

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
DECEMBER 3, 2001  
6:00 P.M.**

**Time & Place** A regular City Commission meeting was held on Monday, December 3, 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 Groepper, Netschert, Oitzinger and Smith were present. City Manager Tim Burton, City Attorney David Nielsen, City Clerk Debbie Havens, and Deputy City Clerk Barb Fairhurst were present. William McCausland from the Helena Citizen Council was 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 November 19, 2001 were approved as submitted.

**Consent Agenda** CONSENT AGENDA  
A. Claims  
B. First passage of an ordinance amending Chapter 3 of Title 2 of the Helena City Code - Administrative Services Department  
C. Agency agreement for the acquisition of economical electrical power

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

Mayor Morrison asked that his vote not be recorded on item C since he will not be voting.

**Motion** Commissioner Groepper moved approval of the consent agenda.  
Commissioner Smith seconded the motion. All voted aye, motion carried.

**Bid Award** BID AWARD  
A. Rebuilt Grizzly at Transfer Station  
B. Two (2) new automated side-load refuse trucks for Solid Waste  
C. Four (4) new police pursuit vehicles

**Staff Report** Shop Superintendent, Ed Robinson, stated that in regards to purchasing a new rebuilt Grizzly 215SW to replace the existing Grizzly at the City of Helena Solid Waste Transfer Station, Crane Equipment was the only bidder, at \$60,490.00. The budget appropriation for this acquisition was \$130,000.00. There will be some additional costs incurred in the installation of the new Grizzly, which as yet have not been determined. These include rent of a crane and operator, contracting an electrician and possibly some additional costs for labor. All additional costs should be less than \$5,000.00. Staff is recommending authorization to purchase the Rebuilt Grizzly 215SW for \$60,490.00. Approval would provide for a significant savings for the Transfer Station and allow it to continue operations for years to come.

**Motion**

**Commissioner Smith moved approval of the bid award to Crane Equipment for an amount not to exceed \$60,490.00 for the purchase of a new rebuilt Grizzly 215SW.** Commissioner Groepper seconded the motion. All voted aye, motion carried.

**Staff Report**

Shop Superintendent, Ed Robinson, reported that bids were opened on November 14, 2001 for Two (2) new 2002 Side-load Refuse trucks. Four bids were received from two vendors. The low bid was received from Kois Bros. Equipment for two new 2002 Freightliners with Rapid Rail compactor bodies for \$139,987.00 per unit or \$279,974.00 for both. Two units - # 208, a 1994 Peterbuilt and # 211, a 1997 Volvo, both with Rapid Rail bodies were offered for trade. Kois Bros. Offered \$33,000.00 for trade of these two units. The net bid for both units is \$246,974.00. The budget appropriation for these two acquisitions is \$300,000.00. Staff is recommending authorization to purchase two new Freightliners/Rapid Rail Side-load refuse trucks from Kois Brothers for an amount not to exceed \$246,974.00. Staff does not recommend the purchase of the extended warranties. Approval would allow the Solid Waste Division to continue to provide service to residential customers in a timely and efficient manner and maintain its equipment replacement schedule.

**Motion**

**Commissioner Smith moved approval of the bid award to Kois Bros. Equipment for two side load refuse trucks for an amount not to exceed \$246,974.00.** Commissioner Groepper seconded the motion. All voted aye, motion carried.

**Staff Report**

Shop Superintendent, Ed Robinson, reported that the State of Montana has received bids on their advertisements for Police Pursuit Vehicles for FY2002. Bids for three vehicles were received and a summary of those bids is attached. The low bidder was Pierce Dodge of Great Falls, with a 2002 Dodge Intrepid for \$18,109.00 including cage. The total cost of four units would be \$72,436.00. This does not include repaired painting and additional equipment required to outfit these units. The budget appropriation for these acquisitions and the necessary equipment is \$107,435.00. Staff is recommending authorization to purchase four Dodge Intrepid Police Pursuit Vehicles for \$72,436.00. Approval would allow the Police Department to maintain its replacement schedule, continue its operations with a reliable fleet and keep repair costs down.

**Motion**

**Commissioner Smith moved approval of the award to Pierce Dodge for purchase of four new police pursuit vehicles for an amount not to exceed \$72,436.00.** Commissioner Groepper seconded the motion. All voted aye, motion carried.

