

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
SEPTEMBER 23, 2002
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, September 23, 2002, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Jim Smith indicated for the record that Commissioners Netschert, Oitzinger, Parriman and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and City Clerk Debbie Havens were present.
HCC representative was Jerry Hutch. Tracy Moseman was the CYAC representative.
Mayor Smith introduced Jacki Pierson, Deputy City Clerk.

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 September 9, 2002 were approved as submitted.

Appointments APPOINTMENTS:
A. Public Art Committee
B. Youth Advisory Council

Mayor Smith recommended the following appointments:

Public Art Committee

Blair Williams, Public Art Administrator.
Term will begin upon appointment and expire December 31, 2004.

Motion **Commissioner Pouliot moved the appointment of Blair Williams.**
Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Youth Advisory Council

Youth:

Brittany Allen	Diana Nettleton
Stephanie Throssel	Allysha Cohenour
Jessica Freeman	Amber Thomas
Jennifer Hubber	Libby Snedeker
Samantha Copenhour	Nicole Nettleton
Andy Salo	Paul Morgan
Rick Pembroke	Chris Pratt
Josh Montayne	Jake Blade

Adults:

Tracy Moseman	Jason Swant
Tom Ryan	Roy Tanniehill

Motion **Commissioner Oitzinger moved approval of the appointments of the Youth Advisory Council.** Motion dies for a lack of a second.

Motion

Commissioner Netschert moved approval of the appointments to the Youth Advisory Council outlined above with the exception of Tom Ryan. Commissioner Pouliot seconded the motion.

Commissioner Oitzinger asked for clarification from Commissioner Netschert on why he did not appoint Tom Ryan to the Community Youth Advisory Council. Commissioner Netschert stated he believes that Tom Ryan is not a person that should be mentoring the youth in Helena.

Commissioner Oitzinger asked for further clarification on the reason for the non-appointment. Commissioner Netschert stated that on more than one occasion he witnessed Mr. Ryan being extremely disrespectful to others against the skate park. Therefore, he does not believe he should be mentoring the youth. Commissioner Oitzinger reiterated that she has heard just the opposite of Mr. Ryan's behavior regarding the skate park.

Commissioner Netschert stated if the mayor is going to accept testimony on behalf of Mr. Ryan, then the other side should be able to have persons present to address specific questions.

Commissioner Oitzinger asked Tom Ryan to come to the podium. Commissioner Oitzinger asked Mr. Ryan if he had been in a debate with the veterans. Mr. Ryan gave a specific example of an incident when he and a veteran had a difference of opinion after a commission meeting.

Commissioner Parriman asked Mr. Ryan what his interest is in serving on the CYAC? Mr. Ryan stated he has been on the council since it's conception, approximately five years ago. There have been accomplishments on the council and the next large project will be a youth center for Helena.

Commissioner Oitzinger asked Carrie Fairbrother to come to the podium and asked her if she could recall any instance where Mr. Ryan acted in an inappropriate way. Mr. Fairbrother, 642 Dearborn, stated she attended many meetings and she did not observe Mr. Ryan act in an inappropriate way. She was pleased with Mr. Ryan's accomplishments with mentoring the youth and the skate park project.

Commissioner Oitzinger asked Mr. Joe Goldes to come the podium and asked him if he was present at any meeting where Mr. Ryan acted inappropriate? He stated that he had not witnessed Mr. Ryan acting inappropriate. Mr. Goldes, 642 Dearborn, stated there was more than one occasion where the veterans and the skateboarders met at the Memorial to discuss the damage that had been done to the Memorial.

Commissioner Oitzinger stated she was very surprised when the issue of not appointing Tom Ryan to the CYAC was first discussed last week. The issues seem to have evolved around the skate park. The city has done many improvements to the Memorial and the veterans seem happy with them. She then asked City Manager Burton to comment on the recent visit from the First Special Services Force. City Manager Burton gave an overview of the improvements to the Memorial in time for the 60th Anniversary of the First Special Services Force. The Secretary of the First Special Services Force had commented the Helena community had given a very special welcome and the skate park issue was behind them.

