

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**March 11, 2002**  
**6:00 P.M.**

- Time & Place** A regular City Commission meeting was held on Monday, March 11, 2002, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present** Mayor Pro Tem Steve Netschert indicated for the record that Commissioners Oitzinger, Parriman and Pouliot were present. Mayor Smith was excused. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Barb Fairhurst were present.  
Jerry Hutch of the Helena Citizens Council was also present.
- Pledge of Allegiance** Mayor Pro Tem Netschert lead those persons present in the pledge of allegiance.
- Minutes** The minutes of the regular city commission meeting of February 25, 2002 were approved as submitted.
- Consent Agenda** CONSENT AGENDA  
A. Claims  
B. Consider a contract for hydro-geological services to evaluate existing irrigation wells and water rights.  
C. Release of interest in a 20-foot wide utility easement located along the common boundary line of Lot 1A and Lot 2A, Mergenthaler Subdivision.  
D. Amendment #1 to engineering services contract - Missouri River Treatment Plant Water Improvements Project.  
E. Consider 2nd passage of Ordinance 2933, rezoning Lots 1 and 6 shown on COS #501240/E (To be known as the Crystal Springs Subdivision) prior to annexation into the City of Helena, Montana.
- Motion** Commissioner Oitzinger moved approval of the consent agenda, items A-E. Commissioner Parriman seconded the motion. All voted aye, motion carried.
- Bid Award** Bid Award  
A. Manhole Rehabilitation 2002, Project No. 02-8
- Staff Report** City Engineer Chuck Hanson reported this construction project will rehabilitate approximately 25 brick manholes. Rehabilitation restores the manholes to a watertight condition. This is important to prevent inflow and infiltration (I & I) of groundwater and stormwater. I & I can consume valuable treatment capacity at our wastewater treatment facility and adds to the cost of treatment. The project was advertised and bids were opened on February 26, 2002. Four contractors submitted bids. Planned and Engineered Construction Inc. of Helena submitted the low bid of \$27,083.21. A total of \$32,859.49 is budgeted for the project. Staff recommends awarding the work to Planned and Engineered Construction Inc. Approximately 25 brick manholes could be rehabilitated this construction season.
- Discussion** Commissioner Pouliot asked if the manholes were located in a specific area of town. Mr. Hanson stated the manholes are not generalized in one area. Commissioner Pouliot asked about the manholes that have concrete and Mr. Hanson stated the concrete collars put on the manholes has been a standard

practice for years. On new manholes, the brick ones may or may not have a concrete collar. This process will not do anything with the surface of the manhole but it will redo the interior.

**Motion** Commissioner Oitzinger moved to award City Project No. 02-8 to the lowest, responsible bidder, Planned and Engineered Construction Inc. for \$27,083.21. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Pro Tem Netschert stated the commission had received a letter from Mike Hiel of Gardenwerks regarding inconsistencies in the city bidding process of the 15th street parking lot. City Attorney Nielsen stated that contract was lead by the parking commission which is a separate legal entity. The parking lot is jointly owned by the city and the parking commission. Mr. Nielsen will review the bids with Mr. Reichert of the Business Improvement District to see what action needs to be taken.

Mayor Pro Tem Netschert asked if the police drug dogs could be used in conjunction with the school district to do random drug searches. Chief McGee stated this issue has been discussed for a year and the school district has formed a committee. The police department has withdrawn from the issue, but has offered advice if they have questions. The committee is sending a recommendation to the school board in the next month and a decision will be made. The dogs can do random searches in the school if that is what they request, but it is completely up to the school district.

**Report of the City Attorney** REPORT OF THE CITY ATTORNEY  
City Attorney David Nielsen had no items to report on.

**Report of the City Manager** REPORT OF THE CITY MANAGER  
City Manager Tim Burton stated he and others attended Federal Emergency Management Agency training in Emmitsburg, Maryland. The course was on how to recover from disaster. There is an outline of the recovery plan chapter that will be incorporated into the emergency operations plan.

**Raleigh Street** CONSIDER A RESOLUTION OF INTENTION TO CLOSE AN UNDEVELOPED PORTION OF RALEIGH STREET BETWEEN BLOCKS 549 AND 566 OF THE EASTERLY ADDITION TO THE CITY OF HELENA, MONTANA.

**Staff Report** City Engineer Chuck Hanson reported a number of residents in the area adjacent to the proposed closure are concerned with preserving this existing right-of-way. Their concern is primarily to keep the unconstructed street in a natural state for trails and stormwater control and to preserve landscaping improvements that already incorporate a portion of the right of way. The residents developed a petition and gathered enough funding to submit the petition and pay the filing fee. The closure will ensure the continuance of the natural trail system and stormwater distribution. The closure, but not vacation, also retains the right-of-way for operation and maintenance of existing and future utilities.

