

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
September 10, 2007
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, September 10, 2007 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present

Mayor Smith indicated for the record that Commissioners Cartwright, Oitzinger, Peura, and Throssell were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Marshall Gingery representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of August 20, 2007 were approved as submitted.

Appointments

APPOINTMENTS:

- A. ADA Compliance Committee
- B. Board of Adjustment
- C. City/County Parks Board
- D. Helena Zoning Commission

Mayor Smith asked for Commission concurrence on the following appointments:

ADA Compliance Committee – Appointment of Robert Throssell, Britany Martel, Myrle Tompkins, Blair Williams, Lila Martinez and Susan Gunn

Board of Adjustment – Reappointment of Jason Davis

City/County Parks Board – Reappointment of John Kotson

City Zoning Commission – Reappointment of Bill Rule

Public comment

Mayor Smith called for public comment, none was received.

Motions

Commissioner Cartwright moved approval of the appointments to the ADA Compliance Committee. Commissioner Peura seconded the motion. All voted aye, motion carried.

Commissioner Cartwright moved approval of the appointments Board of Adjustment, City/County Parks Board and Zoning Commission. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Presentation

PRESENTATION:

- A. Excellence in Economic Development Award – Great Northern Town Center

Mayor Smith noted this item would be postponed to the October 15, 2007 Commission Meeting.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Memorandum of Understanding for Aspen Trails Subdivision storm water drainage
- C. Acceptance of Hazardous Materials Emergency Preparedness Grant
- D. Utility bill insert - Montana Meth Advisory Council
- E. Utility bill insert - City of Helena Recycling

City Manager Tim Burton recommended approval of the claims and the consent agenda.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved approval of items A through E on the consent agenda. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith noted he was out of town for the annual tour of the city and spoke of Boise, Idaho's downtown.

Commissioner Cartwright stated he was very impressed with the Helena Regional Airport portion of the city tour. Commissioner Peura concurred and noted affordable housing and zoning discussions were also an interesting part of the tour. He thanked staff for their work setting up the tour. Commissioner Oitzinger noted the Commission did discuss issues requested by the Mayor, curbs and undeveloped parkland, on the tour. Commissioner Throssell thanked city staff for their work on the trip and the great atmosphere on the tour.

Ron Mercer, Helena Regional Airport Director, stated he enjoyed the opportunity to participate in the entire tour and see firsthand the issues the Commission deals with.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

Manager Burton stated the city took over ownership of the Chamber of Commerce Building some years ago and gave an overview of the agreement with the tenants. The three agencies housed in the building don't fit anymore, especially in terms of conference room space. The Building Board is proposing a remodel of the central atrium, which would include putting in a second floor and staircase. The space would be primarily be used for storage now and the atrium itself would be used as an additional conference room. The total cost of the project is estimated at \$51,878-\$60,835. Manager Burton asked for Commission approval to provide up to \$15,000 in contingency funds to partner in the remodel. The project will be bid out and Manager Burton will report back to the Commission on the results and final funding amounts.

Commissioner Oitzinger asked Manager Burton to apprise George Anderson's family of the remodel. There was Commission consensus to move forward with the putting the remodel out to bid.

Manager Burton spoke of the tour and noted the Commission looked at land use issues, golf course operations, water issues, low to moderate income housing and building inspections. He added it was time well spent.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Marshall Gingery reported the HCC VISTA Martha Eberle has been a great addition to the HCC and thanked city staff and the Commission for approving her hiring. He spoke of the upcoming HCC election and encouraged citizens to run. He stated 2007 has been a fairly successful year for the HCC and thanked all city staff that helps the HCC by sharing information and helping them work with the public.

Mr. Gingery requested a member of city staff come speak to the HCC regarding the Parks General Obligation Bond.

Certificate of Survey

CONSIDER APPROVAL OF A CERTIFICATE OF SURVEY RELOCATING THE NORTH BOUNDARY LINE OF GOVERNMENT LOT 11, TOWNSHIP 9 NORTH, R3W, LEWIS AND CLARK COUNTY, MONTANA, AND CREATING TRACT B1-A AND LOT 11-A.

Land Trade

CONSIDER THE TRADE OF TRACT B1-A TO RICHARD AND BETTI HILL FOR GOVERNMENT LOT 11, TOWNSHIP 9 NORTH, R3W, LEWIS AND CLARK COUNTY, MONTANA.

Staff Report

Parks & Recreation Director Randy Lilje reported in August 2005 the City of Helena agreed to purchase property for open space purposes from Richard and Betti Hill. The land is located in Helena's south hills on the eastside.

Two parcels were involved in the buy/sell agreement. Total appraised value at the time was \$205,000. The Hills agreed to sell the two parcels for \$175,000; \$120,000 for Tract B1, and \$55,000 for Government Lot 11.

The city could either buy the two parcels at that time for the purchase price or buy just Tract B1 for \$120,000 with four different alternatives:

1. Pay \$55,000 for the other parcel within 18 months or close the transaction;
2. Grant access and septic/drainfield easements across Tract B1 to Government Lot 11 for future development;
3. Pay the seller \$30,000 and grant an access easement only to Government Lot 11; or
4. Create a new 1½-acre lot by relocation of the common boundary between Tract B1 and Government Lot 11. The sellers would retain the smaller lot with the intent to annex it for city services and zoned the same as the adjacent city lots.

Director Lilje recommended Alternative No. 4, as it appears to be the most satisfactory in that it is the least expensive. The more visible Government Lot 11 would become city open space and would be preserved in its natural condition. The new lot created would be annexed into the city with water and sewer services. Mr. & Mrs. Hill have agreed to pursue Alternative No. 4.

Public comment

Mayor Smith called for public comment, none was received.

Commission comment Commissioner Cartwright asked how staff tracks the agreement allowing for future installation of improvements? Mr. Golemon explained the agreement is recorded at Lewis & Clark County Clerk and Recorder's Office and placed on the deed. In addition, there is a map specifically set up to track these waivers that the property would be listed on.

Public comment Mayor Smith called for public comment, none was received.

Motion **Commissioner Cartwright moved approval a resolution annexing property legally described in the resolution and the portion of Knight Street and alley adjacent to the property, located in Lewis & Clark County, Montana, and extend services to the property as shown on Exhibit "A"**. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19516**

Vacation- Colonial Drive ROW **CONSIDER A RESOLUTION OF INTENTION TO VACATE A PORTION OF COLONIAL DRIVE RIGHT-OF-WAY (ROW) ADJACENT TO LOT 6A OF THE HELENA MALL SUBDIVISION.**

Staff Report City Engineer Ryan Leland reported the design and construction of the new South Helena Interchange will realign Colonial Drive adjacent to Hunter's Pointe Assisted Living Facility. Helena Retirement Residence, LLC is the current owner of the Hunter's Pointe facility. The realignment of Colonial Drive will require a land trade of ROW that is of approximately equal square footage. The city will get the needed ROW to construct the new Colonial Drive and Helena Retirement Residence, LLC will get the vacated ROW. The city initiated this land trade to facilitate the relocation of Colonial Drive. The city will maintain an easement for the existing sewer main that follows the existing road alignment.

Mr. Leland recommended approval of the vacation as it would allow the owner of the property to use the vacated ROW to its advantage and the City of Helena would get the needed ROW to relocated Colonial Drive.

Motion **Commissioner Peura moved approval for a resolution of intention to vacate a portion of Colonial Drive ROW adjacent to Lot 6A of the Helena Mall Subdivision and set a public hearing date of September 24, 2007.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Resolution #19517**

Res. of Intention to annex **CONSIDER A RESOLUTION OF INTENTION TO ANNEX 12.7 ACRES GENERALLY LOCATED EAST OF B STREET AND SOUTH OF THE AIRPORT, AND ESTABLISH THE CONDITIONS FOR ANNEXATION.**

Public Hearings **PUBLIC HEARINGS:**
A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP AND PRE-ZONING TO CLM (COMMERCIAL-LIGHT MANUFACTURING) DISTRICT 12.7 ACRES PRIOR TO ANNEXATION; GENERALLY LOCATED EAST OF B STREET AND SOUTH OF THE HELENA REGIONAL AIRPORT.

Staff Report City Planner Kathy Macefield reported the property owner is requesting annexation by petition for 12.7 acres that are located adjacent to the city limits.

On August 14, 2007, the Helena Zoning Commission unanimously recommended approval (5:0 vote) for the adoption of an ordinance for pre-zoning to CLM District, prior to annexation as described in Section 11-2-8 (D) of the Helena City Code, for 12.7 acres. Legally described as PARCEL A-1 shown on Certificate of Survey No. 3132066, filed in the office of the Clerk and Recorder for Lewis and Clark County; generally located east of B Street and south of the Helena Regional Airport, in Lewis & Clark County, Montana. Ms. Macefield noted all uses permitted in the CLM zoning district could be located on the property if the proposed pre-zoning is permitted.