Mayor Smith stated he became aware of the issue with Tom Ryan a couple of weeks ago. He too believed the skate park issue was behind everyone. He is concerned that if the commission members begin questioning each appointment, the citizens may not be willing to serve on volunteer committees.

Vote Motion carries 2-3 motion dies.

Motion Commissioner Pouliot moved approval of the appointments listed above to the Community Youth Advisory Committee. Commissioner Oitzinger seconded the motion. Motion carries 4-1 with Netschert voting no.

Consent Agenda CONSENT AGENDA
A. Claims
B. Amendment No. 1 to consultant services agreement – Nature Park Trail, Project No. 99-10
C. Amendment No. 2 to Engineering Services Agreement – West Side Infrastructure, Project No. 00-28

City Manager Tim Burton recommended approval of the claims.

Motion Commissioner Netschert moved approval of consent agenda items A-C. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Bid Award BID AWARD
A. Brick Sidewalks, Project 01-1

Public Works Director John Rundquist reported this project would rehabilitate a portion of the brick sidewalks in the historic mansion district. The project scope is the removal and re-installation of approximately 5,776 square feet of Kessler brick sidewalks. Two bids were opened on July 30, 2002. Tabbert Construction of Helena submitted the lowest bid in the amount of \$145,829.40.

This is a Community Transportation Enhancement Program (CTEP) project with 80% of the funds coming from the Montana Department of Transportation (MDT) and the remaining 20% match provided by the adjacent property owners. An amount of \$143,000 is available for the project in FY 02. Per the requirements from MDT, the city will install approximately 8 ADA access ramps and fund them from the City's Gas Tax budget line in the amount of \$5,560.00. Total budget available for this project is \$148,560.00.

Mr. Rundquist recommended awarding the brick sidewalks, City Project No. 01-1, to the lowest responsible bidder, Tabbert Construction of Helena, in the amount of \$145,829.40. Mr. Hanson noted that Schedules B & C cannot be awarded due to budget and grant limitations.

Discussion Commissioner Netschert asked for clarification if the only city money would be \$5,560. Mr. Rundquist concurred.

Motion Commissioner Pouliot moved to award the Brick Sidewalks, City Project No. 01-1, to Tabbert Construction of Helena, in the amount of \$145,829.40. Commissioner Parriman seconded the motion. All voted aye, motion carried.

B. 9-1-1 Radio Console Upgrade

Police Chief Troy McGee reported bids were opened on September 13, 2002 for this project. The radio and telephone system have not been upgraded since 1992, this work would improve both systems to meet necessary

functionality for the 9-1-1 Center. It would also expand the current center from three to four workstations.

Chief McGee recommended awarding this bid to Motorola Radio for the radio and telephone system and transmit a P.O. letter to Motorola by September 25, 2002. Motorola is offering a discount of \$15,345.00 if this letter is received. This will reduce the cost from \$262,516.00 to \$247,171.00.

Chief McGee also recommended awarding this bid to Montana Correctional Enterprise for the furniture to house the upgrade in the amount of \$4,918.96.

The award of these bids will allow the telephone and radio console upgrade to be accomplished and enhance the 9-1-1 Center to provide service to the City of Helena, Lewis & Clark County, and East Helena. \$270,400 was budgeted for the upgrades while the bid came in at \$252,089.96, saving \$18,310.04.

Motion

Commissioner Netschert moved to award Motorola Radio the bid for the upgrade to Centracom Elite Radio console and telephone system in the amount of \$247,171.00 and to award Montana Correction Enterprise proposal for furniture to house the radio and telephone system in the amount of \$4,918.96. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot presented Mayor Smith and the citizens of Helena the Blue Star Flag from the World War II Veterans. Commissioner Pouliot asked that the flag be displayed in the commission chambers. Mayor Smith on behalf of the entire commission thanked the American Legion and asked Commissioner Pouliot to express their thanks. Commissioner Pouliot explained the Blue Star Flag is a reminder of all the women and men that are serving overseas during a time of crisis.

Commissioner Netschert stated he received a number of phone calls regarding the vandalism issue. There is a lot of concern out in the community and he has talked with Dave Shors at the IR about the possibility of doing an article to ask the community how they would like the city to proceed with the current issue of vandalism.

Commissioner Oitzinger stated she too has received calls regarding the vandalism. She noted that she has a 16 year-old daughter that hangs out at Anchor Park. She believes that this area has been targeted regarding the youth that hang out there. Mayor Smith commented saying the past discussions regarding vandalism is not primarily focused on Anchor Park or the youth.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen reported he appeared before Judge Sherlock this morning regarding the temporary injunction on the clean indoor air ordinance. City Attorney Nielsen stated a reply brief is also due and in there the request for speedy decision will be included.

Commissioner Netschert asked if Judge Sherlock indicated a timeframe when a decision would be made. City Attorney Nielsen stated Judge Sherlock did not indicate any time when a decision would be made.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

City Manager Burton reported the town hall meeting is scheduled for October 29, 2002 in the auditorium at the Civic Center. A draft agenda will be made available at the next administrative meeting.

City Manager Burton informed the commission that through the State of Montana, the city has received an allocation of \$97,138.00 to outfit our hazardous materials unit within the city fire department. This is the first installment of three a year process, which will assist in creating the Sixth Hazardous Materials Response Unit in the State of Montana. The first purchases will be protective equipment. City Manager Burton stated this is a good partnership between the State of Montana and the City of Helena, so that we can prepare for and be ready for any particular incident that may occur in the future.

Commissioner Pouliot asked if this allocation would entail the hiring of additional police officers or firefighters. Mr. Burton stated this program does not require the hiring of any additional FTEs. It provides the funding to purchase the appropriate equipment for specific disasters.

Commissioner Oitzinger asked that the Board of Health and Department of Health employees be brought into the discussions regarding their role in any disaster. City Manager Burton concurred with Commissioner Oitzinger's comments.

City Manager Burton stated the budget resolution requires a report regarding contingency fund expenditures. For several years there has been a contract with the Helena Housing Authority regarding assessments. The city has agreed to reimburse HHA once the costs go over the appropriate assessment. Mr. Burton requested contingency funds in the amount of \$3,210.00 to pay the HHA for the difference in the assessments and the cap.

Mayor Smith asked City Manager Burton if the entire amount is related to street maintenance or if there was a breakdown of funds. City Manager Burton states it goes beyond just street maintenance.

Commissioner Parriman asks City Manager Burton if this expenditure will be yearly? City Manager Burton explained there is no way to know what the exact amount would be each year and recommended that a line item be included in the amount \$5,000 to cover it. In the past there has been a line item, however with the changes to the budget, it was not included.

There was commission concurrence for the expenditure of the \$3,210.00 to the Helena Housing Authority.

**Bradford Addition
Annexation**

CONSIDER A RESOLUTION ANNEXING LOT 1A OF BLOCK 190 OF THE BRADFORD ADDITION AS SPECIFIED IN COS #3016559 AND LOTS 2-7 OF BLOCK 190 OF THE BRADFORD ADDITION, LEWIS & CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA. THE PROPERTY IS GENERALLY LOCATED WEST OF LAUREL STREET AND NORTH OF LE GRANDE CANNON BOULEVARD.

Staff Report

Project Manager Hal Fossum reported this property is vacant residential property on the upper West Side. The owners have applied for annexation to get needed services and, in one case, to help resolve a boundary relocation that crossed the city boundary. The property owners have completed all requirements and wish to proceed with annexation.

On July 8, 2002, the commission established conditions to annexation of this residential property to the City of Helena (Res. 11782), and the property was rezoned in the R-2 District (Ordinance 2942).

The subject property is adjacent to existing city limits. Annexation would not create any additional wholly surrounded area. The annexation of related street rights of way is being prepared; by the commission.

Conditions for annexation included the following:

1. Infrastructure: The applicants must install infrastructure improvements as required by the city and to city standards, including water, sewer, fire hydrants, street, curb, gutter and sidewalks, or enter into a development agreement acceptable to the city of Helena that defines responsibility for the installation or deferment of the improvements.
2. Review of new construction: For all construction commenced subsequent to the adoption of this resolution, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning and Uniform Fire Code requirements of the city.
3. Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the resolution of annexation.
4. Completion of conditions: The applicants 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 or to continue any city services, including water and sewer.

Staff of the community development department has verified that all these conditions have been met.

Mr. Fossum recommended approval of a resolution annexing Lot 1A of Block 190 of the Bradford Addition as specified in COS #3016559 and Lots 2-7 of Block 190 of the Bradford Addition, Lewis & Clark County, Montana, into the City of Helena. The property is generally located west of Laurel Street and north of Le Grande Cannon Boulevard.

Discussion

Mayor Smith asked if the boundary relocation issue would be taken care of with the approval of the annexation. Mr. Fossum explained the annexation and boundary relocation are two separate issues. However, the issue will go away with the annexation of the property.

Commissioner Parriman stated he would abstain from voting on this issue because of a conflict of interest.

Motion

Commissioner Pouliot moved approval of a resolution annexing Lot 1A of Block 190 of the Bradford Addition as specified in COS #3016559 and Lots 2-7 of Block 190 of the Bradford Addition, Lewis & Clark County, Montana, into the City of Helena. The property is generally located west of Laurel Street and north of Le Grande Cannon Boulevard, subject to the four conditions being fulfilled. Commissioner Netschert seconded the motion. Motion carried 4-1 with Commissioner Parriman abstaining. **Resolution 11818**

Animal Rehabilitation Center Annexation

CONSIDER A RESOLUTION ANNEXING A TRACT OF LAND CONTAINING 5.303-ACRES MORE OR LESS SITUATED IN THE WEST HALF OF SECTION 23, T10N, R4W, PMM, LEWIS & CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA. THE PROPERTY IS GENERALLY LOCATED AT ADJACENT TO AND SOUTH OF SPRING MEADOW LAKE STATE PARK.

Staff Report

Project Manager Hal Fossum reported this property is the site of the new

Fish Wildlife and Parks large animal rehabilitation center, located near Spring Meadow Lake. The prior owners, the Mikal Kellner Foundation, applied for annexation in course of development because the facility needed city water and sewer services. The state, which now owns the property, wishes to proceed with the annexation and has completed all requirements of annexation.

On April 8, 2002, the commission established conditions to annexation of this institutional property to the city of Helena (Res. 11744), and the property was rezoned in the PLI District (Ordinance 2937).

Conditions of annexation included the following:

1. Infrastructure: The applicant must install infrastructure improvements as required by the city and to city standards, including water, sewer, fire hydrants, street, curb, gutter and sidewalks, or enter into a development agreement acceptable to the City of Helena that defines responsibility for the installation or deferment of the improvements.
2. Review of new construction: For all construction commenced subsequent to the adoption of this resolution, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning and Uniform Fire Code requirements of the city.
3. Fire code compliance: The applicant shall arrange for inspection by the city fire department and bring facilities into compliance with Uniform Fire Code under a schedule agreeable to the city.
4. Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the Resolution of Annexation.
5. 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 or to continue any city services, including water and sewer.

Mr. Fossum recommended approval of a resolution annexing a tract of land containing 5.303-acres more or less situated in the west half of Section 23, T10N, R4W, PMM, Lewis and Clark County, Montana, into the City of Helena, Montana. This property is generally located adjacent to and south of Spring Meadow Lake State Park.

Discussion

Debbie Dils, Land Supervisor with the Fish, Wildlife and Parks, thanked the commission for approving this annexation. Mayor Smith asked Ms. Dils to express the commission's appreciation for what this project will do for the wild animals.

Commissioner Netschert stated he does not support this proposal because it will create a parcel of non-contiguous property.

Motion

Commissioner Oitzinger moved approval of a resolution annexing a tract of land containing 5.303-acres more or less situated in the west half of Section 23, T10N, R4W, PMM, Lewis and Clark County, Montana, into the City of Helena, Montana. This property is generally located adjacent to and south of Spring Meadow Lake State Park. Commissioner Pouliot seconded the motion. Motion carried 4-1 with Commissioner Netschert voting no.
Resolution 11819

Minor Subdivision CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT CREATING THREE LOTS IN THE B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS LOT 1A-A, DAKOTA SQUARE SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF MONTANA AVENUE.

Staff Report Planner Belinda Waters reported the applicant is requesting to divide the lot into three smaller lots. The lots will range in size from .519 acres to 22.483 acres. Lot 1A-1 will have access off either Custer or Montana Avenues, Lot 1A-2 and Lot 1A-3 will have access off Montana Avenue and are proposed to have commercial uses constructed on them.

The subject lot currently houses the commercial business, Shopko, on the southern portion while the remainder of the lot is vacant and undeveloped. The property is currently zoned B-2 (General Commercial). The property is located north of Custer Avenue and east of Montana Avenue.

Ms. Waters recommended to conditionally approve the preliminary plat for a minor subdivision creating three lots from Lot 1A, Dakota Square Subdivision located in Helena, Montana, and to adopt the Findings of Fact and the conditions contained therein.

Discussion Commissioner Netschert stated he has talked with other property owners in the area and they believe the wetlands are being created because of the runoff. Ms. Waters noted that a permit might need to be obtained from the State regarding the wetlands in the area.

Commissioner Parriman asked for clarification on what buildings are on what lots. Ms. Waters showed the location of Applebee's, Albertson's and the vacant property. Commissioner Parriman asked if the proposal is to develop the lots. Ms. Waters stated there is interest in putting two commercial businesses on Lots 1A-3 and 1A-2. Commissioner Parriman then asked if the lots have been approved, would each lot be approved for a sign, the size of Shopko's? Ms. Waters explained it would depend on how the original PUD was approved. She has not researched this issue and could not give a specific answer.

Ms. Waters stated Jeff Larson, representing the applicant is present. Mr. Jeff Larson, Stahly Engineering, 2687 Airport Rd., stated the headquarters for Shopko is located in Green Bay WI, and he was asked to represent them at this meeting and relay that they are in agreement with the outlined conditions.

Commissioner Pouliot asked Ms. Waters to clarify where Sanders Street is located. Ms. Waters explained that Sanders Street, running behind Shopko, has not yet been developed.

Motion **Commissioner Parriman moved approval of a minor subdivision/preliminary plat creating three lots in the B-2 (General Commercial) District. Legally described as Lot 1A-a, Dakota Square Subdivision, Helena, Montana; generally located north of Custer Avenue and east of Montana Avenue, subject to the Findings of Fact and conditions outlined within.** Commissioner Netschert seconded the motion. All voted aye, motion carried. **Findings of Facts are attached to these minutes and made a part of.**

Public Hearings

PUBLIC HEARINGS

A. CONSIDER APPROVAL OF A PRESCRIBED BURN PLAN FOR MOUNT HELENA.

Staff Report

Parks and Recreation Director Randy Lilje stated this public hearing has been advertised in the paper. In addition the information has been available for review at the Lewis & Clark Library, the City Clerk's office, the office of Parks and Recreation, and the City of Helena web site.

Fritz Zettel, Deputy Fire Marshall explained this plan has been worked on by many agencies. Mr. Zettel stated Dave Larson from the Forest Service and Bob Habeck from DEQ is present to answer any questions. Mr. Zettel recommended approval of the Prescribed Burn Plan.

Public Testimony

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

DD Dowden, 535 Curtis Street, stated she has not had time to review the plan but expressed some concerns with the noxious weed control after the hot spots are cleared, she asked if the piles would be consolidated or would each be burned separately. Ms. Dowden stated that the thinning process has not been completed in certain areas on Mount Helena and would like to see follow through regarding the burn plan.

With no further persons wishing to address the commission, Mayor Smith closed the public hearing.

Commissioner Pouliot asked staff to respond to Ms. Dowden's concerns. Mr. Zettel stated there is already a noxious weed plan for Mount Helena. The main concern is to reduce the potential for fire on Mount Helena. This plan has two phases, the first being accessed through the Reeders Village Subdivision. The second being the North Slope. The entire process will be driven by the weather conditions. The plan is to consume the piles as much as possible. The goal is to hit 100% consumption. Mr. Zettel commented on the "hot spots". All the piles will be checked to make sure they are out before they are left unattended.

City Manager Burton congratulated Mr. Zettel for a very difficult process. He asked that Mr. Lilje comment on the thinning and weed management. Mr. Lilje explained that HOLMAC is in the process of developing a management plan for all of the open space. The plan will include language on future thinning. Mr. Lilje explained that noxious weeds are covered by the management plan and steps are being taken to control them on Mount Helena.

Commissioner Oitzinger asked if the smaller stacks would be combined to avoid the heat from the fire damaging surrounding trees. Mr. Lilje referred the question to Mr. Dave Larson.

Dave Larson, U.S. Forest Service, explained the piles have been made small to avoid heat radiation. This will help damage control. If there is a large pile, there can be permanent damage due to the heat and not allow revegetation.

Commissioner Oitzinger expressed to Mr. Lilje that public involvement in regards to Mount Helena hasn't been what it could be; she also asked Mr. Lilje for his comments on how public notification could be improved; and expressed concern regarding the damage that could occur if sixty small piles were burned.

Commissioner Oitzinger asked that this issue be discussed at the upcoming administrative meeting. Mr. Lilje stated he is not the expert regarding permanent damage on Mount Helena. However, the experts are confident that these issues have been addressed. Mr. Lilje noted the Prescribed Burn Plan included public notification. In addition the Open Space Management Plan specifically addresses public comment.

City Manager Burton stated there has been challenges in getting the public involved, attempts have been made and the city will continue to do so. HOLMAC has put together a draft, which will engage the public, next it will come to the commission for a second public review process. At that time the public can add to the pro and con to the building of that plan.

Commissioner Oitzinger expressed concern for enough resources to revegetate the burn spots. Mr. Lilje concurred. Commissioner Oitzinger then commented regarding the HOLMAC process and said she would like to see the plan keep their focus on Mount Helena so that there can be follow up on the work already completed in the project. Mr. Lilje stated that HOLMAC has been consistent as possible in regards to the burn plan and will continue to reach for the shared goals.

Motion

Commissioner Pouliot moved approval of the Prescribed Burn Plan for Mount Helena. Commissioner Netschert seconded the motion. All voted aye, motion carried

- B. CONSIDER A RESOLUTION, EXTENDING RESOLUTION 11693, FOR A CONDITIONAL USE PERMIT (CUP) FOR A CASINO WITH 20 GAMING MACHINES ASSOCIATED WITH A MOTEL IN THE B-2 (GENERAL COMMERCIAL) DISTRICT, FOR PROPERTY LOCATED AT 2300 NORTH OAKES STREET.

Staff Report

Planner Kathy Macefield reported on September 10, 2001 the commission approved a resolution for a CUP for a casino with 20 gaming machines associated with the Howard Johnson's Motel, in the B-2 (General Commercial) District. This original approval was subject to four conditions related to access, water and sewer, site plan revisions, and allowing the applicant one-year form CUP approval to obtain a building permit. The applicant, Mike Zimmerman, has stated he needs additional time to complete his financing for the casino, related bar and motel. The proposed site plan has not been changed from the original submittal; therefore, a public hearing is not required before the Zoning Commission.

Ms. Macefield recommended approval of a resolution, extending Resolution 11693, for a conditional use permit (CUP) for a casino with 20 gaming machines associated with a motel in the B-2 (General Commercial) District, for property located at 2300 North Oakes Street.

Public Testimony

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

Mike Zimmerman, 5010 Arrowhead Drive, applicant, spoke in support of the extension.

Barb Morris, 507 Geddis, owner of Jorgenson's Restaurant and Lounge, made general comments regarding building a casino.

With no further persons wishing to address the commission, Mayor Smith

closed the public hearing.

Motion

Commissioner Netschert moved approval of a resolution, extending Resolution 11693, for a conditional use permit (CUP) for a casino with 20 gaming machines associated with a motel in the B-2 (General Commercial) District, for property located at 2300 North Oakes Street. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution 11820**

- C. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN ELEMINTARY SCHOOL TO BE LOCATED IN A CHURCH IN AN R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT, WITH A PROPERTY ADDRESS OF 2231 BROADWAY STREET.

Mayor Smith noted the only two items the public hearing will be held on is traffic patterns and impact of property value.

Staff Report

Planner Lucy Morell-Gengler reported the First Lutheran Church is proposing to utilize the existing classrooms within the Church complex to establish an elementary school for grades kindergarten through fifth. The proposed school would be in addition to the existing pre-school currently located at the church. The combined maximum enrollment for the existing preschool and the proposed school would be 135 students with 6 teachers and one administrator. According to the applicant, the hours of operation would be 8:00 a.m. to 5:00 p.m., Monday through Friday, although the school day will be shorter. Based on zoning ordinance requirements, sufficient off-street parking is available. The applicant has indicated existing signage for the Church would be utilized. Modifications to the exterior of the building would be limited to two exterior doors that would be added to the building. In addition, some internal modifications would be needed.

- In 1973, CUP Resolution 7574 was approved which permitted the construction of the Church.
- In 1992, CUP Resolution 10416 was approved which permitted the expansion of the Church and daycare.
- A CUP extension was granted in 1993 allowing the applicant 5 years to install the sidewalks for the property.
- Phase II (scheduled for 2000) of the 1992 CUP has not been constructed and the CUP for that phase has expired.

Conditions of the previous CUP's would continue to apply to this application.

On November 13, 2001 the Zoning Commission unanimously recommended denial of the proposed CUP for the elementary school. The proposal was taken to the city commission January 14, 2002 where the proposal was tabled and the public hearing left opened to address two items only – traffic impacts and impact on property values. On January 28, 2002 the applicant requested the item be tabled to allow additional time to address these items and to complete the conditions of the 1993 CUP (sidewalks and screening of the parking lot). Sidewalks have been installed around the perimeter of the property and vegetation has been planted along the parking area. Additional vegetation will be required to comply with the screening guidelines for the parking area.

The applicant held a neighborhood meeting August 22, 2002 to discuss some of their findings regarding traffic and to listen to neighborhood concerns.

Two recommendations resulting from that meeting, if the school is approved, would be to limit traffic entering the school to the California Street curb cuts, and require the traffic to exit onto Oregon Street to provide a safer flow of traffic. The other suggestion was to start the school day at a different time from Smith School to reduce the peak traffic impacts. The recommended 135 students include the kindergarten and the new students.

Ms. Gengler noted if the commission concurs with the Zoning Commission then they would need to deny a resolution for a conditional use permit.

If there is a motion for approval of the resolution, it should be subject to the following conditions:

1. Screening

The parking area must be screened from abutting residential properties along the south property line, and on the south portion of the west and east property lines, in accordance with City standards. Headlights should be screened.

2. Bicycle Parking Spaces

Bicycle parking spaces must be provided in compliance with Section 11-22-8 of the Zoning Ordinance.

3. Pedestrian Pathways

Pedestrian pathways must be provided through parking areas to create safe and convenient access and connection to building entryways in compliance with section 11-22-8 of the Helena Zoning Ordinance.

4. Traffic Circulation

One-way directional traffic circulation must be established in the parking lot so traffic enters the drop off/pick up area through the California Street curb cuts and exits onto Oregon Street.

5. School Schedule

The school day must start and conclude at times different from Smith School to reduce peak traffic impacts.

6. Financial Guarantees

All of the following improvements must be installed, or the improvements must be financially guaranteed in accordance with Section 11-21-3-G of the Helena Zoning Ordinance.

- A. Bicycle parking spaces;
- B. Pedestrian Pathways through parking lot; and
- C. Screening for the parking lot.

7. Timeframe

Conditions for this CUP for a private elementary school, plus applicable conditions established with previous CUPs for the subject property, must be met within one year.

Discussion

Commissioner Pouliot stated the Zoning Commission originally recommended denial. However, they have not reconsidered it since then.

Public Testimony

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

Jeanne Duncan, 309 S. California, stated she is a neighbor and real estate agent. She stated she has yet to see a potential homeowner be opposed to an elementary school being located across the street. Ms. Duncan stated she believes private schools are an intriguing part of a neighborhood.

Commissioner Pouliot asked if those testifying would indicate if they

attend First Lutheran Church.

Harley Harris, Attorney for First Lutheran Church spoke in support of the proposal. Mr. Harris outlined the persons who would speak on their behalf. The first being Mr. Tim Moore, Moore Appraisal Firm, the second being Mr. Sid Labone, who will address the outcome of the traffic studies and surveys, and the final being Jennifer Charles who will address three issues: neighborhood interaction using information and surveys, traffic flow plan, and clarify the student numbers.

Mr. Moore, Moore Appraisal Firm, 1275 Maple Street, stated he is not here to speak in favor or against the proposal. He then reviewed the report he provided to the church and copies to the commission.

Sid LeBone, addressed the additional traffic in the area. A survey was developed and responses were returned. Issues addressed in the survey included traffic congestion; carpooling; traffic patterns; and traffic volume patterns.

Jennifer Charles updated the commission on the conditions from the previous 1982 CUP; spoke on the proposed traffic flow plan and the proposed enrollment for the for the church/school. Ms. Charles stated they are in agreement with all the conditions outlined by staff.

The following persons spoke as proponents to the proposal:

Dell Bock, 2200 E. Broadway; Joyce Johnson, 200 S. California; Laura Swank, 2208 Broadway.

Those persons who spoke in support of the proposal concurred with the presentations made by Mr. Moore, Sidney Lebahn and Ms. Charles.

The following persons spoke as opponents to the proposal:

Tony Smith, 2230 Broadway; Pat Conners, 2214 Broadway; Betty Carkeek, 2222 Broadway; Marlene Conner, 2201 Highland; Kent Crebo, 210 Graham; Brian Shovers, 210 S. California.

The concerns of the opponents included additional traffic, property values and the number of commercial uses in their neighborhood.

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

Discussion

Commissioner Pouliot stated back in January a large portion of the neighborhood did not support this proposal. He expressed concerns that the actual use will be changed from a church to a school. This is a dramatic and drastic change. He will support denial of the proposal

Commissioner Parriman stated he too was concerned when this proposal was first considered. He does not believe traffic is a large issue and believes the property values would not be hurt. He stated he would support the proposal.

Commissioner Oitzinger stated she has a question regarding the traffic study. Ms. Gengler explained when a traffic study is conducted staff does rely on the Institute of Transportation Engineers. In this particular case they had public schools as a category, as noted that is not a perfect fit for particular use. Ms. Gengler conducted her own analysis, finding the numbers still fell within the categories of the collector streets. Commissioner Oitzinger asked in the worse case scenario, would the traffic be anywhere close to capacity? Ms. Gengler stated California Street is getting close for a collector street, however the actual traffic from the proposed elementary school would be minimum.

Mayor Smith asked for further clarification on the ITE standards regarding the traffic count. The traffic studies conducted by ITE are used for public schools that rely on a busing system, creating an inaccurate traffic count for this particular case.

Commissioner Netschert stated he understands the comments from both the proponents and opponents; however he stated would support the proposal. Commissioner Netschert noted that he is concerned with the screening not being completed from the 1992 CUP.

Mayor Smith stated he appreciates the efforts the congregation and church has gone to provide the additional information to the commission. Mayor Smith stated he would not support the proposal because of the effect on the neighborhood.

Commissioner Oitzinger asked if the alternate motion outlined in the staff report would provide for immediate compliance for the outstanding CUP conditions. Ms. Gengler concurred.

Commissioner Netschert read the condition regarding the screening and asked if the city standards require that headlights not shine onto adjacent property owners? Ms. Granger concurred.

Motion

Commissioner Parriman moved approval of a resolution for a conditional use permit (CUP) to allow an elementary school to be located in a church in an R-2 (Single Family Residential) District, with a property address of 2231 Broadway Street, subject to the conditions outlined above. Commissioner Netschert seconded the motion. Motion carried 3-2 with Commissioner Pouliot and Mayor Smith voting no. **Resolution 11821**

**Public
Communications**

PUBLIC COMMUNICATIONS

There were no persons present wishing to address the commission.

**Meetings of
Interest**

MEETINGS OF INTEREST

The next city commission meeting is scheduled for October 7, 2002.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:40 p.m.

MAYOR

ATTEST:

CLERK OF THE COMMISSION