**Motion**

**Commissioner Oitzinger moved approval of the Resolution of Intention to close a portion of Raleigh Street between Blocks 549 and 566 of the Easterly Addition and set a public hearing date of March 25, 2002.**  
Commissioner Parriman seconded the motion. All voted aye, motion carried.  
**Resolution 11737**

**Franchise Agreement  
between the city and  
TCI**

CONSIDER AN AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE CITY AND TCI MONTANA (AT&T) TO EXEMPT NON-SUBSCRIBER REVENUE FROM THE FRANCHISE FEE AND PROVIDE THAT COLLECTED FRANCHISE FEES BE REMITTED TO THE CITY ON A QUARTERLY BASIS.

**Staff Report**

City Attorney David Nielsen reported on January 28, 2002, the City Commission authorized negotiations with TCI Montana (AT&T) to amend the franchise agreement to exempt revenue from non-subscriber sources, such as advertising and home shopping commissions, from the 5% franchise fee. In addition, the agreement was to provide that franchise fees would be paid by TCI to the city on a quarterly basis rather than semi-annual. Those negotiations have been successful and TCI has agreed to these amendments. The advantage is the city would gain the time-value of the earlier payment in exchange for exempting the non-subscriber revenue from the fee. Exempting the fee on non-subscriber revenue would benefit the subscriber who would otherwise have to pay for it. The disadvantage is the city would lose about \$13,000 in franchise fees annually. The city is obligated to provide funds annually to the PEG channel - \$100,000 for 2001 and \$95,000 for 2002.

**Motion**

**Commissioner Pouliot moved approval of the amendment to the franchise agreement between the city and TCI Montana (AT&T) to exempt non-subscriber revenue from the franchise fee and to provide that collected franchise fees be remitted to the city on a quarterly basis.**  
Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Crystal Springs  
Major subdivision/  
Preliminary Plat**

CONSIDER FINDINGS OF FACT FOR CRYSTAL SPRINGS MAJOR SUBDIVISION/PRELIMINARY PLAT FOR A MAJOR SUBDIVISION CREATING 108 RESIDENTIAL LOTS ON 60 ACRES; LEGALLY DESCRIBED AS LOTS 1 AND 6 OF COS #501240/E LOCATED IN THE SOUTHEAST QUARTER OF SECTION 13, T10N, R3W AND THE EAST HALF OF SECTION 18, T10N, R4W, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED ABOUT 1200 FEET NORTH OF CUSTER AVENUE, EAST OF GREEN MEADOW DRIVE AND WEST OF PIONEER VILLAGE SUBDIVISION.

**Staff Report**

Planner Lucy Morell-Gengler reported on February 25, 2002, the City Commission approved the preliminary plat for the Crystal Springs major subdivision. At that time, there were conditions associated with that approval and the staff report and record was the findings at that time. Staff has compiled the findings from those sources and the final version is before the commission. Staff recommends approval of the final version of the findings of fact for Crystal Springs. Please refer to the Findings of Fact for Crystal Springs subdivision/preliminary plat for description.

Discussion

Commissioner Parriman stated this issue calls for the developer to either install the paving on the streets or financially guarantee them and building permits would not be issued until the streets were improved up to final grade or paved. Will gravel roads still be in place two years from now and at what point do the streets have to be paved? Engineer Chuck Hanson reported staff allows the developer to have building permits while the project is still under way after the utilities are in and they are getting the street gravel laid in place just prior to the final paving. Once staff allowed building permits, the developer is anxious to get the paving in because if they don't, they lose that final base that is put in because it doesn't drain, it just ponds and ruins the base and they have to start over. The paving will follow right along behind the base course because if they don't, they will have to do it over again and it's expensive to redo that gravel. If the developers are putting the utilities in and they are drawing on their letter of credit for all the improvements, they follow with the street paving and staff can require them to do that. Before they can occupy a building, they have to be able to use the utilities and staff doesn't give approval until the street is paved. Commissioner Parriman asked if this could be tied to a date certain, whether or not the paving has to be done prior to the first occupancy permit being issued for the residents or a final inspection on the house. Mr. Hanson stated that with the new infrastructure acceptance policy, they will not have the ability to use the water and sewer until those improvements are done. It would be tied into their ability to occupy that structure so it would have to be done before anybody can live there.

Mayor Pro Tem Netschert asked if it would be appropriate to note the action that Commissioner Parriman stated now or would it be more appropriate to address it another time? City Attorney Nielsen recommended that no changes be done to the findings of fact. That will be a policy issue that will be addressed in future subdivision issues so that the language is tight enough to accommodate Commissioner Parriman's concerns.

Motion

**Commissioner Parriman moved approval of the findings of fact for the Crystal Springs major subdivision/preliminary plat creating 108 single-family lots from 60.03 acres to be located in an R-2 (Single-family Residential) District and R-3 (Multifamily Residential) District for property legally described as Lots 1 and 6 of COS #501240/E located in Section 13, T10N, R4W, and Section 18, T10N, R3W, Lewis and Clark County, Montana.**  
Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Brooke Addition

CONSIDER A RESOLUTION OF ANNEXATION TO THE CITY OF HELENA FOR PROPERTY LEGALLY DESCRIBED AS LOTS 29-32, BLOCK 181, BROOKE ADDITION, LEWIS AND CLARK COUNTY, MONTANA, AND GENERALLY LOCATED AT THE NORTHEAST CORNER OF KNIGHT AND WINSTON STREETS.

Staff Report

Project Manager Hal Fossum reported on May 15, 2002, property owners Darrel and Darla Tenter applied for annexation of private, residential property to the City of Helena. On June 4, 2001, the City Commission established conditions to annexation (Res. 11636), and the property was rezoned in the R-2 District (Ord. 2915).

Conditions to annexation include the following:

1. **Infrastructure:** The applicant must install infrastructure improvements

as required by the city and to city standards, including water, sewer, fire hydrant, street, curb, gutter and sidewalks, or enter into a development agreement acceptable to the City of Helena that defines responsibility for installation or deferment of the improvements.

2. **Building location and standards:** As provided in 50-60-106 MCA, the property owners shall contract with the City of Helena for plan and building review and permitting for all construction subsequent to the adoption of this resolution.
3. **Sewer annexation fee:** The \$300 per acre annexation fee (or \$86.10) shall be paid to the City Engineering Department.
4. **Taxes and Assessments:** Taxes and assessments shall be paid and current at the time of filing the Resolution of Annexation.
5. **Utility Connections and the Completion of Conditions:** The applicant shall notify City Planning in writing upon completion of the conditions for approval of annexation. If the conditions are not completed within one (1) year of the date of approval of this Resolution of Intention, the city is under no obligation to annex the property. City water and sewer utility services may not be connected to the subject property until after annexation has been completed.

Staff of the Community Development Department have verified that all these conditions have been met. The final steps are a Resolution of Annexation, and administrative transfer of responsibilities from county to city providers. Staff propose that the City Commission adopt a resolution of annexation. Completion of this annexation will complete annexation in accordance with state laws concerning the annexation of private property by petition.

Discussion

Mayor Pro Tem Netschert asked if there would be any wholly surrounded properties being created. Mr. Fossum stated no wholly surrounded properties would be created. Mayor Pro Tem Netschert asked if the Tenters were in agreement with the conditions and Mr. Tenter replied affirmatively.

Motion

**Commissioner Pouliot moved approval of a resolution of annexation to the City of Helena property legally described as Lots 29-32, Block 181, Brooke Addition, Lewis & Clark County, Montana, generally located at the northeast corner of Knight and Winston Streets.**  
Commissioner Parriman seconded the motion. All voted aye, motion carried.  
**Resolution 11738**

**PUBLIC HEARINGS**

***CTEP project nominations***

- A. RECEIVE COMMUNITY TRANSPORTATION ENHANCEMENT PROGRAM (CTEP) PROJECT NOMINATIONS.

Staff Report

Transportation Coordinator Kathy Harris reported in 1999, Helena allocated all its Community Transportation Enhancement Project (CTEP) funds

through 2001. CTEP requires project selection by the elected officials, after an active solicitation of public interest. The City of Helena is requesting public nominations for 2002 CTEP projects. The city will meet the CTEP requirements by providing a public process for project nomination. This also increases the opportunity for public involvement and input to the City Commission. The projects include:

Park Avenue and Wong Street street improvements: This is estimated to be a \$240,000 project to redesign the street and circulation system. Costs would be shared with the parking commission, the library and adjoining property owners.

Redesign of Neill Avenue between Benton and Last Chance Gulch: This project is estimated to cost \$250,000. The local match would be possibly identified from the Business Improvement District, the Great Northern and adjacent property owners. This is a street redesign and sidewalk landscaping or enhancement.

Streetscape improvements along the 300 block of Last Chance Gulch: This is the block between Lawrence and 6<sup>th</sup> Avenue. Similar to a project completed years ago called the 400 block of Last Chance Gulch, this would repave the street, replace the sidewalks in their entirety and provide historic lighting and landscaping. The cost estimate is \$200,000. Sources of match would include the Business Improvement District, the parking commission and adjoining property owners.

Parks Dept. and public sidewalks: Cost estimate of \$572,000. This would install sidewalks in city parks where none currently exist. Local match would be provided through a combination of city staff, time and services. Matches allocated through city budget process.

City owned properties – public sidewalk provision: This estimate is approximately \$203,000. Local match would be provided through a combination of city staff time and services as well as local matches coming through the city budget process. This is on properties owned by the city that are not city parks.

Knight street neighbors: Provision of sidewalks along Knight street, a 5 foot sidewalk along the north side of the street between Benton and Cleveland street. This services C.R. Anderson Middle School as well as the residences. The cost was approximately \$105,000. Property owners expected to provide the source of match.

Ms. Harris received an e-mail March 11 from John Poston of Valley Bank on 11th Avenue. Mr. Poston has an interest to provide a sidewalk project in that area. Mr. Poston did not know about the time frame and Ms. Harris will follow up this week to find out more specifics.

Discussion

Commissioner Pouliot had spoken with City Manager Tim Burton earlier about a CTEP project for an alley paving/black topping and asked if any action had been taken. City Manager Burton reported that no further action has been taken on this request. It is a similar street improvement project, but in an alley. Ms. Harris asked that that project be added to the list similar to the project from 11th Avenue to define the location to determine if it is eligible.

Public Testimony

Mayor Pro Tem Netschert declared the public portion of the hearing open and called for any persons wishing to address the commission.

Ron Cullen, 663 N. Warren, is chairman for the Helena Lewis and Clark Historic Preservation Commission. The commission would like to nominate a

project called "Repair and Restoration of the State Capital front steps." The steps are currently in a great deal of need of repair. The project is estimated at \$700,000 to \$1,000,000. There is no specific cost at this time and they are waiting for cost projections. The total cost requested from the city in terms of participation would be \$10,000. The remainder of these costs would be solicited with other participating CTEP entities statewide in a manner similar to the funding of the state capital. The front steps of the capital building are in critical need of repair and represent an immediate hazard and public safety item. The stairway is a major contributing feature to the historic quality of the capital building which is listed on the national historic registry of historic places. This project could be funded with repairs and restoration of the granite steps and a deterioration supporting structure. It is intended to initiate similar contributions from other counties and other commissions statewide. The engineering assessment and the perpetual care of the building will be undertaken by the State of Montana Department of Administration. The proposed matched funds will be matched by the State of Montana as administered by the Montana Department of Administration in a manner commiserate with the CTEP requirements.

Chris Imhoff, 22 South Montana Avenue, is a member of the Capital Restoration Foundation. The foundation brought the suggestion to the local preservation commission to sponsor the capital steps project. The way CTEP works is you can have projects that have a lot of different city and county governments involved, but you need to have a sponsor and the foundation feels it is important that sponsor be the city where the actual capital is located. The foundation is not planning to raise \$700,000 to \$1,000,000 of CTEP funds. The state is planning to go to long range planning and try to get some funding for this project. If they have upfront commitment of funds from local governments and the Montana Department of Transportation, it helps in long range planning to get the project funded. The state will sign a memorandum of agreement with Helena that would say they would always maintain that project. The state would also do the environmental assessment and come up with the match for whatever can be raised by CTEP funds.

Tom O'Connell, 628 Hayes, is the state architect. The CTEP money was instrumental in helping the state complete the restoration of the capital. It was a \$27,000,000. project of which 1.55 million was CTEP money. The exterior stairs of the capital were outside of the project that was initiated with the restoration of the capital. Exploration in the last few months have uncovered that that the steps are in much worse condition than was anticipated. It will be a major job to reconstruct the steps.

Paul Reichert of the Business Improvement District stated BID has nominated the three CTEP projects that Ms. Harris mentioned. Focusing on non-motorized transportation is an important concept and element of CTEP funding. Historic preservation and restoration is also valuable. The three projects nominated were included in the 10 year plan that the city approved in 2000 when the BID was renewed. They are long standing projects that hopefully will get done in the next five to ten years. CTEP funds were instrumental in getting the 400 block rebuilt and that has caused or helped influence some of the redevelopment that has taken place on the 400 block. There should be some consideration of when and where you put CTEP funds.

There being no persons wishing to address the commission, the public portion of the hearing was closed

Discussion

Commissioner Oitzinger asked Mr. O'Connell if the city is being asked to contribute \$10,000 toward the capital steps project. Mr. O'Connell stated the initial request was for \$10,000 and Ms. Imhoff will then try to get other cities to contribute through their CTEP programs. Commissioner Oitzinger asked about long-range building. Mr. O'Connell stated it would be their intent to go to the next legislature and request long-range building funds to match some of the CTEP funds that could be raised for this project.

**Acknowledgement**

**Mayor Pro Tem Netschert acknowledged receipt of the nominations for further use.**

**Jewelry Art  
Design Studio**

- B. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A JEWELRY ART DESIGN STUDIO IN A 225 SQUARE FOOT SUITE AT THE ST. JOHN'S BUILDING THAT IS LOCATED IN AN R-O (RESIDENTIAL-OFFICE) DISTRICT. LEGALLY DESCRIBED AS LOTS 1&2, NORTH 14.5 FEET OF LOTS 20, 21-26, 48-64, 66-68, 74, 77, 81 AND WEST 75 FEET OF LOT 65, BLOCK 28, HELENA TOWNSITE, HELENA, MONTANA; GENERALLY LOCATED BETWEEN RODNEY AND EWING STREET AND SOUTH OF BROADWAY WITH A STREET ADDRESS OF 25 SOUTH EWING, SUITE #402B.

Staff Report

Planner Belinda Waters reported the property currently houses a 48,391 square foot four-story building utilized by law, insurance, physician, real estate and other service-type offices. The subject property is adjacent to two existing city streets, Rodney and Ewing. The total property area is 115,939 square feet. The applicant is leasing a 225 square foot suite on the fourth floor. The applicant will operate a jewelry design and manufacturing studio specializing in the creation of limited edition and one-of-a-kind pieces of jewelry art. The business will not be a trade shop or a full-service jewelry repair shop. Originally the business was operated as a wholesale business out of the applicant's home. The business will be open approximately 27 hours per week, 10:00 a.m. to 4:00 p.m. varied weekdays, and by appointment only. The proposed conditional use permit would operate in context with current land uses and development. This project is consistent with the various goals, objectives and policies of the 2001 Growth Policy.

Discussion

Commissioner Oitzinger asked about the minutes from the Zoning Commission where there was a question about fabricating and the materials used. The applicant designs with wax and works with raw gold which is considered a hazardous material. The applicant, Joann Howeth, 702 Knight, stated that is a typo. Gold is not a hazardous material. Some of the substances she works with are hazardous, flammable or toxic to inhale. The jewelry is fabricated, but she does not cast.

Commissioner Pouliot asked if the applicant uses hazardous materials, how dangerous are they to the people in the office next door. Ms. Howeth stated the materials used are toxic to breath in certain levels. The levels that Ms. Howeth uses are low. Two windows are always kept open when using plating material. A smoke detector and fire extinguisher are available. Everyone, including herself, are safe. Commissioner Pouliot asked if she has ever had an adverse reaction and Ms. Howeth replied no.

Public Testimony

Mayor Pro Tem Netschert declared the public portion of the hearing open and called for any persons wishing to address the commission.

There being no persons wishing to address the commission, the public portion of the hearing was closed

Motion

**Commissioner Parriman moved approval of a resolution for a conditional use permit (CUP) to allow a jewelry art design studio in an R-O (Residential-Office) District. The proposal is legally described as Lots 1 & 2, North 14.5 feet of Lots 20, 21-26, 48-64, 66-68, 74, 77, 81 and west 75 feet of Lot 65, Block 28, Helena Townsite, Helena, Montana; generally located between Rodney and Ewing Street and south of Broadway with a street address of 25 South Ewing, Suite #402B. Approval of the CUP shall be subject to the conditions as recommended by the Zoning Commission. The applicant must comply with the Uniform Fire Code for the storage and use of potential hazardous materials and proper and adequate ventilation of odors.** Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Resolution 11739**

**Public Communications**

PUBLIC COMMUNICATIONS

Mayor Pro Tem Netschert acknowledged Boy Scout Troop 207 which included Michael Ketchum, A.J. Etherington and Jon Nelson. The scouts were working toward receiving their communication merit badges. Mayor Pro Tem Netschert wished them luck and asked them to continue with the program up to Eagle Scouts.

**Meetings of Interest**

The next city commission meeting will be March 25, 2002.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at p.m. this 11th day of March, 2002.

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MAYOR

ATTEST:

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CLERK OF THE COMMISSION