

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
SEPTEMBER 10, 2001
6:00 P.M.

Time & Place A regular city commission meeting was held on Monday, September 10, 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.

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 August 27, 2001 were approved as submitted.

Proclamation HELENA SENATORS BASEBALL TEAM

Mayor Morrison proclaimed September 10 as "Helena Senators State Champion's Day." He congratulated the team on their state championship title and achievements throughout the baseball season.

Appointments APPOINTMENTS

- A. GOLF ADVISORY BOARD
- B. LEWIS AND CLARK LIBRARY BOARD
- C. HELENA HOUSING BOARD
- D. CONSOLIDATED PLANNING BOARD
- E. HISTORIC PRESERVATION COMMITTEE
- F. AIRPORT AUTHORITY

Mayor Morrison asked for concurrence on the following appointments:

Golf Advisory Board – Mike Mundt, term expires October 30, 2002

Lewis and Clark City/County Library Board – George Pendergast, term expires January 1, 2005

Helena Housing Authority – Byron Stahly, term expires August 1, 2006
Judy Erickson, tenant representative

Historic Preservation Committee – William Greiner, term expires June 30, 2003

Airport Authority Commission – Edward Casne, term expires September 1, 2004

Consolidated Planning Board – Gary Peterson, term expires September 1, 2004

Motion Commissioner Smith moved approval of the above listed appointments. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA

- A. Claims
- B. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Resolution No. 11691**
- C. CUP Application fee refund
- D. Water bill insert – Public Works Water Division
- E. Contract between Department of Commerce and City of Helena for a \$5,000 CDBG grant for the Micro-business Development Program managed by Gateway Economic Development Corporation

City Manager Tim Burton asked the commission to table item E and recommended approval of the claims.

Motion

Commissioner Netschert moved approval of consent agenda items

A-D. Commissioner Smith seconded the motion. All voted aye, motion carried.

Motion

Commissioner Netschert moved to table item E on the consent

agenda. Commissioner Smith seconded the motion. All voted aye, motion carried.

Bid Awards

BID AWARDS

- A. SIDEWALK REPLACEMENT 2001, PROJECT NO. 01-5

Staff Report

Public Works Director John Rundquist reported fifteen property owners requested the city assist them in replacing sidewalks, curbs and gutters, and drive approaches. However, the bid prices came in higher than anticipated. Information letters were sent to the property owners explaining the costs. Of the fifteen that applied, ten property owners opted to make other arrangements. Schedule No. 1 consists of the replacement of sidewalks curbs and gutter and drive approaches for the property owners. Schedule No. 2 consists of replacement curb and gutter work as identified by the city engineer. Two bids were received and opened on July 10, 2001. Northside Welding and Fabrication submitted the lowest bid in the amount of \$38,090.19 for Schedule No. 1 and \$9,972.75 for Schedule No. 2. Schedule No.1 will be paid by the SID Revolving Fund with term repayment by the property owners. The budget line, in gas tax, for curb and gutter replacement, funds schedule No. 2. The adjusted bid amount for Schedule No. 1 is \$18,105.99. Staff recommends awarding an adjusted Schedule No. 1 and Schedule No. 2 to the lowest responsible bidder, Northside Welding and Fabrication with Schedule No. 1 being reduced by change order to include only the five property owners still interested in being included in the program.

Discussion

Commissioner Netschert stated he noted rather large discrepancies in the bids that came in. He asked if the differences in the bids were considered with the adjustment made to Schedule I. He also asked if the bid had to be awarded to one contractor or if it could be done by piece.

Mr. Rundquist replied the basis of the award regardless of the change order would still result in the lowest bidder being awarded the project. He also stated under a public works contract the bid is awarded as a total bid and not separated out into individual contracts.

Motion

Commissioner Smith moved to award the Sidewalk Replacement 2001 Project, No. 01-5 to the lowest responsible bidder, Northside Welding and Fabrication in the amount of \$38,090.74 for Schedule No. 1 contingent upon approval of a change order that will reduce Schedule No. 1 to \$18,105.99 and Schedule No. 2 in the amount of \$9,972.75 for a total project cost of \$28,078.74. Commissioner Groepper seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Netschert noted \$20,000 was set aside for weed maintenance in the budget that was contingent upon immediate use to eradicate weeds. He asked for an update on the progress of the program.

Parks and Recreation Director Randy Lilje stated the extra money is primarily for a fall spraying program. He noted that to be effective, the spraying must be done in mid September. An extra person has been hired to spray and will start on Monday morning with the program as well as the initial person hired for weed control. Mr. Lilje stated funds have been set aside to contract for areas the city may not be able to get to this fall. Some of the funds will also be used to get an early start next spring.

City Manager Burton stated the storm water detention ponds are top priority for weed control.

Commissioner Groepper asked if there is a mechanism in place to bring attention to certain problem areas.

Mr. Lilje replied citizens can call the current weed person, Ron Herman, until the end of the month and after that they can call the regular parks office number and the location will be noted.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

A. REPORT ON REFERENDUM REGARDING CLEAN AIR ORDINANCE

City Attorney David Nielsen reported Paulette DeHart notified him on August 31, 2001, that her office had received enough certified signatures to place Ordinance No. 2911 on the ballot as a referendum. Since the petition was received prior to the effective date of the ordinance, which was September 1, 2001, the receipt of the petition has the effect of delaying the ordinance until it is ratified by the electorate in the referendum process. Under Montana statute, when a petition is received and cannot be verified more than 75 days prior to a city election, the referendum is held over until the next city election. In this case, that election would be November 4, 2003. The commission has the option of letting the referendum go until November 4, 2003 or calling a special election to be held in conjunction with the primary election, which would be June 4, 2002. The commission has a 60-day window with which to take action requested by the referendum petition. If no action is taken, the referendum automatically goes to the next appropriate election date.

Commissioner Netschert asked if the ordinance could be amended to the satisfaction of the petitioners and not have to be put on the ballot.

Mr. Nielsen replied the original ordinance would go on the ballot regardless of amendments.

Commissioner Smith relayed he believed it was in everyone's best interest to put the referendum on the earliest possible ballot.

Commissioner Groepper asked staff to develop a referendum to put the ordinance on the June 4, 2002 ballot. He stated this could be brought to the next

commission meeting for a vote from commissioners.

Mayor Morrison and Commissioners Oitzinger, Netschert, and Smith concurred.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

City Manager Tim Burton introduced Tim McGee as the new Administrative Services Director. He gave a brief history of Mr. McGee's background and welcomed him to the city.

Mr. Burton also noted the Montana Department of Transportation is convening a meeting on Monday, September 17, 2001 at 1:00 p.m. in the third floor conference room to discuss the draft Capital Interchange Study.

Sidewalk Repair

CONSIDER APPROVAL OF AN ORDER TO REPAIR THE SIDEWALK AT 214 BROADWAY WITHIN 30 DAYS

Staff Report

Public Works Director John Rundquist reported the Engineering Division has been receiving complaints about a hazardous sidewalk at 214 Broadway. At one time, there was an apparent lawsuit with the city over this particular stretch of sidewalk. Written notices were sent, giving the property owner 60 days to make arrangements to have the sidewalk replaced. The required repairs have not been completed and the sidewalk has continued to deteriorate. In accordance with Helena City Code, Sections 7-4-6 and 7-4-8, the commission may order the repair of the sidewalk at 214 Broadway and assess the cost, including engineering costs, against the property adjacent to where the repairs are made. Staff recommended approval of a repair order.

Discussion

Mayor Morrison asked if this has ever been done before. He asked if this is acquiring an obligation to go out and inspect other sidewalks to make sure they're in compliance to standards.

Mr. Rundquist replied this is the direct result of complaints about the sidewalk.

City Manager Burton stated this is an issue, which has previously been in a court of law and heightens the city's liability if there is another accident and someone is injured.

Commissioner Netschert asked if people are notified by registered mail and if there is a record of them receiving the notice.

Mr. Rundquist stated the notice is sent by certified mail and receipt recorded.

Motion

Commissioner Groepper moved approval of an order to repair the sidewalk at 214 Broadway within 30 days. Commissioner Smith seconded the motion. All voted aye, motion carried.

Uniform Fire Code

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 3 OF THE HELENA CITY CODE (ADOPTION OF THE 1997 EDITION OF THE UNIFORM FIRE CODE)

Staff Report

Fire Marshall Craig Trapp reported the 1997 edition of the Uniform Fire Code has not yet been adopted by the city of Helena as required by the state of Montana. The Fire Department is currently working under the 1994 edition. By revising the amendments and hazardous materials zoning districts wording was

clarified, restrictions lessened and unnecessary sections deleted. Mr. Trapp recommended adopting the 1997 Uniform Fire Code in its entirety with the exceptions of Appendices II – C and II-D, approve amendments, and approve revised zoning district limitations for hazardous materials.

Motion Commissioner Groepper moved first passage of an ordinance amending Chapter 9 of Title 3 of the Helena City Code (Adoption of the 1997 Edition of the Uniform Fire Code). Commissioner Smith seconded the motion. All voted aye, motion carried. Ordinance No. 2921

YMCA Lease CONSIDER AN EXTENSION OF YMCA LEASE AGREEMENT

Staff Report City Attorney David Nielsen reported on the extension of term for the YMCA lease by an additional fifty years to the year 2070. The city owns the property underneath the YMCA facility located next to Centennial Park. The city initially leased the property to the YMCA as a site for the facility it constructed. The lease commenced on March 1, 1970, and with the last renewal will expire in February of 2020. The YMCA wants to add a major addition to and renovate the existing facility and extend the lease term by an additional fifty years to financially justify making the improvement expenditures.

Discussion Commissioner Netschert suggested this might be a good time to review the contract to ensure the language is appropriate and meets the expectations of the city.

City Manger Tim Burton relayed the lease agreement will continue to be just on the footprint of the building. He concurred this would be a good opportunity to review the agreement with the YMCA board.

Commissioner Oitzinger concurred and noted this is a long lease and this would be a good time to look at the agreement.

Commissioner Groepper stated he hoped to convey to the YMCA that the concept of extending the lease agreement is acceptable and the commission just wants to make sure there is nothing in the lease that might be problematic in the future.

