

MINUTES OF THE CITY COUNCIL OF LAUREL

October 15, 2002

A regular meeting of the City Council of the City of Laurel, Montana, was held in the Council Chambers and called to order by Mayor Bud Johnson at 7:00 p.m. on October 15, 2002.

COUNCIL MEMBERS PRESENT: Lauren Van Roekel Doug Poehls
 Ken Olson Mark Mace
 Gay Easton Daniel Dart
 Dan Mears John Oakes

COUNCIL MEMBERS ABSENT: None

Mayor Johnson asked the council to observe a moment of silence.

Mayor Johnson led the Pledge of Allegiance to the American flag.

Mayor Johnson welcomed the members of the audience to the council meeting.

MINUTES:

Motion by Alderman Dart to approve the minutes of the regular meeting of October 1, 2002, as presented, seconded by Alderman Mace. Motion carried 8-0.

CORRESPONDENCE:

Montana Department of Commerce: Letter of September 26, 2002 regarding Public Review of the Draft Annual Action Plan, April 1, 2003 – March 31, 2004.

Montana Department of Commerce: Letter of September 30, 2002 regarding site for Public Review of the Draft Annual Action Plan.

Montana Department of Commerce: Letter of October 1, 2002 regarding proposed changes to the HOME Program for year ending 2004.

Yellowstone County Air Pollution Control: Minutes of September 10, 2002; Activity Report for September 2002; Agenda for October 8, 2002.

PUBLIC HEARINGS.

- Zoning variance to allow additional storage units to be allowed north of 215 South 4th Street. Legal description of property is Laurel East Yellowstone Subdivision, Block 24, Lots 1-8 and the vacated 20x84.7 feet of alley and the 30x87.3 feet of vacated South 3rd Street; and Block 25, Lots 11-20 and Vacated west 10x30 of alley and the 60x150 feet of vacated South 3rd Street adjacent to Lot 20. Planning Board recommends approval subject to: 1) Close the access gates in the abandoned alleyway in Blocks 24 and 25 to include the one fronting on Lots 11, 12, and 13 of Block 25; and 2) that a landscaping plan be prepared for approval by the City Public Works Department and implemented accordingly. (This will be required under new construction provisions of the City's existing ordinances.) In designing a landscape plan for a storage unit facility, it is understood that security of the site and of the storage units is a consideration, and landscaping is not to be designed as a screen.

Mayor Johnson stated that the application has been withdrawn. A letter of explanation was distributed to the council before the meeting and is available to any interested persons. In 1977, the Board of Adjustments gave the property owner the permission to perform the construction. Consequently, there is no need for a public hearing. Mayor Johnson stated that Matt Ereksen could answer questions regarding the situation.

Mayor Johnson reviewed the procedure for public hearings. Council members should address the chairman with any questions they have for an individual speaking at the public hearing.

- Zoning variance to allow zone change from Agricultural Open-Space to Community Commercial adjacent to Airport Road for 2.3773-acre site in the NE ¼ of Section 4, T2SR24E. Planning Board recommends denial.

Mayor Johnson opened the public hearing.

Mayor Johnson asked if there were any proponents.

Lucky Seibert stated that another individual who planned to speak has been delayed, and he asked that he be allowed to speak upon arrival. Lucky commented on the history of the issue. In communicating with Cal Cumin about the zone change, it was originally suggested that it be changed to Highway Commercial. Through further conversation, that was changed to Community Commercial zoning. Although there were no opponents to the public hearing for the zoning commission, Mr. Cumin did recommend denial for several reasons and the commission concurred. They believe the reasoning to be quite unfounded. It was inferred that they were too close to the airport. That inference suggested an element of danger to be that close to the airport. Upon reviewing airport maps, the fly zone includes quite a few houses and areas inside the City of Laurel. Therefore, they do not believe that to be a founded argument. They are not in the restricted area, but are at least one-quarter mile from restricted areas. It was also inferred that they are too far from city services, but they are not requesting any city services and that is an irrelevant fact. Lucky stated that Jim Stevens commented that the fire district had no problems with that area because it is a single building, and there are no problems for fire hydrants to be there. There are no problems for underground tanks and storage tanks to be able to supply water because the department has tankers and it would be no different than if a residence were located in that area. Lucky thanked the council for their consideration as to the use of that property. He emphasized that it would definitely be a low impact project. The Masons meet minimally, and larger crowds only meet a couple times a year. He believes that granting the zoning variance would be a benefit to this city and the area, not a deficit.

Mayor Johnson asked if there were any other proponents.

Gerald Shay stated that this would be a very low impact entity out there, even though it would be a Community Commercial zone. Because of the way the ordinance is written, there are only three zones in which this building would be permitted. They feel that it would not be a detriment to that area. Gerald stated that he was speaking as a member of the Masonic organization, not as the chairman of the City-County Planning Board. It is low impact and would be an enhancement to Laurel. It is an organization that has been in Laurel for more than ninety years and has served the community well.

Mayor Johnson asked if there were any other proponents.

Ron Ludwig stated that this is a low impact area for what they propose to build. He spoke with several of the city council members on the telephone. Ron asked the council to look at their history, what they have done, and what they stand for in the community. He believes that the group is a plus for the community. Mr. Ludwig does not want viewpoints based on hearsay, and he asked the council to research those areas of concern that the city has and which need to be addressed legally. He asked them to consider the issues, what they propose to do, the low impact of where they would be located, and that they just meet a couple times a month. The Eastern Star ladies meet twice a month, and the Masons also support the Rainbow Girls and the boys' chapter. Ron asked the council to make their decision based on the issues presented and not on personal opinions or what other people want.

Mayor Johnson asked if there were any other proponents.

Lucky Seibert asked to speak again. Lucky stated that the Laurel's Comprehensive Plan for planning for the growth of this town was designed in 1975. He stated that the plan has not been reviewed or changed since that time. That plan estimated that Laurel would be about 17,000 people by now with growth and development and expansion going on. The Laurel Airport Road is still scheduled to be a four-lane arterial. There was at one time a thought about a byway going down around to the west connecting to an on/off ramp to the interstate. None of that has occurred because the growth has not occurred. Lucky then stated that the Comprehensive Plan has been changed many times. Cherry Hills Subdivision took away part of that byway route. The airport is now a substantial piece of property which is able to handle small express planes and possibly UPS and FedEx express programs, which would increase traffic up there. We are going to end up with more commercial needs and maybe this community does not want that. Lucky, however, believes that we

do want that. Laurel needs to grow and that is one area that could grow. Lucky suggested that the Comprehensive Plan might need to be reviewed. The change requested by the Masons in that area would be minimal, and their heritage of stability shows that the chances of them not being there twenty or thirty years from now are quite minimal. Also, the possibilities of having them convert over to further extreme business property are minimal. Lucky apologized that the other speaker that was prepared was not there yet.

Mayor Johnson asked twice if there were any other proponents. There were none.

Mayor Johnson named several people who contacted him regarding the zone change. Ken Hagman is in opposition and has concerns about the location not serving well. Ken Beven has concerns about communications and procedures. Mrs. John Johnson has concerns regarding the communication with the disposition of the land and the particulars of the building that is being proposed.

Mayor Johnson asked if there were any opponents.

Lucky stated that the individual had just arrived, and Mayor Johnson allowed him to speak to the council.

Don Herndon, a Billings attorney, represents the Laurel Masonic Temple Association. His understanding of the zoning problem begins with the recommendation of the zoning commission. Mr. Herndon addressed the problem with the airport. There are two sources of law on this: the first is the FAA and the second is the zoning ordinance of the City of Laurel. He stated that there is no possible way that the proposed use of the land could in any way violate either. The zoning ordinance deals with proximity to the approaches. This small parcel of land is not anywhere near the approaches. The building and uses that are planned are more like the surrounding agricultural uses and could not possibly interfere with any flight operations. He thinks that the issue raised by the commission concerning the airport is totally wrong, and stated that the real problem is the way that the zoning ordinance classifies this particular use. He has not compared it with other zoning ordinances, but it is strange to him that a fraternal or social club would be considered as a commercial use. He stated that there is not a lot of reason to argue that the ordinance in its own terms decides that lodges, clubs, fraternal and social organizations must be either in a central city zone business district, community commercial, or in highway commercial. He spoke in terms of commercial uses because he has to do so under this ordinance, but he thinks it is questionable whether this was a proper classification in the first place. It is also strange that the fact that this kind of use is not a profit-centered organization was not overlooked because one of the requirements is that they should not be constructed primarily for gain. It seems to him that there is an internal conflict here – is it commercial or is it not commercial? If it were commercial, why would they have a no gain requirement? He has trouble with that.

