

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**April 9, 2007**  
**6:00 P.M.**

**Time & Place** A regular City Commission meeting was held on Monday, April 9, 2007 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

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

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

**Minutes** The minutes of the regular City Commission meeting of March 26, 2007 were approved as submitted.

**Consent Agenda** CONSENT AGENDA:

- A. Claims
- B. Resolution declaring certain tangible personal property (Fire Department computer/monitor) to be surplus property  
**Resolution #19454**
- C. Resolution declaring certain tangible personal property (City Court Swintec Electric Typewriter, Model 8011, an Oki Microline 320 Turbo 9 Pin Printer, Model GE7000A, and an Oki Microline 395 24 Pin Printer, Model GE8286A) to be surplus property  
**Resolution #19455**
- D. Utility Bill Insert - Animal Control
- E. Utility Bill Insert - Original Governor's Mansion Restoration Fund
- F. Authorize staff to void outstanding checks more than one year old
- G. Right-of-Way dedication of a portion of Montana Avenue adjacent to Helena High School

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

**Public Comment** Mayor Smith asked for public comment, none was received.

**Motion** **Commissioner Peura moved approval of items A through G on the consent agenda.** Commissioner Throssell seconded the motion. All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Commissioner Peura reported the Downtown Visioning Partnership has finished their next-to-final draft of their vision statement and action plan for downtown. This document is available to the public for review, comment, and input; interested citizens can contact Commissioner Peura for a copy.

Commissioner Cartwright reported he sat on the first round interviews for the Neighborhood Transportation Coordinator position last

week. Commissioner Oitzinger commented she is happy staff is moving forward with filling the position.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY  
No report was given.

**Report of the City Manager**

REPORT OF THE CITY MANAGER  
No report was given.

**Report from the Helena Citizens Council**

REPORT FROM THE HELENA CITIZENS COUNCIL  
George McCauley reminded everyone to attend the quarterly district meetings, beginning on April 19, 2007; and reviewed the agenda. Mr. McCauley reported the HCC's application for a VISTA volunteer had been approved and the annual Help Helena Shine Day is scheduled for September 23, 2007.

**Final Plat- Irving Minor Subdivision**

CONSIDER FINAL PLAT APPROVAL FOR IRVING MINOR SUBDIVISION CREATING TWO LOTS IN THE R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT, GENERALLY LOCATED SOUTH OF CLARKE STREET AND EAST OF MONROE AVENUE.

Staff Report

City Planner Kathy Macefield reported on October 17, 2005 the City Commission gave preliminary plat approval for a two-lot minor subdivision in the R-2 (Single-Family Residential) District, generally located south of Clarke Street and east of Monroe Avenue, subject to 6 conditions. These conditions have been satisfactorily completed as shown on the attached information. Lot 1 measures 71.02 feet wide and contains 10,667 square feet; Lot 2 measures 71.03 feet wide and contains 10,689 square feet. Taxes are paid and current.

Ms. Macefield recommended approval of the final plat and noted the lot is served by city infrastructure, and would be an efficient use of land, infrastructure, energy and other resources, and is generally consistent with the Helena Growth Policy.

Public comment

Mayor Smith called for public comment.  
Greg Wirth, Northland Engineering & Surveying, 2969 Airport Road, representing the applicant; spoke in support of the final plat.

Motion

**Commissioner Peura moved approval for the final plat for Irving Minor Subdivision creating two lots in the R-2 (Single-Family Residential) District, generally located south of Clarke Street and east of Monroe Avenue.** Commissioner Throssell seconded the motion. All voted aye, motion carried.

**Building Codes**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 3 OF THE HELENA CITY CODE AND ADOPTING THE 2006 EDITIONS OF: THE INTERNATIONAL BUILDING CODE; THE INTERNATIONAL ENERGY CONSERVATION CODE; THE INTERNATIONAL RESIDENTIAL CODE; AND THE INTERNATIONAL EXISTING BUILDING CODE.

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 4 OF TITLE 3 AND ADOPTING THE 2006 EDITION OF THE INTERNATIONAL MECHANICAL CODE.

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 5 OF TITLE 3 AND ADOPTING THE 2006 EDITION OF THE INTERNATIONAL FUEL GAS CODE.

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 7 OF TITLE 3 AND ADOPTING THE 2006 EDITION OF THE UNIFORM PLUMBING CODE.

Staff Report

Chief Building Official Brandt Salo reported on a three-year interval, the adoption of new editions of the 'family' of International Codes Council (ICC) building codes with revisions and amendments are mandated by the state Department of Labor and Industry Building Codes Division in an effort to keep the codes current with available building technology or to address recurrent enforcement issues. As a 'certified' local municipal jurisdiction, staff must and therefore proposes, that the city approve first passage of the proposed ordinances adopting the most recent editions and any miscellaneous revisions and amendments to the above listed codes.

Mr. Salo recommended approval of the ordinances as it would fulfill our responsibility as a certified jurisdiction to adopt building codes in like manner as and concurrent with those adopted by the state of Montana, Department of Labor and Industry, Building Codes Bureau. Approval also continues the use of a nationally recognized and 'uniform' family of building codes authored by the International Code Council, Inc. and affords access to the most current building and safety technology for area residents, builders and designers.

Public comment

Mayor Smith called for public comment, none was received.

Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending Chapter 2 of Title 3 of the Helena city code and adopting the 2006 editions of: the International Building Code; the International Energy Conservation Code; the International Residential Code; and the International Existing Building Code and set a public hearing date of May 21, 2007.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Ordinance #3081**

Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending Chapter 4 of Title 3 of the Helena City Code and adopting the 2006 edition of the International Mechanical Code and set a public hearing date of May 21, 2007.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Ordinance #3082**

Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending Chapter 5 of Title 3 of the Helena City Code and adopting the 2006 edition of the International Fuel Gas Code and set a public hearing date of May 21, 2007.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Ordinance #3083**

Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending Chapter 7 of Title 3 of the Helena City Code and adopting the 2006 edition of the Uniform Plumbing Code and set a public hearing date of May 21, 2007.** Commissioner

Throssell seconded the motion. All voted aye, motion carried.

**Ordinance #3084**

**Service Area** CONSIDER EXPANSION OF THE CITY'S WATER AND SEWER  
**Expansion-Reber PUD** SERVICE AREA TO SERVE BLOCKS 12, 13, 14, 15, 16 & 17 OF THE REBER PUD.

**Westside water tank** CONSIDER A WATER TANK COST SHARING AGREEMENT BETWEEN THE CITY OF HELENA AND BENCHMARK DEVELOPMENT, LLC TO CONSTRUCT A WATER TANK LOCATED ON BLOCKS 12-17 IN THE REBER PUD.

**Public Hearings** PUBLIC HEARINGS:  
A. CONSIDER APPROVAL OF THE INSTALLATION OF A RESERVOIR/WATER TANK FOR POTABLE WATER STORAGE UP TO 500,000 GALLONS TO BE LOCATED ON A PARCEL OF LAND GENERALLY LOCATED SOUTH OF GARY COOPER STREET AND MOUNT HELENA DRIVE.

**Staff Report** Community Development Director Sharon Haugen stated the Reber PUD was reviewed and approved by the City Commission in 1978, and the final plat was filed in 1980. The plat established a total of 217 lots; a majority of those single-family lots have been built in the north phase of the subdivision. The south phase of the Reber Subdivision has not been developed. When the PUD was established, the density was established on the final plat, instead of using zoning. There is a vested right to the amount of units allowed in the subdivision.

When the Commission granted approval of the subdivision they left the water and sewer improvements at the discretion of the city engineer. According to city records, once the lots were developed south of LeGrande Cannon Boulevard, installation of a water tank was required to provide water supply. This subdivision pre-dated the city's water and sewer service area ordinance. Section 11-2-10(B) of the Helena Zoning Ordinance identifies water tanks as an essential public/private facility that require an advertised public hearing, and City Commission action to authorize construction of such facilities. The construction of essential public or private facilities is allowed in all zoning districts. Therefore, the construction of the water tank is not subject to the conditional use permit process, procedures or requirements.

**Commission comment** Commissioner Throssell asked for the status of ownership of the property to the south, north, east and west of the Reber property. Director Haugen stated south and east is Mt. Helena Park and the area to the north and west is private property.

City Attorney Nielsen explained the Reber PUD was created under the Montana Subdivision and Platting Act. Under that act, the governing body looks for access to the property, and water and sewer. Approval of the subdivision in 1978 was a confirmation by the city that water and sewer would be available through the methods set forth in the application for the subdivision or the conditions imposed on the subdivision. This particular subdivision's condition for water and sewer was that it would be approved by the Public Works Director. City Attorney Nielsen stated in his opinion, this subdivision has the legal right to have water and sewer made available to it, not at no cost to the city.

Attorney Nielsen added agenda item #13 relating to enlargement of the water and sewer service area would provide technical compliance.

Commission comment

Commissioner Cartwright asked if the developer were to change the density of the subdivision, would it require Commission approval? City Attorney Nielsen explained since there is no underlying zoning for this property, as the density was placed on the plat and is subject to private restrictive covenants, it would take approval of the other property owners in the subdivision, both north and south, as well as the City Commission to revise the density.

Public Works Director John Rundquist reiterated Benchmark Development, LLC, has proposed to complete the development of Blocks 12-17 in the Reber PUD. The property is not presently within the City's water and sewer service boundary and cannot be served from existing city water mains due to the ground elevation and lack of water service pressure.