Motion Commissioner Groepper moved to table the lease agreement with the YMCA to the September 24, 2001 commission meeting. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Public Hearings PUBLIC HEARINGS

**Zone Change
Great Northern** A. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR ZONE CHANGES FROM CLM-T-2 (COMMERCIAL-LIGHT MANUFACTURING) AND R-3 (MEDIUM DENSITY RESIDENTIAL) TO B-3 (CENTRAL BUSINESS) DISTRICT FOR MULTIPLE PROPERTIES. LEGALLY DESCRIBED AS GETCHELL AND CHILDS PLACER, CURRENT LOCATION OF THE BREW HOUSE AT 939 GETCHELL STREET; THE FORMER RECYCLING CENTER LOCATION; AND, THE CURRENT LOCATION OF THE HELENA COMMUNITY FEDERAL CREDIT UNION, 915 KESSLER STREET

Staff Report

City Planner Kathy Macefield reported the three properties included in the proposed zone change are under separate ownership. The proposed zone change for the former recycling center is accompanied by a simultaneous request to amend the resolution for a conditional use permit establishing the Great Northern planned unit development to include this property in the PUD. The current CLM-T-2 District is remnant of the CLM-T-2 zoning that had previously included the Great Northern PUD. On May 15, 2001, the Helena zoning commission unanimously recommended approval for the two proposed zone changes. The commission tabled action on this proposal on June 4, 2001 and again on July 23, 2001 due to the applicant's request for additional time to resolve issues related to the CUP conditions for approval. The credit union and the Brewhouse properties are expected to continue their current uses. Currently, there are no buildings planned for construction on the former recycling center property and a parking lot may be constructed at this location in the future. These three properties are a logical extension if the current downtown B-3 zoning district.

Discussion

Commissioner Netschert asked if the Brewhouse signs would be grandfathered in if the zone change takes affect.

Ms. Macefield replied they are currently under the CLM zoning requirements as far as the signs are concerned so their existing sign could stay. If the business wanted to change signs they would have to conform to the B-3 District.

Public Testimony

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

Alan Nicholson, 1 Quarry Lane, addressed the commission and expressed his support for the zone change. He stated he does not represent the credit union, the brewery or the Brewhouse. He stated he hoped to modify the zoning regulations to allow various undertakings that are happening in the Great Northern area to be in compliance.

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

Motion

Commissioner Smith moved first passage of an ordinance for a zone change from R-3 to B-3 for property legally described as Lots 4-8 on Block 3 of the Parchen Addition and Parcel No. 3 in Lot D of the Getchell and Childs Placer as shown on that warranty deed recorded in M Book 11 at page 4190 as Document No. 464611, records of the Clerk and Recorder of the Lewis and Clark County, Montana, the current location of the Helena Community Federal Credit Union at 915 Kessler Street; generally located south of Lyndale Avenue between Getchell and Kessler Streets.

Commissioner Netschert seconded the motion. All voted aye, motion carried.
Ordinance No. 2922

Motion

Commissioner Smith moved first passage of an ordinance for a zone change from CLM-T-2 to B-3 for property legally described as Getchell and Childs Placer, Tract A-P5 (current location of the Brewhouse, 939 Getchell Street) and Lot A (former recycling center location); generally located south of Lyndale Avenue and east of Getchell Street.

Commissioner Netschert seconded the motion. All voted aye, motion carried. Ordinance No. 2923

**Amend
Resolution 11224**

- B. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP), AMENDING RESOLUTION #11224 (APPROVED MARCH 9, 1998 TO ALLOW A PLANNED UNIT DEVELOPMENT (PUD)) TO INCORPORATE ADDITIONAL PROPERTY INTO THE GREAT NORTHERN PUD, LOCATED IN THE B-3 DISTRICT. LEGALLY DESCRIBED AS GETCHELL AND CHILDS PLACER, LOT A (FORMER RECYCLING CENTER); GENERALLY LOCATED SOUTH OF LYNDALE AVENUE AND EAST OF GETCHELL STREET; AND GETCHELL AND CHILD PLACER MINING CLAIM, LOT E AND PART OF LOT 8 IN THE CHESSMAN DAVIS PLACER MINING CLAIM; GENERALLY LOCATED WEST OF FRONT STREET BETWEEN 13TH AND 14TH STREETS

Staff Report

City Planner Kathy Macefield reported that on May 15, 2001, the Helena zoning commission unanimously recommended approval for the proposed PUD annexation subject to 7 conditions. The city commission tabled action on this proposal on June 4, 2001 and again on July 23, 2001 due to the applicant's request for additional time to resolve issues related to the conditions. Specifically, these conditions related to the storm drain which would require an easement or the applicant could relocate it; and updating the traffic impact study and the parking study which staff has agreed would not be required. The three properties included in this proposal have existing structures that are expected to continue their current uses with the exception of the former recycling center. A parking lot is anticipated to be constructed on the former recycling center property and properties containing Computerland and Action Print are expected to continue their current uses. Parking lots are a permitted use in the CLM zone and a conditional use in the B-3 zone (although they would be allowed in the PUD as identified by their covenants). The original CUP resolution was directly related to the lots included in the 11.16-acre PUD as identified by the subdivision plat. Incorporating an additional 1.25 acres into the PUD will require the subdivision plat to be amended. The proposed PUD expansion for the former recycling (new

Lot 12, Block E containing 24,330 square feet) is also accompanied by a simultaneous request for a zone change from CLM-T-2 to B-3 District. After the May 15 public hearing before the zoning commission, the applicant, Alan Nicholson, met with staff to state his concern with the conditions for approval. His concerns are as follows:

Stormwater Drainage: Condition #5.B. states a 20-foot wide easement would be required for the existing storm drain that diagonally crosses the property. Although Mr. Nicholson agrees buildings cannot be constructed over the storm drain, he objects to providing an easement and would like the city to relocate the storm drain and provide a maintenance agreement. Mr. Nicholson has said he would pay to extend the storm drain in Carousel Way to connect to the relocated storm drain.

Condition #5.B. has been modified to clarify that the easement is required or the applicant must relocate the storm drain at his own expense.

Traffic and Parking Impact Studies: Condition #2 states the previous traffic impact and parking studies must be updated to include the additional properties. Mr. Nicholson objects to updating those studies and questions the value of those updates because the lots are already zoned for uses that could be located on the additional lots. If the lots remained outside the PUD, the uses on the lots could change according to the zoning without any requirements for traffic impact studies or parking studies.

The updated traffic impact and parking studies would determine if additional traffic and parking improvements need to be installed to serve the PUD. The difficulty for updating both studies is in trying to accurately quantify the traffic and parking requirements when the specific uses are not yet known. **Therefore, Staff agrees Condition #2 would not be needed.**

Pedestrian Access: Condition #3.A. states a sidewalk is required along the east side of Getchell Street if a building is constructed on the former recycling center lot. Mr. Nicholson requests a variance from the sidewalk requirements for the former recycling center property.

Several factors create potential problems for installing a sidewalk at this location. This portion of Getchell Street has a 40-foot wide right-of-way (ROW) with a 33-foot wide pavement width. This reduced ROW width would not allow all of a 5-foot wide sidewalk to be installed entirely within the ROW. Additionally, a telephone utility box, several trees and a retaining wall are located on the east side of Getchell Street. Although a sidewalk is currently located adjacent to the Brewhouse (to the north), no sidewalk is in place adjacent to the parking lot located to the south.

After further reviewing this situation with the limited ROW width, Staff recommends that a variance be granted from this sidewalk requirement. As a result, Condition #3.A. would no longer be required as recommended by the zoning commission.

Pedestrian Access: Condition #3.B. states if the pedestrian access currently provided between Lot 4, Block E and Lot 1, Block G is relocated northward, a new pedestrian access must be provided to give an internal pedestrian access between

Blocks E and G and the various parking areas to the west.

According to the applicant, the former recycling center property would provide parking for the Great Northern development and would not be available for use by others; access to this parking area would be from Carousel Way (a private street) and not from Getchell Street. Mr. Nicholson has said he will be providing 2 pedestrian accesses through this block. He contends that this pedestrian access would provide private access from a private parking lot to a private street; he agrees providing the pedestrian access makes sense and would be in the subdivision's best interest but objects to being required to show this access on the amended subdivision plat and has said this access would be part of a condominium arrangement. Another alternative to an easement would be to make this pedestrian access part of the common area so the access is available.

The city attorney has determined that since this pedestrian access is on private property, and connects private property to private property, it would not be appropriate to require this access. If Mr. Nicholson would like to provide this pedestrian access, that would be his choice. **Therefore, Condition #3.B., as recommended by the zoning commission, could be deleted.**

Finally, the zoning commission had recommended 60 days to complete the conditions for approval based upon comments from the applicant's engineer who had indicated 60 days was a reasonable timeframe to complete the conditions. **Staff recommends that the timeframe be revised to the more typical one year standard.**

This approval is subject to the following conditions:

1. Stormwater Drainage

The previously approved stormwater drainage plan shall be updated to include the additional property included with this amendment. The revisions shall be complete with drainage calculations provided by an engineer, not allowing drainage in excess of the historical run-off, and shall be submitted to the city engineer for review and approval.

2. Water and Sewer

- A. Any removed or remodeled buildings shall have the unused services properly abandoned.
- B. Adequate fire flows to serve new Lot 12, Block E must be installed prior to building construction.

3. Subdivision Plat

The Great Northern Subdivision plat shall be amended to reflect the additional property included in the PUD and the new legal descriptions. A 20-foot wide utility easement must be provided for the storm drain that crosses proposed Lot 12, Block E. No structures may be built over the storm drain. This statement must be included on the amended plat.

4. Financial Guarantee

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

Zoning Ordinance: If required by the revised stormwater drainage plan, any necessary drainage improvements and appurtenances.

5. Timeline

Conditions of this CUP amendment must be completed within one year.

Public Testimony

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

Alan Nicholson, 1 Quarry Lane, addressed the commission and stated his support for the proposal. He thanked staff for working with him on these issues. He stated he was amenable to the conditions listed.

Mayor Morrison stated he has a long standing concern that if more parking is put in the area, the Getchell Street parking structure will continue to be under utilized. He asked if the proposed parking area would be mainly evening and weekend parking for the carousel.

Mr. Nicholson relayed the parking would be approximately 100 spaces and will be used for the carousel as well as hotel parking. He stated the garage parking is considered long-term parking while the proposed parking is short-term. He explained the need for parking for both the hotel and the carousel area and stated the parking garage would be needed by employees for long-term parking. He further noted the original PUD required this parking area. Mr. Nicholson suggested a work session would be useful in helping explain the area and progress to the commissioners.

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

Motion

Commissioner Smith moved approval of a resolution for a conditional use permit amending Resolution No. 11224 approved March 9, 1998, for a conditional use permit to allow a planned unit development to incorporate 54,462 square feet (1.25 acres) of additional property into the Great Northern PUD, located in the B-3 District. The additional property is legally described as Getchell and Childs Placer, Lot A; generally located south of Lyndale Avenue and east of Getchell Street; this property would become known as Lot 12, Block E of the Great Northern Subdivision, Helena, Montana with the amended plat; and Getchell and Child Placer Mining Claim, Lot E and part of Lot 8 in the Chessman Davis Placer Mining Claim; generally located west of Front Street between 13th and 14th Streets; CUP amendment. This property would become known as Lots 1, 2, and 4 of Block 1 of the Great Northern Subdivision, Helena, Montana with the amended plat; the CUP would be subject to the listed conditions.

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

Resolution No. 11692

**CUP
2300 North Oakes**

- C. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) FOR A CASINO WITH 20 GAMING MACHINES, ASSOCIATED WITH A MOTEL, TO BE LOCATED IN THE B-2 DISTRICT. LEGALLY DESCRIBED AS LOT 13, BLOCK 26; LOTS 13-17, BLOCK 35, FLOWER GARDEN ADDITION; AND THE CLOSED ALLEYS AND THE CLOSED PORTIONS OF ELM STREET AND OAKES STREET, HELENA, MONTANA; GENERALLY LOCATED WEST OF I-15 AND NORTH OF CEDAR AVENUE WITH A PROPERTY ADDRESS OF 2300

NORTH OAKES STREET

Staff Report

City Planner Kathy Macefield presented the proposal to allow a casino with 20 gaming machines to be located in a B-2 (General Commercial) District in conjunction with a motel. The motel (currently under construction) and the future restaurant are permitted uses in the B-2 District. The 20-foot wide Oakes Street right-of-way creates some difficulty for this project. The amount of projected traffic that would be generated by the 2,000 square foot casino was not significant when compared to the amount of traffic that could be generated by the motel and future restaurant. However, these other uses are beyond the scope of the CUP for the casino. The city commission tabled this proposal on August 13, 2001 to give the applicant time to meet with staff from the city and the Montana Department of Transportation. At the meeting MDT representatives discussed safety concerns they had with a 20-foot wide access onto Cedar Street and recommended an additional 10 feet of right-of-way be acquired for Oakes Street to maintain turning movements for ingress and egress to the applicant's property; left turn movements from the property onto Cedar Street would be restricted with this option. If the additional right-of-way was not obtained, MDT would further restrict the movements at this intersection to maintain the safe and efficient operation of Cedar Street. MDT will pursue closing this approach if safety issues are not addressed. Condition #1C requires the applicant to obtain permission from MDT to access Cedar Street from this property. The city attorney has recommended deleting this condition because the access issues that concern MDT are related to the motel and future restaurant on the property, which are both permitted uses and are beyond the scope of this CUP. The access issues will be resolved for the rest of the property by MDT. Additionally, condition #1A states the hammerhead turnaround would be eliminated. This requirement needs to remain if the streets are to be closed and vacated to accommodate the motel. The condition stated in Resolution #10168 that had closed and vacated Oakes Street has not yet been completed. Therefore, the amended plat would still be required but the resolution would not need to be amended. Finally, the legal description for this proposal is based upon information provided by the applicant and does not include the portion of property located east of Oakes Street that would contain the future restaurant. Therefore, if the casino moves to this portion of the property in the future, a new CUP would be required which would allow the traffic impacts to be addressed for the new casino location. The property is located more than 300 feet from a residential district. According to the applicant, the casino would be developed with a 2,000 square foot bar as part of the full service hospitality center to primarily serve guests of the motel. The portion of the building containing the gaming machines would operate 7 days a week, generally from 8:00 a.m. to 2:00 a.m. (and until midnight on Sundays) with 3-4 employees. The submitted site plan shows 69 parking spaces (with 2 spaces for persons with disabilities) surrounding the motel. The proposed casino would be located at the southwest corner of Phase 2 of the motel and would have an all-beverage bar with a limited food service menu. The proposal would be subject to the following conditions:

1. Access

- A. The vacation for Oakes Street, Elm Street, and Cole Avenue and the alleys, as stated in Resolution #10168 must be finalized.

- B. The access from the property onto Cole Avenue and Cedar Street must be constructed and paved to city standards.
- C. A utility easement must be provided for the entire Cole Avenue right-of-way.

2. Water and Sewer

- A. Final water and sewer plans must be submitted to the city engineer, and fire flows must be tested prior to acceptance.
- B. A construction and maintenance easement on each side of the water and sewer mains must be provided. This easement will also serve as an access for emergency vehicles.

3. Site Plan Revisions

The site plan must be revised to show:

- A. The number of onsite parking spaces required by Chapter 22 of the Helena Zoning Ordinance;
- B. The dimensions and locations of landscaped areas as required by Chapter 24 of the Zoning Ordinance;
- C. Property dimensions and building setbacks; and
- D. Fire hydrants, water and sewer easements, and utility easements.

4. Building Permit

A building permit must be obtained within one year.

Discussion

Commissioner Groepper asked if there was any mechanism to deal with the traffic impacts in the area.

Ms. Macefield replied there is nothing in the Zoning Ordinance that allows staff to deal with the traffic impacts.

Commissioner Oitzinger stated another business owner had restrictions on his access and was required to have a setback. She asked how the requirements descended on this business and wouldn't on another.

Ms. Macefield stated she did research on this issue and couldn't find anything in the house files that indicated this was a requirement.

Public Testimony

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

Mike Zimmerman, applicant, addressed the commission and explained the proposal at depth. He urged the commission to support the proposal. Mr. Zimmerman stated he was amenable to the conditions.

Commissioner Netschert voiced concern regarding the access issues. He asked if the action this evening had anything to do with the access issues or was it just the CUP for the casino.

City Attorney David Nielsen replied the proposal before the commission is

for a conditional use permit only for the casino. The access issues are with the motel, bar and perhaps the restaurant, which are, permitted uses. He clarified that the Montana Department of Transportation will be reviewing the access issue whether the casino is approved or not.

Commissioner Netschert asked Mr. Zimmerman if there were ongoing discussions with the MDOT to facilitate the wider street.

Mr. Zimmerman stated he has been working with his neighbors on the issue. This is a strip that is approximately 10 feet by 100 feet long. He stated he can widen the road immediately on his portion of the property, however, he is still working with a neighbor on the rest.

Commissioner Groepper asked how traffic would be handled for tourists trying get back onto the Interstate from the motel.

Mr. Zimmerman replied the traffic comes in decimals and tourists would be leaving earlier than the standard 8:00 a.m. traffic or later than the 5:00 p.m. traffic.

Glenn Gregor, business manager for Laborers Local 254, addressed the commission and stated he was representing the Helena Building and Construction Trades Council. On behalf of the council, he urged the commission to approve the proposal.

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

Motion

Commissioner Netschert moved approval of a resolution for a conditional use permit (CUP) for a casino with 20 gaming machines, associated with a motel, to be located in the B-2 District. Legally described as Lot 13, Block 26; Lots 13-17, Block 35, Flower Garden Addition; and the closed alleys and the closed portions of Elm Street and Oakes Street, Helena, Montana; generally located west of I-15 and north of Cedar Avenue with a property address of 2300 North Oakes Street. Commissioner Smith seconded the motion. Motion passes 4-1 with Commissioner Groepper voting nay. **Resolution No. 11693**

Minor Subdivision

D. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT TO CREATE TWO LOTS (LOT 3E-1A WILL CONTAIN 16,169 SQUARE FEET AND DENSITY RESIDENTIAL) DISTRICT. THIS PROPOSAL INCLUDES VARIANCES FROM LOT WIDTH REQUIREMENTS AND THE REMOVAL OF TWO 15-FOOT WIDE ACCESS AND UTILITY EASEMENTS. LEGALLY DESCRIBED AS LOTS 3C-1 AND 3E-1, BLOCK 6, SLEEPING GIANT ADDITION, HELENA, MONTANA; GENERALLY LOCATED EAST OF JANET STREET AND SOUTH OF TRICIA STREET WITH PROPERTY ADDRESSES OF 11 AND 13 BUMBLE BEE COURT

Staff Report

City Planner Belinda Waters presented the proposal for a minor subdivision/preliminary plat. She stated that presently there are two existing lots of record, Lot 3C-1, Lot 3E-1, and two community residential care facilities on each lot. On March 17, 1997, the city commission approved a conditional use permit to allow the construction of three facilities over a period of several years. One facility would be located on Lot 3C and two facilities would be located on Lot 3E. Also, there are currently two 15-foot access and utility easements located on both sides of Lots 3A and 3B and Lots 3D and 3E resulting in two 30-foot wide easements. The property is currently zoned R-4 (High Density Residential). Both

lots in the proposed subdivision will meet lot area width requirements for the R-4 zoning district. This survey will also correct COS #608632/B for Lot 3C-1. Ms. Waters stated the primary plat approval shall be subject to the following two conditions (as well as other standard conditions), which shall be completed prior to filing the final plat:

1. Easements

A. The final plat must show the following easements:

- 1.) Sewer easement located in Lot 3A;
- 2.) The sewer main installed on existing lot lines between Lot 3A and Lot 3B;
- 3.) An additional 20-foot wide easement for maintenance of the sewer main adjacent to the lot line between Lots 3E-1A and 3E-1B.

B. All existing easements must be retained.

2. Design Standards/Improvements

The subdivision and final plat must comply with the requirements of Chapter 4 (Design Standards/Improvements) of the Helena Subdivision Regulations.

Public Testimony

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

Ken Vivrette, applicant and owner of the care facilities, addressed the commission and distributed a map of the area. He further explained the proposal in depth and urged the commission to approve the subdivision. He also asked that item 1A-3 of the conditions regarding the easements be deleted.

Commissioner Netschert asked Mr. Vivrette if he is citing hardship for elimination of the easement. He also asked if a 10-foot easement was approved, would it work for the proposal.

Mr. Vivrette concurred and stated a 10-foot easement would be workable.

Commissioner Smith asked what kind of residents are located in the community facilities.

Mr. Vivrette replied the complex is a 24 hour elder care facility.

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

Discussion

Commissioner Groepper asked if it would be possible to act on a motion to negotiate the easement issue with Mr. Vivrette to a mutual satisfaction for both parties.

City Manager Burton replied a motion could be made that allows him to negotiate the easement to accommodation.

Motion

Commissioner Groepper moved approval of a minor subdivision to create two lots, Lot 3E-1A and 3E-1B in a R-4 Residential District. Legally described as Lots 3C-1 and 3E-1, Block 6, Sleeping Giant Addition, Helena, Montana; generally located east of Janet Street and south of Tricia Street

with property addresses of 11 and 13 Bumble Bee Court subject to the listed conditions with an amendment to condition 1A-3 to request the city manager and the applicant negotiate the easement to mutual satisfaction to allow the property to be built with reasonable access to the utilities.

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

Agenda Change

Mayor Morrison stated a request was made to table items E and F of the agenda and asked for motions to do so.

Two simultaneous proposals for the same property: Both proposals are legally described as Tract A in the Bailly Minor Subdivision as shown on COS #555300 and the .22-acre Bailly Parcel as shown on COS #371449; generally located on Carter Drive between the oil tank farm and the railroad tracks with addresses of 781, 783, and 789 Carter Drive in Lewis and Clark County, Montana.

- E. CONSIDER AN ORDINANCE PREZONING TRACT A IN THE BAILLY MINOR SUBDIVISION (COS #555300) AND THE 4.22-ACRE BAILLY PARCEL (COS #371449) PRIOR TO ANNEXATION INTO THE CITY OF HELENA, MONTANA.
- F. CONSIDER A RESOLUTION OF INTENTION TO ANNEX TRACT A OF THE BAILLY MINOR SUBDIVISION (COS #555300) AND THE 4.22-ACRE BAILLY PARCEL (COS #371449) IN LEWIS AND CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA, AND ESTABLISH CONDITIONS FOR ANNEXATION

Motion

Commissioner Groepper moved to table items E and F to the call of the city manager. Commissioner Smith seconded the motion. All voted aye, motion carried.

CUP 2466 Country Club Avenue

CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO RELOCATE A PREVIOUSLY CONSTRUCTED RESIDENCE (A 1996 MANUFACTURED HOME (856 SQUARE FEET) TO THE R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT. THIS APPLICATION INCLUDES A REQUEST FOR A VARIANCE FROM THE R-2 ZONING REQUIREMENT FOR A 1,000-SQUARE FOOT MINIMUM FLOOR AREA FOR A RESIDENCE. LEGALLY DESCRIBED AS LOT 11A, BLOCK 9, WEST HELENA TOWNSITE, SECTION 23, T10N, R4W, HELENA, MONTANA; GENERALLY LOCATED ON THE NORTH SIDE OF COUNTRY CLUB AVENUE WITH A PROPERTY ADDRESS OF 2466 COUNTRY CLUB AVENUE

Staff Report

City Planner Kathy Macefield presented the proposal for a conditional use permit to allow a previously constructed residential structure to be located in the R-2 District. This undeveloped property was recently subdivided and annexed to the city. The home to be relocated to this property is currently located at 1805 Joslyn Street, #123. The application includes a request for a variance from the R-2 zoning requirement for a 1,000 square foot minimum floor area and a request for an unpaved driveway. The relocated home will be placed on a permanent foundation. According to the submitted site plan, a 2-car garage will also be constructed on the 7,450 square foot property. The proposal is subject to the following conditions:

1. **Code Requirements**
The structure must be placed upon a permanent foundation.
2. **Water**
The deferment of the installation of city water to serve the property is subject to the December 2000 development agreement.
3. **Site Plan Revisions**
The site plan shall be revised as follows:
 - A. Showing a dwelling that complies with the minimum size requirement if a variance is not granted from Section 11-5-4 of the Helena Zoning Ordinance.
 - B. Showing curb cut located more than 25 feet from the adjacent driveway.
4. **Building Permit**
Applicant shall obtain a building permit within one year.

Discussion

Commissioner Groepper asked if the Unified Development Ordinance would be changed regarding the 1,000 square foot dwelling size. He also asked if the size requirement could be met with a statement proclaiming the permanent foundation shall include a minimum of 220 feet of living area.

Ms. Macefield replied there were no recommendations to change the size requirements in the UDO. Ms. Macefield stated this would mean the applicant would have to construct an addition to the residence.

Commissioner Smith asked how water is currently being provided to the residence.

Ms. Macefield replied water currently comes from a well on the northwest corner of the property.

Public Testimony

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

Kathy Herbel, applicant, addressed the commission and urged the commission to support the proposal.

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

Motion

Commissioner Smith moved approval of a resolution for a conditional use permit to relocate a previously constructed residential structure (a 1996 mobile home) to be located in a R-2 (Single Family Residential) District. Said property is legally described as Lot 11A, Block 9, West Helena Townsite, Section 23, T10N, R4W, Helena, Montana; generally located on the north side of Country Club Avenue with a property address of 2466 Country Club Avenue subject to the listed conditions.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Resolution No. 11694

Motion

Commissioner Groepper moved approval of a variance from Section 11-5-4 of the Zoning Ordinance which requires 1,000 square feet for a

dwelling unit in an R-2 District. Commissioner Smith seconded the motion.

Commissioner Groepper stated he would like to see changes in the Unified Development Ordinance to make the dwelling size 750 square feet instead of 1,000 square. He noted there are many situations that 750 square feet is plenty of space and it would alleviate the variance requests.

Vote All voted aye, motion carried.

Motion **Commissioner Groepper moved approval of a variance from an unpaved driveway.** Commissioner Smith seconded the motion. All voted aye, motion carried.

Discussion was held on the Unified Development Ordinance with Community Development Director Michael Barros relaying the UDO would come before the commission in this calendar year.

CUP Bus Depot H. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 1,100 SQUARE FOOT BUS DEPOT PROVIDING PASSENGER SERVICE TO BE CONSTRUCTED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS THE NORTHERN PORTION OF BLOCK 29, BOYCE ADDITION, SECTION 28, T10N, R3W, HELENA, MONTANA; GENERALLY LOCATED NORTH OF HIGHWAY 12 EAST AND EAST OF 20TH STREET

Staff Report City Planner Kathy Macefield presented the proposal to allow the existing bus terminal to be relocated east of 20th Street in the B-2 (General Commercial) District. According to the applicant, the new terminal would be ADA compliant, would have passenger loading and unloading, an office and customer service area and restrooms. The submitted site plan shows the new building will be located on the northwestern portion of the property behind the truck stop and casino. Buses will enter and exit via 20th Street and the eastern curb cut onto Highway 12 East and will unload passengers on the south side of the new building. This application also includes a request for a variance to exceed the maximum curb cut size allowed in the B-2 District for the access onto 20th Street. After the zoning commission hearing, staff learned the site plan may be revised to relocate the bus drop-off area to the west side of the proposed building. Currently the 4 parking spaces located on the west side of the building would cause vehicular conflicts as they back out onto the 20th Street right of way and would be in violation of Section 7-5-8G of the city codes. Therefore, the site plan would need to be revised to eliminate this conflict; this clarification should be added to condition 3A. If the bus drop-off location is revised to the west side of the building, some access arrangement should be made to cross the property located to the west; the site plan would also need to be revised. Ms. Macefield stated the proposal is subject to the following conditions:

- Parking**
Ten paved onsite parking spaces, which includes one space for persons with disabilities must be installed in accordance with Chapter 22 of the Helena Zoning Ordinance.

2. Access

- A. 20th Street must be closed or vacated or the curb cuts onto 20th Street must comply with Section 7-5-7 and 7-5-8 of the city codes.
- B. If 20th Street is not closed or vacated, 20th Street must be constructed to city standards, including curb, gutter and sidewalk.
- C. Pedestrian access must be installed to provide a safe location for pedestrians walking from the bus station to Highway 12 East.

3. Site Plan Revisions

The site plan shall be revised to show:

- A. Ten parking spaces for the bus terminal that do not conflict with Section 7-5-8G of the Helena City Codes if 20th Street is not closed or vacated.
- B. Dumpster location.

4. Financial Guarantee

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

- A. Paved onsite parking.
- B. 20th Street improvements if 20th Street is not closed or vacated.

5. Building Permit

Applicant shall obtain a building permit within one year.

Discussion

Commissioner Groepper asked how the buses would get to the bus depot if they close the street.

Ms. Macefield replied they still have the entrance from Highway 12 East. They could continue to use 20th Street after it's closed.

Commissioner Groepper voiced concern with pedestrian safety in the area.

Ms. Macefield replied if they construct 20th Street to city standards with sidewalk on both sides, pedestrians can get safely to the highway. There is an importance to maintaining some sort of pedestrian access even if 20th Street is closed.

Public Testimony

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

Rick Mueller, addressed he commission and relayed he was representing the applicant this evening. He stated the applicant has intentions of vacating 20th Street and installing sidewalks and crosswalks. He also stated the applicant is amenable to the conditions.

Commissioner Netschert asked if the issue was tabled for two weeks,

would it cause a problem for construction purposes.

Mr. Mueller replied he was not opposed to tabling the matter and getting some clarification on the closure of 20th Street.

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

Motion

Commissioner Netschert moved to table the request for a resolution for a conditional use permit to allow a 1,100 square foot bus depot providing passenger service to be constructed in the B-2 District to the call of the city manager. Commissioner Groepper seconded the motion. All voted aye, motion carried.

***Public
Communications***

PUBLIC COMMUNICATIONS

There were no citizens wishing to address the commission.

***Meetings of
Interest***

MEETINGS OF INTEREST

There were no meetings discussed.

Adjournment

There being no further business to come before the commission, the meeting was adjourned at 8:15 p.m.

MAYOR

ATTEST:

CLERK OF THE COMMISSION