

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
September 8, 2003
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, September 8, 2003, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena Montana.

Members Present Mayor Smith indicated for the record that Commissioners Oitzinger, Netschert, Parriman, and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Jacki Pierson were present.

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

Minutes The minutes of the regular city commission meeting of, August 18, 2003 were approved as submitted.

Appointments: APPOINTMENTS:
A. Helena Airport Authority Board – Mayor Smith recommended the appointment of Daniel A. Ellison to the Helena Airport Authority Board. Term will expire September 1, 2006.

Public Comment Mayor Smith asked for public comment; non-was received.

Motion Commissioner Pouliot moved approval to appoint Daniel A. Ellison to the Helena Airport Authority Board. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Introduction and Confirmation INTRODUCTION AND CONFIRMATION:
A. Police Officer Lynette Flink
B. Police Officer Jayson Zander
C. Police Officer Kevin Carlson

Public Comment Mayor Smith asked for public comment; non-was received.

Chief of Police Troy McGee introduced Police Officer's Lynette Flink, Jayson Zander and Kevin Carlson, gave a brief history on the officers and recommended approval of the confirmation.

Officer Zander introduced his family and gave thanks to the department and the commission.

Officer Flink thanked the department and stated she is very proud to be part of such a high caliber department.

Office Carlson introduced his family and thanked the department.

Motion Commissioner Pouliot moved approval of the confirmation of Lynette Flink, Jayson Zander and Kevin Carlson as police officers with the Helena Police Department. Commissioner Oitzinger seconded the motion. All voted aye, motion carried

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Second passage of Ordinance 2972 – amending the Helena City Code, Title 12 Subdivision Regulations for alleys, turnarounds, street grades, sidewalks, and amended plats
- C. Second passage of Ordinance 2973 - amending the Helena City Code, Title 7, Section 7-4-2, for sidewalks
- D. Second passage of Ordinance 2974 - zone change from B-2 (General Commercial) District to R-3 (Medium Density Residential) District and to R-O (Residential Office) District; from R-3 (Medium Density Residential) District to B-2 and to R-O; and from PLI (Public Lands & Institution) to B-2 for approximately 39.8 acres
- E. Second passage of Ordinance 2975 - pre-zoning designation of R-2 (Single Family Residential) District for multiple properties in Lewis and Clark County
- F. Second passage of Ordinance 2976 - pre-zoning designation of R-1 (Single-Family Residential Large Lot) for property located in Lewis and Clark County
- G. Resolution designating an Environmental Certifying Official for the HOME Investment Partnership Grant. **Res. #12031**
- H. Amendment to the city's Professional Services Agreement with MDG, Inc., consultant's for the non-motorized plan, to extend the termination date from July 31, 2003 to September 30, 2003. ACTION: Approve, table or deny an amendment.
- I. Approval of FY04 Helena Housing Contract - \$50,000.
- J. Community Youth Advisory Council (CYAC) By-Laws

City Manager Tim Burton recommended approval of the claims.

Public Comment

Mayor Smith asked for public comment, non-was received.

Motion

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger stated several agencies in Washington D.C. have designated this month as the National Youth Court Month. She wanted to recognize this event and say thank you to all that help with this process.

Commissioner Netschert mentioned the What Dreams May Become playground is about two weeks away from being built and invited the public to join. Commissioner Netschert mentioned the art that was placed down in the Great Northern area is inappropriate for children.

Commissioner Pouliot mentioned he would be helping with the What Dreams May Become project on Wednesday the 24th.

Mayor Smith mentioned he would attempt to make it down as well. He stated he attended the Helena Home Building Industry Association annual Tour of Homes and found it to be an excellent event.

Public Comment

Mayor Smith asked for public comment, non-was received.

**Report of the City
Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen explained he anticipates on providing some advice and guidance regarding the recommendation for amending the preliminary plat on Crest View and reconsideration of the two variances.

Public Comment

Mayor Smith asked for public comment, non-was received.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

City Manager Tim Burton stated the city has heard from the Government Finance Officers Association and he is pleased to notify the commission that the city's comprehensive annual financial report for the fiscal year end of June 30, 2002 qualifies for the certificate of achievement for excellence in financial reporting.

Mr. Burton asked to cancel the October 1 Administrative Meeting and the October 2 Joint City-County Work Session due to a conflict with the Montana League of Cities & Towns Conference in Billings on October 1-3.

Mr. Burton invited Fire Chief Steve Larson forward to report on the current fire situation. Chief Larson explained the situation is not much different then it was two weeks ago; Level 2 fire restrictions continue throughout our area.

Mr. Burton invited Public Works Director John Rundquist forward to reported on the city's water supply. Mr. Rundquist explained the water supply looks good. August's water usage averaged a little over 9 million gallons a day and July's average was about 12 million gallons a day. The city is now drawing off the Scott Reservoir, which is supplementing the supply to the Ten Mile. As the demands drop off the city will take the Missouri River Treatment Plant offline and operate completely off of Chessman and Scott Reservoirs during the winter.

Public Comment

Mayor Smith asked for public comment, non-was received.

**L&C Montana
Experience Project**

CONSIDER RECOMMENDATION OF ARCHITECTURAL SELECTION
FOR LEWIS AND CLARK MONTANA EXPERIENCE PROJECT

Staff Report

Community Facilities Director Gery Carpenter reported the request for proposals for the Lewis and Clark Montana Experience Project was advertised on August 3, 2003; and August 10, 2003. Proposals were to be submitted by 5:00 p.m. on Wednesday, August 20, 2003. DT Architecture, a Helena firm, submitted the only proposal received. Because only one proposal was submitted, DT Architecture has become the top-ranking firm. DT Architecture has worked in conjunction with the Lewis and Clark Bicentennial Commission of Lewis and Clark County on the original TIF funding application for the Lewis and Clark Montana Experience project.

Mr. Carpenter recommended approval of the architectural selection for Lewis and Clark Montana Experience Project.

Public Comment

Mayor Smith asked for public comment, non-was received.

Discussion

Mayor Smith asked what the proposal's amount was? Mr. Carpenter explained the city manager would negotiate the contract, which will come back through the city commission for approval.

Motion

Commissioner Pouliot moved approval of the proposed rankings and further recommended the City Manager be authorized to enter into fee

negotiations with the firm of DT Architecture. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

McHugh Lane

CONSIDER A RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 418 FOR MCHUGH DRIVE; CREATING 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 FUND. **[TABLED AUGUST 18, 2003]**

Staff Report

Director of Public Works John Rundquist reported this project will construct about a ½ mile of new city street including sidewalk, bike path and drainage improvements. The process to date started back in March with public meetings, but most recently on July 22, 2003 the city commission approved a resolution of intention creating the process to create the SID. Letters were sent to the property owners notifying them of assessment and the 15-day protest period. The state statute requires a fifty percent petition of property owners by assessment to stop an SID from formation or forty percent petition of those property owners in the county can vote by petition to kill an SID. The only protest on this SID was from Pete McHugh and his attorney Mr. Sternhagen, which represented about fifteen percent of the total frontage over all and about 32 percent of the county frontage. As such the city commission has full authority, under state statute, to create this SID.

Discussion

Commissioner Pouliot stated there is a financial hardship and asked if the commission could amend the resolution to shorten the SID to not affect Mr. McHugh's property? Mr. Burton concurred and explained there are a couple variations the commission could look at. The project could be shortened to the south boundary of the McHugh property and readjust the allocation or the city could also go to the present construction, which is to the city boundary, and participate financially as a city in the difference. He would also like to add for the record that during the last city commission meeting the commission received a packet from council representing McHugh Land and Livestock. The commission had asked staff to look into the contract between HS&G and McHugh Land and Livestock. He directed staff to not pursue that conversation because the contract is between two private individuals. Commissioner Pouliot asked how the city's financial participation would affect Mr. McHugh? Mr. Burton explained there would be a couple ways the city could participate. If the city took the length of that road from the city boundary south to the McHugh property line, then there is going to be a per linear foot cost that will be less because fewer roads are being built. The city's contribution would be around \$10,000. If the commission determines that Mr. McHugh doesn't benefit from this SID at all but still sees the value of going to the city boundaries, then essentially the city would pick up Mr. McHugh's cost of \$150,000, if the sidewalks and trails went in. Commissioner Pouliot stated he would like the chance to more fully understand this option and felt that this item should be tabled.

Commissioner Netschert asked regarding how far down can HS&G dig and about the leveling of the property? Mr. Burton explained that issue could be brought up with Mr. Sternhagen or Mr. McHugh.

Mayor Smith stated the proposal to create the Special Improvement District was not initiated entirely at the request of the city but is shared with the county.

Mr. Rundquist explained there are statutes that describe the issue of when an SID is formed and it crosses a municipal boundary. There are special rules that apply to that formation. One of the rules is that the city and the county engage in a joint resolution to allow the SID to move forward. Once that happens the city is in full control of administering the SID under the statutes. Mayor Smith asked if the county is in concurrence with how the city is handling the SID? Mr. Burton concurred.

Public Comment

Mayor Smith asked for public comment:

Bill Sternhagen, 25 S. Ewing, stated he is an attorney at law representing McHugh Land and Livestock. He stated the figures he gave regarding the initial cost being \$150,000 was wrong. By taking the 15 years, multiply it by the amount per year, which would then include the interest, it's a little over \$228,000. Mr. Sternhagen stated he realizes and appreciates the position of the city to leave the issues surrounding the contract alone and commented on Commissioner Netschert question regarding how much gravel will be uses on the property. It can continue as long as HS&G would like and he explained there is nothing in the contract about leveling the property.

PJ McHugh, 4301 McHugh Drive, stated he is representing McHugh Land and Livestock in the absence of his father. The term of the contract was for 20 years and there is 13 years remaining on the contract. Mr. McHugh stated Ed Maronick with HS&G explained in a phone conversation that there was a previous comment made regarding the length of time that HS&G would be using the property for gravel and Mr. Maronick stated he regretted that statement.

Mr. Sternhagen stated the contract has a huge bearing on this proposal because it's the only place where Mr. McHugh could receive any money at all. The evidence would show how much money comes out of the property and how often the gravel trucks use the road. Mr. Sternhagen mentioned their economist Joe Shevlen is present to answer questions.

Mayor Smith stated substantial revisions were made to the ordinance that relates to sidewalks and other improvements for SID's tonight and the staff report stated those changes would mitigate the impact on the family and the property problems. Mayor Smith asked for discussion on this aspect. Mr. Sternhagen stated they are willing to discuss or mitigate at any time.

Discussion

Commissioner Netschert stated the developability of the McHugh parcel is diminished considerably and not having further information explaining what the outcome will be with the rest of the property. From that perspective of their argument the benefit is minimal. He would suggest tabling the item in order to collect further information on alternatives. Mayor Smith asked Commissioner Netschert if he believes that the existence of that hole represents a benefit, in the past, to the property? Commissioner Netschert concurred and explained to determine the benefit of the road the commission will need further information.

Commissioner Oitzinger asked Mr. Nielsen what the commission's time line is on approval for the SID? Mr. Nielsen stated there is no legal impediment on the time and the item could be tabled. Commissioner Oitzinger stated she would like to explorer this with the county.

Commissioner Pouliot stated to follow up on Commission Oitzinger's comments, it's possible to decide along the way that the city might participate in one fashion or another. He would like to ask the county if they would participate if the city participates? Commissioner Pouliot explained he believes that McHugh Land and Livestock does benefit from the previous road and they will benefit from

an improved road; however, they are tied up in a lease that financially creates a hardship. He would like the walkways and bikeway installed and doesn't feel that is should be an option.

Commissioner Parriman stated he could support the recommended motion for creating the SID and he does believe the land benefits from the creation of that district and the improvement of the streets.

Motion

Commissioner Parriman moved approval of a resolution relating to Special Improvement District No. 418 for McHugh Drive; creating 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 fund. Motion dies for a lack of a second.

Motion

Commissioner Pouliot moved to table the resolution to the call of city manager and asked for further information regarding the city and county's cost sharing options.

Discussion

Mayor Smith explained he supports Commissioner Parriman thoughts.

Vote

Commissioner Netschert seconded the motion. Motion carried 3:2 with Commissioner Parriman and Mayor Smith voting no.

Tax Levy

CONSIDER A RESOLUTION PROVIDING FOR THE ANNUAL TAX LEVY IN MILLS FOR FISCAL YEAR JULY 1, 2003 THROUGH JUNE 30, 2004

Staff Report

Administrative Services Director Tim Magee reported and reviewed the annual mill levy. Under MCA 2-9-212, Group Health Insurance tax levies may include annual increases for insurance premiums. However, that tax increase must be levied or the authority to levy in future years is lost. The city has annually levied for Group Health Insurance, including annual premium increases as follows:

- a. 5.60 mills or \$246,910 in 1998 for Fiscal Year (FY) 1999
- b. 6.12 mills or \$264,861, a \$17,951 increase in 1999 for FY 2000
- c. 7.43 mills or \$304,132, a \$39,273 increase in 2000 for FY 2001
- d. 9.74 mills or \$405,574, a \$101,442 increase in 2001 for FY 2002
- e. 12.94 mills or \$549,808, a \$144,234 increase in 2002 for FY 2003

The fiscal year 2004 budget provides for \$615,100, or 14.55 mills to be levied for group health insurance premiums in 2003 for FY 2004, including a premium increase of \$65,292, as allowed under MCA 2-9-212.

The city has not levied the maximum levy authorized under MCA 15-10-420 as follows:

- a. \$3,708,925 levied, \$432 authorized but not levied in 1999 for FY 2000
- b. \$3,828,463 levied, \$410 authorized but not levied in 2000 for FY 2001
- c. \$3,387,830 levied, \$302,307 authorized but not levied in 2001 for FY 2002
- d. \$3,659,153 levied, \$220,093 authorized but not levied in 2002 for FY 2003

The FY 2004 budget provides for \$275,568, or 6.52 mills, to be authorized but not levied in 2003 for FY 2004.

Mr. Magee recommended approval of the resolution.

Public Comment

Mayor Smith asked for public comment, non-was received.

Motion

Commissioner Pouliot moved approval of a resolution setting the annual mill levy resolution. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12033**

**Crystal Springs
Subdivision
(Annexation)**

CONSIDER A RESOLUTION ANNEXING LOT 1 AS SHOWN ON THE COS#501240/E, LEWIS AND CLARK COUNTY, MONTANA, GENERALLY LOCATED EAST OF GREEN MEADOW DRIVE AND WEST OF THE EXISTING PIONEER VILLAGE SUBDIVISION (CRYSTAL SPRINGS SUBDIVISION)

Staff Report

Lucy Morell-Gengler reported on February 11, 2002, the city commission established conditions to annexation of Lots 1 (40-acres) and 6 (20-acres) of COS #501240/E, the proposed Crystal Springs Subdivision (Res. 11730), and established rezoning designations for the property (Ord. 2933). On February 25, 2002, the commission approved a preliminary plat, establishing conditions to the subdivision. This proposal would annex the forty-acre Lot1. The remaining Lot 6 will be proposed for annexation when that property is fully served and developable within the city.

The annexation of two additional road rights-of-way are expected, including the segment of Green Meadow Drive, Benton Avenue from the existing city limits through the northern extent of the subdivision, and any part of the adjacent Horseshoe Bend that lies outside the property proposed for annexation. These streets will be proposed for annexation at a later date.

Conditions to annexation include the following:

1. The applicant must notify the City Community Development Department in writing upon completion of the conditions for subdivision, and must complete annexation within one year of the city is under no obligation to complete the annexation.
2. Taxes shall be paid and current at the time of annexation.

Staff confirms that the conditions of annexation have been fulfilled and that all procedural and due process requirements have been completed. Annexation has been requested and is recommended by staff.

Ms. Morell-Gengler recommended approval of a resolution annexing property and approval of the final plat, which includes the two changes:

1. The applicant indicated during preliminary plat reviews that Kingsbrook Drive, located on the east side of the subdivision, might be eliminated.
2. The applicant has also indicated the existing wells will be relocated to the proposed parkland area with a future phase of subdivision. Since right-of-way has not been established between the Benton Avenue and Custer intersection and the Crystal Springs Subdivision, the requirement for a temporary bike/pedestrian path in the area will be delayed until Phase II.

Discussion

Commissioner Parriman asked if the sidewalks would be installed when a building permit is obtained or would they be installed during Phase 1 continuous? Ms. Morell-Gengler stated the sidewalks have been financially guaranteed and will not be installed with the street as was previously required.

Mayor Smith asked if the final plat is complete? Ms. Morell-Gengler explained this is a phase development which means that not all of the improvements needs to be installed with this particular phase, only the improvements related to this phase need to be installed.

Public Comment

Mayor Smith asked for public comment, non-was received.

Motion

Commissioner Pouliot moved approval of a resolution annexing property legally described as Lot 1 as shown in COS#501240/E, Lewis and Clark County, Montana, generally located north of Custer Avenue between Green Meadow Drive and Benton Avenue, into the city of Helena.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12034**

Motion

Commissioner Pouliot moved approval of the final plat of the Crystal Springs Subdivision Phase I creating 25 lots and parkland dedication from Lot 1 as shown on COS#501240/E, Lewis and Clark County, located in a R-2 District and generally located east of Green Meadow Drive and West of the existing Pioneer Village Subdivision. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Crestview Estates

CONSIDER DRAFT FINDINGS OF FACT AND CONDITIONS CONTAINED THEREIN FOR THE MAJOR SUBDIVISION/AMENDED PRELIMINARY PLAT FOR THE CREST VIEW ESTATES SUBDIVISION PHASE II FOR PROPERTY GENERALLY LOCATED SOUTH OF RHODE ISLAND STREET, SOUTHEAST OF BEATTIE STREET, AND WEST OF CREST VIEW ESTATES PHASE I, HELENA, MONTANA. THIS PROPOSAL INCLUDES REQUESTS FOR RECONSIDERATION OF THE FOLLOWING VARIANCES:

- A. FROM THE MAXIMUM 700 STREET LENGTHS FOR A DEAD-END STREET.
- B. TO ALLOW A SINGLE ACCESS FOR A SUBDIVISION EXPECTED TO GENERATE MORE THAN 200 VEHICLE TRIPS PER DAY.

Staff Report

City Planner Lucy Morell-Gengler reported on January 27, 2003, the preliminary plat for the second phase of the Crest View Estates Subdivision was approved for 17 single-family residential lots. At that time, the applicant requested two variances from the City Subdivision Regulations:

1. A variance from Section 12-4-2 (B) which requires each subdivision with a projected trip generation of more than 200 vehicle trips per day to have a minimum of two public accesses for ingress and egress, and
2. A variances from Section 12-4-2 (C), which states: "dead-end streets may not exceed 700 feet in total length..."

On July 14, 2003 the applicant submitted a revised preliminary plat reducing the number of lots from 17 to 11 residential lots, two of which would be designated for 10 condominium units. Included with the submission was a request for reconsideration of the variances from Section 12-4-2 (C) and Section 12-4-2 (B) to allow a maximum 1,300-foot long dead-end street and to permit a single access for the Crest View Estates Subdivision, which is anticipated to generate approximately 239 vehicle trips per day. If the condominium units were approved, the anticipated combined vehicle trips would increase to 279 vehicle trips per day.

Because the Crest View Estates Phase II Subdivision is located in an R-1 (Single-Family Residential Large Lot) District, an application for a Conditional Use Permit (CUP) to allow the 10 condominium units was also submitted and is being reviewed simultaneously with the amended plat. 10 condominium units would be located on proposed Lot 10 and six units would be located on proposed Lot 11 of the Crest View Estates Phase II Subdivision. Conditions:

1) Agriculture and Agricultural Water User Facilities

The applicant must submit to the City documentation as to the disposition of any water rights for the property.

2) Local Services

A) Water and Sewer

- i. A pump station must be provided to meet domestic water demand and a reservoir constructed at a sufficient altitude for adequate pressure; with sufficient volume to provide operating storage for domestic demand and to provide the necessary pressure and flow for fire protection.
- ii. The design fire flow and duration for reservoir sizing shall be that required by the Uniform Fire Code for the largest permitted structure.
- iii. Operating storage for the reservoir must be sufficient for adequate circulation in the reservoir and accommodation of peak water demands.
- iv. The applicant must provide a site for the reservoir and maintenance access to that site.

OR

1. The applicant must construct, at the developers expense and in accordance with City approved standards, a water booster pump station for domestic and fire protection that meets the following conditions:
 - a. The applicant must submit to the City the design, specifications, and construction submittals for review and approval for all components of the proposed water booster pump station prior to construction of the water pump station.
 - b. The design flow for the pump station must provide for an operating capacity that meets UFC (Uniform Fire Code) standards for the largest permitted structure with a 25% safety factor in anticipation of diminished capacity due to equipment wear.
 - c. Two fire pumps (one for standby) each sized for the design fire flow shall be provided.
 - d. Fire pumps must be National Fire Protection Association (NFPA) approved or non-UL/FM dual pumps each sized for required fire capacity. The fire pumps must be horizontal split case type (Peerless or equal) designed for municipal water supply. Fire pump controls must be set to alternate the pumps for equal starts and run time. The fire pump controls must automatically start on low pressure with automatic switch to the alternate pump on low flow indicated by a non-mechanical flow meter (Magmeter or equal) for the condition of service.
 - e. The design flow for domestic demands must be provided with pumps sized for peak domestic demand with captive air tanks for pump cycling and pressure stabilization.
 - f. The pump station shall be automatically controlled with condition status and failure alarms telemetered to water operations headquarters and to the 911 Emergency Dispatch Center.
 - g. The pump station must provide automatic control and safety measures to prevent system overpressure and water hammer.
 - h. An emergency power generator powered by propane or diesel with 5-day heated fuel storage, or natural gas if adequate natural gas utility service

will be available to the site, must be provided and installed to power all of the pump station in the event of grid power outage.

- i. ~~The emergency power generator must include automatic start and transfer, separate sound insulated room, automatic generator exercise, block heaters, hospital type muffler system, heat exchanger (city water supply) for block cooling, and other appurtenances as necessary to provide a complete, automatically controlled and reliable backup power supply.~~
- j. ~~Off street parking and all weather maintenance access to the pump station must be provided as approved by the Public Works Department.~~
- k. ~~The proposed pump station must be located on water department property or an access and maintenance easement must be established to service the station; the easement must be filed with the Clerk and Recorder with the final plat. The property dedicated for this purpose must be stable, secure, level and suitable for pump station construction.—~~

~~2)-1) The sewer collection and water distribution systems must be designed by an engineer licensed in the state of Montana, and the design must conform to City standards for types of materials, spacing of hydrants and valves, manholes, and other appurtenances; the design must be submitted for review and approval by the City Engineer.~~

~~3)- 2)An engineer must inspect and certify the installation of the utilities complies with the approved plans and the Montana Public Works Standard Specifications.~~

~~4)- 3)City Commission approval for the expansion of the water and sewer service area boundaries to serve this subdivision must be obtained prior to filing the final plat.~~

Access

- 2. ~~The proposed access for Lot 17 must either be a private drive just for Lot 17, or it must be improved to Helena street standards per the Subdivision Regulations and must be so noted on the plat if that access serves other lots.~~

~~2)- 1) The 60-foot wide private drive right-of-way, which bisects the Phase II subdivision as described by COS # 349016, must not be diminished in width and must not be blocked by fill material or cut slopes. The existing vehicular access road located within the easement established by COS # 349016 and which is not a part of proposed Crest View Drive must be reestablished without a significant increase to the existing grade. -~~

- 3. ~~The street section located south of the Crest View cul-de-sac and between Lots 10 and 11 must be constructed to City street standards and the 60-foot wide right-of way must be dedicated to the City.~~
- 4. ~~The location, grade, and construction materials of the proposed pedestrian/bike path must be reviewed and approved by the City.~~

3) The Natural Environment & Wildlife And Wildlife Habitat

A construction erosion and weed control plan and a post-construction erosion control plan that addresses erosion control mechanisms, a weed control plan plus a revegetative and maintenance plan must be submitted to the City for approval.

4) Public Health And Safety

Fill Area

~~To improve safety, mitigate the visual impact, and to reduce maintenance requirements, fill material may be extended into the Beattie Park if the fill grade 4:1 slope and the fill area is reclaimed in a manner consistent with the existing vegetation and terrain.—~~

Stormwater Drainage

A stormwater drainage plan, complete with drainage calculations provided by an engineer, not allowing drainage in excess of the historical run-off, must be submitted to the City Engineer for review and approval.

The final designs for any stormwater detention basins and drainages must meet all City of Helena regulations and standards and must be approved by the City Engineer.

Stormwater basins must be located on public lands or on easements for maintenance purposes unless it serves only one lot and is privately owned.

~~Operation and maintenance of privately owned stormwater basins must be included in a covenant for the property. An access road, installed to City specifications, must be constructed for maintenance access to all basins unless the basin is privately owned. Maintenance access must be provided to basins and must be located on City-owned property or an easement must be established and graphically shown on the final plat.~~

~~A stormwater detention pond may be established in the existing natural drainage located west of the subject property and in Beattie Park if, the area is reclaimed in a manner consistent with the existing vegetation.~~

~~Detention/retention basins must be blended into the landscaping.~~

~~6) 4) Where drainage channels are created across multiple lots, drainage easements must be provided and drainage channels must be engineered for erosion control.~~

~~7) 5) An off-site drainage easement must be obtained to transmit flow to pond 3 located in the first phase parkland. This easement must be filed with the Clerk and Recorder with the final plat.~~

~~8) If a retaining wall is installed, the construction plans for the retaining wall adjacent to pond 2 and maintenance access must be submitted to the City for review and approval. The retaining wall must be designed to blend in with the natural surroundings and maintenance access approved by the City Engineer must be provided.~~

C) Fire Mitigation

- i. Fire hydrant location and spacing must be approved by the City.
- ii. The plat must indicate areas with lot slopes 25% or greater and state that homes built in areas of 25 % or greater slopes to reduce fire danger must:
 - a. Use only Class A or B fire rated roofing materials; and
 - b. Establish a vegetation reduction area adjacent to structures in accordance with the 1993 Fire Protection Guidelines for Wildland Residential Interface Development; and
 - c. Due to the extreme cuts and fills associated with this development, a site grading and drainage plan must be submitted that demonstrates a foundation and driveway layout and design for each lot that is buildable within the constraints of City Code and provides emergency access to each building site.

5) **The Survey Requirements Provided For In Part 4 Of This Chapter**

The final plat for this subdivision must be ~~tied to the City coordinate system~~ and provided to the City on acceptable digital formats for archival and mapping purposes.

6) **Helena Subdivision Regulations**

A) Streets

Roadway pavement section designs must be submitted to the City for review and approval by the City Engineer.

B) ~~Financial Guarantee~~ Improvement Installation

All of the following improvements must be installed or the improvements must be financially guaranteed in accordance with Section 12-4-13 and 12-4-14 of the Helena Subdivision Regulations:

- 1) Streets, curbs, and gutters, sidewalks, ~~guardrail~~, street identification signs, and traffic control devices;
- 2) ~~Pedestrian/bike path and related improvements;~~
- 3) ~~2) Street lighting;~~
- 4) ~~3) Revegetation and erosion control improvements, and weed management measures;~~
- 5) ~~Water pump station, or reservoir and pump;~~
- 6) ~~4) Water and sewer mains, manholes, fire hydrants, and other appurtenances;~~
- 7) ~~5) Stormwater drainage improvements;~~
- 8) ~~Retaining wall (if required); and~~
- 9) ~~6) Reclamation of fill area.~~

C) Parks

- i. ~~Parkland dedication must be consistent with the City's Comprehensive Parks, Recreation, and Open Space Plan. The dedicated parkland may consist of the parcel of land connecting the parkland and the Phase I trail to Crest View Drive; a portion of the subject property located in the southern area of the subdivision and containing an existing east-west trail. and cash donation for the remainder.~~
 - ii. The area required for the bike/ pedestrian path, the City's existing 60-foot wide access easement, the proposed water booster pump station, and stormwater detention ponds must not be included as part of the required parkland dedication for the subdivision.
- ~~3) 1) To mitigate impacts to the park areas from construction encroachment, the developer must install a temporary fence or boundary indicating the existing and designated park areas prior to the construction phases of the development.~~

7) **Easements**

- D) ~~A 10-foot wide utility easement must be noted on the full length of the west side of Crest View Drive.~~
- B) ~~A) An Encroachment easements must be obtained from the City Commission for any fill areas or stormwater drainage and detention basins encroaching on City property including any parkland. Fill slope and provision for restoration, establishment of vegetative cover and weed control for the fill area must also be approved by the City if an easement is granted.~~
- E) The 60-foot wide private road easement noted on COS # 349016 as recorded in the Clerk and Recorder's Office, Lewis and Clark County must be shown and referenced on the final plat. Written approval for changes to the location, width, or road grade must be obtained from those entities that have a legal interest in this easement.
- F) Easements for stormwater drainage, natural or man-made, and/or detention basins must be graphically shown on the plat. These easements must restrict any encroachments that may inhibit the required stormwater drainages.

- G) Stormwater easements that are required on adjacent properties must be obtained from affected property owners.
- H) Easements for maintenance access to the proposed stormwater detention ponds ~~and retaining wall~~ must be shown on the plat.
- I) An easement for the proposed booster pump station or reservoir must be noted on the final plat.

VARIANCES

The applicant withdrew the request for a variance from Section 12-4-2 (A)(7)(b) of the Helena Subdivision Regulations, which requires 5-foot wide sidewalks on each side of a street or a 10-foot wide pedestrian/bike path separate from the street but located in the right-of-way.

The City Commission denied the applicant's requested variance from Section 12-4-2 (B) of the Helena Subdivision Regulations, which requires each subdivision with a projected trip generation of more than 200 vehicle trips per day to have a minimum of two public accesses for ingress and egress.

The City Commission denied the applicant's requested variance from section 12-4-2 (C) of the Helena Subdivision Regulations which states: "dead-end streets may not exceed 700 feet in total length..."

Discussion

Mr. Nielsen explained the commission has four decisions to make. The first one is whether to approve the amendment to the preliminary plat and any commissioner can make that motion. After that issue is resolved then the commission will consider the two requests for variances. The difference is on the reconsideration motion for the variance; any commissioner, including the mayor, who previously voted on the prevailing side at the original decision, can make it. If the commission votes to reconsider, it will take the commission back to square one to vote on whether to approve the variance or deny the variance. The last motion would be the one to approve the new findings of fact; that comes about if the preliminary plat approval is amended or the variances are approved.

Public Comment

Mayor Smith asked for public comment.

Mark Brooke, 562 Highland, stated he is the Project Manager with Morrison-Maierle Inc. He expressed to the commission that this amended preliminary plat represents a concerted effort on behalf of the applicant and city staff. The plan before the commission preserves the essence of the approved 17 lot subdivision while minimizing impacts to the natural environment, reducing the length of the dead-end road, enhancing the open space, trail connectivity and creating an open space buffer between existing and proposed development and between existing open space and the proposed development. Mr. Brooke explained how the alterations have improved the problems surrounding city services and the natural environment.

Art Compton, 17 Mueller Court, explained there was a fire up above his subdivision and expressed to the commission that without the abundance of resources available and the responding time of the city and Forest Service fire crews the fire could have easily come down into the subdivision. He recalled Fire Chief Steve Larson comments, when looking at the preliminary plat, he indicated, under certain circumstances, that he would hesitate sending response crews up into the upper reaches of the Mueller Court Subdivision. He encouraged the commission to hold firm on the requested variance for vehicle trips per day because denial of that variance would limit any future Phase II to about 6 R-1 Lots

or about 12 condominium units. The present proposal is a step in the right direction; however, still to high on the hill.

Sally Angove, 738 2nd Street, reviewed a letter that she had written to the City Planning office earlier this year. She explained there is still to many vehicle trips per day for a dead-end street and also in regards to the problems that city services will face involving the condominium street proposal. She believes that the developers should complete Phase I before starting Phase II.

Mark Kelly, explained he is representing Plan Helena. He repeated a couple of the comments that were included in a previous letter sent into the Planning Board. Plan Helena urged the commission to consider the area that can be served by existing city water and consider the Planning Board recommendations.

Gwen Boone, 638 1st Street, mentioned she would like to submit a letter to the commission to be placed on the record. She stated the city is under no obligation to reverse the variance requests. The city has made laws for good reason and has used good judgment in the past regarding the Helena Subdivision Regulations. She urged the commission to deny the variance requests.

Dawn North, 707 2nd Street, she explained her property drains the entire mountain side and has noticed significant amounts of drainage since Phase I has started. She expressed concern regarding emergency service access to the property and the danger of the street grades.

Gene Thayer, 220 40th Ave. Great Falls, Montana, asked for clarification regarding the procedural vote. Mr. Nielsen explained the commission uses two sources for their parliamentary procedure. The first is the bylaws and secondly to the extent that the bylaws do not cover the procedure then the manual of legislative procedure by Mason.

Lynn Center, 406 Chauser Street, commented on what Mr. Compton said regarding the wildfires. She asked in the event of a wildfire, would the city be liable for lawsuits brought by home owners who were allowed to build in a sever, high risk fire area? She also asked in regards to individual commissioners having conflicts of interest during the first preliminary plat hearing. Mayor Smith explained Montana statute says that commissioners may have a conflict of interest that ranges from minor to major proportions. He believes it's incumbent for the individual commissioners to evaluate whether or not a conflict exists and if so to disclose it to the other commissioners and the public at large. The commission's duty is to act and vote. Mr. Burton explained that the commissions duty to act is not only supported within the bylaws that govern it but also several supreme court cases, unless there's a clear conflict of interest.

Jerry Wells, 619 1st Street, expressed concerns regarding their children's safety due to increased traffic and urged the commission not to change the vote on the variances.

Steve Gilbert, 604 2nd street, asked for clarification relating to the ITE standards on street lengths with a cul-de-sac. Mr. Gilbert explained how each street from Crest View Drive turns onto another dead end street. He suggested to the planning staff that ITE direction says that 700 feet begins where you leave a second ingress/egress. He expressed concern regarding the water supply situation and he quoted from the staff recommendation that stated, "The Public Works Department cannot thoroughly evaluate the planned water system".

Arlieta Holshue, 725 Rhode Island Street, stated she agrees with all the comments given and expressed concern regarding road blockage.

Discussion

Commissioner Netschert stated he feels the need to address some of the comments made during the public comments. He stated he works for the Landmark Company and explained the company had been representing the developers; however, the Landmark Company is no longer listing the properties in Crest View Phase I.

Commissioner Pouliot explained he knows and has friends on both sides of this issue and stated there is no clear conflict of interest and he will be voting. He asked if the city would be liable for fire loss to the homes? Mr. Nielsen explained he doesn't believe the city would have a great liability exposure in that regard.

Commissioner Parriman stated this is a difficult issue and people have been very passionate about it; however, some of the letters received are reasonable yet some are not. Commissioner Parriman explained he would be voting in denial of the variances.

Commissioner Oitzinger stated in defense of people who have spoken and who feel passionately, certain letters of the law binds this commission; however, as individuals other things may bind us as well.

Mayor Smith asked for clarification regarding the Planning Board's recommended denial. Ms. Morell-Gengler explained the amended preliminary plat did not go to the Planning Board, the CUP went to the Zoning Commission for a public hearing and their recommendation was for denial.

Mayor Smith asked regarding the statement from Public Works having to do with the water system? Mr. Rundquist explained the ability to serve without a pump station is dependent upon the elevation and it's his understanding that the current proposal would take advantage of the maximum elevation that the city could serve without a booster pump station. Mayor Smith asked if there are doubts about the ability of the system to do so without a booster station. Mr. Rundquist stated he believes it can do it without a booster system if the road pulled back to the lower elevation as proposed. Mayor Smith asked regarding the comment made in the findings of fact that states, "Because of the insufficient information the Public Works Department cannot thoroughly evaluate the planned water system". Mr. Rundquist explained the Public Works Department does not have the developer's calculations at this point in time to verify one way or another if it can be done; however, he understands their intent. Mayor Smith asked what the ITE standards had to say regarding dead-end streets? Ms. Morell-Gengler explained ITE has a number of guidelines and one of those recommendations is for the length of dead end streets. Staff contacted ITE and requested how streets should be measured when there is a network of dead end streets. Their indication was it was from two points of ingress/egress.

Motion

Commissioner Pouliot move to conditionally approve the amended preliminary plat. Commissioner Netschert seconded the motion.

Discussion

Commissioner Oitzinger explained she feels there have been substantial improvements made to the preliminary plat. However, to be consistent, she would not be supporting the proposal because she does not support the subdivision.

Vote

Motion carried 3:2 with Mayor Smith and Commissioner Oitzinger voting no.

Wong Street

CONSIDER A RESOLUTION OF INTENTION TO CLOSE WONG STREET BETWEEN PARCELS 12,19, 15 OF THE FIRST SUBDIVISION OF THE LAST

CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF
HELENA

Staff Report

Director of Public Works John Rundquist reported the library wishes to close Wong Street and incorporate it into the parking lot. With the closure of Wong Street the city will still own the right-of-way for utility maintenance and emergency access. The configuration of the parking will still allow for the public to access the parking that connects Wong Street with Broadway from Park Avenue. If the proposal is approved, a right-of-way use agreement would be executed that would allow the library use of the right-of-way with the following conditions:

1. The Lewis and Clark Library would be responsible for pavement maintenance, sweeping and snow removal.
2. The parking would remain open to the public.
3. A 20' wide emergency access connecting to existing Wong Street right-of-way would be maintained.
4. The Downtown Business Improvement District will provide sweeping and snow removal associated with the remaining Wong Street right-of-way, which is not closed.

Mr. Rundquist recommended approval of the closure of Wong Street.

Public Comment

Mayor Smith asked for public comment.

Susan Bjerke, 545 S. Harris, stated she is the owner of Bjerke Architects and they are working with the consultant, Stahly Engineering on this project.

Motion

Commissioner Pouliot moved approval of a resolution of intention to close Wong Street and set a public hearing date for September 22, 2003.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12035**

Oregon Street

CONSIDER A RESOLUTION OF INTENTION TO VACATE 52 FEET OF THE OREGON STREET RIGHT-OF-WAY ADJACENT TO LOT 16 IN 110 OF THE NORTHERN PACIFIC SECOND ADDITION

Staff Report

City Engineer Ryan Leland reported the proposal is to vacate 52' of the Oregon Street ROW and enlarge the adjacent city owned property. If this vacation is approved, the city commission will be asked to consider donation of this property to the Habitat for Humanity. The existing ROW is not being used to access any of the properties for emergency access, or for underground utilities. The city will still maintain 20' easement for the overhead power lines and storm water control. The current city owned property is unbuildable for the proposed improvements. With vacation, the property will be much more attractive for a residential housing development.

Mr. Leland recommended approval of the vacation of Oregon Street.

Public Comment

Mayor Smith asked for public comment, non-was received.

Motion

Commissioner Netschert moved approval of a resolution of intention to vacate 52' of the Oregon Street right-of-way and set a public hearing date for September 22, 2003.

Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12036**

- Advertising** CONSIDER A RESOLUTION ESTABLISHING A POLICY FOR ADVERTISING SPACE ON CITY VEHICLES
- Staff Report Fleet Superintendent Ed Robinson reported the city presently offers advertising space on Helena Area Transit Service buses but has previously not specified the types of advertising that would be permitted or restricted. Mr. Robinson recommended approval of the resolution.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Motion** **Commissioner Oitzinger moved to table a resolution establishing a policy for advertising space on city vehicles.** Commissioner Netschert seconded the motion. All voted aye, motion carried.
- Public Hearings**
Open Space Bond Funds PUBLIC HEARINGS:
A&B. CONSIDER EXPENDING \$140,000 IN OPEN SPACE BOND FUNDS FOR TOPSOIL FOR THE CENTENNIAL PARK AND AIRPORT SOCCER COMPLEX PROJECTS
- Staff Report Director of Parks and Recreation Randy Lilje reported the first was for an expenditure of \$140,000.00 for topsoil for the sports field projects. These projects include the Centennial Park Softball Complex, 15,000 cubic yards at 7.50/yd totaling \$112,500.00 and the Airport Soccer Complex, 5,000 cubic yards at 5.50/yd totaling \$27,500.00 the difference in the unit price is due to the difference in hauling from the source of the soil to the park. In both cases this is a very good price for topsoil in the Helena Valley.
- The second was to renew the contract with the Prickly Pear Land Trust to continue its services as the trails coordinator for the Helena Open Lands trails system.
- Mr. Lilje recommended approval for expending \$140,000.00 for topsoil at Centennial Park and the Airport Soccer Complex and further recommends expending \$16,815.00 to retain the Prickly Pear Land Trust for trails coordinator services.
- Public Testimony Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.
- Dawn North, 707 2nd Street**, explained she has been attending the OSBAC meetings as an interested party and encouraged the commission to approve the expenditure.
- There being no further persons wishing to address the commission, Mayor Smith closed the public hearing.
- Motion** **Commissioner Oitzinger moved approval to expend \$140,000.00 in Open Space Bond Funds for topsoil for the Centennial Park and Airport Soccer Complex projects.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.
- Pubic Testimony Mayor Smith 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, Mayor Smith closed the public hearing.

Motion Commissioner Oitzinger moved approval to expend \$16,815.00 in Open Space Bond Funds to continue the contract with the Prickly Pear Land Trust for services proved as the open lands trails coordinator. Commissioner Pouliot seconded the motion. All voted aye, motion carried. Parriman wasn't there.

Quail Run Subdivision C. CONSIDER A MAJOR SUBDIVISION TO BE KNOWN AS THE QUAIL RUN SUBDIVISION, CREATING 20 RESIDENTIAL TOWNHOUSE LOTS IN THE R-O DISTRICT, LOCATED IN THE SKELTON ADDITION. LEGALLY DESCRIBED AS LOTS 3 AND 4, BLOCK 3, SKELTON ADDITION, HELENA, MONTANA; GENERALLY LOCATED WEST OF ROAD RUNNER DRIVE AND SOUTH OF PTARMIGAN LANE. **[TABLED FROM AUGUST 18, 2003]**

Staff Report City Planner Kathy Macefield reported major subdivision/preliminary plat creating 20 townhouse lots from two platted lots in the R-O (Residential-Office) District. The applicant proposes to name the new subdivision Quail Run. A new internal street ("Quail Run") would be constructed 34 feet wide (back to back of curb) within a 60-foot wide right-of-way. An 8-inch sewer main and an 8-inch water main with on fire hydrant would be constructed in Quail Run to serve the new lots. The original Skelton Subdivision provided enough parkland of all of the residential lots in the subdivision so no parkland would be required. The applicant has requested to remove the existing 20-foot wide trail easement from the rear of proposed Lots 3-A through 7-A, and would establish a new 5-foot wide trail within a 10-foot wide easement between Lots 2-B and 3-A to connect to an easement between Lots 9-B and 10 in Block 3. An environmental assessment and traffic impact study have been submitted.

Ms. Macefield recommended approval of the major subdivision to be known as the Quail Run Subdivision.

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

Dave Stahly, 2687 Airport Road, stated he is here representing both the owner and the engineering firm. He gave some brief history on the lots and explained the current design being proposed.

Robin Layton, 17 Hummingbird Court, explained her concerns revolve around what was expected of the neighborhood and the privacy issues. Neighborhood discussions were held in order to find a solution, which would satisfy the neighborhood. They are asking the developers to create a buffer between them and the development in order to protect their privacy.

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

Motion Commissioner Netschert moved approval for a major subdivision/preliminary plat, to be known as the Quail Run Subdivision, creating 20 residential townhouse lots from two lots. Legally described as Lots 3 and 4, Block 3, Skelton Addition, Helena, Montana; generally located west of Road Runner Drive and south of Ptarmigan Lane; and to adopt the findings of fact and the conditions outlined above. Commissioner Parriman seconded the motion.

Discussion Mayor Smith asked if the applicant is in agreement with the stipulations created by the Planning Board? Mr. Stahly concurred. Mayor Smith asked if he is

receptive to the suggestions made by Ms. Layton? Mr. Stahly stated he would be willing to create a buffer screening between the properties and work with the neighborhood on their issues.

Vote All voted aye, motion carried.

Crestview Estates D. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW CONDOMINIUMS TO BE LOCATED IN THE R-1 (SINGLE-FAMILY LARGE LOT) DISTRICT, LEGALLY DESCRIBED AS LOTS 10 AND 11 OF THE CREST VIEW ESTATES PHASE II SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED SOUTH OF RHODE ISLAND STREET, SOUTHEAST OF BEATTIE STREET AND SOUTH OF THE PROPOSED CREST VIEW DRIVE EXTENSION

Staff Report City Planner Lucy Morell-Gengler stated when staff evaluated the proposal the evaluation was based on the assumption that the preliminary plat, including the variances, would be approved. The analysis was based on a street design that had been approved. The staff recommendation is changing because of the previous actions by the commission. Staff recommended tabling the issue until such time that a plat comes forward with a street design that has been approved.

Public Testimony Mayor Smith 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, Mayor Smith closed the public hearing.

Motion Commissioner Parriman moved to table a resolution granting a Conditional Use Permit (CUP) to allow residential condominiums to be located in an R-1 (Single-Family Residential) District, to the call of the city manager. Commissioner Oitzinger seconded the motion. Motion carried 4:1 with Commissioner Pouliot voting no. **Res. #12038**

Zone Change E. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM PLI (PUBLIC LANDS AND INSTITUTIONS) TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR 16.97 ACRES, LEGALLY DESCRIBED AS THAT PORTION OF THE SW ¼ OF SECTION 16, T10N, R3W, PMM, HELENA, MONTANA; GENERALLY LOCATED NORTH OF CUSTER AVENUE, EAST OF KELLEHER DRIVE AND WEST AND SOUTH OF THE HELENA VALLEY IRRIGATION CANAL

Staff Report City Planner Belinda Waters reported the property is currently vacant and undeveloped. Because Custer Avenue is designated as a state urban route and is controlled by the Montana Department of Transportation, access to Custer Avenue from the property must come from an approved approach permit. All new structures are required to conform to the Uniform Building Code and Uniform Fire Code.

The applicant is proposing to rezone a 16.97-acre tract from PLI (Public Lands & Institutions) to B-2 (General Commercial) in order to develop the property for commercial and retail uses. The property is generally located north of Custer Avenue, east of Kelleher Drive and west and south of the Helena Valley irrigation canal.

Ms. Waters recommended approval of the proposal.

Discussion Commissioner Pouliot asked if there was a landfill in this area at one time? Ms. Waters stated she believes this area is not sitting over landfill.

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

Sanna Yost, 4507 Porcupine Drive, stated she is a Senior Civil Engineer with Morrison-Maierle and she has been working with West States Development on the development of this site. Ms. Yost described the general theme for the western portion of this site as "dinner and a movie". Ms. Yost explained the layout of the site and recommended approval.

Rick Thompson, Chattanooga, Tennessee, explained they are proposing to build a state of the art 10-plex Cinema and explained what it would bring to the community.

Brad Tracy, 1219 Ladema Lane, Duncanville, Texas, entered a letter for the record of Rawlins's commitment and his personal commitment to this project, to the city of Helena and the city staff.

Patrick Racicot, 774 California Street, stated he is in support of this project for a couple of reasons. He explained the citizens of Helena are leaving the city to spend their money, which is not right. He had over 1200 signatures of people in support of the project that he entered onto the record.

Tom Tenneson, explained Rawlins Construction would be bringing Montana and local people in on this project.

Gary Burnham, 2205 York Road, stated the city/county landfill that use to be in that area is still owned by the city or the county. All the private property in that area has not been affected by that landfill.

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

Motion **Commissioner Netschert moved first passage of an ordinance for a zone change from PLI (Public Lands and Institutions) District to B-2 (General Commercial) District for approximately 16.97 acres. Said property is legally described as Tract 1 as shown on COS#3049004, located in the SW ¼ of Section 16, T10N, R3W, PMM, Helena, Montana; generally located north of Custer Avenue, east of Kelleher Drive and west and south of the Helena Valley irrigation canal.** Commissioner Parriman seconded the motion. **Ord. #2977**

Discussion Commissioner Oitzinger explained she would have preferred a tabling motion because it has not been discussed in depth.

Mayor Smith stated he echoed Commissioner Oitzinger's feelings on this matter and would like to have more discussion.

Commissioner Netschert explained he had some concerns in regard to the city service facilities located in that area; however, the issues at hand does not bear any weight on his decision.

Vote Motion carried 3:2 with Mayor Smith and Commissioner Oitzinger voting no.

Non-Commercial Signs F. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTIONS 11-23-2 AND 11-23-9 OF THE HELENA ZONING ORDINANCE FOR NON-COMMERCIAL SIGNS. **[TABLED FROM JULY 21, 2003]**

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 the 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. 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 changes under Section 11-23-2 and 11-23-9 of the Helena Zoning Ordinance as it relates to political signs.

Discussion

Commissioner Pouliot asked if there would continue to be rules about when political signs would be placed and removed? Ms. Waters explained there is no time frame on when they can be placed or removed.

Public Testimony

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

Michael Barros, stated he has been involved with the city attorney and other staff in this discussion. He explained a threatened lawsuit during the last campaign was one of the reasons the city examined this.

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

Motion

Commissioner Netschert moved approval of the first passage of an ordinance amending Sections 11-23-2 and 11-23-9 of the Helena Zoning Ordinance for non-commercial signs. Commissioner Parriman seconded the motion.

Discussion

Commissioner Oitzinger stated she is concerned about not having any temporal limits. She explained there would be signs during the political season and if there are no dates for removal they will become a visual problem. She explained she doesn't want to end up having a legal situation; however she feels that the commission needs more time to work on this issue.

Mayor Smith explained he shares Commissioner Oitzinger concerns about the duration of limits.

Substitute Motion

Commissioner Pouliot moved to table the first passage of an ordinance amending Sections 11-23-2 and 11-23-9 of the Helena Zoning Ordinance for non-commercial signs. Commissioner Parriman seconded the motion. All voted aye, motion carried. All voted aye, motion carried.

**Public
Communications**

PUBLIC COMMUNICATIONS
No report was given.

**Meetings of
Interest**

MEETINGS OF INTEREST
No report was given.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:35 p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