It is obvious to him that an airport use in its own right is a commercial organization. If he understands what is going to happen to the airport, which has been greatly improved and is an excellent air facility, it is likely to become more industrial than just merely commercial. Furthermore, he understands that the big kink in Airport Road will be straightened out and become a straight shot to the west. It is clear to him that the uses around the airport are going to be decidedly commercial and the location of a fraternal lodge would be the least noticed use of all. He is mindful of the arguments that it is the zoning and not the first use that counts. Once it is zoned, somebody else can use it for another commercial purpose. That is why Highway Commercial may be the least onerous of the zoning possibilities. He thinks that the city should look at the master plan in terms of reality. He stated that Laurel's master plan is quite old and things have changed in this area. It is clear that the area will change at an ever-increasing pace. There is another problem that needs to be faced squarely with the master plan. He has been told that the master plan has been observed quite frequently more in the breach than in its enforcement. One of the concerns that the commission expressed in its report to the council was that somebody else would want to do something if an exception is made. The real question is whether they can stop now. This is a reasonable use and fits the tenor of the zoning responsibility that actions should be taken for the general benefit, use, enjoyment, health, and safety of this community. He does not think that anyone could argue that the Laurel Masonic Lodge does not fit in many or most of these categories. In this case, it makes perfect sense to allow zoning for this purpose for the Laurel Masonic Temple Association to build its new facility and that it not be put to any further delay or any further legal expense. Mr. Herndon stated that denying or not accepting the recommendation of the zoning commission is probably the best thing for the entire community.

Mayor Johnson asked some questions of Mr. Herndon. Mr. Herndon is representing the Laurel Masonic Temple Association, not the Lodge itself. They are separate legal entities. Currently, the individuals who will donate it own the land. The whole matter came to him as he was doing the ordinary real property work necessary to deed this land to the Laurel Masonic Temple Association free and clear so they could begin the development. The Temple Board would be the owner. Everything was ready to happen until this zoning roadblock came up. The temple was sold, the money is there, and they are ready to build their building at this location. The board of the Laurel Masonic Temple Association makes decisions regarding the use of the building by any organization or individual. It is a director oriented and directed board. Guidelines for the use of the building and the land are addressed in the bylaws of the board. The bylaws allow it to be used by the Corinthian Lodge, for other associated Masonic bodies, and for such other community activities as it decides to host. There are no financial arrangements between the organization and Temple board. The Temple board was created, exists, and is funded by itself solely to serve the needs just mentioned. The connection is that the Laurel Masonic Temple Association board is elected by the Corinthian Lodge members, but that is a voting requirement and not a financial arrangement. There is no legal, formal, or financial connection between the two organizations. There is no type of contract between the organizations and the Temple board. Mr. Herndon, who was the draftsman of the most recent bylaws, is quite sure that the bylaws are intended to be the guiding force and not specific contractual arrangements. The Masonic Temple Association was first incorporated in 1921, a date which predated the corporation code. Having predated our corporation code, the technical requirements had really not been met and it could not be found in the corporate records of the Secretary of State. The organization now has corporate existence and bylaws, and it is a fully viable, non-profit corporation, which is a mutual benefit corporation. Mayor Johnson questioned whether the organizations have given some sign of consensus toward the location of the temple and the building being proposed. The Laurel Masonic Temple Association has directors, all of whom are members of and elected by Corinthian Lodge, and the reason that they hold that office is because of Corinthian Lodge. He assumes that they have the best interests of the lodge at heart when they act. He assumes that the actions of the Masonic Temple Association Board of Directors were the consensus because they are elected by the people and are representing their interests. He thinks the board of directors took the action.

Mr. Herndon thanked the council.

Mayor Johnson asked if there were any other proponents.

Jim Burrows has been a member of the Masonic fraternity for fifty-three years. He stated that the Lodge did vote to sell the building and it was not solely the Temple board. The Lodge voted to sell the building and the Order of Eastern Star was notified of it. The membership is getting older and wants a single level lodge and heating costs will be lower because of the building's design.

Mayor Johnson asked if there were any other proponents.

Bob Schessler and his brother own the land, which they are donating to the Masonic Lodge. They are concerned about the future if the lodge should fail. The contract is not complete yet, but there will be a clause to address that possibility. If something happened to the lodge, Mr. Schessler and his brother would have a say as to how it would be sold or what would go in there. They do not want a used car lot or anything similar on the land. Language in the contract would give them some say as to the future and the property could also revert back between the Schessler brothers, the city, and the community. The property could become a civic center or a similar use. Many things will be included in the contract, which is not yet complete. He encouraged the council to ask any questions they might have.

Gerald Shay stated that, as secretary of the Lodge, the post office box appears on all correspondence. Typically, he receives correspondence from the members, regardless of whether it is meant for the Temple Board or for the Lodge itself. His signature appears on documents and is known to the membership. He said that it would not be true to say that there was a hundred percent approval of the change; however, there was and still is a general consensus among the members of the organizations that they would like to go ahead with this project.

Mayor Johnson asked three times if there were any other proponents. There were none.

Mayor Johnson closed the public hearing.

- Ordinance No. O02-31: Community Entryway Zoning District (continued from August 6, 2002; continued from August 20, 2002; continued from September 3, 2002; continued from September 17, 2002; continued from October 1, 2002)

Mayor Johnson opened the public hearing.

Mayor Johnson asked three times if there were any proponents. There were none.

Mayor Johnson asked three times if there were any opponents. There were none.

Mayor Johnson closed the Community Entryway Zoning District public hearing.

CONSENT ITEMS:

- **Clerk/Treasurer Financial Statements for the month of September 2002.**
- **Approval of Payroll Register for PPE 09/29/02 totaling \$110,067.64.**
- **Receiving the Committee Reports into the Record.**
 - Budget/Finance Committee minutes of September 16, 2002 were presented.
 - City Council Committee of the Whole minutes of October 1, 2002 were presented.
 - City-County Planning Board minutes of October 3, 2002 were presented.
 - Council Workshop minutes of October 8, 2002 were presented.
- **Resolution No. R02-72: A resolution changing the City Council meeting from November 5, 2002 to November 6, 2002.**

The mayor asked if there was any separation of consent items. There was none.

Motion by Alderman Olson to approve the consent items as presented, seconded by Alderman Dart. Motion carried 8-0.

COMMUNITY ANNOUNCEMENTS (ONE-MINUTE LIMIT):

Mayor Johnson stated that the next council meeting would be held on Wednesday, November 6th, because of State General Election Day on Tuesday, November 5th.

SCHEDULED MATTERS:

- **Yellowstone City-County Health Board presentation.**

Mayor Johnson introduced Lil Anderson, the executive director of the City-County Health Board. Mayor Johnson serves on the health board and believes that Lil fulfills her responsibilities quite well. Perry Howell, the chief financial officer of the health board, also attended the council meeting.

Lil Anderson thanked the council for the opportunity to speak about the Yellowstone City-County Health Department. She has attended a couple of past council meetings and spoke briefly about the department and their responsibilities. Mayor Johnson invited them to attend tonight. Since the department has a mill levy request on the November 5th ballot, it is a good time to educate the public about the health department.

When thinking about health issues, most people think about individual things such as getting sick, getting hurt and going to a doctor to receive treatment. When thinking about public health, the health of the community as a whole is considered. Public health includes issues such as clean air, clean water, sanitation systems, infectious diseases, and immunizations for our children, and how we take care of the people in need in our communities. Children and young people in homes where there is drug, alcohol, or violence need consideration. Many senior citizens need assistance in order to stay in their homes, and some people make decisions between whether they are going to take their medications or are going to buy groceries. Public health is really how we as people in communities

address those issues. In Yellowstone County, these issues are addressed through the Health Department. The department was created in 1974 through an interlocal agreement between the City of Laurel, the City of Billings, and Yellowstone County. When it was originally created, all of the employees were under the county commissioners in Yellowstone County as a department of the county. In 1998, the department separated from the county and created the Health District. The Board of Health is now the policy-making and operational board for the Health Department and employs the staff. Over the years, they have created a dual-purpose organization. In addition to public health activities, fee-for-service programs including home health services, hospice and private duty services, and the community health center, which provides private physician services, are also available. Monies from the fee-for-service programs have been utilized to support public health activities. With increasing demands on the staff and decreasing resources through Medicare, Medicaid, private insurance, and the various fee-for-service programs, the department has been struggling for the last couple years to maintain the mandatory public health services. During any given time, the mandatory services in the Laurel area serve twenty to twenty-five families and seniors, who sometimes have Medicare or Medicaid to help offset the cost of their care. If the citizens do not have money to pay for care, the mill pays for their care. The department provides services to twelve to fifteen young families who may have sick infants at home, who may need education in how to be better parents, or may be in a true crisis with drugs and alcohol or violence in a home setting. The sixty licensed food establishments in the Laurel area are inspected a minimum of once a year, most of them twice a year, by the department's sanitarians. The four public pools are inspected to ensure that the chlorine levels are adequate to protect swimmers. The subdivisions in the county go through a planning and review process by the sanitarians to assure that the septic systems and water systems will be safe. For many years, the health department has done all of these things without requesting any additional dollars from the public. The staff has been strained with all of the bio-terrorism activities that have occurred this past year. The department is now on a 24/7 call system that was not required in the past. The department received hundreds of phone calls during the anthrax scare. They are considered as the Public Health Department Command Central for health issues in any bio-terrorism event. The department's plan to protect the health of the public in Yellowstone County has to be an immediate response plan, not just a quick response plan. The plan would coordinate the responses of all of the medical personnel in the county. It is their responsibility to accept and dispense the national pharmaceutical stockpile if it needed to be sent out by the federal government to our community to deal with any kind of bio-terrorism response. It is the department's responsibility to handle the entire vaccination of our community for small pox, should anybody ever be able to obtain the small pox bacteria and infect anyone with it. The department has had some enormous demands during the past year and is in a position where they must request public support. The information that distributed at the beginning of the presentation outlined some specific information. A colored graph showed the per capita amount of money spent in Yellowstone County on public health for our citizens as compared to the other population areas in the state. That is the reason that the Board of Health has concluded that they need to request assistance.

Alderman Mace asked how the funds would be dispersed if the federal government stepped in and distributed funds for terrorism. The federal government has given the state about \$7 million in bio-terrorism funds. That is a lot of money until you try to spread it over all of Montana. The state will keep the bulk of the money at the state level to develop their plan and to be able to respond to crises in areas that do not have local public health departments. The local department will receive some monies for bio-terrorism response, and the one-year funding will fund one or two positions to deal with development of response plans.

Alderman Van Roekel asked if restaurants pay a fee for inspections. License fees paid by restaurants cover about two-thirds of the cost of an inspection. Health departments have asked the legislature several times to implement a graduated fee system for inspections. Currently, a coffee kiosk pays the same fee as a restaurant or a casino in a big hotel. A graduated system would allow health departments to charge more for places that take longer and place the public at higher risk, but that has been rejected. The legislature has told the departments to ask the local communities to implement the graduated fee system.

Mayor Johnson stated that the level of service provided by the interlocal agreement for the dollars paid by the city is a great deal. Without this agreement, all of the inspections and the responsibilities of the health department would fall back on the local administration and service provider. He assured that it would be a great weight of responsibility.

Mayor Johnson thanked Lil for her presentation.

Referring to the chart, Alderman Oakes asked why Missoula had \$14.23 per capita and Yellowstone County had \$2.53. Lil explained that Yellowstone County is paying for their efficiency. Yellowstone County was at the \$2.53 figure at the time that I-105 was passed by the legislature. They have not been able to increase the local contribution for public health without asking the voters to approve it. The other counties were at the levels shown on the chart at the time that I-105 was passed. The Yellowstone County Health District would have had to ask for more money sooner, except that they have been creative in bringing in additional monies and have been able to stretch their dollars. However, that can no longer be done.

- **Department of Revenue: Don Hoffman and/or Gene Walborn.**

Don Hoffman is the process lead in the Department of Revenue and is responsible for all the compliance activities within the department, as well as the assessment of centrally assessed property. Mr. Hoffman understood that Mayor Johnson sent Director Curt Alme a letter requesting information regarding the mill levy decrease. The premise of what transpired came from the fact that the City of Laurel's mill levy was \$6,067 last year. This year the mill levy decreased to \$5,819, and then it dropped again. Mayor Johnson explained that the letter was sent because it was incumbent upon the council and administration to be able to explain the decrease.

Don Hoffman and Gene Walborn did not come with prepared testimony or text, but were asked to come and respond to the council's questions. They previously provided the council with the information in the text of the letter and have talked with Mary on the phone. They would be happy to respond to any specific questions beyond what is provided in the information with respect to the things that were identified that have caused the reduction in value with respect to centrally assessed property in the City of Laurel.

Mayor Johnson stated that the central issue is the decrease in mill value, which has come because the centrally assessed assets of Touch America's optic line inventory have significantly changed in value. Don responded that the value of Touch America as an entity has dropped significantly. Under central assessed law in Montana, centrally assessed companies are valued as a unit. Then the value is allocated back to the local taxing jurisdiction of a portion of that unit. The unit, the value of Touch America as a whole, has dropped significantly. As the Department of Revenue pointed out in the letter, this is not just occurring with Touch America, but it is also occurring with other telecommunication companies, i.e. AT&T, who have opted to go into the fiber optic arena. AT&T had a similar drop in value.

Mayor Johnson stated that the goal is to gain an understanding of the issue in order to explain it to members of the community. Mayor Johnson originally understood that the value of the optic lines had changed. However, when inventory is priced out at a certain value, that is the value and it does not change. Apparently, there is a different process involved in this.

Gene Walborn stated that the list of inventory that is submitted to the Department of Revenue for property tax purposes is not technically inventory but is really the assets of the business. Mayor Johnson asked whether the value that has dropped is not fiber optics. Gene was suggesting that inventory is exempt from taxation in Montana. Gene gave information on the locally assessed side. When that is reported to their local office, the local office uses a trending and depreciation of that asset. If you report a \$1,000 asset in year one, their office will take that, trend it down for CPI (consumer price index) times a multiple to reflect the current economic state in the State of Montana and in the country. If they apply that \$1,000 at 97 percent, it becomes \$970. They depreciate it based on the number of years it has been owned to come up with the market value. That is how it is done on the locally assessed side. Those are what you see in Class 8 property for a typical business. For Touch America and other companies that are centrally assessed, they appraise it as a unit in the fourteen states in which Touch America has property. They use a cost approach, which is original cost less depreciation; they use an income approach, which is a capitalization of some income stream; and they use a market approach, or a stock and debt approach. They take those indicators and correlate those into a unit value. Of the fourteen states in which Touch America operates, they come up with an overall unit value for them. Then they take a percentage of the property that is located in Montana – typically based on the original cost of the property in Montana – and the state receives a portion of that unit in the fourteen states. Montana's share in Touch America is about 14 percent of the total value. The system value is approximately \$600 million and the Montana portion is \$73 million, which is the total amount that was to be allocated across all taxing jurisdictions in Montana. If you think of Touch America as a big pie that is cut into fourteen pieces, we only get our piece.

The methodology used is standard, nationally accepted appraisal methodology for centrally assessed companies. Centrally assessed companies are those that we typically know as utilities, railroads, pipelines, etc. This methodology was not devised in Helena, and it has been adopted and accepted through the Supreme Court through some litigation. After the State of Montana receives its piece of pie, it is broken down to the local jurisdictions such as the City of Laurel and Yellowstone County. Another allocation is taken based on the original cost of the property in place in the City of Laurel. The \$73 million received is allocated to the location of the property in each county. In Touch America's case, and they are still in the process of doing this, they were plowing in fiber optic cable into the ground throughout the state and throughout the country. During that process, Touch America gives the Department of Revenue an estimate of where that property is going to be located and finally booked into their plan account. When they plow it in, it is called construction work in progress. They put it into a temporary holding account, if you will. When they book that property at the end of the year or whenever the project is done, they physically move it to a plant account and verify the location of the property. One of the driving forces in this issue is that Touch America reported more property in Laurel and Yellowstone County in 2001 during construction work in progress than they did in 2002. This is compounded by the decrease in Touch America's market value. It was their best guess as to where the property was located. They booked the fiber optic line into the account, but it was not really located in Laurel. It is really located somewhere else in Montana or in Wyoming or wherever. That, with the 20 percent decrease in Touch America's value, gets the city to the shock factor that we experienced.

Mayor Johnson stated that it is not a minor error – it is huge because by the time it came down to us our values went from \$280,000 down to \$35,000. Alderman Poehls asked if corporations get penalized for inaccurate estimating. The response was there was a good chance that the 2001 statements for location of the property were overstated. The 2002 statements bring it back in line with where the property was actually laid and will be placed into service. Construction work in progress is the company's best estimate of the location of it – it could have been sitting on spools somewhere in the yard and that was their best estimate. Now it is laid in the ground and 2001 may have been overstated because they had included too much within the City of Laurel. This problem was not unique to Touch America in 2002. Construction work in progress is something that is dealt with on a regular basis as companies go through the process of bringing it into service.

Mayor Johnson stated that it does not feel good when you are randomly chosen. Don Hoffman stated that they were not trying to minimize the impact to the City of Laurel.

Alderman Olson stated that his understanding of the book factor in 2001 was that Touch America estimated that they would have this amount of line in the ground and that the ground was located in our jurisdiction. In 2001, Touch America submitted their best estimate of the location of the fiber optic line and it happened to be within the City of Laurel. As it turned out, that is not where it was located. They were assessed where they thought it was located, but in actuality it did not come to fruition. Consequently, when the decision was actually made to lay the line in 2002, our jurisdiction was not included and that was part of the reason for the discrepancy. There is property in the City of Laurel. However, when they did construction in progress in 2001, they estimated the original book cost of it to be ten-fold of what it actually turned out to be in 2002. Touch America continues to lay line throughout the United States, but they are pretty much done with Montana.

Alderman Poehls stated that he could not see how a ten-fold mistake could be made. When there are plans to lay cable, easements and rights have to be protected five, seven, and ten years in advance. He did not understand how a company could be mistaken by ten times in the City of Laurel and that no recourse is available.

Don Hoffman stated that the Department of Revenue could look at Touch America from an audit perspective and possibly identify some things. That is typically how they would find errors that could change the outcome, but he did not say that an audit would be done. Audits are taxpayer specific things, and the department could not discuss it. Mayor Johnson stated that the city would feel better if an audit were done, regardless of the outcome. Mayor Johnson stated that the mill value should have taken a jump up when the mistake was made in booking the construction in progress. However, the mill levy went down. He is having a hard time seeing that correction of the error drops us significantly but yet we did not see the uptake in the mill levy. The construction in progress was overstated by a certain amount of dollars, and now reality has shown it to be a different amount of dollars. There was no corresponding uptake to accompany the down spike, and that is the part that has him concerned.

Don Hoffman did not think that question could be answered without doing an audit. The point is that if Touch America had materially overstated it, the value of the mill should have gone up in proportion to the way it went down because there was a direct correlation to value.

Mayor Johnson stated that the mill value went down the previous year and then it went down again this year. Don was not questioning that what the mayor said was correct, but stated that other circumstances could have contributed to the mill levy decrease in 2001. Gene Walborn stated that the certified values in 2001 and 2002 should be compared to get the explanation of why the mill levy went down.

Mary Embleton stated that a comparison of 2001 to 2002 showed that the Class 3 (agricultural) properties remained fairly stable. Class 4 properties (residential, commercial buildings and land) increased slightly - \$200,000 plus in taxable value. Class 8 property (business equipment) went down a little bit. Class 9 (gas lines, electric lines, and pipelines) went down almost \$90,000 from last year. Class 12 (railroad) properties remained fairly stable. Class 13 (telecommunications lines real and personal property) properties took the big dive and there was nothing to offset it.

Mayor Johnson stated that we are starting to understand the circumstances of 2001 and 2002. The focus should now be on 2000-2001. Additional figures will be needed to determine that answer. He asked the gentlemen to help the council with that. Mayor Johnson stated that it is incumbent on the council to have more understanding. Communities around Laurel had an appreciation while the City of Laurel did not.

Gene stated that they are not responsible for calculating mill levies or certifying values to cities. That comes from a different part of the department. From Mary's chart, it seems somewhat reasonable to make the same deduction that was made. Don stated that the 2000-2001 figures should be examined to get an exact comparison to see if the 406,000 in 2001 is a jump from 2000.

Mayor Johnson stated that the taxation processes are very complex and the council wanted to get an understanding of the process. He assured them to understand that the city did not invite them down here to give them a bad time. This was a quest for trying to understand the situation.

Mary asked how difficult it would be to see if Touch America had a similar effect on other jurisdictions, as our give would be someone else's take.

Mayor Johnson thanked Don Hoffman and Gene Walborn for attending the council meeting to explain the issue.

- **Quarterly Report for 1st Quarter Fiscal Year 2002-2003: Mary Embleton, Clerk-Treasurer.**

Mary submitted the quarterly report for the first quarter of fiscal year 2002-2003, which had been distributed to the council prior to the meeting. This is the time of year when we are into our cash reserves on funds that only collect or are pretty well dependent on tax revenues. We will see the first tax revenue collection in December, so during the first quarter and partially into the next, you will see heavy usage of the reserves. We have not improved our situation a whole lot in the investment arena but are gearing up to start looking into other avenues of investment. The Montana Board of Investments is usually behind the market in trends and the reason that the City has used them heavily at this point in time is because of the liquidity. Not being sure of the cash flow with projects on the horizon, the easy access of the \$4 million was important. But now we are getting a better handle on that and it is time to start putting our money to better use. Changes should be seen by the next quarterly report or the semi-annual report.

In the General Fund, expenditures are ahead of revenues by about \$165,000, which is typical for this time of year. We are at 23 percent of budget with 25 percent of the year gone.

The Health Insurance Funds are transferred on a semi-annual basis. Mary may be looking into seeing how to do that more frequently; however, since the majority of the revenue comes from tax collections, it makes sense to do the transfer twice a year. There is no expenditure because we have not transferred from the Health Insurance Fund to the General Fund. That shows that part of the \$165,000 expense over revenue in the General Fund is partially due to the lack of reimbursement from health insurance at this time.

The Street Maintenance Fund is a seasonal fund because there is more activity during the construction season, which usually spans the end of one fiscal year and the beginning of the current fiscal year. We are on target for that because most of the revenue comes from our maintenance assessments, which will be collected in December. The expenditures are only about 13 percent of budget.

The Gas Tax Fund has fallen a little bit behind. Mary will monitor it carefully to make sure the payments are received. The majority of the money for the chip seal project came from Gas Tax. The contract for the project was about \$125,000 and there were also city costs, so the reserves are pretty much used up in the Gas Tax Fund.

The revenues are falling a little behind in the Water Fund than what should be expected for this time of year. The summer months are the high water usage months, so the revenue should be on track. Mary looked into it further, and it was because \$400,000 of revenue was expected for the WRDA Grant. We did not get all of that revenue until this month so that reflects why the 19 percent is there rather than closer to the 25 percent. We did receive \$380,000 of the \$400,000 WRDA Grant as of this month, and that will be reflected on the next monthly financial reports as well as subsequently semi-annual and quarterly reports. We had to show the expenditures for the water intake project in order to be eligible for the WRDA Grant, so those are higher than what would typically be but it is still only at 17 percent of budget. Basically, the reason the expenditures are only at 17 percent is that the major expense is coming yet with the project itself. Once that gets going and completed toward the end of the calendar year that will catch up.

The revenues are on target in the Sewer Fund and expenditures are a little behind. The revenues are exceeded by expenditures a little bit, but that is acceptable.

The Garbage Fund is on track.

The Capital Projects Fund will probably be discussed more as the CIP Plan develops. There is an unallocated cash balance of \$337,220.39 in this fund as of September 30, 2002. The council has yet to designate uses for these monies for this year.

Alderman Olson stated that the quarterly report is used for accountability and to provide an idea of the city's financial status. Alderman Olson stated that he appreciated the efforts put forth by the administration to encourage the report and the effort that went into the report.

Alderman Van Roekel asked concerning the additional mills for the health insurance funds. Mary estimated that an average for a \$100,000 house would be about \$60 per year.

Mayor Johnson thanked Mary for the presentation.

- **Ordinance No. O02-35: An ordinance establishing Standards for Public Works, replacing sections 13.04.010 through 13.12.370 of the Laurel Municipal Code.** Second reading.

Motion by Alderman Easton to adopt Ordinance No. O02-35, seconded by Alderman Poehls. A roll call vote was taken on the motion. All eight aldermen present voted aye. Motion carried 8-0.

- **Confirmation of Appointments.**

Ambulance Attendant:

Mayor Johnson appointed Jodi Macomber as an attendant for the Laurel Volunteer Ambulance Service.

Motion by Alderman Poehls to approve the appointment of Jodi Macomber as an attendant for the Laurel Volunteer Ambulance Service, seconded by Alderman Mace. Motion carried 8-0.

ITEMS REMOVED FROM THE CONSENT AGENDA: None.

AUDIENCE PARTICIPATION (THREE-MINUTE LIMIT): None.

COUNCIL DISCUSSION: The council discussion was held during the Committee of the Whole.

UNSCHEDULED MATTERS:

- **Resolution No. R02-73: Resolution to authorize submission of Application and Agreement to Certifications for Application for Montana Department of Commerce HOME Investment Partnership Program (HOME).**

Motion by Alderman Poehls to place Resolution No. R02-73 on this agenda, seconded by Alderman Van Roekel. Motion carried 8-0.

Motion by Alderman Poehls to approve Resolution No. R02-73 to authorize submission of the application, seconded by Alderman Mears.

Mayor Johnson stated that the council is careful about placing unscheduled items on the agenda. This item was discussed at the council workshop but was not placed on the agenda.

A vote was taken on the motion to approve Resolution No. R02-73. Motion carried 8-0.

Mayor Johnson asked if there were any other matters.

Casey Joyce asked if he could schedule a public hearing on the HOME Grant at 6:30 p.m. on Tuesday, October 29th. The public would be invited at that time to give their comments on the HOME Grant applications. Mayor Johnson stated that the council has approved the application and Casey is the one to execute it. He told Casey to make arrangements for the public hearing, place an ad in the newspaper, and have it approved by the clerk-treasurer.

There being no further business to come before the council at this time, the meeting was adjourned at 8:42 p.m.

Cindy Allen, Secretary

Approved by the Mayor and passed by the City Council of the City of Laurel, Montana, this 6th day of November, 2002.

John E. Johnson, Jr., Mayor

Attest:

Mary K. Embleton, Clerk-Treasurer