

A G E N D A R E P O R T

DATE June 4, 2002

ITEM Public Hearing - Resolution No. 9240 to Annex a 3.959 Acre Tract of State Land on 14th St. SW

INITIATED BY State of Montana, Department of Natural Resources and Conservation

ACTION REQUESTED After Conducting Joint Public Hearing on Annexation and Zoning Ordinance No. 2824, Commission Adopt Annexation Resolution No. 9240 and Approve Annexation Agreement

PREPARED & PRESENTED BY Bill Walters, Senior Planner

REVIEWED & APPROVED BY Robert Horne, Jr., Planning Director

- - - - -

RECOMMENDATION:

The City-County Planning Board has recommended the City Commission annex a 3.959 acre tract of State land on 14th Street Southwest.

MOTION:

“I move the City Commission adopt annexation Resolution No. 9240 and approve the Annexation Agreement, both related to the 3.959 acre tract of State land on 14th Street Southwest.”

SYNOPSIS:

Resolution No. 9240 annexes a 3.959 acre tract of State land located immediately east of Market Place Subdivision. The State Department of Natural Resources and Conservation will be leasing subject property to a party planning on constructing a 98 room Hampton Inn on the site. The accompanying Agreement contains terms and conditions associated with the annexation.

BACKGROUND:

The State of Montana Department of Natural Resources & Conservation (DNRC) has submitted applications regarding the following:

- 1) Annexation of approximately 4 acres in the W ½ SE ¼ of Section 15, Township 20 North, Range 3 East, Cascade County, Montana, to the City of Great Falls.
- 2) Rezoning the approximate 4 acres requested to be annexed to the City from the current County “R-1” Suburban Residential District to the City “GC” General Commercial, “C” Area District.

Said approximate 4 acres requested to be annexed to the City is located south of the I-315 Interchange between 14th Street Southwest and the Burlington Northern Santa Fe Railroad. DNRC is in the process of securing a lessee who will develop the site.

Attached to Resolution No. 9240 as Exhibit “A” is a vicinity map, which also reflects the current zoning in the area.

Subject triangular shaped 4 acre tract of land has 1,190 feet of frontage on 14th Street Southwest and is 280 feet deep at its north boundary tapering down to zero at its southerly tip.

The abutting portion of 14th Street Southwest is improved to city standards and contains water and sanitary sewer mains and paving, curb and gutter. Reimbursement is owed to the City for the sanitary sewer main and reimbursement is owed to Macerich Management Company, the developers of Market Place Subdivision, for the water main and roadway improvements.

The Planning Board on June 26, 2001, conducted a public hearing on the annexation. Mr. Robert Harrington, Special Uses Manager with the Department of Natural Resources, provided background information on the property and explained the State's desire to lease the site for business development. Ms. Carol Auth, 118 Treasure State Drive, spoke in opposition to the proposed commercial zoning, as the subject property currently acts as a buffer between the Marketplace development and residents along Treasure State Drive. Mr. Phil Kiser, 3930 Lower River Road, thought it would be more appropriate to zone the property Local Business instead of General Commercial and grant a variance for a restaurant serving alcohol.

The Planning Board at the conclusion of the public hearing, passed a motion recommending the City Commission annex subject 4 acre tract of land owned by the State in Section 15, T20N, R3E, Cascade County, Montana, subject to the following conditions being fulfilled by the applicant:

- 1) payment of all applicable fees owed as a condition of annexation approval including:

| | |
|-------------------------------------------------------------------------------------------------------|-----------|
| a) Annexation Agreement Fee | \$200.00 |
| b) Resolution of Annexation Fee | 100.00 |
| c) Storm Sewer Fee (\$250/acre x 3.959 acres) | 989.75 |
| d) Reimbursement to City for Sanitary Sewer Main in 14 th St. SW (1,190 ft. x \$19.50/ft.) | 23,205.00 |
| e) Reimbursement to Macerich for 1,190 ft. of Water Main in 14 th St. SW | 20,047.26 |
| f) Reimbursement to Macerich for 1,190 ft. of Roadway Improvements in 14 th St. SW | 92,820.00 |
| g) Recording fees for Agreement and Resolution (\$6 per page x 10 pages) | 60.00 |

- 2) entering into an agreement with the City agreeing to the typical terms and conditions associated with annexation including:
 - a) prior to issuance of a commercial building permit within subject property, the development site plan shall be reviewed and approved by the City-County Planning Staff, Community Development Department, Public Works Department, Fire Department and City Forester.
 - b) agreeing to install, within six months of occupancy of any building on subject property, a five foot concrete sidewalk along the east side of 14th Street Southwest.
 - c) agreeing to participate in the costs of a public roadway lighting district and maintenance districts, lawfully created by the City.

The two above stated conditions have been fulfilled. The Minutes of the Planning Board Hearing held June 26, 2001, are also attached.

Attach: Res. No. 9240
Annexation Agreement
Minutes of Planning Board Hearing, June 26, 2001

cc: Garry Williams, DNRC

**ANNEXATION AGREEMENT
FOR
A 3.959 ACRE TRACT OF STATE LAND
IN THE W ½ SE ¼ OF SECTION 15,
TOWNSHIP 20 NORTH, RANGE 3 EAST,
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2002, between the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES & CONSERVATION, hereinafter referred to as "State," and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as "City," regarding the requirements for annexation to the corporate limits of City of a 3.959 acre tract of State owned land in the W1/2 SE1/4 of Section 15, Township 20 North, Range 3 East, Cascade County, Montana, hereinafter referred to as "Parcel."

2. PREVIOUS AGREEMENTS

Annexation and Improvements Agreement for Great Falls Market Place Subdivision, dated April 15, 1997, between Macerich Management Company and the City of Great Falls, filed in the office of the Clerk and Recorder of Cascade County on Reel 293, Document 1483.

3. FEES AND CHARGES

A. Prior to annexation of Parcel, State shall, in addition to the Annexation Application Fee of \$100.00 and Zoning Application Fee of \$400.00, which have been paid, pay the following required fees:

| | |
|-----------------------------------------------------------------------------------------------------|----------------|
| a) Annexation Agreement Fee | \$200.00 |
| b) Resolution of Annexation Fee | \$100.00 |
| c) Storm Sewer Fee (\$250/acre x 3.959 acres) | \$989.75 |
| d) Reimbursement to City for Sanitary Sewer Main in 14 th St. SW (1,190 ft x \$19.50/ft) | \$23,205.00 |
| e) Reimbursement to Macerich for 1,190 ft of Water Main in 14 th St. SW | \$20,047.26 |
| f) Reimbursement to Macerich for 1,190 ft of Roadway Improvements in 14 th St. SW | \$92,820.00 |
| g) Recording fees for Agreement and Resolution (\$6 per page x 10 pages) | <u>\$60.00</u> |
| Total fees made payable to Great Falls City-County Planning Board | \$137,422.01 |

B. The absence of any fee from this agreement lawfully charged by the City in connection with construction activity associated with Parcel, shall not constitute a waiver by the City.

4. DEVELOPMENT SITE PLAN
Prior to issuance of a commercial building permit for construction upon Parcel, the development site plan shall be reviewed and approved by the City-County Planning Staff, Community Development Department, Public Works Department, Fire Department and City Forester.
5. PUBLIC ROADWAY LIGHTING
State hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities on 14th Street Southwest abutting Parcel, and further agrees to pay its proportionate share of the costs associated with roadway lighting.
6. SIDEWALKS
State hereby agrees to install, within six (6) months of occupancy of any building on Parcel, standard five (5) foot sidewalk in that portion of 14th Street Southwest abutting Parcel.
7. WAIVER OF PROTEST OF ANNEXATION
State does hereby waive any and all statutory procedure notice on right of protest to annexation of Parcel, as provided for by State law.
8. ANNEXATION PREREQUISITES
Parcel is contiguous to City; is not included within the boundary of any other incorporated municipality; and will not, upon annexation to City, be a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Parcel, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.
9. MAINTENANCE DISTRICTS
State waives its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to Parcel.
10. CITY ACCEPTANCE AND ZONING
City will approve Parcel for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, under a "GC" General Commercial, "C" Area District zoning classification, with casinos, bars, nightclubs and establishments featuring live musical entertainment, being prohibited.
11. BINDING EFFECT
The provisions covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day, month and year first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA
A Municipal Corporation of the State of Montana

City Manager

APPROVED FOR LEGAL CONTENT:

City Attorney

State of Montana)
 :ss.
County of Cascade)

On this _____ day of _____, in the year A. D. Two thousand and two, before me, the undersigned, a Notary Public for the State of Montana, personally appeared John W. Lawton known to me to be the City Manager of the City of Great Falls, Montana, is the person whose name is subscribed to the instrument within and acknowledged to me that he he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(NOTARIAL SEAL)

Notary Public for the State of Montana
Residing at _____
My Commission Expires _____, 20__

STATE OF MONTANA

By: _____

State of Montana)
 :ss.
County of _____)

On this _____ day of _____, in the year A. D. Two thousand and two, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ whose name is subscribed to the instrument within and acknowledged to me that (s)he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(NOTARIAL SEAL)

Notary Public for the State of Montana
Residing at _____
My commission Expires _____, 20__

GREAT FALLS CITY-COUNTY PLANNING BOARD

MINUTES OF THE PUBLIC HEARING ON
ANNEXATION AND REZONING OF
STATE OWNED LAND ALONG 14TH STREET SOUTHWEST

June 26, 2001

The public hearing on the Annexation and Rezoning of State Owned Land Along 14th Street Southwest was called to order at 3:05 P.M. in the Commission Chambers of the Civic Center by Planning Board President Bud Rooney.

ROLL CALL & ATTENDANCE

Planning Board Members present:

Mr. George Gallagher
Ms. Marva Hoard
Mr. Gregory Madson
Ms. Deb Matteucci
Mr. Bud Rooney

Planning Board Members absent:

Mr. Robert Livesay
Mr. Doug Ormseth
Mr. Robert Woodmansey
One vacant position

Planning Staff Members present:

Mr. Robert Horne, Jr., Director
Ms. JoAnn Painter, Admin. Asst.
Mr. Bill Walters, Senior Planner

Others present:

Mr. Robert Harrington, Representing Petitioner
Mr. Dave Dobbs, City Engineer

A copy of the attendance list as signed by those present is attached and incorporated by reference.

EXPLANATION OF HEARING PROCEDURES

Mr. Rooney advised the audience that agendas are available on the table at the back of the room and requested that everyone present sign the attendance list which was also on the table. He stated that following presentation of the staff report and recommendation, the petitioner, proponents and opponents will be provided an opportunity to speak. Anyone wishing to speak should come to the microphone, state their name, address and whom they represent. He requested remarks be on current business before the Board and limited to a reasonable length of time to allow everyone equal opportunity to comment. The Chairman will determine the reasonable time and will then inform the speaker they have one minute to finish. The hearing is recorded on tape as an aid in preparing minutes.

READING OF PUBLIC NOTICE

As there was no response to Mr. Rooney's question on whether anyone present wished to have the public notice read, the public notice was not read.

PLANNING STAFF REPORT & RECOMMENDATION

Mr. Walters said this public hearing involves a request from the Montana Department of Natural Resources and Conservation to annex approximately four acres located south of the I-315 Interchange between 14th Street Southwest and the Burlington Northern Santa Fe Railroad.

Posted on the chalkboard was a vicinity map showing the existing zoning in the area.

Mr. Walters said staff received, after publication and distribution of the hearing notice, a couple of inquiries from area property owners wanting to know what exactly was going to be placed on the lot. At this point, it is unknown until the State should secure some type of lease with a developer. Also, just prior to the meeting, staff received handwritten comments from a resident in the Montana Addition advocating the property be left as open space.

After reviewing the staff report and recommendation, Mr. Walters said he would respond to any questions the Board might have.

Mr. Rooney questioned why the property was being rezoned General Commercial instead of Local Business. Mr. Walters replied that any establishment that serves alcohol beverages requires the General Commercial zoning classification. If a restaurant were to locate on the site and the proprietor was interested in serving wine or beer, they could not do so unless the zoning was General Commercial. Mr. Rooney said he saw very little difference between a restaurant with a wine license and a casino.

Ms. Matteucci asked that if the zoning is changed to General Commercial, if billboards or other signs could be placed there. Mr. Walters replied that if the property is zoned General Commercial and annexed to the City, it would be susceptible to anything that would be permitted under the sign code.

PETITIONER PRESENTATION

Mr. Robert Harrington, Special Uses Manager with Department of Natural Resources, passed aerial photos of the area to the Board. He presented a background of this property. The State of Montana was granted approximately 5.8 million acres at statehood in 1889, by the Federal government as a condition of statehood. Those lands were expressly granted by the Federal government for the purpose of supporting public schools. Some parcels have been sold. The State manages each parcel for the highest and best use of that property with the hope of obtaining an optimal amount of income from each parcel. Their job is to manage these lands consistent with the surrounding area uses to try to generate as much income as they can for the schools of Montana. That is why this item is before the Board today. This parcel is a remnant of what historically was a larger piece of State ownership. A lot of that land was sold off over the years with the authority of the State Land Board leaving this four-acre parcel. It is currently unleased. Over the past 20 or 30 years, it had been a Department of Fish, Wildlife and Parks office. At one time there was a Quonset hut located there. When FW&P moved out, it was leased to a business for welding. Then when the interchange was constructed, the Quonset hut was demolished and removed. If they have a piece of unleased School Trust Land that has value, they feel it is their obligation and job to bring it into the highest and best use. In the past five years, they have had proposals for this property. One was for a motel but did not go forward. More recently they had interest in constructing a car wash. That also did not go forward. With development along the 14th Street corridor, they've continued to get a lot of interest from potential lessees. So, it is their desire at this time to annex the property with the zone change. They have a difficult time putting out a request for lease proposals without providing as much information about the development costs and obligations of locating on that site. Their intention is that if they know the conditions of annexation, they can go forward after today's hearing with a request for proposal and select a lessee. At that time, they would be able to present the City a site plan.

PROPONENTS OPPORTUNITY TO SPEAK

There were no proponents to speak.

OPPONENTS OPPORTUNITY TO SPEAK

Ms. Carol Auth, 118 Treasure State Drive, said the commercial zoning would be objectionable and offensive for those living along Treasure State Drive. They already get noise and traffic from the Marketplace development. She thought their property values would also be affected. The pleasure of having this property a passive area helps act as a barrier for some of the existing noise. She and her neighbors were not in favor of having this property developed commercially. It has been a quiet residential area and she would like to see it remain that way.

PUBLIC COMMENTS

Mr. Phil Kiser, 3930 Lower River Road, said it seemed inconsistent to him to zone this property General Commercial if you prohibit the uses that are the only distinction between General Commercial and Local Business. He felt the logical approach would be to zone it Local Business and grant a variance for a restaurant serving alcohol.

PLANNING BOARD DISCUSSION & ACTION

There was a discussion about why the exclusion for casinos, bars, nightclubs and establishments featuring live musical entertainment was being considered. Mr. Horne said staff talked to the applicant about zoning the property Local Business, but Local Business precludes any type of alcohol sale. If somebody wanted to open a restaurant with a cabaret license, they couldn't do that under Local Business. So, it made more sense to apply the General Commercial but restrict it. This has been done before.

Ms. Matteucci asked if the Board could consider a variance. Mr. Horne replied that the Planning Board cannot do what Mr. Kiser suggested. The Planning Board does not have the authority to grant a variance. Variances are only granted by the Zoning Board of Adjustment and you have to meet very specific criteria under State law.

Ms. Matteucci asked if there would be any merit in providing a condition for creating a buffer zone. Mr. Horne replied that the site plan will be subject to design review. Normally, we would get some type of concept development plan but because of the uniqueness of this situation, staff recommended a condition of site plan review rather than reviewing it up front.

There was a discussion about the site plan review including landscaping and lighting and further discussion about the General Commercial versus Local Business zoning classifications and forming a buffer along the residential area.

Ms. Hoard said that in her mind the road was a dividing point between the commercial development and the residential development. It seemed a shame to change that.

There was further discussion about a buffer zone, the zoning and area classifications and what was allowed in General Commercial versus Local Business.

MOTION: That the Planning Board recommend the City Commission annex subject 4 acre tract of land owned by the State in Section 15, T20N, R3E, Cascade County, Montana, and apply a zoning classification of AGC@ General Commercial, AC@ Area District, to same with casinos, bars, nightclubs and establishments featuring live musical entertainment prohibited, subject to the following conditions being fulfilled by the applicant:

- 1) payment of all applicable fees owed as a condition of annexation approval including:
 - a) Annexation Agreement Fee \$ 200.00
 - b) Resolution of Annexation Fee 100.00
 - c) Storm Sewer Fee (\$250/acre x 3.959 acres) 989.75
 - d) Reimbursement to City for Sanitary Sewer Main in 14th St. SW (1,190 ft x \$19.50/ft) 23,205.00

- | | | |
|----|--------------------------------------------------------------------------------|------------------|
| e) | Reimbursement to Macerich for 1,190 ft. of Water Main in 14th St. SW | 20,047.26* |
| f) | Reimbursement to Macerich for 1,190 ft. of Roadway Improvements in 14th St. SW | 92,820.00* |
| g) | Recording fees for Agreement and Resolution (\$6 per page x ? pages) | to be determined |
- 2) entering into an agreement with the City agreeing to the typical terms and conditions associated with annexation including:
- a) prior to issuance of a commercial building permit within subject property, the development site plan shall be reviewed and approved by the City-County Planning Staff, Community Development Department, Public Works Department, Fire Department and City Forester.
 - b) agreeing to install, within six months of occupancy of any building on subject property, a five foot concrete sidewalk along the east side of 14th Street Southwest.
 - c) agreeing to participate in the costs of a public roadway lighting district and maintenance districts, lawfully created by the City.

*Figures as agreed upon between Macerich=s Project Engineer and City Administration. Subject to acceptance by Macerich Management Company.

Made by: Ms. Hoard
Second: Mr. Madson

Ms. Hoard said that she weighed whether the leasing money received for such a small tract of land was important enough to do something that is not appreciated by the neighbors. But, she hated to take money away from schools that desperately need it.

Mr. Madson said he agreed with Ms. Hoard, but he thought there was an opportunity with the design review to look at buffers.

Vote: The motion carried unanimously.

Mr. Walters said the Board=s recommendation won=t immediately go on to the City Commission. The State will go through the efforts to secure a lessee and then staff will work with that individual in site plan review, etc. This item will proceed onto the City Commission after a potential lessee and staff come to terms on an acceptable site plan.

Mr. Rooney advised the audience that the Planning Board=s job is to make a recommendation to the City Commission. The City Commission has the final decision. Those in opposition can speak before the City Commission.

ADJOURNMENT

The hearing adjourned at 3:47 P.M.

PRESIDENT

SECRETARY