

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
JULY 9, 2001
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, July 9, 2001, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Ken Morrison indicated for the record that Commissioners Netschert, Groepper, Smith and Oitzinger were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Cathy Beck-Jenkins were present.
HCC representative was David Samson.

Pledge of Allegiance Mayor Morrison 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 June 4 and June 18, 2001 were approved as submitted.

Introduction And Confirmation FIREFIGHTER JASON RIGSBY
Fire Chief Steve Larson introduced firefighter Jason Rigsby and his family. Mr. Rigsby has successfully completed his one-year probation period and Fire Chief Larson asked the Commission to approve Mr. Rigsby as a confirmed firefighter for the City of Helena.

Motion Commissioner Groepper moved approval of the confirmation of Jason Rigsby as a confirmed firefighter for the City of Helena, Montana.
Commissioner Netschert seconded the motion. All voted aye, motion carried.

Preliminary Budget PRELIMINARY BUDGET PRESENTATION
City Manager Tim Burton presented the preliminary budget for fiscal year 2001-2002. (copy attached)

Discussion Commissioner Groepper asked what was included in the budget for sidewalk programs.
Mr. Burton replied approximately \$250,000 was marked through the CTEP program with the appropriate match budgeted in the 440 Capital Fund. He noted they are striving to put a five-year plan together to accomplish this.
Commissioner Groepper asked if a work session would provide direction on what areas are deficient that would be incorporated into the sidewalk plan.
Mr. Burton replied staff would like direction from the Commission on what they view as priorities.
Commissioner Groepper asked if the landscape management plan for weeds would include current city rights-of-way as well as acquired property.
Mr. Burton replied the rights-of-way will probably not be related to the landscape management plan. However, he was aware of the issue and has scheduled a meeting with the Lewis and Clark County Weed Board on these issues.
Mr. Burton thanked Brandi Pierson, Bob Rickert, and Liz Hirst for their efforts on compiling the budget information.

Consent Agenda CONSENT AGENDA
A. Claims
B. Change Order No. 2, Northwest Park Expansion Project Irrigation

- Contract
- C. Unit cost utility agreement – North Main Reconstruction Project (MDT)
 - D. Construction Agreement – North Main Reconstruction Project (MDT)
 - E. Change Order No. 2 - North Main Water & Sewer, Phase II, Project No. 97-7
 - F. Annual Certified Local Government (CLG) grant contract for historic preservation for FY02
 - G. Second passage of Ordinance No. 2912 – Pre-zoning Lots 21-23, Block 165, Syndicate Addition
 - H. Construction Agreement – Lyndale Overpass, Project No. 99-4

City Manager Tim Burton recommended approval of the claims.

Commissioner Groepper asked to remove items D and H for discussion.

Commissioner Smith asked to remove item F for discussion.

Mayor Morrison asked to remove item A for discussion.

Item A

Mayor Morrison asked why the claims were in excess of 3 million dollars. City Manager Tim Burton stated the County inadvertently transferred 2.5 million dollars to the City account and the money was transferred back to the County.

Item D-H

Commissioner Groepper asked if the State was required to adhere to the City ordinances when they contract construction projects within the City. He was concerned with the street lighting, boulevard sidewalks, underground utilities, and bike paths that are in conjunction with arterials constructed within the City.

Public Works Director John Rundquist replied he has discussed the agreement language with MDT. He noted this is standard language used for all of their contracts and they aren't eager to change it just for the City of Helena. Mr. Nielsen had followed up with a phone call to MDT lawyers to see if they were receptive towards making language changes. They relayed that at this point it would hold up their advertisement and possibly the start time of the project. Mr. Rundquist deferred to City Attorney David Nielsen on whether the State was required to adhere to City ordinances.

Mr. Nielsen stated he talked to an MDT lawyer and his immediate response was that the State is not bound by City ordinances any more than the Federal government is bound by the State acts. He noted that the contracts are rather one sided and progress was made this year in that it used to say the City would enact the ordinances within the agreement. It now says the City won't enact ordinances contrary to the agreement. The State does coordinate with the City Engineering and Public Works Department on the plans.

Commissioner Groepper voiced concern with the Euclid Avenue project in which there were no sidewalks built. Now the State wants to build over Lyndale Avenue and the City is putting money forth to get better pedestrian pathways with no offer from the State to replace the sidewalks that they would tear up. He expressed his frustration that the Commission has approved long standing ordinances for what they want the City to look like and the Department of Transportation feels they don't have to follow what is set forth in those ordinances. He asked that a letter be drafted to the Governor to let her know what the City's expectations are with these agreements.

Mayor Morrison noted these are important issues and believed the

construction schedule would not be met this year with either of these projects. He asked Public Works Director John Rundquist to confirm this.

Public Works Director John Rundquist replied that neither of the projects would be completed this year due to right-of-way acquisition problems. The bids won't open until August with preliminary construction to begin this fall with completion scheduled for next summer.

Mayor Morrison recalled a discussion with Department of Transportation Commissioners about this very issue of being told by the State what had to be followed without the State adhering to the City rules. He stated the lighting issue is a primary concern for this community and should be abided. He concurred with Commissioner Groepper's suggestion of sending a letter to the Governor and the Director of the Department of Transportation to obtain agreement at the State level as to what the local community feels about construction and obtain some recognition of the process.

Commissioner Netschert stated there are some issues that need to be resolved, however, he voiced concern at holding up the projects as the best way to go about resolution. He suggested future discussion with MDT and encouraged them to work with staff in trying to best meet the City ordinances.

Commissioner Oitzinger concurred with Commissioner Groepper and suggested tabling the matter while the City Attorney drafts simple language to state "in accordance with our ordinances" and send to the MDT staff.

Commissioner Smith also concurred and stated he has always been dismayed at the one-sided language and rhetoric in the agreements but didn't believe anything could be done to change the language. He also agreed with the suggestion of writing a letter to the Governor and asking her to intervene with her own appointees and extend a cooperative hand toward the Capital City.

City Manager Burton interjected this is a valid point and this may be the right time to raise the issue to the Governor. He believed they received a good reception from the two transportation commissioners that represent this area at a previous meeting. He noted staff would draft a letter for the Mayor's review and signature to ask for a meeting on this issue with some proposed language changes.

Commissioner Groepper asked if language could be drafted stating " In building these projects, the State agrees to abide by the City of Helena's ordinances for street development, lighting, and will make every effort to put the utilities underground." He stated this simple sentence included in the agreements would ensure the projects built by the State would fit within the general cultural state of the city being developed.

Mr. Rundquist stated the Commission has raised some good points about the relationship between MDT and the City in terms of obtaining what the City's interests are. It's been a recognized problem among all the major cities in Montana. There is a move afoot with the larger cities to have MDT adopt local agency guidelines whereby the cities can qualify for and administer the expenditure of urban funds with their own consultants. Missoula has already engaged in this process to some extent and it's a hope to get this pushed through MDT as a policy. At that point, we'll have local agency guidelines and be able to have more on sight control of our interests.

Commissioner Netschert reminded the Commission there is a Transportation Coordinating Committee meeting scheduled for tomorrow. There are MDT representatives that generally attend and this might be an opportunity to discuss this issue.

Motion

Commissioner Groepper moved to table items D and H of the

consent agenda until the next regular City Commission meeting on July 23, 2001, and direct the City Manager and Mayor to send a letter to the Governor (and carbon copy the Director of the Montana Department of Transportation) asking her to intercede in the one paragraph language in both of these agreements to maintain the quality of the City when the projects are built. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Item F

Commissioner Smith asked if the proposal for the Historic Preservation Committee is requesting a new employee or supporting an existing employee.

City Manager Burton replied the decision is yet to be made by both the City and County Commission as to what level should be received from the grant funding. He stated the \$5,500 is available and probably would be awarded to the City. He stated an additional half time person would likely be needed to support this level of work. The City and County have set the issue aside for discussion in relationship to the rest of the budget priorities.

Commissioner Smith clarified that a half time person cost approximately \$15,000, the State would pay \$5,500 and the City would contribute the balance.

Mr. Burton concurred and stated the airport is also interested in participating in this program.

Motion

Commissioner Groepper moved approval of consent agenda items A B, C, E and G. Commissioner Smith seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Netschert stated he and Commissioner Oitzinger met with a group of citizens regarding the smoking ordinance. He stated the intention of the meeting was to seek common ground in the implementation process of the smoking ordinance. He asked if the Commission would be willing to support an effort to facilitate discussion for citizens on both sides of the smoking ordinance.

Commissioner Groepper asked if this had anything to do with the effort to gather signatures for petition to put the smoking ordinance to a public vote and if it means that process will be suspended while people try to work through this.

Commissioner Netschert replied this is an attempt to bring a facilitator to the community so citizens on both sides of the smoking ban issue could discuss the matter and try to reach some common ground. He didn't believe it had anything to do with any other efforts within the community.

Commissioner Oitzinger stated she thought the facilitator was volunteering the time because of the divisiveness of the issue. It has nothing to do with the electoral process but creates dialogue between the proponents and opponents of the issue.

Mayor Morrison asked if this indicates a group getting together to work on implementation with the Board of Health or just a case of people talking about their different views.

Commissioner Netschert replied it's just a group of people wanting to better the community by discussing the issue in a rational manner. There is no guarantee of the outcome or of who will show up except for the facilitator. Any discussion is better than no discussion.

Mayor Morrison asked for clarification on why the Commission would be involved in the matter.

Commissioner Oitzinger stated the Commission is not necessarily

needed as an institutional sponsor, however, it would be valuable to give support to the dialogue and improve the level of the dialogue for the citizens.

Commissioner Smith responded and stated he believed the community searched for common ground throughout the year spent working on the ordinance. He concluded there wasn't common ground on the issue, however, he is pleased to support the effort to continue trying.

Commissioner Netschert noted Hometown Helena has also been approached for lending their support in getting the business community involved.

Mayor Morrison stated this has been a difficult issue for the community and any discussion would be beneficial. However, he didn't want to send a message that the Commission is ready to change the ordinance. The ordinance is in place and an implementation program from the Board of Health is going forward.

Commissioner Oitzinger believed the facilitation will be a valuable process that will benefit the community.

Commissioner Groepper stated at the most recent administrative meeting some concerns were raised about the proposed sign ordinance. He stated another work session would be needed to get input from all of the Commissioners. There were some legitimate concerns from the business community and he committed some discussion by the Commission to resolve some of those concerns. He also reported the Subdivision Regulation Committee has drafted some of the changes in the ordinance. The Commission members should be receiving an email version of the changes. He noted this was not an endorsement by the committee, however, is the beginning process of trying to work through some of the issues. He explained the issues and possible solutions and hoped to have the ordinance back to the Commission by July 23 for discussion and possibly second passage.

***Report of the City
Attorney***

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen reported he received a call from the election administrator who had been presented with a petition to put the smoking ordinance on the ballot as a referendum. He stated he reviewed the petition for format and saw the final draft of petition for referendum today. He explained once a City passes an ordinance there is a time period for the effective date, which is 30 days. However, this legislature increased that time to 60 days so that once an ordinance is passed the voters can put together a petition to put the ordinance on the ballot as a referendum. If the voters get the petition in before the effective date, the ordinance does not go into effect and goes to a vote of the people. If the petitioners can get the required signatures before September 1, it would suspend the operation of the smoking ordinance until the election. In order to get the ordinance on the November ballot, the petition has to be in the third or fourth week of August.

Commissioner Groepper asked what the controlling election date is in years when the City holds a primary election. He asked if they are able to specify that on a petition or does the fact that there is a primary in September mean they back up however many days necessary to get those ballots printed that the petition has to be received.

Mr. Nielsen replied they go to the closest election after the petition is received that would fit in 75 days before the election. In this case, they couldn't make it by the primary election.

Report of the City

REPORT OF THE CITY MANAGER

Manager

A. Review of Judge Sherlock's ruling and appeal options

City Manager Tim Burton referred to memorandums from the City Attorney and from himself regarding Judge Sherlock's order awarding attorney fees to Mr. Hendricks and Mr. Jensen on the part of the Timberline lawsuit. At that time, the Commission was informed a full legal review would be done on what the options were for settling or appealing the case. Mr. Burton asked City Attorney David Nielsen to expound on the memo he prepared for the Commission.

City Attorney Nielsen stated his memo depicts the chronological events of the proceedings. He further explained the legal basis for appeal. He noted when an appeal is done from a District Court decision, the appeal has to be based upon legal errors. What those involve is if a judge declares here is the law and rules against you procedurally or substantively on a legal issue. It is close to impossible to appeal on a factual issue. The basis for an appeal would be on legal mistakes that were made in the case. The first one is a statute that states District Courts cannot issue injunctions and restraining orders if it prohibits another courts function or if it prevents legislative acts by a municipality. From the beginning it has been argued that the procedure picked by the plaintiffs in this case was illegal and that Judge Sherlock standing in for Judge Honzel had no legal authority to issue the restraining order from the beginning. He stated there was never a clear ruling on this because Judge Honzel, at the motion to dissolve, stated the City raised some good legal points. However, with only three or four days away from a settlement, they chose to move forward. He noted in addition there were some other procedural defects in the temporary restraining order which was later followed by a preliminary injunction. He stated there was a deficiency in the requirement that when a temporary restraining order is asked for the court has to ask for a bond or has to put in the order why a bond is excused. There is also a requirement that the court has to find in the temporary restraining order that there is no remedy at law and that the equitable remedy or the injunction is the only possible remedy. From the very beginning, MEIC was named as a plaintiff but nowhere in the body of their complaint was there an allegation that MEIC did anything. The two main parties involved were actually Mr. Hendricks and Mr. Jensen. He noted he moved to dismiss MEIC as a party because there was nothing in the complaint that alleged that MEIC was harmed, made requests, or had done anything. The motion was possibly dismissed, however, it has never been clear what the ruling was. In the order allowing attorneys fees there are some errors made in the courts interpretation of the facts. The court stated Mr. Jim Hunt testified when in fact he did not. Mr. Nielsen stated a key issue was a contradiction in the preliminary injunction. The court followed up with an order which stated the City was not required and did not have to produce information that was protected by attorney/client privilege or the protective order. Later, in the last order for attorney's fees, the court states there is no attorney/client privilege. The City was caught in cross fires between Judge Olsen, the primary judge on the Timberline case, who issued an order to go to mediation, and restrained by a local judge who stated the City could not go forth with what the other judge had ordered. Despite what are a lot of legal errors, there were many procedural errors. It seems if government stubs there toes on a procedural error the court holds them to a strict standard, whereas there is somewhat more latitude for private citizens. The other problem with the appeal is if the case went to the Supreme Court, it would be classified as a right to know case or citizen versus government. The City would spend a difficult and

inordinate amount of time trying to explain all of the little nuances of what was wrong in the order. Mr. Nielsen stated the amount at risk now is a little over \$9,000 in attorney's fees. If the City goes on an appeal, the risk is not only would the City pay that but also probably double that in additional attorney's fees. In the bigger picture, when nuisance value of cases is looked at, the only thing being litigated is attorney's fees. Due to the tremendous amount of work and time involved in an appeal, Mr. Nielsen did not recommend appealing this case. He noted it would be better to pay the fees, put the case behind us and move on.

Commissioner Netschert asked how much has been spent defending this case in staff time and outside contractors.

Mr. Nielsen replied he didn't have the exact amount but guessed it would be close to what the plaintiffs are asking in billable fees or approximately \$9,000.

Commissioner Groepper stated it seems as though the City was caught in the middle of the jurisdiction of two courts. He asked if there was some way to obtain guidance from the Supreme Court on how cities are expected to behave when two District Court are giving different orders on the same issue.

Mr. Nielsen replied he has never been in a situation with two different courts giving orders on an issue. He stated the only way to get the issue before the Supreme Court would be to appeal the case. What this case would involve would be to ask if one court is doing something, how much authority does another court have in restraining the parties from complying with the first order. He noted this is one of the rare situations where you have a factual situation that could lend itself to an appeal of that issue.

Commissioner Smith asked if there were any case laws on this dilemma in Montana Codes Annotated.

Mr. Nielsen stated as far as he knows there are no case laws on this type of situation.

Commissioner Groepper asked if there was any legal sources for guidance on this issue. He noted as long as the Commission deals with subdivisions, this could happen again. He stated this dilemma is groundbreaking in that it's making it right for citizen groups to file in non-controlling courts under the right to know action and get a judge to demand something. He felt this is putting other city governments in a pinch as to which act to follow. He stated after negotiation sessions on Timberline he was told by the MMIA lawyers he couldn't disclose anything under court order and then to be ordered by a different court to disclose information is a personal dilemma. He wondered if the Commission could go to the Attorney General or MMIA to get advice on the merits of the case. He stated he knows it's not a good investment to spend \$10,000 to save \$9,000, however, he sees a real dilemma for Commissions that are involved in subdivision litigation. He noted the facts are right for getting some sort of clarification on how the Commission is supposed to act in a situation like this.

Mayor Morrison asked City Manager Tim Burton to address the Commission in reference to his memo and possibly lend some direction.

Mr. Burton stated he was also involved in many of the issues leading to this point. After reviewing Mr. Nielsen's memorandum, it is clear from the City perspective this issue has never been about denying the public access to public documents. It's been about following the direction of Judge Olsen of Bozeman regarding protecting confidential and privileged documents. Judge Sherlock originally took the Timberline case but later excused himself and Judge Olsen of Bozeman assumed jurisdiction and was the presiding judge in this case. On August 8, 2000, the City participated in mediation for settlement ordered by Judge

Olsen. Judge Olsen followed all of the laws that govern that process in Montana statute. The mediator reported back to Judge Olsen on September 12, 2000, that the parties had reached an agreement on general parameters of the settlement and filed a document with the court to that affect. On October 5, 2000, in contravention to § 27-19-103 (1), Judge Sherlock restrained the City from complying with Judge Olsen's mediation order. Mr. Burton stated he has talked to numerous attorneys in town and none of them have ever heard of a case such as this. The restraining order by Judge Sherlock also violates § 27-19-103 (7) which prevents courts from enjoining legislative acts by municipalities. On November 29, 2000, Judge Olsen ordered the parties to complete the settlement and in regards to the Hendricks and Jensen injunction, he states "these third parties are attempting to derail this settlement and force the matter back into time consuming and expensive litigation. To both the litigants in the court: this court notes that it has full jurisdiction in this matter and that no third parties have attempted to intervene or become involved in this case in any way whatsoever." Mr. Burton stated Judge Sherlock should have sent this to Judge Olsen's court and he could have ruled on the merits of the claim. Also on November 29, 2000, Judge Sherlock issued a preliminary injunction order wherein he held that the material covered by Judge Olsen's protective order and attorney/client privilege did not need to be released. He also held that the City acted in good faith in not releasing confidential and privileged information. At this point, it became very evident the City had been whipsawed between the order of the presiding Judge Olsen and an injunction from Judge Sherlock. Mr. Burton relayed the dilemma of knowing which judge to follow. He hoped the state assumption of the District Courts will go in some direction to prevent this from happening again. However, in weighing the expense of time involved in pursuing an appeal, having worked through this unique situation and realizing the Timberline issue is ultimately resolved, Mr. Burton recommended not pursuing an appeal. He noted the appeal of this case would not be in the best interest of the City and could potentially double or triple the costs. This is considered a nuisance lawsuit in that it's considered cheaper to settle than it is to pursue the case to a favorable conclusion. Mr. Burton stated that however bad this tastes, he recommended writing a check to Mr. Hendricks and Mr. Jensen.

Commissioner Smith expressed concern that Judge Sherlock's June 9 order contained no reference whatsoever to the concurrent proceeding going on in Judge Olsen's courtroom. He asked if Judge Olsen was now retired from judicial practice.

City Attorney Nielsen relayed Judge Olsen retired last December.

Commissioner Smith commented that he was willing to treat this as a nuisance lawsuit. However, the concerns raised by Commissioner Groepper are valid and other local governments are in for a similar roller coaster ride in the future. Following the payment of attorney fees in this case, there may not be a right of privacy in the State of Montana for any purpose after this. Commissioner Smith stated this disturbed him but he was willing to accept the recommendations of the City Manager and City Attorney on this issue.

Commissioner Oitzinger concurred with City Manager Burton's concerns of local government being whipsawed between two courts. She stated the assumption of District Courts by the Supreme Court creates an opportunity. The court is in the process of deciding upon a court administrator and they have begun to consider how they will effect the transition. This would be a good time to communicate the concerns of local government being whipsawed between two courts to the Supreme Court as an issue to think about while they are progressing

with the transition. She concurred with the recommendation to pay the attorney fees.

Commissioner Netschert expressed concern that this could happen again and would prefer to not to reward the plaintiffs by paying this settlement when this is clearly a contestable issue. He was unwilling to set such a precedence that would create a cash cow for trial lawyers who want to take the City to task on cases like this.

Commissioner Groepper stated he believed the City deserved better guidance from the court system than to be thrown in the middle of two courts. He didn't feel it was appropriate to continue spending taxpayer's money and staff time to try to save money. He would like to see the City Attorney's memo and legal understudy of the case shared with the League of Cities and Towns and other large city attorneys. He asked that an informal letter be sent to the Supreme Court by the City Manager pointing out the dilemma raised when the City falls under the jurisdiction of two courts and asking them to take that into consideration. He noted this is short of making a point for this particular case in court. However, sharing the information with the Supreme Court in their reorganization structure and the League of Cities and Towns and the major cities will assist other entities in building a better case to resolve an issue like this on appeal.

City Attorney David Attorney stated he was approached to be on the agenda this fall at the conference of the League of Cities and Towns so the issue will be discussed at length.

Commissioner Groepper asked if a request sent to the Attorney General has to be an issue that is right to be looked at or can a request on any issue be sent for request of process.

Mr. Nielsen stated that to ask for an Attorney General's opinion does not require an actual issue pending.

Mayor Morrison stated the City was abused by Judge Sherlock's court in this case as a local government. He felt it was unfortunate that the judges did not cooperate to resolve this in an appropriate manner both for the plaintiffs and the City. The City was put in a very difficult position, however, he didn't believe it was wise to go forth with an appeal. He strongly concurred with the idea of sharing the information with the League of Cities and Towns and seek legislation to ensure that judges are not allowed to put local governments in this position.

Motion

Commissioner Smith moved to pay attorney fees in the amount ordered by Judge Sherlock on June 9, 2001, to the plaintiffs in the Timberline lawsuit. Commissioner Oitzinger seconded the motion. Motion passes 4-1 with Commissioner Netschert voting nay.

Commissioner Smith stated the best context in which to address this issue was suggested by Commissioner Oitzinger and the City Manager in the transition to State assumption of District Court funding and operation. This is imminent and immediately available at this time. The other option is the Attorney General and legislation in a subsequent session. He believed the City would be well advised to present its case to the Supreme Court administrator and ask that some consideration be given as the State assumes funding and operation of District Courts. He stated he would be willing to make a motion to direct the City Manager to do so.

Mayor Morrison also asked to add the second step of pursuing legislation

on the issue.

City Manager Tim Burton agreed to this as a request.

**Early Purchase
Requests
Staff Report**

CONSIDER FY 2002 EARLY PURCHASE REQUESTS

Administrative Services Officer Bob Ricker reported that the budget would not be adopted until August 13 and departments were advised to hold off on any unusual or capital items until after that time. However, if something unusual must be purchased before that date, they were to make a request to budget staff by June 15. Early purchase is recommended (or in certain instances early bidding) for the following items from the funding sources indicated:

1. Dump Station - \$15,000 – WW Pretreatment
2. HWY Design Conference - \$ 100 – Planning/Transp. Planner
3. Western Planner Conference - \$1,675 – Planning
4. Pressure Washer - \$2,500 – Res. Solid Waste
5. Paint Machine – \$4,800 – Traffic
6. APWA Nat'l Conference - \$6,300 – PW Admin., Engineering,
Streets/Traffic, Solid Waste
7. ICMA Conference - \$ 935 – City Manager
8. Remodel Station 1 - \$40,000 – Capital Improvement

Mr. Ricker referred to the packet memo and stated the justification for each request was attached.

Commissioner Groepper asked the Public Works staff to report back with information from the APWA Conference on how other communities are handling the issues that this community is dealing with in the Subdivision Regulations such as street slopes, cuts and fills and construction grades.

Motion

Commissioner Groepper moved approval of the early purchase and/or bidding of the items outlined from the funding sources indicated.
Commissioner Smith seconded the motion. All voted aye, motion carried.

**Chapter 6-Title 2
Amendment**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 2 OF THE HELENA CITY CODE – BOARDS AND COMMISSIONS (ZONING COMMISSION)

Staff Report

City Planner Kathy Macefield reported the City Commission recently approved a revised interlocal agreement for the Planning Board which revised the statement that the Consolidated Planning Board would also serve as the Helena Zoning Commission. Therefore, a separate Helena Zoning Commission should be established. Montana law is vague when establishing a separate City Zoning Commission and does not specify the number of required members. Members of the City Commission had questioned whether it was appropriate to have 5 or 7 members on the new Zoning Commission. Although there seemed to be some merit of having a lesser number of 5 members and requiring 3 members to be present to establish a quorum, the Zoning Commission agreed that having a 7 member board with 4 members for a quorum had worked in the past. If a 5 member Zoning Commission is created, a quorum of 3 members would be an option, similar to the quorum number for the 5 member City Commission, instead of the 4 members required by the Board of Adjustment. Having fewer members for the entire board, and for the quorum, could help when members are out of

town. An alternate member could also be appointed to help with the quorum requirements. Ms. Macefield noted in order to establish the new Zoning Commission, the City Commission would need to adopt an ordinance this evening establishing a 5 member Zoning Commission, plus an alternate, all of whom would be City residents. Second passage of the ordinance would occur on July 23 and the ordinance would become effective August 23, 2001. When the City Commission approved the revised interlocal agreement, they gave an effective date of August 1. This effective date should be extended to September 1 to allow time to appoint new Zoning Commission members.

Mayor Morrison asked if the effective date for this ordinance could happen any sooner.

Ms. Macefield replied advertising needs to be done and members appointed and by the time this all occurs it will probably be September 1.

Motion

Commissioner Groepper moved first passage of an ordinance establishing a separate Helena Zoning Commission consisting of five (5) members and one (1) alternate , all of whom are City residents, with staggered 3-year terms and to extend the effective date of the interlocal agreement reorganizing the Consolidated Planning Board from August 1 to September 1, 2001. Commissioner Netschert seconded the motion. All voted aye, motion carried. **Ordinance No. 2914**

**Street ROW
Annexation**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX STREET RIGHTS – OF-WAY ON HELENA’S WEST SIDE, INCLUDING PORTIONS OF JOSLYN, KNIGHT, WINSTON, AND A RELATED ALLEYWAY

Staff Report

City Planner Hal Fossum presented the proposal for the annexation of street rights-of-way serving the Tenter annexation and the Reber PUD. The proposed annexation would have the effect of surrounding a significant area in the west side. The applicants have requested annexation to the City, of property located at the northeast corner of Knight and Winston Streets. It is the practice of the City to annex street rights-of-way leading to the annexed property. This avoids the creation of the exclaves, provides City street services to City residents, and enables City street access by emergency service providers. In the last such annexation of street rights-of-way , the City and County agreed that all further street annexations should be done in full block segments, so as to avoid confusion over maintenance of partial street blocks. The Reber PUD has similarly developed within the City, but it does not have access to the main body of the City via City streets. For this reason, it is recommended to extend the annexation of Joslyn one block further to the south to create a linkage to the City via Joslyn Street. A request for County assent of this annexation has been received. The annexation of these streets is expected to have costs in excess of revenues generated for street maintenance. Also, the proposed street annexation would create a wholly surrounded situation for all properties east of Joslyn Street and this may raise concerns by those property owners. The City has received a number of calls from concerned citizens due to the wholly surrounded area this will create. Mr. Fossum stated the following are the proposed street rights-of-way to be annexed:

1. The 60 foot wide right-of-way of Joslyn Street, from the Highway 12

(Euclid Avenue) south through existing Helena City limits at Choteau Street and the Reber PUD.

2. The 66 foot wide right-of-way of Knight Street, from its intersection with Joslyn Street west through its intersection with Winston Street.
3. The 60 foot wide right-of-way of Winston Street, from its intersection with Knight Street north to its intersection with Choteau Street.
4. The 18 foot wide right-of-way between Knight Street and Choteau Street from its intersection with Winston Street through its intersection with Joslyn Street.

Mayor Morrison asked for clarification that this evening's action is indication of the Commission's intention to look at the issue and hold a public hearing at which time final action would be taken. Mr. Fossum concurred.

Commissioner Groepper asked that data on how many residents in the area are receiving City water and sewer be available at the public hearing.

Commissioner Netschert stated the Commission serves the people who elected them and to create wholly surrounded areas doesn't seem to properly represent those citizens. He hopes these citizens are informed of the possible action and invited to the public process. He noted the City continues to bring residents into the City services and a condition to receive those services is annexation. He stated he would like to have a discussion at some point to consider allowing residents to utilize City services without having to annex and encouraging them through a bifurcated system to voluntarily annex into the City.

Motion

Commissioner Groepper moved approval of a resolution of intention to annex the listed street rights-of-way on Helena's west side including portions of Joslyn, Knight, Winston, and a related alleyway and set a public hearing date of August 13, 2001. Commissioner Oitzinger seconded the motion. Motion passes 4-1 with Commissioner Netschert voting nay. **Resolution No. 11650**

Public Hearings

PUBLIC HEARINGS

Pre-Zone Brooke Addition

- A. CONSIDER FIRST PASSAGE AN ORDINANCE PRE-ZONING TO R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT PROPERTY LEGALLY DESCRIBED AS LOTS 29-32, BLOCK 181, BROOKE ADDITION, LEWIS & CLARK COUNTY, AND GENERALLY LOCATED AT THE NORTHEAST CORNER OF KNIGHT AND WINSTON STREETS

Staff Report

City Planner Hal Fossum presented the recommendation by the Zoning Commission to pre-zone the above-mentioned property. The proposed zoning is related to annexation with the City Commission having established conditions for annexation on June 4, 2001. The public hearing due process will be complete and the City Commission may act to pre-zone the property. Mr. Fossum explained zoning does restrict property rights so does have to be considered with due diligence by public officials. The lot is 100 feet wide and a series of four 25-foot lots, each of which is 125 feet deep. The proposal is for a development of a single-family household. The proposed zoning is consistent with the evaluative criteria, encourages development of this property, and enables its annexation to

the City. Mr. Fossum recommended approval of the ordinance to pre-zone the property to R-2 (Single Family Residential) District.

Public Testimony

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

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

Motion

Commissioner Smith moved approval of an ordinance pre-zoning to R-2 (Single Family Residential) District prior to annexation of property legally described as Lots 29-32, Block 181, Brooke Addition, Lewis and Clark County; generally located at the northeast corner of Knight and Winston Streets, and find that the zoning is consistent with the evaluative criteria. Commissioner Groepper seconded the motion. All voted aye, motion carried. **Ordinance No. 2915**

**Pre-Zone 2460
Country Club**

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT PROPERTY LEGALLY DESCRIBED AS LOTS 9 AND 10, BLOCK 9, WEST HELENA TOWNSITE, LEWIS & CLARK COUNTY, MONTANA, AND GENERALLY LOCATED AT 2460 COUNTRY CLUB AVENUE

Staff Report

City Planner Hal Fossum reported the Zoning Commission unanimously recommended approval of a pre-zoning designation of R-2 to the above-mentioned property. The City Commission established conditions to annexation for the parcel on June 4, 2001. This single-family residential dwelling has a septic failure. The property is located on Country Club Avenue and is immediately adjacent to a property the City annexed earlier this year. There are no related roadways left to annex for this property. With completion of the public hearing, due process will be complete and the City Commission may act to pre-zone the property. Pre-zoning is required by City codes and ensures that properties have a zoning designation at the time annexation is completed. It has no effect before that time. The proposed zoning is consistent with the evaluative criteria, encourages development of this property, and enables its annexation to the City. Mr. Fossum recommended approval of an ordinance pre-zoning the property to R-2 (Single Family Residential) District.

Public Testimony

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

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

Motion

Commissioner Smith moved first passage of an ordinance pre-zoning to R-2 (Single Family Residential) District prior to annexation of property legally described as Lots 9-10, Block 9, West Helena Townsite, Lewis and Clark County; generally located at 2460 Country Club Avenue, and find that the zoning is consistent with the evaluative criteria. Commissioner Groepper seconded the motion. All voted aye, motion carried. **Ordinance No. 2916**

CUP – 403 N. Hoback

C. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT

(CUP) TO ALLOW A THREE-UNIT BOARDING/ROOMING HOUSE FOR UP TO EIGHT GUESTS WITH REQUESTED VARIANCES FROM THE LOT AREA, PARKING, AND SCREENING REQUIREMENTS OF THE R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT; LEGALLY DESCRIBED AS BLOCK 6 LOT 16 OF THE BASSETT ADDITION, HELENA, MONTANA; LOCATED ON THE EAST SIDE OF HOBACK BETWEEN EIGHTH AND NINTH STREETS WITH A STREET ADDRESS OF 403 NORTH HOBACK

Staff Report

City Planner Lucy Morell-Gengler presented the proposal for a conditional use permit to allow a three unit boarding/rooming house for up to eight guests located on the corner of Hoback and 8th Avenue. It is surrounded by primarily residential uses. Ms. Morell-Gengler stated the subject lot contains a building that was designed for mixed use and was constructed prior to the adoption of the zoning ordinance so this is a legal non-conforming structure. The building currently houses a business in the front, a photography studio, and the rear of the structure being utilized for residential use. The portion to be used for the boarding/rooming house would be the rear section of the building. The applicant is proposing converting the permitted residential to a use requiring a CUP which requires the entire lot and its use to be evaluated. Because of the non-conforming status and the mixed use building design, several variances are being requested simultaneously with the CUP proposal. Ms. Morell-Gengler noted the approval is subject to the following conditions:

1. The sidewalk along Hoback must be replaced and an ADA ramp installed.
2. A dumpster site approved by the Public Works Department must be provided.
3. The signage for the proposed boarding/rooming house must not exceed 6 square feet in area and must comply with all other provisions of Chapter 23 of the Zoning Ordinance.
4. Conditions for the proposed CUP must be met within one year and prior to the proposed boarding/rooming house accommodating overnight customers.

The Zoning Commission also recommends approval for the following variances:

1. From Section 11-6-3 of the Zoning Ordinance, Lot Area and Width, from the requirement for 7,000 of lot area for each commercial use.
2. From Section 11-22-11 of the Zoning Ordinance, Parking Space Reductions, to allow more than 50 percent of the required parking to be located off-site, permitting some of the parking requirement to be met with 8 on-street parking spaces, and two bicycle parking spaces.
3. From Section 11-6-5C of the Zoning Ordinance, Yards, to eliminate the screening requirement for the west side yard facing Hoback Street with the requirement that the residential appearance of the subject section of the building is maintained.

Ms. Morell-Gengler noted there is currently a lilac hedge on the east section but is not located on the property. Apparently there was a verbal agreement many years ago that the owners of this structure would be able to use part of this yard but it was never put in writing. The applicant has indicated he would obtain this in writing. If he cannot get something legally binding on the hedge, he will need to establish screening along the property line.

Discussion

Commissioner Groepper clarified the applicant is essentially trying to go from a mixed commercial with an apartment to a three-bedroom apartment house with one bathroom.

Ms. Morell-Gengler stated it would be a three-unit boarding/rooming house, similar to a bed and breakfast.

Commissioner Groepper asked the logic of eight guests as opposed to six or less guests allowed.

Ms. Morell-Gengler replied this to accommodate families. She noted this was short term lodging geared towards tourists, legislators and students. There would be no cooking facilities and the owner/operator has the option of providing one meal.

Commissioner Smith asked if boarding/rooming house was defined in the City's ordinances.

Ms. Morell-Gengler replied it was defined in the ordinances. The difference between a boarding house and a bed and breakfast is primarily the bed and breakfast requires the owner to occupy the premise. This will not be owner occupied as the applicant intends to hire a manager for this property.

Public Testimony

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

Robert Clarkson, applicant, addressed the Commission and clarified the boarding/rooming designation. The designation is due to the fact the building is a multiple use building. Mr. Clarkson stated his vision was essentially a historic theme luxury suite that would be available one evening to one week for writers, photographers, tourists, and people that are patron of the arts.

Commissioner Groepper asked if the applicant would provide meals to boarders.

Mr. Clarkson replied the landlord may provide one or more meals under the provisions of the boarding/rooming house ordinance. He noted this may be beneficial in the summer to host meals for small-scale fund raising events in the back yard during times when the structure is not occupied.

Commissioner Netschert asked Mr. Clarkson to address the concerns raised about the bathroom facilities.

Mr. Clarkson replied the bathroom facility is one large bathroom with a large tub for essentially a three-bedroom house. The bathroom facility is on the same level as the bedrooms.

Commissioner Smith asked Ms. Morell-Gengler what a legally non-conforming structure is.

Ms. Morell-Gengler replied they are buildings constructed prior to the adoption of the zoning ordinance that may not conform to the setback requirements or lot size. The buildings are grandfathered into the ordinance.

Wayne Beckman, 803 Eighth Avenue, addressed the Commission and stated he was not supportive of the proposal. He stated he property managed a boarding house and problems arise with these types of businesses. He voiced

concern that the business would attract drug users and clients with less than desirable backgrounds.

Mr. Clarkson replied to Mr. Beckman's concerns and noted he is concerned about the same issues. He also does not want undesirable clients and seeks to make the business viable as a reputable boarding house.

Commissioner Oitzinger asked Mr. Clarkson to explain the manager situation for the facility and explain the parking variance and impacts from the variance.

Ms. Morell-Gengler explained the parking variance would be to allow parking off site. They would meet the number requirement for parking but it would be located on the street and through bicycle parking.

Mr. Clarkson replied the manager he has hired has experience in decorating, marketing, housekeeping, meal preparation and smaller aspects of the operation. The rooms will be cleaned every day. She will not be living on the premises but does live nearby. The parking impact should be minimal as most of the clients would need transportation from the airport. Most of the impact from parking would be during the legislative session and there would be three extra cars in the area.

Commissioner Groepper asked about the Comprehensive Plan requirements and how one bathroom with three units can meet the requirement of public safety and health.

Ms. Morell-Gengler replied they rely on building codes and Health Department regulations and if it meets those regulations that staff feels it meets the requirements.

Mayor Morrison asked if the bed and breakfast facilities in town share bathrooms among multiple rooms.

Ms. Morell-Gengler replied some do share bathrooms and others have private bathrooms.

Commissioner Netschert felt this was creative use of the property and was comfortable with the fact there would be full time management of the facility and that Mr. Clarkson lives very close to the facility.

Motion

Commissioner Netschert moved approval of a resolution for a conditional use permit to allow a three unit boarding/rooming house for up to eight guests to be located in a R-3 (Medium Density Residential) District legally described as Block 5, Lot 6, of the Bassett Addition of Section 30, T10N, R3W, Helena, Lewis and Clark County, Montana; generally located on the east side of Hoback between Eighth and Ninth Streets with a street address of 403 North Hoback subject to the listed conditions. Commissioner Oitzinger seconded the motion. Motion carried 3-2 with Commissioner Groepper and Mayor Morrison voting nay. **Resolution No. 11651**

Motion

Commissioner Netschert moved approval of the three variance requests for the conditional use permit to allow a three unit boarding/rooming house for up to eight guests to be located in a R-3 (Medium Density Residential) District legally described as Block 5, Lot 6, of the Bassett Addition of Section 30, T10N, R3W, Helena, Lewis and Clark County, Montana; generally located on the east side of Hoback between Eighth and Ninth Streets with a street address of 403 North Hoback. Commissioner Oitzinger seconded the motion. Motion passes 3-2 with Commissioner Groepper and Mayor Morrison voting nay.

T-Zone Changes

- D. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-O -T - 5 (RESIDENTIAL OFFICE) DISTRICT TO R-O (RESIDENTIAL OFFICE) DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS LOTS 13 AND 14, OF BLOCK 20 OF THE FLOWEREE ADDITION, HELENA, MONTANA; GENERALLY LOCATED ON THE NORTHEAST CORNER OF 8TH AVENUE AND ROBERTS STREET

Staff Report

City Planner Lucy Morell-Gengler presented the proposed adoption of an ordinance for a zone change from R-O-T-5 (Residential Office) District to R-O (Residential Office) District. She noted the objective is to eliminate the T Standard number 5 which states "Due to the property's location near to the Capital and the need to protect the panoramic view to and from the Capital Building. Any new construction in this zone must first be approved by the City/County Planning Department. If any proposed building will be greater than 24 feet in height, the applicant shall file for a conditional use permit. In 1982, The block bordered by Ninth, Sanders, Eighth, and Roberts Streets was rezoned from R-O-T-5 to PLI to allow for the State Motor Pool and other State offices in conjunction with the Capital Complex plan. The subject property is the remaining portion of that block and currently contains State offices. T Standard number 5 is in large part duplicative of the underlying R-O District which also requires a CUP for building heights of over 24 feet. In addition, the Building Division reviews all new building construction when issuing a building permit. T Standard number 5 indicates the additional regulations are needed "Due to the property's location near to the Capital and the need to protect the panoramic view to and from the Capital Building" but the view of the Capital from the subject properties has already been blocked by the Justice Building and there is no longer a view to protect. Ms. Morell-Gengler stated the Independent Record incorrectly stated the proposal is to eliminate the height restriction. The underlying zoning still maintains the height restriction for this area.

Public Testimony

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

Sharon Miller, 9th Avenue, addressed the Commission and asked if the T-zones with numbers after them were just for maintaining panoramic view from the Capital.

Ms. Morell-Gengler stated this was correct and that they each state specifically that the rationale for the T Standard is to maintain a panoramic view to and from the Capital.

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

Motion

Commissioner Groepper moved first passage of an ordinance for a zone change from R-O -T - 5 (Residential Office) District to R-O (Residential Office) District for property legally described as Lots 13 and 14, of Block 20 of the Floweree Addition, Helena, Montana; generally located on the northeast corner of 8th Avenue and Roberts Street. Commissioner Smith seconded the motion. All voted aye, motion carried. **Ordinance No. 2917**

T-Zone Change

- E. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-3 -T -6 (MEDIUM DENSITY RESIDENTIAL) DISTRICT TO PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT

FOR PROPERTY LEGALLY DESCRIBED AS THE SOUTH 44.6 FEET OF LOTS 9 THRU 16, AND THE CLOSED EAST WEST ALLEY OF BLOCK 35 OF THE CANNON ADDITION; LOTS 5, 6 AND 8, AND THE NORTH 140 FEET OF LOT 7 OF THE CARSON ADDITION, AND THE ADJACENT CLOSED AND VACATED EXTENDED RIGHT-OF-WAY OF HARRIS STREET, HELENA, MONTANA; GENERALLY LOCATED ON THE SOUTH SIDE OF 9TH AVENUE AND EAST OF SANDERS STREET

Staff Report

City Planner Lucy Morell-Gengler reported the objective for the proposal was to consolidate the zoning for the subject uses from two different zoning districts to one PLI District and to eliminate T Standard number 6 which states "Due to the property's location near the Capital and the need to protect the panoramic view to and from the Capital Building; Any new construction allowed in the R-3 Zone, remodeling excepted, shall be subject to obtaining a conditional use permit." Ms. Morell-Gengler stated this would also provide for a City Zoning map that is easier to read and apply. The R-3-T-6 zone was adopted as part of the 1969 zoning map and Zoning Ordinance. Since that time, many changes have taken place in the subject area. Many of the T Standards in this area have been eliminated or reduced particularly with the implementation of the Capital Complex Plan. In 1982 the Department of Natural Resources rezoned large sections of property from R-O-T-5 and R-3-T-6 to PLI as part of the Capital Plan Complex. This rezoning left the R-3-T-6 District containing primarily a section of the DNRC storm water retention pond, which is owned by the State. This district also contains parking and landscaping for Ray Bjork School, plus the west section of the school building which is owned by the school district. Both the detention pond and the remainder of Ray Bjork School are zoned PLI with adjacent PLI zoning to the south, east and west. The proposal would eliminate the situation where a single use falls within two different zoning districts, and provide more appropriate zoning for the subject uses.

Commissioner Oitzinger asked if there were any panoramic concerns with changing the T zone to PLI.

Ms. Morell-Gengler replied the storm water retention pond is required so nothing can be developed. With this being such a small section, it would not be developable. If the school was reconstructed, there is a possibility, however, there are several buildings in the area that are quite tall.

Public Testimony

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

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

Motion

Commissioner Groepper moved first passage of an ordinance for a zone change from R-3 -T -6 (Medium Density Residential) District to PLI (Public Lands and Institutions) District for property legally described as the south 44.6 feet of Lots 9 thru 16, and the closed east west alley of Block 35 of the Cannon Addition; Lots 5, 6 and 8, and the north 140 feet of Lot 7 of the Carson Addition, and the adjacent closed and vacated extended right-of-way of Harris Street, Helena, Montana; generally located on the south side of 9th Avenue and east of Sanders Street. Commissioner Smith seconded the motion. All voted aye, motion carried. **Ordinance No. 2918**

T-Zone Change

- F. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-O -T -8 (RESIDENTIAL OFFICE) DISTRICT TO PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS LOTS 6, 7, 8 AND 9 BLOCK 19 OF THE CORBIN ADDITION, HELENA, MONTANA; GENERALLY LOCATED ON THE NORTHEAST CORNER OF MONTANA AVENUE AND BROADWAY

Staff Report

City Planner Lucy Morell-Gengler presented the proposal to consolidate two zoning districts into one zoning district for a single use and eliminate T Standard number 8 which states "Due to the property's location near the Capital and the need to protect the panoramic view to and from the Capital Building; Any new construction in this zone must first be approved by the City/County Planning Department. If any proposed building will be greater than 24 feet in height, the applicant shall file for a conditional use permit." In 1974, an S-curve was approved for the intersection of Broadway and Montana Avenue leaving the subject property. This property is owned by the State and has been incorporated into parking and landscaping for the Capital Complex creating a single use, a parking lot, with two zoning categories, PLI and R-O-T-8. The proposed zone change would consolidate the parking area into one PLI zoning district. PLI is appropriate for government owned property that is serving a governmental function. The main concern with the PLI zone for this area is that PLI allows a 60-foot height where as R-O requires a 24-foot height. The type of structure could be considerably taller if the State decided to develop this property. There are currently no proposals for development of this property.

Commissioner Groepper asked if the T designation is removed then the R-O designation would ensure the 24-foot building restriction.

Ms. Morell-Gengler replied this was another option for the area and the 24-foot restriction would remain.

Public Testimony

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

Jim Benish, 1302 Highland, addressed the Commission and referred to a letter submitted by Dr. and Mrs. Hamill. Mr. Benish stated he did not want to see zoning applied that would change the neighborhood. He stated the neighborhood was not notified of the changes and expressed concern that changes would occur without anyone being aware of what was going on.

Mayor Morrison stated if the T Standard was removed but not changed to PLI, the maximum height of the building would remain the same at 24 feet. There wouldn't be much of a change other than removing the T Standard so there is one less thing to track in the planning system. Mayor Morrison asked Mr. Benish if he would be comfortable with the R-O designation.

Mr. Benish replied he thought it sounded good, however, he is not educated in what the various zoning is so he doesn't know what all of the options are.

Sharon Miller, 9th Avenue, addressed the Commission and stated she also did not want to see changes in the area. She asked if a parking variance has to be applied for if the T Standard is dropped from the R-O.

Ms. Morell-Gengler replied the parking would be grandfathered in.

Ms. Miller relayed she would be agreeable to the change if it was changed to an R-O.

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

Commissioner Groepper clarified that with doing nothing, someone could still build a residential office structure there but they are limited to 24 feet. He asked what the impact would be if just the T Standard were eliminated.

Ms. Morell-Gengler replied the R-O is very repetitive to the requirements of the T Standard. The impact would be minimal and nothing would be done to the height requirement of 24 feet.

Motion

Commissioner Groepper moved first passage of an ordinance for a zone change from an R-O-T-8 (Residential Office) to R-O District for property legally described as Lots 6, 7, 8 and 9 Block 19 of the Corbin Addition, Helena, Montana; generally located on the northeast corner of Montana Avenue and Broadway. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance No. 2919**

T-Zone Change

G. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-3 -T -9 (MEDIUM DENSITY RESIDENTIAL) DISTRICT TO R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS ALL OF BLOCKS 1, 2, AND 3 OF THE MONTANA AVENUE ADDITION; ALL OF BLOCK 1 OF THE EAST VALLEY VIEW ADDITION; ALL OF BLOCKS 1 AND 2 OF THE TENTH STREET ADDITION AND ALL OF BLOCK 9 OF THE BASSETT'S ADDITION, HELENA, MONTANA; ALL BLOCKS GENERALLY LOCATED BETWEEN HIGHLAND STREET, MONTANA AVENUE, EIGHTH AVENUE, AND DAKOTA AVENUE

Staff Report

City Planner Lucy Morell-Gengler presented the proposed zone change from an R-3-T-9 (Medium Density Residential) District to R-3 (Medium Density Residential) District. The objective is to eliminate the T Standard number 9 which states "Due to the property's location near the Capital and the need to protect the panoramic view to and from the Capital Building; Any new construction allowed in the R-3 zone, remodeling excepted, shall be subject to obtaining a conditional use permit." The R-3-T-9 zone was adopted as part of the 1969 zoning map and Zoning Ordinance. Since the time of its adoption many changes have taken place in the Capital area. Many of the T Standards in this area have been eliminated or reduced particularly with the implementation of the Capital Complex Plan. The R-3 zone currently has a height limit of 24 feet and Section 11-6-6 of the Zoning Ordinance already requires a conditional use permit to exceed that height. Since regulating the height of buildings is one of the primary mechanisms for protecting the view of the Capital, T Standard number 9 is somewhat duplicative with Section 11-6-6. The Building Division currently reviews new construction in an R-3 District which is redundant to the requirements of the T Standard number 9. The permitted and conditional uses would remain the same since the underlying zoning would remain the same. This is the largest area proposed for elimination of the T Standard.

Commissioner Groepper asked if the T Standard is eliminated would a conditional use permit be required to build above the 24 foot height limit and under what conditions could that conditional use permit be denied. He stated if a proposal fits into the Comprehensive Plan it really can't be denied.

Ms. Morell-Gengler replied if it meets the requirements of the conditional use permit it would be hard to deny a proposal.

Mayor Morrison asked if removing the T Standard would change anything for someone wanting to build on a vacant lot.

Ms. Morell-Gengler replied the lot would be subject to a conditional use permit and limited to its impact on the viewscape of the Capital. It wouldn't consider the viewscape of the neighbors, only the viewscape of the Capital. With the T Standard in place, any additional building is subject to a conditional use permit.

Public Testimony

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

Pam Worthy, Breckenridge, addressed the Commission and relayed the neighbors are concerned with making any kind of changes that would affect the quality of the neighborhood. She asked that the neighbors be informed if there are to be any major changes in the zoning of the neighborhood. She also commented that each neighborhood is different and should be treated as so.

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

Commissioner Groepper clarified that staff wants to eliminate the T Standard in this area so residents would be able to remodel their homes without having to go through a conditional use permit process for everything.

Ms. Morell-Gengler replied that started the process for this area. Staff is recommending eliminating the T Standards in many areas since it is so repetitive in many instances.

Commissioner Groepper asked if the T Standards would be included for discussion in the Unified Development Ordinance.

Ms. Morell-Gengler replied that was staff's intention. There has already been an article in the newspaper and a public meeting on eliminating the T Standards.

Commissioner Groepper clarified if nothing is done, someone wanting to build a garage would have to go through the CUP process and if this were passed this evening, that individual would not be required to go through the entire process. He asked if the Commission would see this again whenever the UDO comes before the Commission for approval.

Mayor Morrison relayed the UDO Committee was originally recommending eliminating all of the T Standards with one sweeping change through the Unified Development Ordinance. After discussion, the committee was convinced this might be too radical and they should be looked at one at a time to make sure there are no upheavals created in neighborhoods.

Ms. Morell-Gengler noted the T Standard has no impact on the uses in the zones. The uses are regulated by the R-3 which would remain the same regardless of whether the T Standard was there or not.

Motion

Commissioner Smith moved first passage of an ordinance for zone change from R-3 -T -9 (Medium Density Residential) District to R-3 (Medium Density Residential) District for property legally described as all of Blocks 1, 2, and 3 of the Montana Avenue Addition; all of Block 1 of the East Valley View Addition; all of Blocks 1 and 2 of the Tenth Street Addition and all of Block 9 of the Bassett's Addition, Helena, Montana; all blocks generally located between Highland Street, Montana Avenue, Eighth Avenue, and Dakota Avenue. Commissioner Netschert seconded the motion. All voted aye, motion carried. **Ordinance No. 2910**

Mayor Morrison thanked planning staff for the organization of the reports for the meetings.

**Public
Communications**

PUBLIC COMMUNICATIONS

There were no persons wishing to address the Commission.

**Meetings of
Interest**

MEETINGS OF INTEREST

No meetings were discussed.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:30 p.m.

MAYOR

ATTEST:

CLERK OF THE COMMISSION