Ms. Macefield recommended approval of the resolution of intention to annex as this property is located adjacent to the city limits; infrastructure can be extended to serve the property, making efficient use of land, infrastructure, energy and other resources. She added the proposal does not create any individually wholly surrounded properties. She also recommended approval of the pre-zoning, as it is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, as is compatible with the surrounding land uses.

Public Testimony

Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the Commission.

Timothy Bury, 1 Engineering Place, representing the applicant; spoke in support of the proposal.

Ron Mercer, Helena Regional Airport Director, 4272 Country View Drive, applicant; urged the Commission to support the proposed resolution and ordinance.

There being no further persons wishing to address the Commission, Mayor Smith closed the public hearing.

Motions

Commissioner Peura moved approval of a resolution of intention to annex PARCEL A-1 on Certificate of Survey No. 3132066, Lewis and Clark County, Montana; subject to the four conditions stated in the resolution and staff report. Commissioner Throssell seconded the motion. All voted aye, motion carried.
Resolution #19518

Commissioner Peura moved approval of first passage of an ordinance pre-zoning to CLM (Commercial-Light Manufacturing) District, prior to annexation as described in Section 11-2-8 (D) of the Helena City Code, for 12.7 acres legally described in the ordinance and staff report. Commissioner Throssell seconded the motion. All voted aye, motion carried. **Ordinance #3091**

B. CONSIDER THE PRELIMINARY PLAT FOR THE AMENDED SKYWAY REGIONAL SHOPPING CENTER MAJOR SUBDIVISION CREATING 17 COMMERCIAL LOTS FROM APPROXIMATELY 28.7 ACRES LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT; GENERALLY LOCATED SOUTH OF CUSTER AVENUE AND WEST OF WASHINGTON STREET.

Staff Report

Planner Lucy Morell-Gengler reported the Skyway Regional Shopping Center was given conditional preliminary plat approval for a minor subdivision creating five lots in January of 2004 and final plat approval for that subdivision in January 2005. The development was

granted a Conditional Use Permit in June 2006 for the shopping center per compliance with the conditions.

The applicant indicated when the initial minor subdivision was reviewed and approved the intent was to lease buildings for the shopping center. The applicant has indicated many of the tenants now prefer to purchase the property for their stores. Therefore, the applicant has submitted an application for a major subdivision although most of the impacts and infrastructure remain the same as reviewed and approved for the minor subdivision.

The proposed major subdivision/preliminary plat for Amended Skyway Regional Shopping Center Subdivision would create 17 lots from 4 lots located in the B-2 (General Commercial) District. The proposed lots will range in size from .48 to 6.86 acres. Access would primarily be by means of Washington Street plus a "right in" only from Custer Avenue shared with Home Depot. A portion of Cromwell-Dixon Lane would become dedicated right-of-way in addition to a portion of proposed Lots 2-A and 4-F to accommodate improved access from the Skyway Drive/Washington Street intersection. The plat states access to the interior lots would be provided by covenants with a cross-access agreement and emergency access easements to the city.

On August 21, 2007 the Consolidated Planning Board held a public hearing for the subject major subdivision/preliminary plat. The Planning Board unanimously recommended conditional approval (7:0 vote) for the preliminary plat of the Amended Skyway Regional Shopping Center major subdivision creating 17 lots from 28.7 acres and to adopt the Findings of Fact and the conditions contained therein.

Ms. Morell-Gengler recommended approval of the proposed major subdivision, as it would provide infill development by facilitating the transfer of individual lots for development consistent with current B-2 zoning.

Commission comment

Commissioner Oitzinger asked if there is direct access to a signalized street? Ms. Morell-Gengler reported the current proposal does not include access but the revised site plan will.

Commissioner Throssell asked what would happen to the increased traffic from the shopping center when Custer Avenue is shut down for construction of the new interchange? Ms. Morell-Gengler stated some traffic problems are anticipated and the Montana Department of Transportation (MDT) will work to accommodate traffic as best it can. City Manager Burton noted MDT Director Lynch has stated although there will be inconveniences with the construction of the Custer Interchange, MDT doesn't plan on closing the street or bridge.

Commissioner Cartwright asked for clarification of the street network within the subdivision. Ms. Morell-Gengler pointed out the streets on the site plan. Commissioner Cartwright asked if there is a road running across the southwest corner of the property? Ms. Morell-Gengler stated the Conditional Use Permit (CUP) did show access in that area and the applicant is working with the Helena Airport to establish a private access easement across the property. Commissioner Cartwright asked for the advantages and disadvantages to having private roads serve the development? Ms. Morell-Gengler stated in a shopping center the pavement width is somewhat different than a street, as are requirements for sidewalks and boulevards. Some disadvantages are that police enforcement is somewhat limited and maintenance and landscaping are done by the shopping center. Commissioner Cartwright

commented at the time of the CUP, the applicant suggested he wished to do a more traditional development, along the lines of a main street type development. It now sounds like with private streets in the subdivision, some of the things associated with traditional streets would not be necessary, such as sidewalks. Another concern is the ability of private parties to control public access in a commercial district. Presumably if there were people there that the owners didn't want they could be moved out even if they were talking on some social or political issue, in what appears to be a public spot.

Mayor Smith expressed concern for private ownership of the shopping center lots because he would prefer consistency with regards to things like landscaping and easements. Ms. Morell-Gengler stated there would be pedestrian amenities required by the CUP and covenants to control landscaping, parking and pedestrian access.

Commissioner Throssell referred to connectivity issues in another shopping center and asked if those issues will be addressed in this shopping center. Ms. Morell-Gengler noted access for the shopping center would be provided to all of the lots and all of the buildings. There will be interconnectivity for vehicular and pedestrian access.

Commissioner Cartwright asked what the current status is for using private streets for public gatherings such as political rallies or union organizing drives. City Attorney Nielsen stated the property owners can limit the gatherings; it can be complex depending on if the area is a quasi-public place. Regarding this subdivision, the easements are intentionally not well defined so that the property owners have the flexibility of redirecting traffic through the parking lots as to not create a prescriptive right-of-way. It also allows them to control the property so they can prevent the public coming on after hours or when it needs to be closed. Commissioner Cartwright asked if there was precedence elsewhere that could be adopted that might give the public greater right of access in the future on these streets? Attorney Nielsen stated he wasn't aware of any. Commissioner Cartwright asked if the easements could be changed during final plat consideration or would the Commission be locked into them with preliminary plat approval? Attorney Nielsen stated staff could review the quality of the easements and restrictive covenants and noted there would be challenges as Home Depot is already a member of the covenants. Approval of the preliminary plat will not preclude the Commission from researching the easements and restrictive covenants. Commissioner Peura asked City Attorney Nielsen if an additional condition related to review of the easements and covenants should be added as a placeholder. Mayor Smith recommended Attorney Nielsen answer Commissioner Peura's question after public testimony.

Public Testimony

Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the Commission.

Robert Schmidt, PEG Development, 1 East Center Street, Suite 300, Provo, UT 84606, representing Skyway Regional Shopping Center; spoke in support of the preliminary plat. He addressed the issues of public use of private property and connectivity and noted the CUP would provide congruity to the shopping center.

There being no further persons wishing to address the Commission, Mayor Smith closed the public hearing.

Discussion

City Attorney Nielsen stated it is possible to have easements for the public; the downside is neither the property owner or the city could control the public's use of the easement because it would not be like right-of-way, which has traffic laws. He recommended the Commission not pursue trying to allow for uncontrolled public gatherings on these easements. Commissioner Cartwright commented this is something that has been nagging at him and as there is more and more privatization of public space a series of problems are created. If the city ends up with all commercial areas in private hands the community is diminished. He asked if the Commission has the ability to add a condition during final plat approval that would note his concerns. City Attorney Nielsen stated yes because some of the easements are not defined or contained in the covenants.

Commissioner Peura concurred with both Commissioner Cartwright's concerns and the applicant's desire to control their own roadways.

Motion

Commissioner Cartwright moved conditional approval of the preliminary plat for the Amended Skyway Regional Shopping Center Major Subdivision creating 17 commercial lots and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact. Commissioner Peura seconded the motion. All voted aye, motion carried.

Public Communications

PUBLIC COMMUNICATIONS

No public communications were given.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is Wednesday, September 19, 2007 and the next Commission Meeting is Monday, September 24, 2007. The Helena Housing Authority has invited Commission to their board meeting on September 25, 2007 at 4:00p.m.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:41p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission