

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
July 21, 2003
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday July 21, 2003, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena Montana.

Members Present Mayor Pro Tem 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 Jacki Pierson were present. Jerry Hutch was the Helena Citizens Council member.

Pledge of Allegiance Mayor Pro Tem Netschert 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, July 7, 2003 were approved as submitted.

Appointment APPOINTMENT:
Mayor Pro Tem Netschert asked for commission concurrence for the following appointments:

Historic Preservation Commission

Bob Habeck – 1st Term – Term will expire on June 30,2006.

City/County Parks Board

Bill Schneider – Unexpired Term – Term will expire September 30, 2004.

Public Comment Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion Commissioner Oitzinger moved approval of the appointment of Bob Habeck to the Historic Preservation Commission and Bill Schneider to the City/County Parks Board. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:

- A. Claims
- B. Consider a contract Change Order #1 with Helena Sand and Gravel for the Woolsten Reservoir piping project.
- C. Consider second passage of Ordinance #2965 – amending the City of Helena Ordinance #2359 and amending the official zoning map thereof in reference to that property described as Lot 2 in Block 6 of the Sleeping Giant amended subdivision in Helena, Montana.

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

Public Comment Mayor Pro Tem Netschert asked for public comment, non-was received.

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

Bid Award

BID AWARD:

Staff Report

A. Fairway mower – Golf Course

Director of Parks and Recreation Randy Lilje reported the present fairway mower is 13 years old and has become unreliable. In order to keep the golf course in excellent playing condition, a replacement mower is needed as soon as possible. We received two bids on the bid opening date; Midland Implement, \$25,710; TurfCare and Specialty Products, \$25,477. Both of the bids met specifications.

The mower will be financed through the state InterCap Loan Program over a ten-year period. The annual payment for the loan has been worked into the golf course budget.

Mr. Lilje recommended awarding the bid for a fairway mower to TurfCare for \$25,477, the low bid.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Oitzinger moved to award a bid for a fairway mower to TurfCare and Specialty Products as bid for \$25,477. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Staff Report

B. Chip and Seal Construction Contract – Project No. 03-6

Public Works Director John Rundquist reported this project will add a new wear surface and pavement sealer by applying a single application of asphalt material, followed by spreading a 3/8 inch crushed rock. The annual Chip and Seal program is essential to preserve and extend the life of City Streets.

The bid documents consist of two schedules of work. The first schedule is for work in the City and the second is for work in the County. The bid documents state that the lowest bid will be determined based upon the lowest bid for Schedule 1 without Add Alternates. The County will make a separate determination of low bid based upon the bids for Schedule 2 and award a separate contract with the selected bidder.

Helena Sand and Gravel is the low bid for Schedule 1 in the amount of \$128,781.90. Add Alternates 1 and 2 in Schedule 1 are intended to stretch the City budget for the work to allow additional work to be accomplished depending upon bid prices. There is sufficient budget this year (FY04-\$160,000) to allow award of the base bid plus Add Alternate 1. Add Alternates 3,4 and 5 are to facilitate completion of chip seal for private developments. The developers directly reimburse the City for this work.

Mr. Rundquist recommended awarding the Schedule 1 base bid plus Additive Alternates 1,3, 4 and 5 (\$178,323.82) to the lowest responsible bidder, Helena Sand & Gravel. Helena Sand Gravel Inc. has satisfactorily completed numerous chip & seal projects for the City of comparable scope and complexity. The County will contract directly with the contractor they select for Schedule 2.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Parriman moved to award the chip and seal project, City Project No. 03-6, schedule 1 plus add alternates 1,3,4 and 5, to the lowest responsible bidder, Helena Sand & Gravel Inc., in the amount of \$178,323.82. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger stated she will be absent on business for 30 days beginning July 28, 2003 and returning September 5, 2003 and asked for commission approval for her absence.

Motion

Commissioner Pouliot moved to allow Commissioner Oitzinger to be absent for 30 days beginning July 28, 2003 and returning September 5, 2003. Commissioner Parriman seconded. All voted aye, motion carried.

Commissioner Pouliot mentioned the Senators American Legion Baseball team is fighting to win the state title again this year and he asked the citizens of Helena to come down and support the team.

Mayor Pro Tem Netschert mentioned there are several RFP's coming up on the Tax Increment Financing Projects and stated Commissioner Pouliot volunteered for the Jackson Street Parking Structure, Commissioner Parriman volunteered for the Exploration Discovery Center and he will be participating in the Last Chance Gulch Walking Mall.

Mayor Pro Tem Netschert read and presented the TommyBoy's Birthday proclamation to his brother Thomas Netschert.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Tim Burton invited Public Works Director John Rundquist forward to introduce a new city employee. Mr. Rundquist introduced Ryan Leland as the new city engineer and gave a brief background. Mr. Leland thanked the commission and city staff for this opportunity.

Mr. Burton invited Wastewater Treatment Supervisor Leonard Willett forward to give the commission an update on the city's water supply. Mr. Willett explained for the past 14 days the reservoirs have been dropping very little; however, this last weekend the reservoirs were affected by the heat so they asked the Parks Department and the Golf Course to cease watering for a day, which brought the reservoirs back up to normal levels.

Mr. Burton invited City Planner Belinda Waters forward to explain the request from Child Care Partnerships. Ms. Waters explained Child Care Partnership wishes to sponsor a grant application to a federal program called the Early Learning Opportunities Act. This is to offer expanded services to families, early childhood providers and educators throughout the Helena area. Ms. Waters asked if the city would agree to submit a letter, designating the Helena Area Early Learning Opportunities Act Council, in order to submit this grant application to the federal government for this program.

Motion

Commissioner Oitzinger moved approval to appoint the Early Learning Opportunities Act Council in accordance with the staff representation. Commissioner Pouliot seconded the motion.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Vote

All voted aye, motion carried.

Mr. Burton invited Police Chief Troy McGee to discuss tree trimming on Mount Helena. Chief McGee explained the police department owns a power line that runs up Mount Helena to an antenna. There was a call from a concerned citizen saying that some limbs of a tree were growing within the power line. Within the next few days those limbs will be cut away from the power line.

Contract Procedures CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE HELENA CITY CODE BY REPEALING SECTION 1-4-11 WHICH ESTABLISHED A PREFERENCE PROCEDURE FOR AWARDING CONTRACTS

Staff Report

Public Works Director John Rundquist reported section 1-4-11 of the Helena City Code sets forth the preference procedure followed by the City of Helena when awarding construction contracts. Under that procedure, a resident of Lewis & Clark County is granted a 3% bid preference on contracts awarded by the City. The legality of this type of bid preference was recently questioned. In researching the issue, the City Attorney has serious reservations about the legality of the bid preference. State statute requires municipalities to award contracts for projects exceeding \$25,000 to the lowest responsible bidder. The bidder preference is in conflict with this statute and its legality rests on whether the City with its self-governing powers can supersede this statute. Thus, this issue would have to be resolved in court. Additionally, the state and federal constitutions prohibit discrimination between persons based upon residency unless there is a legitimate government purpose. Since our bid preference favors residents of Lewis & Clark County, who may not be residents of the City, the City would have difficulty in meeting this burden. A legal challenge of our bidder preference provision would be difficult to defend.

In looking at other governments, the State of Montana had a resident bidder preference of 3% until 2001, when the legislature eliminated the preference that specifically favored residents and replaced it with a reciprocal preference that applies the same preference to residents as the low non-resident bidder's state gives. This seems to be a common trend among states.

Mr. Rundquist recommended repealing the resident bidder preference section of the Helena City Code. It discriminates against non-resident bidders, which discourages them from bidding on City projects, and it is incompatible on its face with state statute.

Discussion

Mayor Pro Tem Netschert explained he would be voting for this proposal because of the legal issue involved; however, he feels there should be a preference for the local businesses here in Helena.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Parriman moved approval for first passage of an ordinance repealing Section 1-4-11 of the Helena City Code, which established a bidding preference procedure for awarding contracts. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Ord. #2966

Annexation

CONSIDER A RESOLUTION ANNEXING INTO THE CITY OF HELENA, MONTANA, TRACT 6A SHOWN ON COS#3041789, RECORDS OF LEWIS & CLARK COUNTY, MONTANA, GENERALLY BEING SOUTH OF GOLD RUSH

AVENUE BETWEEN LODE STREET AND CRYSTAL DRIVE ON HELENA'S
EAST SIDE

Staff Report

Project Manager Hal Fossum reported the owners of this property, David W. and Maura Kerry (Sullivan) Lechner, petitioned for annexation to the City of Helena. On March 10, 2003, the city commission established conditions to annexation of this residential property to the City of Helena (Resolution 11847). The property was rezoned to Single Family Residential (R-2), a zone change from the Open Space-Residential (OSR) District effective upon annexation (Ordinance 2954). Through plat amendment, the property (Tract 6A) was created and joined to an in-city parcel with a single-family residence. Conditions to annexation have been completed. A resolution annexing the property is proposed.

The property is adjacent to existing City limits on the upper east side, south of Gold Rush Avenue between Lose Street and Crystal Drive. Annexation would not create any additional wholly surrounded area.

Established conditions to annexation included the following:

1. Plat amendment: The applicants must prepare an amended plat to establish the property and combine it with the existing in-city residential parcel.
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.
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 the City upon completion of the conditions for approval of annexation, and complete conditions within one year.

These conditions have been satisfied. The final steps are a resolution of annexation, and administrative transfer of responsibilities from County to City providers.

Mr. Fossum recommended adoption of a resolution of annexation.

Discussion

Commissioner Parriman asked if the owners could build on the property? Mr. Fossum stated the property could be developed; however, they would need to apply for a subdivision of the property and bring that proposal before the commission. Under the R-2 zoning, the property is a single parcel, which means it can only include one single-family residence. Should the owner choose to build there would be some possibility of demolishing the existing house and rebuilding a house further up into the property. Commissioner Parriman asked if they would be able to move their house up into that property without city commission approval? Mr. Fossum concurred and stated there is an easement on the existing city limits line, which includes utility lines. Mr. Fossum stated the Lechner's sent a letter of support, which will be submitted to the clerk for the record.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Pouliot moved approve of a resolution annexing into the City of Helena, Montana, Tract 6A shown on COS#3041789, records of Lewis and Clark County, Montana, generally being south of Gold Rush Avenue between Lode Street and Crystal Drive on Helena's east side.

Commissioner Parriman seconded the motion. All voted aye, motion carried.

Res. #12010

SID No. 417

CONSIDER A RESOLUTION RELATING TO \$174,500 SPECIAL IMPROVEMENT DISTRICT NO. 417 BONDS: AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF AND AUTHORIZING THE PLEDGE OF THE REVOLVING FUND TO THE SECURITY THEREOF [BRADY STREET]

Staff Report

Accounting Supervisor Brandi Pierson reported on April 21, 2003, the city commission passed a resolution to create Special Improvement District No. 417 – Brady Street.

The Bonds are paid primarily from the collection of a special assessment against the assessable real property within the District. The Bonds are secured by the Special Improvement District Revolving Fund of the city.

The total estimated costs of the improvements and incidental costs to be financed by the bonds are \$174,500. Costs of the improvements in excess of Bonds proceeds will be paid from a MACI grant of \$332,022.00, City Gas Tax Funds of \$182,949, and a Lewis and Clark County payment in lieu of assessments of \$37,895.00.

Ms. Pierson recommended preliminary approval of the issuance of the bonds given by the city commission.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Oitzinger moved approval of a resolution authorizing the issuance, calling for the public sale and authorizing the pledge of the revolving fund to the security of Special Improvement District No. 417.

Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12011**

SID No. 418

CONSIDER A JOINT RESOLUTION OF LEWIS & CLARK COUNTY AND THE CITY OF HELENA RELATING TO THE CREATION BY THE CITY OF HELENA SPECIAL IMPROVEMENT DISTRICT NO. 418 [MCHUGH DRIVE] AND CONSIDER A RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 418; DECLARING IT TO BE THE INTENTION OF THE CITY COMMISSION TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LEVEL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND [MCHUGH DRIVE]

Staff Report

Public Works Director John Rundquist reported the Lewis and Clark County Commission approved the Joint Resolution on June 24, 2003. The proposed Special Improvement District contains 6 parcels of land in the County abutting the City and benefiting from the improvements.

The district includes portions of the parcels adjacent to McHugh Drive right-of-way in Section 18, T10N, R3W, P.M.M., P.M.M., Lewis and Clark County Montana. The improvements will be made to McHugh Drive north of Custer to the City Limit Line.

The general character of the improvements being financed is preparation, design, engineering, reconstruction and installation of streets, sidewalks, and bike path, and related improvements, including grading, asphalt, curbs, storm drainage, signage, striping, miscellaneous utility work, and landscaping.

The total estimated costs of the improvements, including all incidental costs are up to \$980,000.00. The Bonds are to be payable from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements in an amount not more than \$9880,000.00.

Mr. Rundquist recommended approval of the Joint Resolution of Intention and the Resolution of Intention to create Special Improvement District No. 418 in the City of Helena, Montana. Approval of the Joint Resolution will allow the City to proceed with the Resolution of Intention to create Special Improvement District No. 418.

Discussion

Commissioner Parriman asked if there are access problems regarding the Collision Pro building? Mr. Rundquist stated he knows that the plat has been approved for the Anderson Development and the access would have shown on that plat. City Manager Tim Burton explained the access is as platted for the Anderson Subdivision and as a reminder the Anderson Development is probably the main reason why this SID is before the commission.

Commissioner Pouliot asked, for approval of the SID, 40% of the county residents need to agree with the SID? Mr. Rundquist stated 60% of the property owners need to be in favor of the SID on the county side to gain approval.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Oitzinger moved approval of joint resolution of Lewis and Clark County and the City of Helena relating to the creation by the City of Helena Special Improvement District No. 418. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12012**

Motion

Commissioner Oitzinger moved approval of resolution of intention relating to Special Improvement District No. 418; declaring it to be the intention of the City Commission to create the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Special Improvement District Bonds secured by the City's Special Improvement District Revolving and set a public hearing date for August 18, 2003. Commissioner Pouliot seconded the motion. All vote aye, motion carried. **Res. #12013**

Clevenger's Annexation

CONSIDER AN ANNEXATION DISTRICT AGREEMENT SETTING ANNEXATION OF A PARCEL OF PROPERTY WITHIN TEN YEARS; LEGALLY DESCRIBED AS TRACT 1 OF COS#302232 IN THE SW 1/4 OF SECTION 18, T10N, R3W, LEWIS & CLARK COUNTY; GENERALLY LOCATED WEST OF MCHUGH LANE AND NORTH OF CUSTER AVENUE

Staff Report

Public Works Director John Rundquist reported Glenn and Beverly Clevenger are the current owners of a property in the county adjacent to city limits on McHugh Lane and north of Custer Avenue. City staff are actively pursuing creation of a Special Improvement District to reconstruct McHugh Lane

north of Custer Avenue. At a public meeting on March 27, 2003, Mr. Clevenger indicated he was not interested at this time in participating in a SID for the improvement of this street. In following conversations with Mr. Clevenger, he indicated that although he knows the SID is much needed and would improve the value of all fronting properties, the cost would be a severe financial impact to them. The current project estimate shows that the Clevenger's SID assessment would be about \$120,000.00.

It was learned that the owners recently had a contamination problem with their well. The well serves two small businesses, LIEAP (Low Income Energy Assistance Program) and a Montessori School. Mr. Clevenger asked if for their support of the SID, the city would allow him to connect a 3/4-inch service to city water without the obligation of immediate annexation, as this would add about \$900 per year more in property taxes and assessments. The Clevenger property is already connected to city sewer. There is an existing 12-inch diameter water main that fronts the Clevenger property on the east side of McHugh Lane.

State codes relating to annexation, allow for special districts fixing the time for annexation up to 10 years. The Clevenger's support this approach to annexation and have further agreed that if there were a change in use requiring additional utility service that they would annex at that time.

Mr. Rundquist recommended approval of the attached Annexation District Agreement with the Clevenger's. Their property fronting McHugh Lane is critical to the success of the SID as currently proposed.

Discussion

Commissioner Oitzinger asked City Attorney David Nielsen to comment on the statue and the intent. Mr. Nielsen stated this statue was intended to do phase-ins.

City Manager Tim Burton stated former Mayor Morrison carried this particular law through the legislative body and ultimately the full Montana League of Cities and Towns.

Commissioner Pouliot asked if this property would be hooked up to any other city services. Mr. Nielsen explained the two city services they would receive would be water and sewer.

Commissioner Parriman asked if the Clevenger's property would automatically be annexed in relation to creating this SID? Mr. Rundquist explained it would be in ten years or if he changes the land use.

Mr. Burton explained the city is not promoting the annexation on the west side of McHugh. They are responding with the Anderson Development so that they can comply with the conditions of approval of the preliminary plat. Mr. Burton stated staff is asking the commission for special consideration to delay annexation and use the other law to use a development agreement.

Public Comment

Mayor Pro Tem Netschert asked for public comment, non-was received.

Motion

Commissioner Oitzinger moved approval of the Annexation District Agreement with Glenn and Beverly Clevenger setting annexation of a parcel of property within ten years. Commissioner Parriman seconded the motion.

Discussion

Commissioner Pouliot stated he would be voting against this action because he feels the commission has set a policy in the past that if the city is going to provide services like sewer and water then the property owners will annex into the city.

- Vote Motion carried 3-1 with Commissioner Pouliot voting no.
- Boundary Extension** CONSIDER A WATER SERVICE BOUNDARY EXTENSION; PROPERTY LEGALLY DESCRIBED AS TRACT 1 OF COS# 302232 IN THE SW1/4 OF SECTION 18, T10N, R3W, LEWIS & CLARK COUNTY; GENERALLY LOCATED WEST OF MCHUGH LANE AND NORTH OF CUSTER AVENUE
- Staff Report Public Works Director John Rundquist reported Glenn and Beverly Clevenger are the current owners of a property in the county adjacent to city limits on McHugh Lane and north of Custer Avenue. City staff is actively pursuing creating a Special Improvement District to reconstruct McHugh Lane north of Custer Avenue. At a public meeting on March 27, 2003, Mr. Clevenger indicated he was not interested at this time in participating in a SID for the improvement of this street. In following conversation with Mr. Clevenger, he indicated that although he knows the SID is much needed and would improve the value of all fronting properties, the cost would be a severe financial impact to them. The current project estimate shows that the Clevenger's SID assessment would be about \$120,000.00.
- It was learned that the owners recently had a contamination problem with their well. The well serves two small businesses, LIEAP (Low Income Energy Assistance Program) and a Montessory School. Mr. Clevenger asked if for their support of the SID, the City would allow him to connect a 3/4-inch service to city water without the obligation of immediate annexation as this would add about \$900 per year more in property taxes and assessments. The Clevenger property is already connected to city sewer. There is an existing 12-inch diameter water main that fronts the Clevenger property on the east side of McHugh Lane.
- Mr. Rundquist recommended approval of the Water Service Boundary extension so that the Clevenger's may connect to city water upon payment of regular hookup fees.
- Public Comment Mayor Pro Tem Netschert asked for public comment, non-was received.
- Motion** Commissioner Oitzinger moved approval of a water service boundary extension to include property owned by Glenn and Beverly Clevenger and legally described as Tract 1 of Certificate of Survey #302232 in the SW 1/4 of Section 18, T10N, R3W, Lewis and Clark County. Commissioner Parriman seconded the motion.
- Vote Motion carried 3-1 with Commissioner Pouliot voting no.
- Gateway Property** CONSIDER A FULL RECONVEYANCE TO RELEASE THE CITY'S SECURITY INTEREST UNDER THE TRUST INDENTURE ON THE GATEWAY PROPERTY LOCATED AT 1015 POPLAR STREET, HELENA, MONTANA
- Staff Report City Manager Tim Burton reported in the past the city loaned \$210,000 in Community Development Block Grant money to the Helena Area Economic Development Corporation (HAEDCO) for the purchase of the building at 1015 Poplar Street. HAEDCO used the building as an incubator for new businesses. In 1999, HAEDCO was reorganized and its name was changed to Gateway Economic Development Corporation (Gateway) and including participation by

other counties. The city maintained a revolving loan fund portfolio into which it placed repayments on CDBG loans that it made to HAEDCO, Win-Trol, and Queen City Ice Palace. Upon the reorganization of Gateway, the city transferred its revolving loan fund portfolio to Gateway and allowed Gateway to use the proceeds for economic development and use a specified amount for Gateway's administrative costs. As a result of these transfers, Gateway pays HAEDCO's loan to itself as the administrator of the revolving loan fund portfolio and, from time to time, uses part of it for its administrative costs. Gateway houses its office in the building financed by the city's loan of CDBG money. As a nonprofit organization dedicated to creating economic developments through a business incubator, Gateway could more fully utilize the entire building as a business incubator if it were released from the loan payment that makes to itself. This release would allow Gateway to relocate its office and free up space in its building for business incubator purposes.

Mr. Burton recommended the city release its security interest in the Gateway building and Gateway would agree to place a restrictive covenant on the property permitting it to be used only for economic development as a business incubator and for any use that qualifies the property as exempt from property taxes. Violation of the restrictive covenant would result in a reversion of the property to the city.

Discussion

Mayor Pro Tem Netschert asked if language could be included in the contract that would have the money spent within the city limits rather than leaving the city jurisdictions and having the taxpayers of this community paying for the outlying communities? Mr. Burton stated the legal approach to that is if the Gateway Corporation chooses not to use the building as an incubator as proposed it will revert back to the city of Helena.

Mr. Nielsen explained the sub recipient agreement, which the city approved between the city and Gateway six months ago; Gateway agrees that on the disillusion that all remaining monies in that loan portfolio do go back to the city.

Public Comment

Mayor Pro Tem Netschert asked for public comment.
Rick Hayes echoed the discussion and thanked the city and commission for all the leadership.

Motion

Commissioner Pouliot moved to authorize the City Manager to request a full reconveyance under the Trust Indenture on the Gateway property located at 1015 Poplar Street, Helena, Montana. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Public Hearing

A. CONSIDER THE EXPENDITURE OF \$110,000.00 IN OPEN SPACE BOND FUNDS FOR THE PURCHASE OF THE SWANEY PROPERTY ON MOUNT HELENA AND DEVELOPMENT OF THE SKYWAY TRAIL

Staff Report

Director of Park and Recreation Randy Lilje reported two years ago the city commission approved a recommendation from OSBAC for a resolution for matching funds for a Land & Water Conservation Fund (LWCF) grant for the acquisition of some of the Swaney Property and the development of the Skyway Trail. The grant was subsequently awarded to the City of Helena and after considerable paper shuffling was finally approved by the National Park Service for these two projects.

During that time the Swaney subdivision was approved and land was set aside for open space. This land will be transferred to the City through a bargain sale, private donations, and Open Space Bond funds. The trail will then be developed with assistance from the Montana National Guard and using Open Space Bond Funds and LWCF funds.

Even though these projects have been approved in other resolution, a public hearing will be necessary in order to expend the Open Space Bond funds in the amount of \$110,000.00.

Mr. Lilje recommended approval of the expenditure of \$110,000.00 in Open Space Bond Funds toward the purchase of the Swaney Property and the development of the Skyway Trail.

Public Testimony

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

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

Motion

Commissioner Oitzinger moved approval of the expenditure of \$110,000.00 of Open Space Bond funds to assist in the acquisition of the Swaney Property and the development of the Skyway Trail. Commissioner Pouliot seconded the motion.

Discussion

Commissioner Parriman asked if the funds for purchasing open space property are fully depleted? Mr. Lilje concurred and explained the allocation for the acquisition of open space is down to about \$5,000.

Vote

All voted aye, motion carried.

B. CONSIDER A RESOLUTION AMENDING PREVIOUSLY-APPROVED RESOLUTION #11467 THAT GRANTED A CONDITIONAL USE PERMIT (CUP) TO ALLOW THE EXISTING 40-BED PRE-RELEASE CENTER IN THE CLM-T-26 (COMMERCIAL-LIGHTING MANUFACTURING) DISTRICT, ADDING UP TO 20 MORE BEDS; LEGALLY DESCRIBED AS LOTS 2 AND 3, BLOCK 4, INTERCITY COMMERCIAL SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED EAST OF COLLEEN STREET AND SOUTH OF THE RAILROAD TRACKS WITH A PROPERTY ADDRESS OF 805 COLLEEN STREET

Staff Report

City Planner Belinda Waters reported the CUP of the 40-bed pre-release center was originally approved in 1999, and the center began its operation in 2001. On Tuesday, June 10, 2003 the Helena Zoning Commission recommended Approval (3:2 vote) for a resolution amending previously approved Resolution #11467 that granted a CUP to allow the existing 40-bed pre-release center, to add up to 20 more beds.

The Zoning Commission recommendation did not specify a time frame for the approval of the CUP. A time limit is appropriate to make sure that circumstances surrounding the original approval have not changed. The applicant has indicated if they expand in the future, it probably would not be right away. Therefore, a 3-year time frame would be more appropriate in this case instead of the one-year limitation anticipated in Section 11-21-4-B of the Helena Zoning Ordinance.

Ms. Waters recommended approval of a resolution amending previously-approved Resolution #11467 that granted a CUP to allow the existing 40-bed pre-release center, to add up to 20 more beds, in the CLM-T26 (Commercial-Light Manufacturing) District. Four beds would be added in existing space; the other additional beds may be added to one wing, or may be added to two wings. Women may also be added to the program; staff will be added as required and programming will be expanded to include gender-specific programs if women are placed at the facility.

Public Testimony

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

Michael Ruppert, 50 Pine Ridge Circle, stated he is CEO of Boyd Andrew Community Services and explained the current CUP states there can be 40 people and never more. He stated the center would like to add two to four beds with existing space to maximize their contract to capture all the funds available.

Matt Dalton, 233 Meadow Drive, stated he is currently a board member of Boyd Andrew and spoke in support of the extension.

David Blade, 3418 Alice Street, stated he is one of the citizen appointees to the Prerelease Screening Board and spoke in support of the extension.

Teresa Dye, 1510 Cannon, stated she serves on the Prerelease Screening Committee and spoke in support of the extension.

Helena Police Chief Troy Magee stated he on the Prerelease Screening Committee and explained the police department responds to any public safety calls at the center and stated after a bumpy start the center has an excellent record with the community and the police department.

Susan Carroll stated she is the Director for the Helena Prerelease Center and spoke in support of the extension and gave some facts regarding the resident's contributions to the community.

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

Discussion

Commissioner Pouliot stated he serves on the Prerelease Screening Committee and he has been impressed with the facility and staff.

Motion

Commissioner Pouliot moved approval for a resolution amending previously approved Resolution #11467 (approved November 8, 1999) that granted a CUP to allow a 40-bed pre-release center in the CLM-T-26 (Commercial-Light Manufacturing) District, and to allow 20 more beds to be added. Legally described as Lots 2 and 3, Block 4, Intercity Commercial Subdivision, Helena, Montana; generally located east of Colleen Street and south of the railroad tracks with a property address of 805 Colleen Street. This approval is subject to the following condition: A building permit for the expansion must be obtained within three years. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12014**

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTIONS 11-23-2 AND 11-23-9 OF THE HELENA ZONING ORDINANCE FOR SIGNS

Staff Report

City Planner Belinda Waters reported during the last political season, a number of questions were raised about the constitutionality of the City's sign ordinance. Members of the city commission, political organizations, candidates, and others asked for clarification and rationale on the existing sign ordinance, specifically as it relates to political signs.

The City Attorney reviewed this issue and proposed this amendment to bring City Code into legal compliance with the 1st Amendment that guarantees "Right of Free Speech." The current Code discriminates against noncommercial signs when compared to commercial signs because the Code is more permissive and generous for commercial signs. Noncommercial speech, sometimes called political speech, is afforded the highest level of legal protection under the 1st Amendment. Commercial speech may be lawfully regulated to a greater extent than noncommercial speech. It is illegal to allow commercial signs in areas that prohibit noncommercial signs; therefore, the City Attorney proposed a change under Section 11-23-2 and 11-23-9 of the Helena Zoning Ordinance as it relates to political signs.

On July 8, 2003, the Helena Zoning Commission unanimously recommended **TABLING** (3:0) the adoption of an ordinance that regulates political signs until the Zoning Commission meeting of August 12, 2003, so more members of the Zoning Commission could be present to consider these amendments.

Ms. Waters recommended the city commission table the proposed adoption of an ordinance amending Sections 11-23-2 and 11-23-9 of the Helena Zoning Ordinance that regulates political signs until the city commission meeting of September 8, 2003.

Motion

Commissioner Oitzinger moved to table the proposed adoption of an ordinance amending Sections 11-23-2 and 11-23-9 of the Helena Zoning Ordinance that regulates political signs until the city commission meeting of September 8, 2003. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

D. CONSIDER A RESOLUTION ESTABLISHING A TYPE B RESIDENTIAL PARKING DISTRICT FOR THE 1300 BLOCK OF POPLAR STREET AND THE 1200 BLOCK OF COOKE STREET

Staff Report

Bill Michalson reported The P.A.L. Program has taken up residency in the former Lincoln Elementary School located on the 1300 Block of Poplar Street. This has caused a certain amount of parking problems with residents along Poplar and Cooke Streets adjacent to the school. Often times, mailboxes and driveways are blocked or no parking exists in front of these homes due to events at the school or a constant flow of visitors to the school. There appears to be adequate parking in the school parking lot and/or appropriate adjacent on-street parking to accommodate normal school activities, however, it is not being fully utilized.

Mr. Michalson recommended approval of the resolution to establish a Type B Residential Parking District.

Public Testimony

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

Rhonda Simmons, 1320 Poplar, spoke in favor of the resolution and explained some of the problems the neighborhood has been having since P.A.L. has come into the neighborhood.

Sam Cummings, 1316 Poplar, spoke in support of the resolution.

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

Motion

Commissioner Pouliot moved approval of a resolution to establish a Type B Residential Parking District for the 1300 Block of Poplar Street (northside) and the 1200 Block of Cooke Street (westside) between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday. Commissioner Oitzinger seconded the motion.

Discussion

Mayor Pro Tem Netschert asked if it is illegal to park in front of mailbox? Mr. Nielsen stated there are no statues prohibiting that.

Mayor Pro Tem Netschert mentioned he would like to engage the school districts on these issues.

Vote

All voted aye, motion carried. **Res. #12015**

E. CONSIDER A RESOLUTION TO ESTABLISH A TYPE B RESIDENTIAL PARKING DISTRICT FOR A PORTION OF BRIARWOOD LANE IN THE CITY OF HELENA

Staff Report

Bill Michalson reported residents along the Briarwood Lane cul-de-sac are experiencing problems with vehicles blocking driveways, mailboxes and garbage containers, particularly from Capital High School students when school is in session. The residents are also coping with increased incidences of vandalism and trash scattered throughout the street and neighborhood. Apparently, numerous high school students are parking in this area rather than on high school grounds.

Mr. Michalson recommended approval of a resolution to establish a Type B Residential Parking District.

Discussion

Commissioner Parriman asked where the monies for the costs associated with the signs comes from? Mr. Michalson explained they come out of the maintenance division. Commissioner Parriman stated he would like to have a discussion about fees being created for the services that the residents are requesting.

Commissioner Pouliot stated he doesn't believe the residents should have to pay any cost. It's through no fault of their own that these cars are parked in their driveway; however; if a fee is to be created it should be directed at the school district because they are the ones that should be controlling the parking problems with their students.

Public Testimony

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

Bob Vogel, 188 Briarwood Lane, thanked the commission and city staff for helping them in this process. He explained safety in their neighborhood is a huge concern and he is in support the resolution.

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

Motion

Commissioner Oitzinger moved approval of a resolution to establish a Type B Residential Parking District for a portion of Briarwood Lane, from 172 Briarwood Lane to the end of the cul-de-sac between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12016**

Discussion

Mayor Pro Tem Netschert stated he would like to have staff craft a letter that could be sent to the school districts and to the school board outlining our concerns and asking them for further involvement. Mr. Burton concurred.

**Public
Communications**

PUBLIC COMMUNICATIONS

Beth Sirr, 512 Harrison, wanted to speak about the current no tolerance policy being enforced on the walking mall. She believes its alienating many people in this community, especially teenagers, and that the need to stop vandalism can be accomplished in a more constructive fashion. Ms. Sirr recommended a non-motorized vehicular lane running through the walking mall.

Margaret Lincoln, 220 Adams, stated she is speaking as a parent and as a chair of the Transportation Choices Committee. She explained the TCC has encouraged safe non-motorized transportation in Helena for the past few years by working on getting a non-motorized plan for the Helena area. Ms. Lincoln suggested looking at some safe options that has been used in other communities that might work on the walking mall and that the TCC would be willing to work with who ever the commission would recommend.

Jerry Hutch, 1111 State Street, spoke as a private citizen stating he is firmly against the riding of bicycles, scooters, and roller blades on the walking mall because there are people who use the walking mall that cannot distinguish a lane of traffic for non-motorized vehicles. He explained it is more of a safety issue then anything else.

Gloria Tatchell, 102 S. Benton, explained her seven-year-old son was recently with a friend and two teenage babysitters on the downtown walking mall, the two children were riding their scooters on the mall when a police officer reminded them to walk their scooters and not ride. She encouraged the commission to change the laws that prohibit bicycle riding on the walking mall and to promote safe alternative forms for transportation.

Alicia Stickney, 528 W. Lawrence, she spoke in support of the pursuit of a safe non-motorized path for bike, scooter or skate board use on the walking mall that would cover between the library and 6th Avenue.

Paula Boggs, 615 Power Street, stated it is important to make efforts as a community to support and enhance this clean healthy way of transportation. Recently there has been talk of providing auto access to the downtown walking mall to promote downtown business, though this may seem a likely means to accomplish this goal, it's counter progressive in promoting a safe and friendly down town area. Allowing a designated cycling route through downtown, from the library to the Great Northern area, would provide safe downtown access and use. This is a distance many pedestrians would consider to far to comfortably walk, so driving and parking needs grow. Ms. Boggs recommended the commission consider this matter in a broader prospective.

Discussion

Mayor Pro Tem Netschert explained one of the reasons this was adopted was to take care of some vandalism issues and other safety issues on the walking mall.

Mr. Burton stated as a result of vandalism the city has had more officers down in the walking mall and to some degree it has had a positive impact to those who lived through what occurred in the walking mall last summer. Mr. Burton explained the opportunity for the commission to have discussion on whether the walking mall should stay a walking mall or whether it is opened to trickle traffic or closing trickle traffic in the summer and open it in the winter could be discussed in an administrative meeting.

Commissioner Pouliot stated he would be in favor of creating bicycle paths.

Meetings of Interest

MEETINGS OF INTEREST

Mayor Pro Tem Netschert noted July 22, 2003 at 10:00 a.m., city staff and the engineering firm will be meeting at Memorial Park to review the plans for the community build playground.

Commissioner Pouliot wanted to invite the community to the American Legion Baseball game with the Senators July 22, 2003 at 7:00 a.m.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:20p.m.

Mayor Pro Tem Netschert

ATTEST:

CLERK OF THE COMMISSION