In recent years, the city has been studying options for either improvement of the nearby Forest Estates water pump station or installation of a water reservoir in the area to improve fire flows and distribution pressure. The 2005 Water Facilities Plan Update identified that a new pressure zone may be created to serve properties above and adjacent to LeGrande Cannon Boulevard with a reservoir sized to at least 500,000 gallons. For current needs, replacing the Forest Estates Pump Station would be a lower cost option than providing a new reservoir and this work has been estimated at about \$341,600. However, pump stations without a companion reservoir are less desirable due to maintenance and reliability. If a reservoir were constructed then the existing pump station would be adequate for maintaining water level in the reservoir with only minor modifications.

The storage needs for the undeveloped Reber PUD have been analyzed to be about 320,000 gallons. For the long term, it would be advantageous to have the reservoir sized to 500,000 gallons. Staff recommends that the City Commission consider participation in over sizing the reservoir to meet the larger volume. Given that the Forest Estates Pump Station is in need of replacement now, the city's participation can be rationalized to be the cost of replacement of the Forest Estates Pump Station (\$341,600). The developer's estimate of total project cost is \$1,554,000.

Director Rundquist recommended the city participate in the cost of construction of a new westside reservoir in the amount of \$341,600, as water storage will be sized for present and future water service needs to properties above and adjacent to LeGrande Cannon Boulevard in accordance with the 2005 Water Facilities Plan Update.

Commission comment

Commissioner Peura referred to the options used to assign the cost of the tank and asked for more information on the city usage cost. Director Rundquist stated Benchmark Development came up with percentage split on the parties use of the reservoir, and stated the developer could provide additional information. Commissioner Peura stated the developer would be eligible for rebates because the infrastructure they are installing might be eligible for use by future developments. If city pays a percentage of the cost, would the city also receive a rebate? Director Rundquist stated negotiation would need to take place, and the rebate would be a Commission action item. City

Manager Burton stated at this point, the approach has been to not pursue rebates from a city perspective. He noted the study by Anderson Montgomery recommended installation of a water tank on the westside. It is staff's view that the city would be solving existing water pressure and fire flow problems with this investment. Commissioner Peura referred to the study that suggested this site and asked why it identified a location that was not adjacent to the Reber PUD and if there were any other locations identified? Director Rundquist explained the study targeted a specific range of elevation. Property with this elevation near the Reber Subdivision is in Mt. Helena Park. There is private property west of the Reber PUD with the correct elevation, owned by Mr. Bill White. The problem with that site, from a developer's prospective, is there would be a lot of underground main to construct. The advantages of the proposed site are that less underground main would need to be installed and it would also fix Forest Estates Subdivision's pump station problems. Commissioner Peura asked if elevation is the primary reason for choosing a tank site, and if a site near to and above the Reber PUD at a similar elevation were identified, could it solve the same problems? Director Rundquist stated yes.

Commissioner Cartwright reiterated this proposal started with a developer with already platted land, who is willing to install the facilities necessary to serve that development. Because of this there should not be rebates because the improvements would serve his development. Regarding the portion of the proposal that would serve more than the Reber property, it is necessary to solve existing fire flow and water pressure problems. In this case, anybody who wishes to develop currently platted, but not developed land, would have to provide their own water so the issue of rebates shouldn't arise but neither should existing platted, but not developed land expect to be able to tap into the water system at no cost because this is all for existing service. Commissioners Cartwright asked if his statements are a correct interpretation of the situation? City Manager Burton stated he believes staff and Commissioner Cartwright are saying similar things. From a city staff perspective, this is an opportunity to improve conditions in the area, instead of spending the same amount of money to fix the lift station. The city would end up with a more reliable water supply, better pressure and fire flows. He noted staff can't predict what will happen in the future related to development in the area. Commissioner Cartwright stated there are a number of lots east and west of the Reber PUD and proposed tank that can't receive decent water pressure. With the installation of the tank they will be developable. He asked if the proposed tank sized to accommodate future developments or only the Reber and Forest Estates Subdivisions? City Manager Burton stated the lots next to Forest Estates Subdivision, which are already in the city, need to be served by city water as well. But, the primary interests from a city staff perspective are the areas that are already developed. Beyond that, the developer has sized the tank to serve their subdivision. He noted there are not a lot of vacant lots in the area that are in the city at the moment. Commissioner Cartwright stated it seems potentially unfair that there is a developer that is willing to pay to provide water to the area, and there may be smaller developers that will get a free ride on his nickel. Manager Burton stated that is why a rebate was written into the cost sharing agreement.

Commissioner Throssell stated this project would add 130,000-150,000 gallon capacity; if we are building for the future, regardless of

the rebate issue, is this amount going to be acceptable? Director Rundquist stated he believes the amount will be adequate. The Water Master Plan called for either a 500,000-gallon tank or 1,000,000-gallon tank. This tank could also serve the White property with some relatively inexpensive upgrades to the pump station. If property were developed to the west of the White property then there may be a need for a larger tank. Commissioner Throssell asked if this site is sufficient to serve the Overlook Subdivision and Kessler area? Director Rundquist stated the city's major transmission line comes into town in that area, and supplies the Malben pressure zone below LeGrande Cannon. The proposed tank would serve another pressure zone above LeGrande Cannon and would not need to serve the Overlook Subdivision and Kessler area.

Commissioner Cartwright commented since this tank only serves the area south of LeGrande Cannon Boulevard, the size of the tank might be adequate as future Commissions may not want to develop additional property to the south. He noted he does not feel comfortable developing any higher up the mountain.

Commissioner Peura asked for the size of the Malben tank? Director Rundquist stated plus or minus 4 million gallons; the Nob Hill tank is 4 million gallons; and the Woolsten Reservoir is about 1 million gallons.

#### Public Testimony

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

Byron Stahly, Stahly Engineering, 3530 Centennial Drive; gave a power point presentation including positives of the proposal, show of support from Forest Estates Subdivision, site landscaping and re-vegetation, tree planting and site maintenance, a conceptual drawing of the site, and views of the site from around the city. He explained the cost sharing formula as an estimated 36%-64% split with the 34% representing the existing city lots that would benefit versus the new developments in the Reber PUD. The city had "x" amount of dollars set aside, at least cost, to improve the poor service area at Forest Estates Subdivision. That dollar amount was \$341,000. The developer agreed to that dollar amount along with the ability to collect a rebate, as the city wouldn't be contributing the actual cost of the 34% share. Mr. Stahly also addressed the capacity of the water tank.

Tom Cladouhos, 2009 University; spoke in support of the water tank, and stated he is not against the development, but is concerned with the time period the subdivision was developed in. He wanted to make sure the portion of LeGrande Cannon between Foot Hills Court and Silverette would be paved, and expressed concern over re-vegetation and excess dust in the area. He also asked if the identified arteries and access are sufficient to handle the new development?

Tom Dixon, 1601 Stuart; spoke in opposition to the proposed water tank and development of the Reber PUD.

Gordon Thompson, Jackson Street; asked who pays for city services associated with new developments.

Ken Eden, 1030 LeGrande Cannon Boulevard; expressed concern for trails in the area.

John Satrie, 2028 LeGrande Cannon Boulevard; spoke of concerns with regard to safety on LeGrande Cannon Boulevard.

Chere Justo, MT Preservation Alliance and founder of Friends of Mt. Helena; spoke of LeGrande Cannon Boulevard's recreational importance.

George McCauley, 926 5<sup>th</sup> Avenue; asked the city to control growth in Helena related to quality of life issues.

Bruce Hayes, 1021 North Jackson; asked if the developer would be willing to fund the water tank if there were less homes planned to be built in the subdivision.

Buck McClaurin, 1555 Charlie Russell; asked if the improvements to the road would be an SID and also expressed concern over traffic at Henderson and LeGrande Cannon.

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

#### Discussion

Commissioner Peura asked for more information on the development standards for the Reber PUD. Director Haugen explained the lots in Blocks 12, 13, 14, 15, 16 and 17 have not been subdivided. It was not subdivided further into lots when the final plat was approved. If the developer wants to subdivide into single-family lots, the developer will need to go through the subdivision process; the multi-family lots can be developed without further subdivision of the property. City Attorney Nielsen explained there could be no conditions regarding the development tied to approval of the water tank. Commissioner Peura stated he would like to understand the standards of the PUD before he allows the water tank that would let the development happen. City Manager Burton stated it is staff's intention that the internal infrastructure of the PUD meets existing city standards. Also, the internal street grade will comply with city standards.

Commissioner Cartwright referred to the condition that the tank must meet the approval of the city engineer and asked what would happen if the Commission decided the proposed site isn't appropriate? Manager Burton stated the city is obligated in good faith to resolve the water and sewer issues in the Forest Estates Subdivision. If this site is not the right spot, the city would need to facilitate the right spot. Commissioner Cartwright asked how the pipeline would get from the tank down to Legrande Cannon Boulevard? Director Rundquist showed the proposed route on a map. Commissioner Cartwright commended the developer for their screening and re-vegetation plan. He commented there have been private conversations about the city or Prickly Pear Land Trust owning the entire lot the tank would be built on. Commissioner Cartwright recommended tabling the proposal to work out details with the lot and configuration.

Commissioner Throssell asked for confirmation that this tank would primarily serve properties south of LeGrande Cannon? Director Rundquist concurred. Commissioner Throssell asked where the money would come from to pay for the project? Manager Burton stated two sources; the city water utility, which would require discussion in this year's budget. Second, if a tank is sited on the westside, it would probably negate the city's need to retain ownership of the Crane property on Mount Helena, which was purchased to help water issues in Reeder's Village Subdivision. The city water utility could sell the Crane property to the city general to be set aside as Mt. Helena City Park. He noted the city has the obligation to surplus the property if it is not going to be used for water utility purposes. Manager Burton reiterated there would need to be a discussion between the Parks Department, a general funded agency, and the Water Department.

Commissioner Throssell stated as he looks back at what his predecessors did in 1978 and 1980, he warned new developments that

he is concerned that the city has approved subdivisions that are ten to fifteen years out and this problem could happen again in the future. This is private property and he has no problem with it being developed. But there is a problem with city ratepayers paying to pump water uphill to several hundred thousand dollar homes. If homeowners want to live above the blue line, and live above what nature and gravity can provide, he is reluctant to approve an increase in water rates to the general populous of Helena so some people can live in that area. He stated he would support expansion of the water and sewer district and the proposed location of the water tank. He recommended creating a special district to pay for the water improvements.

Commissioner Peura recommended tabling the cost sharing agreement and installation of the water tank for two weeks in order for staff to provide more information to the Commission. He noted he would support approval of the enlargement of the service area. Mayor Smith asked if city could require the Reber PUD to build out to current city standards? City Manager Burton stated that is his understanding; he has conveyed this to the developer and city staff. Mayor Smith asked how staff would mitigate existing ratepayers having to subsidize new development? Manager Burton stated the Commission set a policy stating if you are going to receive city water and sewer services then at some point you will be required to annex into the city. At that point you would pay for services such as police, parks, and fire with general taxes. On a normal straightforward subdivision, the developer is required to install city sewer, sidewalks, roads, and stormwater to city standards as a condition of approval for the final plat. The developer pays for the primary infrastructure. The City and County Commissions have approved a study on impact fees, which would cover the cost beyond the city's ability to cover the development cost within a particular piece of property. Mayor Smith asked if existing ratepayers would pay any of the cost to install the tank, water mains, sidewalks, streets, curbs, and gutters? Manager Burton explained existing ratepayers do not pay for the installation, and noted at the time the new homeowners are using services, they are being charged for it. Mayor Smith asked if the owner of the Reber PUD was present? Director Haugen stated no, but his representative was available for questions.

**Motion** Commissioner Cartwright moved to conditionally approve the application to enlarge the water and sewer service area to Blocks 12, 13, 14, 15, 16 & 17 of the Reber PUD contingent upon the approval of the infrastructure plan by the Public Works Department and the construction of a water reservoir, pipes and infrastructure. Commissioner Peura seconded the motion. All voted aye, motion carried.

**Motion** Commissioner Peura moved to table a cost sharing agreement between the City of Helena and Benchmark Development, LLC to construct a 500,000-gallon water reservoir, piping and appurtenances to the April 23, 2007 Commission Meeting. Commissioner Cartwright seconded the motion.

**Discussion** Commissioner Peura requested the developer work with the city Parks Department and the Prickly Pear Land Trust to address the location of the tank and see if there may be a better location related to visibility and view shed. He asked staff to update the Commission on the

development standards of the PUD. He also asked staff to address the concept of the cost sharing being paid for by an SID.

Commissioner Cartwright asked if staff determines the proposed location as the best location, to explore if the city could acquire the entire tract with an equitable trade or payment to the developer.

Mayor Smith asked if two weeks would be sufficient time for staff to collect the requested information for the Commission? City Manager Burton stated two weeks should provide adequate time.

Marc Parriman, 263 Springfield Drive, applicant; stated he understands the questions and a two week tabling should be okay but will be a hardship because of timeframes; the property is under contract with closing dates. He noted there are also non-refundable earnest monies involved, along with funding toward the design with Stahly Engineering. He expressed concern over the desire to change the tank site as he has worked with Andy Bauer of the Prickly Pear Land Trust on the issue, as well as city staff. He noted a professional engineering company identified the proposed site as the preferred site. He commented that two weeks is not long enough to identify an alternate site. Mr. Parriman spoke in support of the proposal from an equitable standpoint and urged the Commission not to table the agreement.

Commissioner Oitzinger stated a couple of weeks to cogitate would be nice, but she does not believe that is a fair basis to table the proposal. She noted she was persuaded by Mr. Parriman's comments that postponing the decision to re-site the tank would be very problematic. Commissioner Oitzinger stated current development standards will be applied to the Reber PUD so the Commissioner Peura's request for an update on the subject seems superfluous. She also noted she would not support an SID to fund the project. She indicated she would vote against the motion to table.

Commissioner Throssell stated he would support the motion to table for the SID reason. Mayor Smith indicated he would not support the motion as he resists the idea of an SID and supports the proposal.

**Vote**

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

**Motion**

**Commissioner Peura moved to table the installation of a reservoir/water tank for potable water storage up to 500,000 gallons to be located on a parcel of land shown as Tract A-1 as a portion of a tract recorded in the book of Deeds M17, Page 1193 and containing 2.11 acres in Helena, Lewis and Clark County, Montana; generally located south of Gary Cooper Street and Mount Helena Drive to April 23, 2007.** Commissioner Cartwright seconded the motion. Motion carried 3-2, with Mayor Smith and Commissioner Oitzinger voting no.

B. CONSIDER A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN APPLICATION TO BE SUBMITTED ON BEHALF OF THE STUDENT ASSISTANCE FOUNDATION, INC. FOR A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ECONOMIC DEVELOPMENT GRANT.

Director Haugen reported staff received notice from Sheli Jacoby at the Montana Business Assistance Connection (MBAC) that the

Student Assistance Foundation has decided to withdraw their application request for a CDBG Economic Development Grant.

C. CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 19412, WHICH CREATED SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 214 ALONG THE STREETS AND AVENUES IN PARTS OF THE NORTHGATE MEADOWS SUBDIVISION TO INCLUDE PHASE II.

Staff Report

Administrative Services Director Tim Magee reported on September 11, 2006, the City Commission passed Resolution No. 19412 which created Special Improvement Lighting District No. 214 in the Northgate Meadows Subdivision. A petition has been signed and filed by Jerry Hamlin requesting a light district be created in Phase II of the Northgate Meadows Subdivision. It appears to be in the best interest of the City of Helena and the affected property owners to amend Resolution No. 19412 to encompass Lots 1-89 in SLD No. 214.

The proposed facilities will consist of ten additional units, with underground wiring, fiberglass or metal poles for 16-foot mounting heights, and glass enclosed cut-off luminaries with 100-watt high-pressure sodium vapor lamps. The estimated cost of maintenance, electrical energy, and administration for the first year is \$3,160 with the estimated cost being \$.00943 per square foot of property owned, said amount to be paid by the property owners. This amount includes an additional assessment to be charged by the city to establish a cash reserve and recover any costs of the district incurred prior to receipt of the first assessments. Thereafter, the annual assessment will be approximately one-half of the first year's assessment.

Director Magee recommended approval of the resolution and noted ten lights would be installed in Phase II of the Northgate Meadows Subdivision.

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 Cartwright moved approval of a resolution amending Resolution No. 19412 to include Phase II in Special Improvement Lighting District No. 214.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19456**

D. CONSIDER A RESOLUTION CREATING SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 215 ALONG THE STREETS AND AVENUES IN PARTS OF THE SUSSEX PARK SUBDIVISION.

Staff Report

Director Magee reported a petition has been signed and filed by Ron Bartsch requesting a light district be created in the Sussex Park Subdivision.

The proposed facilities will consist of nine units, with underground wiring, fiberglass or metal poles for 14-foot mounting heights, and glass enclosed acorn luminaries with 100-watt high-pressure sodium vapor lamps. The estimated cost of maintenance, electrical energy, and administration for the first year is \$5,014 with the

estimated cost being \$.0171 per square foot of property owned, said amount to be paid by the property owners. This amount includes an additional assessment to be charged by the city to establish a cash reserve and recover any costs of the district incurred prior to receipt of the first assessments. Thereafter, the annual assessment will be approximately one-half of the first year's assessment.

Director Magee recommended approval of the resolution to create SLD No. 215, as nine lights will be installed in the Sussex Park Subdivision.

Discussion

Commissioner Cartwright stated he would oppose this SLD, as lighting districts should be charged on frontage rather than the square footage of the property.

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 Oitzinger moved approval of a resolution to create Special Improvement Lighting District No. 215.** Commissioner Peura seconded the motion. Motion carried 3-2, with Commissioners Cartwright and Throssell voting no. **Resolution #19457**

E. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A PARKING LOT WITH 7 SPACES IN A R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT; GENERALLY LOCATED ON THE NORTHWEST CORNER OF 14TH STREET AND N. JACKSON STREET.

Staff Report

Zoning Officer Elroy Golemon reported on March 13, 2007 the Helena Zoning Commission recommended denial (4:1 vote) for a Resolution granting a CUP and variance to allow a parking lot for not more than 7 spaces in a R-3 District for property legally described as Lot 1 Block 575, Central Addition Number 2 Helena, Montana; generally located on the northwest corner of 14th Street and North Jackson Street. The owner of the subject lot owns adjacent lots to the west that are zoned B-2 (General Commercial) District. According to the applicant, the CUP would provide off street parking only for Empire Office Machines employees, free up additional parking on North Last Chance Gulch for customers, and end conflicts over daytime parking in the residential neighborhood on North Jackson Street. Staff noted the proposal generally conformed to the objectives of the 2001 Growth Policy and recommended approval for the CUP and accompanying lot area and width variances subject to conditions listed in staff report. This proposal also includes a request for a variance from the minimum lot area of 7,000 square feet to 5,000 square feet and from the minimum lot width requirements of 70 feet to 50 feet for a non-residential use in this zoning district as identified in Section 11-6-3 (B) of the Helena Zoning Ordinance.

Mr. Goleman recommended approval of the proposal as it would allow for development of a vacant property. It is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and the impacts on surrounding land uses would be mitigated with landscaping and screening.

Public Testimony

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

Jerry Olsen, Empire Office Machines, 821 N. Last Chance Gulch; urged the Commission to support the CUP.

Jennifer Winterstein, 816 Logan Street; spoke in opposition to the CUP.

Nancy Cobble, 72 Ruby Mountain Road; spoke against the CUP.

Curt Syness, 812 North Jackson; spoke against the CUP.

Chere Justo; MT Preservation Alliance; spoke in opposition to the CUP.

George McCauley, 926 5<sup>th</sup> Avenue; spoke against the parking lot for quality of life issues.

Pete Brown, 423 5<sup>th</sup> Avenue; spoke in opposition to the CUP.

Bruce Hayes, 1021 North Jackson; spoke in opposition to the parking lot.

Monte Nick, 714 North Jackson; spoke against the CUP.

Melissa Kaiser-Syness, 812 North Jackson; spoke in opposition to the parking lot.

Will Selser, 728 North Warren; spoke in opposition to the CUP.

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

Discussion

City Attorney Nielsen reminded the Commission of the criteria for reviewing a CUP. Commissioner Peura indicated he would not vote in support of the CUP because he believes the proposal is not in accordance with the city's growth policy as it would encroach into a residential area, and is counter to the goals and objectives of city zoning that seeks to consider and allow protection of the character of property. He expressed concern that by encroaching into a residential neighborhood, this CUP would substantially reduce or impair the full enjoyment of the surrounding properties. Commissioner Cartwright stated he would be more inclined to support the CUP if it did not include the variance.

Motion

**Commissioner Peura moved denial for a resolution granting a Conditional Use Permit (CUP) and lot area and width variance to allow a parking lot with no more than 7 spaces in a R-3 (Medium Density Residential) District for property legally described in the staff report.** Commissioner Cartwright seconded the motion.

Comment

Commissioner Oitzinger indicated she would vote to deny the CUP based on it being counter to infill requirements of the growth policy.

Vote

Motion carried 4-1, with Mayor Smith voting no.

F. CONSIDER A RESOLUTION GRANTING TWO SIMULTANEOUS CONDITIONAL USE PERMITS (CUPS) TO ALLOW CONSTRUCTION OF 3 RESIDENTIAL CONDOMINIUMS IN THE B-2 DISTRICT THAT EXCEED THE HEIGHT OF THE ZONING DISTRICT FOR PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF FRONT AND 13TH STREETS.

Staff Report

City Planner Kathy Macefield reported on March 13, 2007 the Helena Zoning Commission unanimously (5:0 vote) recommended

approval for a resolution granting two simultaneous Conditional Use Permits (CUPs) in the B-2 (General Commercial) District, for property legally described as Lot 23B, Chessman and Davis Placer, Helena, Montana; generally located at the southeast corner of Front and 13th Streets, to allow:

1) Construction of 3 residential condominiums. Six ground-level parking spaces will be provided inside the new building for the residences; two angled on-street parking spaces would be located on Front Street adjacent to the property. Approximately 300 square feet of retail space, such as a gallery, would be located on the ground floor in the front of the building; 2 parking spaces would be required for retail sales while a gallery would require one space.

2) The new 4-story condominium to exceed the 34-foot height limitation of the B-2 District so it could be constructed up to 50-foot high. When the application was originally submitted, the proposal was to allow the building to be up to 60 feet high. The applicant initially did not calculate the building height according to the Zoning Ordinance definition. When the lot grade difference is less than 10 feet, which is this case with this property, building height is measured from the high side of the lot to the mid-point of the roof. According to the submitted building elevation, the proposed building height would be 48'9" when measured to the top of the east parapet wall so 50 feet would be sufficient for the proposed design.

Ms. Macefield recommended approval of the CUP as the proposals represent infill development, and efficient use of energy, infrastructure and resources and are consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and compatible with the surrounding land uses.

Commission comment                      Commissioner Cartwright asked for the height of the distillery across the street? Ms. Macefield indicated the applicant would provide that information.

Public Testimony                              Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the Commission.  
George McCauley, 926 5<sup>th</sup> Avenue; stated the Commission approves too many variances.  
Blair Williams; 740 Front Street; stated the distillery across the street is 65-70 feet tall and urged the Commission to approve the CUP.  
Tim Mildrim, Schlenker & McKittrick Architects; spoke in support of the CUP.  
Mike Hughes, 809 Harrison Avenue; spoke in support of the CUP.  
Will Selser, 728 North Warren; spoke in support of the CUP.  
There being no persons wishing to address the Commission, Mayor Smith closed the public hearing.

Commission comment                      Commissioner Cartwright stated a CUP is not a variance, it is a use that is allowed within a district subject to Commission approval.

Motion

**Commissioner Cartwright moved approval for a resolution granting two simultaneous Conditional Use Permits (CUPs) in the B-2 (General Commercial) District, for property legally described in the staff report, to allow:**

**1) Construction of 3 residential condominiums.**

**2) The new 4-story condominium to exceed the 34-foot height limitation of the B-2 District so it could be constructed up to 50-feet high.**

Commissioner Throssell seconded the motion. All voted aye, motion carried. **Resolution #19458**

G. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359, AND AMENDING THE OFFICIAL ZONING MAP THEREOF IN REFERENCE TO PROPERTIES DESCRIBED AS 31 EAST LYNDAL AND 1030 JACKSON STREET, FOR A ZONE CHANGE FROM R-O DISTRICT TO B-2 DISTRICT.

Staff Report

Ms. Macefield reported on March 22, 2007 the Helena Zoning Commission recommended denial (3:1 vote) for a zone change from a R-O (Residential-Office) District to a B-2 (General Commercial) District for Lots 20-28, Block 37, Central Addition, Helena, Montana; generally located south of Lyndale Avenue and east of Last Chance Gulch with property addresses of 31 East Lyndale and 1030 Jackson Street. Staff had recommended approval for this zone change.

The applicant's representative withdrew the accompanying application for a zone change from R-3 (Medium-Density Residential) to a B-2 District for 1032 Logan Street at the March 22, 2007 public hearing.

Montana law (76-2-305 MCA) states if written protest is submitted by the owners of 25% or more of those lots located 150 feet from a lot included in proposed zone change, then a 2/3 vote of the governing body is required to over-ride those objections. As of Wednesday, March 26, 2007, twelve opposing letters, and a petition stating opposition containing 46 signatures from area residents had been submitted. However, not all of the letters and signatures on the petitions are from landowners located 150 feet from the property.

Forty-nine lots are located within 150 feet of the proposed zone change. Owners of eleven of those lots have submitted written protests. This means that 22.4% of the qualifying property owners have protested. Therefore, a super-majority of the five member City Commission is not needed to vote in favor of the proposed zone change to over-ride the written protests.

Ms. Macefield stated this proposal could represent infill development, and efficient use of energy, infrastructure and resources. Staff concluded the proposed zone change is consistent with some portions of the 2001 Helena Growth Policy and the Montana zone change criteria.

Public Testimony

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

Glen Blalock, owner of B & B Muffler, 1023 North Main; urged the Commission to approve the zone change.

Tim Bury, representing the applicant and new owner, Ms. Darla Agatar; gave a power point presentation on the proposal and spoke in support of the zone change.

Tricia Hayes, 1021 North Jackson; spoke in opposition to the zone change.

William Spilker, 20 Carriage Lane; spoke in support of the zone change.

Molly Plummer, 1001 North Jackson; urged the Commission to deny the proposed ordinance.

Janet Nick, 7014 North Jackson; spoke against the zone change.

Bruce Hayes, 1021 North Jackson; spoke in opposition to the proposed ordinance.

Jennifer Wintersteen, 816 Logan Street; spoke against the zone change.

Betty Pollack, 1025 Logan; spoke opposition to the zone change.

Nancy Cobble, 72 Ruby Mountain Road, MT City; spoke against the proposed ordinance.

Gordon Thompson, 1027 North Jackson, urged the Commission to keep the property residential.

Melissa Kaiser-Syness, 812 North Jackson, spoke against the zone change.

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

**Commission comment**

Commissioner Cartwright stated based on the possibility of increased traffic congestion he would not support the zone change. Commissioner Peura stated he also is concerned that the zone change would create traffic congestion and ruin the residential core and existing property values. He indicated he would not support the zone change.

**Motion**

**Commissioner Peura moved denial for the adoption of an ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map for a zone change from a R-O (Residential-Office) District to a B-2 (General Commercial) District for property located at 31 East Lyndale and 1030 Jackson Street, as legally described in the staff report.** Commissioner Throssell seconded the motion. All voted aye, motion carried.

**Public Communications**

**PUBLIC COMMUNICATIONS**

George McCauley, 926 5<sup>th</sup> Avenue; commended the Commission and city staff for providing green space to the citizens of Helena.

**Meetings of Interest**

**MEETINGS OF INTEREST**

The next Administrative Meeting is Wednesday, April 18, 2007 and the next Commission Meeting is Monday, April 23, 2007. Mayor Smith reminded citizens to attend the HCC District Meetings.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 10:30p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission