subdivision Regulations say, it's rather clear what is in our purview. We have the opportunity, as Ms. McCrea said, to exercise our judgment, to look at what's before us, in terms of what the applicant has submitted to substantiate and provide merit to their request, and we have a section of the Subdivision Regulations that say that basically, I'll read it again, Valued to sufficiently document any of the applicable elements shall constitute a sufficient reason to deny the quest...a request. And for those reasons, there's no way that I can support this motion or an extension like this so that's where I am. Thanks.

Mayor Engen said, I have Ms. Marler, Mr. von Lossberg, Ms. Bentley, Ms. Jones and Mr. Wells. Probably I do need a pen, Counsellor, thank you.

Alderwoman Marler said, we'll just go around the table. I think that Mr. DiBari brings up a lot of excellent points and I think that the staff report summarizing our meeting from last week is really clear that this subdivision, as we approved it, 7 to 9 years ago, seems like longer, I think I was the only one at this table who was on Council at the time, and it was a tough subdivision, it doesn't conform with a lot of our current policies. If we were just...if it was just a matter of looking at this one extension request and it didn't have to be in context with a lot of other things that we do, and this was the information that I had, I would vote to deny it but it would be the only subdivision extension request that we would have denied. And I think that that just sets us up badly and maybe it's a shortcoming of character but I just don't feel like this is the one to...where I want to vote to take on another lawsuit. I'm being completely honest here. I think that, yeah, I think that everything that John said, Mr. DiBari, excuse me, and Ms. McCrea, I mean, it seems like this, from a common sense position, a lot of things have changed. Policies aren't there anymore. It seems like we

should at least be able to require the street being up to certain code but this isn't the time that I want to...I'm just not willing to take a stand on it at this point and so we're granting a one-year extension, not a three-year extension, not an 18-month extension, I think. Is the motion for a one-year extension? It's until this time next year.

Mayor Engen said, Ms. Bentley?

Alderwoman Bentley said, yes, it's the one year that he agreed upon in committee.

Alderwoman Marler said, okay, so we will see what happens in that time. I don't know how they're planning to market these. It is between a rifle range and the Interstate and a railroad track and the river so I'm not sure what's going to happen there but that is...I appreciate Ms. McCrea and Mr. DiBari bringing up all these things but I'm going to vote for the extension in this case and I hope that we have some capacity amongst ourselves and with staff's support to figure out what we're going to do in the future.

Mayor Engen said, Mr. von Lossberg?

Alderman von Lossberg said, so as a starting point, I'm going to support Ms. Bentley's motion. I think it's a responsible motion for the one-year extension on the first phase and keeping the time with the other ones as has been mentioned, it was discussed in committee and agreed to. We considered a recommendation...a potential recommendation from staff of six months. There was some discussion about 18. I heard agreement about a year and it felt reasonable to me. I don't disagree with any of the points that Mr. DiBari made. They're on-point. I think they're factual and I think they serve as an extremely valuable jumping-off point, if you will, into us developing a defensible, robust policy about how we treat continued requests for extensions of this nature going forward. When Ms. McCrea talks about us having, you know, discretion here and weighing a number of things, that's where I have concerns regarding the time when this with which we took up the extension request, our ability to have a discussion with the developer about concerns and I think that the points that Mr. DiBari raised, you know, there wasn't an opportunity...it's important to have clarity relative to expectations going forward, both for us as well as the development community. And I think this particular example, relative to a denial, doesn't serve us well in that regard but I think that the points that Mr. DiBari raised serve us extremely well as we craft a policy to consider these things going forward. So, I think much like Ms. Marler, I perhaps feel a little bit unprincipled relative to this. I have zero desire to be driving down the highway and see a development in this area. I think it, as others have mentioned, goes against a number of good planning...plans and rules that we've developed and considered thoughtfully and stretches our services in a way that's not smart but, that said, the process here matters to me, as well, and I think it's a more measured approach to do the year extension on the first phase and then move into a robust crafting of policies with how we'll treat exemptions...extension requests going forward.

Mayor Engen said, Ms. Bentley?

Alderwoman Bentley said, I just wanted to thank Mr. DiBari for his printable questioning, understand I completely agree with what you're saying. I really do. I don't feel great about granting this extension. I know it's going to be a tough vote for people and vote your conscience and we'll see what happens. But I appreciate you taking a stand on it. I appreciate the record that you set. I'm sorry that committee meeting wasn't long enough. The vote was because the developer was late to the meeting. But I also wanted to point out that one of the things we're going to have to look at is we promised to get these done within 30 days but for this month, for example, it was literally impossible to do it without having one committee meeting and one Council meeting. So, that is not...we can't do it, you know. It's not enough time for him to set a good enough record that can be held up in

court, in my opinion. So, anyways, it's a tough vote.

Mayor Engen said, Ms. Jones?

Alderwoman Jones said, a lot of people have said thoughts that I wanted to say so I would echo many of the communications tonight and, Mr. DiBari, I think you did a great job of raising this issue and articulating the issue and focusing it so that we could have a constructive conversation on all of this. And I think the good thing coming out of this is, as Ms. Bentley said, is to have a protocol that we create. I think it is...if we're going to be shifting gears and going in a new direction that's fair to the developers, that they have some predictability and notice that there's going to be a different application in the future at some point but it also acknowledges that we, as a City Council and city involving so many of our citizens through the growth policies, through all of the new policies that have been worked on and brought to fruition over the last few years, are proactively trying to shape our city for the future, so I think this is a good way of going about it. We're having this conflict where due to the great recession so many subdivisions were put on hold and now they are coming about and in the meantime so much has changed in our city culture. So, I think having really clear communications, protocol, notice, all of this will be a great base to lay so that we can continue to shape our city, and I'm in favor of it as it is set out tonight.

Mayor Engen said, Mr. Wells?

Alderman Wells said, so, Mary, I have another quick question for you. Recently we were dealing with a PUD that had been created during Title 19 that nothing had been done with and now we are looking to do some work on there and all the rules reverted back to Title 19, not Title 20. So, if he had created a PUD there, would it be memorialized more permanently or why is it different if it's in other incidences when it's in a PUD versus a subdivision?

Mary McCrea, Development Services, said, with a PUD or special zoning district created under Title 19 it continues to the base zoning is Title 19. That's in the Title 20 zoning ordinance and how to address those zoning districts. So, he zoned it to straight zoning and the RLD-1 and RLD-2 became...or, yeah, RLD-1 and RLD-2 became R20 and R40. And he continued to file his plats because there's a transitional process in Title 20 that talks about anything that was approved as a site-specific development plan, which a subdivision would be and can continue to be platted in Title 20 even if it doesn't meet the minimal lot sizes of the zoning district. The reason, you know, he certainly could have built it and come forward without ever coming back to you had it built it in the timeframe of his last extension. It's when he comes, you know, any developer comes forward with another extension that there are sections in the regulations that give Council the opportunity to say, what is changed and, you know, do we want to extend this and do we need it to come up to standards?

Alderman Wells said, but if he had chosen the PUD route instead of the route he did, it would have just kind of stayed there in perpetuity, it wouldn't have mattered, it wouldn't have timed out?

Mary McCrea, Development Services, said, the PUD, depending on if it was a PUD subdivision or PUD zoning, I know it's confusing but the PUD zoning is something that would revert to Title 19 but the subdivision still has to follow the Subdivision Regulations and the extension. So, if he hadn't built his PUD subdivision or this, you know, if it was a PUD zoning with a subdivision, if he hadn't built it within the timeframe, he'd still be coming back to you and asking questions.

Alderman Wells said, thank you. And then, I guess, just a comment. I kind of like where the direction is going where it's not just an abrupt change in policy from the City so

developers aren't all of a sudden everywhere going, wait, what just happened? I think it sets a really good precedent as they come up saying, hey, you're going to get one-year extensions, either get your ducks in a row or we're going to be starting to move you to Title 20. So, I'd like to say I'm thankful for the discussion and I think we're going in a good direction.

Mayor Engen said, Mr. DiBari?

Alderman DiBari said, thanks. A couple of things. I appreciate discussion and I appreciate the discussion and I wish we could have had some more time in committee to kind of beat this around a little bit more because I think it would have been productive. I guess the one thing that I want to bring up that we didn't touch on is a couple of folks have mentioned the idea of potentially being in a situation where the City's vulnerable to a lawsuit and I just want to bring up the somewhat vulnerable state we're putting ourselves in if we go ahead and grant the extension, and we didn't have a chance to talk about this during committee either. If we go ahead and grant an extension for Phase 1 for one year, that means Phase 1 needs to be built before December or that final plat for that needs to be filed before December 31, 2017. Keeping all the other phases on their schedule that means Phase 2 also has to have final plat phase before December 31st of 2017. So, essentially what we're asking to have happen is that two phases of the subdivision be done in the next calendar year. If Mr. Brugh moves forward, joining the one-year extension that we grant if we go ahead down that path and does file the final plat for Phase 1 and starts construction but doesn't do anything for Phase 2 and then comes back before Council, same sort of scenario, end of the year, 11th hour, asking for an extension for Phase 2, that puts the Council in a really tenuous spot about how we address the extension request. At this point there's bare ground out on this subdivision. There's not been a cent of money spent on infrastructure or marketing or any of those sorts of things. If Phase 1 is started in the next calendar year, then I think the developer has an opportunity to make a stronger request for an extension for Phase 2, so I don't really know where we wind up when we talked about having an ambition to recraft our Subdivision Regulations in a way that make this more predictable for folks and provide the substance that's required for Council to make an informed, well informed, decision. So, in terms of trying to minimize vulnerability, I think you're going to have to pick your poison about where you want to be vulnerable. And I think, from my perspective, I believe that the Subdivision Regulations, as they're already written, are very clear. I have spelled out what the procedure is for moving through an extension request. What our obligation is as a Council and the language that the Subdivision Regulations provide in terms of denying a particular request. I think next year, if the request comes, it's a lot more muddy, and less clear how to move forward in a way that does not provide vulnerability that we're seeking to try to avoid now.

Mayor Engen said, Ms. Armstrong?

Alderwoman Armstrong said, thanks to Mr. DiBari for doing the heavy lifting on this. I am glad you said that because I tend to agree that if we grant this extension and I have the luxury of not knowing the history on this so I get to go back and read, and the particular history with this developer is not the best and it looks like this is something he's going to continue to do. And if he did not have the financial ability to develop this back in 2007 and 2008, I doubt his ability to develop two phases at the same time by the end of next year. I also would not want to live in a neighborhood that is bordered by an unimproved street, the highway, hundred-year floodplain and a gun range. And I don't know that many people that are...how marketable this thing is going to be and this is not something I'm going to support.

Mayor Engen said, Ms. West?

Alderwoman West said, so I'm also not going to support the extension of this subdivision

and mainly because its location and it's also on top of the pipeline. I'll just add that in there. And because we're allowing this to move forward with substandard, what is now substandard infrastructure and I'm afraid that the demographic of folks that this would eventually draw, you know, deserve better than that so thank you.

Mayor Engen said, further discussion? Mr. Wells?

Alderman Wells said, I think you guys are also forgetting the high-tension powerlines that run right through the middle. And there's a lot of reasons why this is not necessarily the most marketable thing. But I still have to follow Ms. Marler's lead in that if we have a certain direction to what we've done, and all of a sudden there's just this huge abrupt change, that is not a predictable thing for the businesses and the developers of this community to all of a sudden be scrambling. And I still think that this one-year extension, that was a negotiated extension, gives a signal to all developers out there that things are changing but we're not just doing it as a karate chop, done. And I also don't think that as City Council we should be picking winners and losers as far as where a developer builds. It probably is not a marketable thing and then a good chance in a year we'll be saying, you had your chance and it didn't work out, now we're not going to redo it. So, I will be supporting it.

Mayor Engen said, Mr. von Lossberg?

Alderman von Lossberg said, I appreciate Mr. DiBari bringing up that concern. I have been thinking about that actually and I still come back to an ordinance that we had an obligation to deal with this in a timeframe under which we did not deal with it and that's the part of it that is the kicker for me that I wrestle...I'm more comfortable wrestling with it the next time we deal with it than at this point. And, again, I don't disagree. Factually, with any of the points that have been raised and by some of the other people at the table, but given the timing nature of the process it doesn't feel like the most responsible way to act.

Mayor Engen said, further discussion? Seeing none, we've lost all the public this evening. We'll have a roll call vote on the extension.

MOTION

Alderwoman Bentley made a motion for conditional approval of the phasing plan extension request for the Clark Fork Terrace #1 and #2 Subdivisions, extending the final plat submittal deadline for Phase 1 to December 31, 2017, and retaining the deadlines for Phase 2 at December 31, 2017, Phase 3 at December 31, 2018 and Phase 4 at December 31, 2019 subject to the amended conditions of approval shown in Exhibit #3

Upon a roll call vote, the vote on the motion was as follows:

AYES: Bentley, Hedahl, Hess, Jones,
Marler, von Lossberg, Wells

NAYS: Armstrong, DiBari, West

ABSTAIN: None

ABSENT: Cares, Wilkins

Motion carried: 7 Ayes, 3 Nays, 0 Abstain, 2 Absent

Mayor Engen said, and the motion is approved. Ms. McCrea, thank you for punting in light of planner's illness this evening. We appreciate your time.

4. Parks and Conservation Committee Report
 - a. December 7, 2017 Parks and Conservation report
5. Public Works Committee Report
 - a. December 7, 2016 Public Works report will be available at a later date

XI. NEW BUSINESS

None

XII. ITEMS TO BE REFERRED

1. Administration and Finance Committee
 - a. Award Neighborhood Project Funds Grants for fiscal year 2017
 - b. Tax Increment Financing Purchase of Parking at East Front Street Student Housing
2. Committee of the Whole
 - a. Legislative tracking for the 2017 session
 - b. Bureau of Business and Economic Research presentation - Bryce Ward
3. Land Use and Planning Committee
 - a. Petition No. 9800 – Request to annex Tract 1-A of Certificate of Survey 3996 located on the southwest corner of the intersection of Flynn Lane and Siren Road
 - b. Petition No. 9812 – Request to annex Lot 6 of Missoula West Industrial Subdivision and Lots 7 & 9 of Missoula West Industrial Subdivision Lots 2, 4, 7 and 9 Amended which is located approximately one block west of West Broadway on Flynn Lane
4. Public Safety and Health Committee
 - a. Appointments to the City/County Animal Control Board
5. Public Works Committee
 - a. Agreement with Montana Department of Transportation for City of Missoula Street Maintenance Division to perform Special State Projects FY17 (Addendum 1)
 - b. Morrison-Maierle Inc. contract Amendment No. 20 for Wastewater Treatment Plan Upgrade Services Cogeneration System Improvements Engineering.
 - c. Purchase Parks Wood Chipper
 - d. Purchase of Street Department Pothole Patcher Unit

- e. Vended Fuel Contract Award
- f. Presentation on Missoula Bicycle Facilities Master Plan

XIII. MISCELLANEOUS COMMUNICATIONS, PETITIONS, REPORTS AND ANNOUNCEMENTS

Ms. Marler removed Harlan Wells from the Public Safety and Health committee at his request. Also, Ms. Marler stated we have one more Monday night meeting in December. She asked that committee chairs and everybody pay close attention that not only that we have few Monday night meetings coming up but keep in touch with your staff about anything that's time-sensitive and try to figure out the best way to deal with that so that we don't end up trying to have a special meeting. On the flip side, just because there is an open Wednesday when we could have a committee meeting, we don't have to have a committee meeting if there's not business to do so please pay extra attention for the next five or six weeks.

- 1. Administratively approved agreement report
 - a. No report

XIV. ADJOURNMENT

Mayor Engen thanked the council members and the staff for their service.

The meeting adjourned at 8:24 p.m.

ATTEST:

Martha L. Rehbein, CMC
City Clerk

APPROVED:

John Engen
Mayor

Respectfully submitted by,

Kelly Elam
Administrative Assistant IV