***Communications***

**COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS**

Commissioner Netschert congratulated the parks and recreation department for getting the Davis property bordered up in quick time. The question was raised as to what it takes to get barrels of sand put up at specific intersections. Since the recent snow, there were a number of intersections that have a lot of ice.

John Rundquist, Public Works Department Director, reported that that matter would be looked into if locations were given.

Commissioner Groepper reported that merchants in the 400 block were concerned that there was no maintenance money available for beautification.

City Manager, Tim Burton, stated that the city parks and recreation department does maintain the 400 block. The confusion comes from the fact that the BID created the project and then turned it over to the park and recreation department without any discussion relative to maintenance and cost of maintenance. They will remove the rose bushes because they grow so fast and are hard to maintain.

Commissioner Groepper reported that a citizen on the end of Thrill Hill had trouble getting up her street. The public works department recommended removal of the barricade. A neighborhood meeting was held and staff should be receiving an e-mail saying they are agreeable to taking the barricade out that goes up Howie Street, during the winter. The barricade at the top of the hill should be well marked and a stop sign should be put up so that if people go through, it will be a moving violation. At the bottom of the hill, the road should make an "s" curve so that it would make it hard for people to go up the wrong way fast and create accidents.

Commissioner Groepper also reported that two months ago there was a citizen who asked about her garbage rates. Public Works Director John Rundquist, City Manager Tim Burton and Commissioner Groepper met and discussed the problem. It was found that commercial property pays as much as a single-family residence. A conclusion was reached that a stop-gap measure would allow public citizens who change use residentially could appeal to the public works director to stay with the older rates.

Commissioner Smith thanked Bill McClausen for his work with the Helena Citizens Council, District # 1 for the past 12 years.

Mayor Morrison asked about the letter from AT&T Broadband which asked them to sign a document excluding the non-subscriber revenues from the franchise fees.

City Attorney David Nielsen did contact AT&T and will be consulting with City Manager Tim Burton about the course of action. Two options are available, one of which is to do nothing and AT&T will reimburse themselves for the non-subscriber fees by increasing what the subscribers would pay. The other option is that AT&T would ask us to forgive and not charge them against the non-subscribers.

Mayor Morrison stated that the Montana League of Cities and Towns has asked his board of directors for nominations to fill a police officer standard and training council position. This position has to be filled by the mayor and Mayor Morrison asked that a letter be sent to the league and its officers recommending Mayor-elect Smith fill that position.

***Report of the City  
Attorney***

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen had no items to report on.

**Report of the City  
Manager**

REPORT OF THE CITY MANAGER

A. Growth Policy Map

City Manager Tim Burton reported that there was some discussion about the Growth Policy Map and what it represented.

Mayor Morrison had concerns about the map. A memo dated October 31 from the city attorney describing the map. The name of the map "future land use map" is a misnomer. The word "future" should be eliminated and in its place, put "current land use map". There hasn't been a chance to examine the map to turn it into a "future lands map" given what's in the growth policy.

City Attorney David Nielsen reported that some technical corrections can be made to the map such as changing the name. Major substantive things should go through the planning board. It was suggested that the technical changes be done at a later date such as December 17.

Commissioner Groepper suggested getting a memo to the planning board letting them know of the editorial changes.

B. Administrative Services Department

City Manager Burton reported that in regards to the first passage of the ordinance relative to Administrative Services Department, the organizational structure as proposed has changed. In terms of accommodating the staff with office space, in utility customer billing, money needs to be invested to tear out a "fake" wall in order to more effectively utilize that space. It is requested \$3,250 in contingency funds to complete that project. There is a contingency of \$49,937 and to date, none of that budget has been utilized. The wall is not original to the building and it does not create a problem if taken out.

**Commissioner Groepper moved to authorize the city manager to spend \$3,250 of contingency fees to implement the reorganization of the Administrative Services Department.** Commissioner Smith seconded the motion. All voted aye. Motion carried.

**Bill Roberts Golf  
Course**

CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR THE BILL ROBERTS MUNICIPAL GOLF COURSE FOR THE 2002 SEASON.

Staff Report

Randy Lilje, Director of Parks and Recreation, stated the objective is to set the fee schedule for the 2002 golf season so that season ticket and punch card sales may begin in December. At its November meeting, the Golf Advisory Board approved the fee schedule proposed by the Budget and Fees Committee and is recommending approval by the City Commission for the 2002 season. Basically all fees will be increased by roughly five percent with the exception of the season tickets which will remain the same as the 2001 season. The golf course experienced a drop of over 15 percent in the number of season tickets sold over the last year. There were a number of reasons to explain this. However, the board feels that if the golf course can set the fees earlier and get off to a more positive start, the number of season tickets can go up again. Keeping the season tickets the same price as 2001 prices will help to do this. The proposed fee schedule shows that Bill Roberts will be at market level for the Helena area. This will allow the sale of the 2002 season tickets and punch cards to begin in February and March.

Commissioner Oitzinger asked about the effect on the high school golf teams use of the facility. Randy Lilje reported it did not affect the high schools because they buy a season ticket at one of the local golf courses and then it is transferred during the golf season so it can be used at any one of the three golf courses.

Commissioner Netschert doesn't think raising the prices will increase business when the other courses in the area may have kept their rates the same. He would be inclined to keep them at the current rate at this time.

Mayor Morrison reported that, as stated in the memo, the reason for not selling as many season tickets is because of the delay in getting the fee set.

Randy Lilje reported that there was a lot of controversy involved because of the cash flow problems. Originally, the board was proposing a fee increase of roughly 15%. The golf advisory board discussed it and there were a number of public hearings held and it was brought to the city commission where it was tabled which put it back to the day after the season started. Usually they have a 1/3 to 1/2 of their season tickets sold by the 1st of April.

Commissioner Netschert asked when the pros contract ends and Randy reported that the pros contract ends at the end of the 2002 season.

**Motion**

**Commissioner Smith moved approval of the resolution of intention to increase the golf fees for the 2002 season and set a public hearing date of December 17, 2001 .** Commissioner Groepper seconded the motion. Commissioner Oitzinger voted aye, motion carried. Commissioner Netschert voted no.

***Annex Properties***

CONSIDER A RESOLUTION OF INTENTION TO ANNEX PROPERTY (LEGAL DESCRIPTIONS AS LISTED UNDER HEARINGS FOR PRE ZONING) UNDER PROVISIONS OF STATE LAW (MCA 7-2-4501 ET SEQ.) FOR ANNEXATION OF WHOLLY SURROUNDED LAND.

**Staff Report**

Project Manager, Hal Fossum, reported the city is proposing annexation of properties that are both surrounded by current city limits, and that are either connected to city utilities, or accessible to city water and sewer lines with little or no extension of the mains. Annexation is contemplated under MCA 7-2-4501 et seq.

Area I is generally located west of Montana Avenue and north of Custer Avenue, in the 900 and 1000 blocks of Custer Avenue, all within Section 18, T10N R4W, Lewis & Clark County, Montana.

Area II is generally located on and east of the private drive known as Pepsi Cola Drive, south of Airport Road, and west of Carter Drive, all within Sections 28, T10N R3W, Lewis & Clark County, Montana.

Area III includes properties north of Billings Avenue between Blaine Street and Carter Drive; south of Billings Avenue between Blaine Street and Market Street and north of the closed Butte Street; east of Carter Drive between the vacated Billings Avenue and the railroad tracks; and east of Carter Drive in the 700 and 800 blocks of that street, all within Section 28, T10N R3W, Lewis & Clark County, Montana. The proposed annexation would provide for orderly growth through uniform regulations such as building codes, planning and zoning standards. The annexation would provide for an equal sharing of community resources and financial responsibilities for those resources by people living and businesses located in an area united by social, political, and economical interests. The annexation would clear hurdles to further development of the properties by enabling the owners to develop in accordance with local standards and in anticipation of receiving all city services.

Commissioner Netschert asked what the urgency of the proposal was and if it's a matter of necessity or convenience.

Project Manager, Hal Fossum, reported that they have been working on annexation for about a year and a half. The commission established a work plan for annexation and updated that work plan earlier this year. That plan called for the annexation of properties that are wholly surrounded by city limits and served by city utilities. Those were essentially their selection criteria for the properties brought before the commission. All of them are wholly surrounded by city limits and all of them have water and sewer city utility mains crossing their property or right to the corner of their property. Those utilities are imminently accessible to the properties.

City Manager Burton stated that the reason that the city staff is moving forward is that they have been directed to do so by the city commission.

Commissioner Groepper stated that it is necessity for the staff because they were told to do this and he is pleased they are getting it done. The wholly surrounds need to be done by the end of the year.

Commissioner Netschert mentioned he would like to see incentives offered to see if we couldn't influence some voluntary annexation to eliminate the need to wholly surround these properties.

City Manager Burton has had discussions with the commission in terms of the work plan. In terms of these properties, we have had them reviewed by the fire marshall and we have got a short term and a long term situation relative to fire protection. The short term situation requires the installation of three fire hydrants in certain locations and the city will pay that bill. There has been communications with the land owners in terms of what needs to take place with these improvements. A lot of this property is undeveloped. Those improvements will be initiated by a request for a building permit.

Commissioner Netschert was looking at the possibility of phasing in certain fees or taxes that might be associated in reducing time limits.

Project Manager Hal Fossum stated that the elimination of the \$300 per annexation fee which will be replaced by the sewer system development fee is an incentive. They are asking these property owners to pay city taxes and assessments the same as city property owners do. This is annexation by plan and they have received comments from the property owners that is better for them.

Commissioner Groepper stated that if somebody wants to annex, they have to go through the planning board or zoning board and they have to pay a fee to the planning department for the cost of city staff to hold that hearing and by doing it this way, they don't have to pay that fee.

Commissioner Netschert asked if research had been done to identify properties that have been wholly surrounded after their purchase as opposed to those properties that have been purchased with the knowledge of them being wholly surrounded.

Project Manager Hal Fossum stated that no research had been done of ownership histories.

City Manager Burton reported it would be a significant request.

Commissioner Netschert asked what consideration has been given to the properties which are currently undeveloped with regard to any inequities of increased taxes and fees relative to the impact that they have and the benefits that they have received.

Project Manager, Hal Fossum, reported that the tax impact assessments and estimates were prepared last week by the administration department. One of the major issues is the increase of street maintenance costs. There are no restrictions that would prevent annexation of these properties.

Commissioner Netschert called their attention to MCA 7-2-4503. This says that land shall not be annexed under this part whenever the land is used for agricultural, mining, smelting, refining, transportation or any industrial or manufacturing purpose.

Project Manager Hal Fossom stated that that code has been considered. They have mapped the land uses in some detail. The state legal counsel was called to find a legal history behind this law. The judicial opinion on this state law is that generally when that law contemplates any industrial uses, they are talking about kinds of industry that tend to export from an area. The case law supports a fairly narrow interpretation of that.

City Attorney David Nielsen stated that he has looked at that statute and that none of the properties fit within that category. Liability would be that they do an annexation and we'd get challenged and it would be unannexed.

City Manager Burton stated that this has received a full legal review from the city attorney and this is in compliance with Montana statutes including all the laws governing annexation.

**Motion**

**Commissioner Smith moved to approve a resolution of intention to annex private properties under MCA 7-2-4501 et seq. and set a public hearing for December 17, 2001.** Commissioner Groepper seconded the motion. All voted aye, motion carried.

**Establish a SDF  
for new wastewater  
connections**

CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH A BASE SYSTEM DEVELOPMENT FEE FOR NEW WASTEWATER CONNECTIONS IN THE CITY OF HELENA.

**Staff Report**

John Rundquist, Director of the Public Works Department, reported that System Development Fees for wastewater utilities are a common way for new hookups to share in the cost of general benefit facilities such as treatment plants, pump stations and truck lines. Helena has charged SDF's for new hookups to the water utility since 1986. This type of connection charge is common and many of the larger communities in Montana have SDF's for sewer hookups, although they may call it by a different name. As required by law, money collected via the proposed connection fee would be set aside for expenditure only on general benefit facilities.

The commission is currently considering modifications to Helena City Code 1-5-9 and 6-3 that will eliminate the \$300 per acre sewer annexation fee and will install a schedule of SDF factors that would apply to a base SDF to be enacted by resolution. The factors are determined by the customer's water service meter size and the correct SDF would be calculated by multiplying the factor by the base SDF.

Based upon most recent construction costs, staff estimates that the unit capacity cost in Helena for wastewater to be in the range of \$1,400 per standard residential hookup. Normally, this would be the upper limit for a SDF assessment. The rate of fees charged by other cities varies widely. On the high side, Missoula's is set at \$1,200 and Kalispell charges \$1,581. On the low side, Great Falls charges \$245, Billings charges \$884 and Bozeman charges \$192.

Last summer, the Public Works and Community Development Departments met with area builders to discuss elimination of the annexation fee and proposed enactment of a SDF for wastewater. In general, most of the builders were not against enacting an SDF for wastewater hookups, but thought

that \$1,400 would be too high but were not objectionable to a fee in the range of the existing Water SDF of \$484 for a single family residence.

To encourage connection to the City's sanitary sewer as opposed to installing a septic tank and drain field, connection fees and front foot sewer main costs should be comparable or less than the initial cost than an on-site disposal system. On site disposal systems for a single-family residence can range from \$3,000 to \$15,000 depending upon site constraints. In comparison, the frontage foot costs for sanitary sewer mains is typically in the range of \$30 per foot for residential development. So, for 75 feet of frontage, a typical cost of sewer mains would be about \$2,250. On this basis, a SDF base of \$750 would be competitive with most on-site disposal systems.

Staff recommends that a Base Systems Development Fee for sewer hookups be set at \$750 which is a price slightly higher than half of the unit capacity cost estimate of \$1400 per single-family residential unit and competitive with on-site disposal systems.

This provides a funding source for general benefit wastewater facilities than will reduce the need for rate increases and debt instruments for system expansion.

Commissioner Netschert asked if the proposed base rate of \$750 is based on ¾ inch water meter? John said that is exactly the way the system development fee already works. As you increase the size of the meter, the actual fee goes up.

Public Works Director, John Rundquist, explained that the system development fee is a common fee in Montana and it ranges widely throughout the state. As growth occurs, there becomes a need for additional capacity.

Public Works Director, John Rundquist, advised the commission that they do have the public hearing for the wastewater ordinance changes which includes the schedule of system development fee factors that would be applied to the system development fee that the commission would enact by resolution. They are trying to change the ordinances with the re-codification to pull out the permits and fees to be enacted by resolution to make it easier for the commission to interact on those. They are doing wastewater ordinances and these factors based on the water meter size are in the ordinance itself to be applied to the base system development fee which would be enacted by resolution. Since ordinances require a first reading, a public hearing, action and then 30 days for it to be effective, staff is trying to get the system development fee to reach the end point at the same time.

**Motion**

**Commissioner Smith moved to approve the resolution of intention to establish a base systems development fee for new wastewater connections and set a public hearing date of December 17, 2001.**

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

**Mayor Morrison did a second motion - ask Debbie. 66.3 on tape.**

**Intention to vacate  
a portion of LeGrande  
Cannon Boulevard  
adjacent to Block W  
in the Mauldin  
Addition**

CONSIDER A RESOLUTION OF INTENTION TO VACATE A PORTION OF LEGRANDE CANNON BOULEVARD ADJACENT TO BLOCK W IN THE MAULDIN ADDITION.



John Rundquist, Public Works Director, stated the property owner adjacent to the portion of LeGrande in question is attempting to remedy some incomplete deeds for his property as well as the LeGrande right-of-way. Apparently, when the LeGrande property was deeded to the City a portion of Block W was inadvertently omitted in the legal descriptions. In order to rectify the ambiguity of our title to this portion of the right-of-way, the applicant is proposing some land swaps.

The conditions are: Utility easements for the vacated property are retained in accordance with state statute; An amended plat is completed to transfer the properties; Deeds are prepared and executed to transfer the properties and the request for the value - for value of waiver of fees to be accepted and approved by the commission.

The advantage would be that the city and property owner clear the titles to both private and public properties.

**Motion**

**Commissioner Groepper moved to approve the resolution of intention for this vacation and set a public hearing date of December 17, 2001.** Commissioner Smith seconded the motion. All voted aye, motion carried.

**Public Hearings**

PUBLIC HEARINGS

- A. CONSIDER A RESOLUTION TO ESTABLISH FEES FOR CITY COURT SERVICES.

**Staff Report**

City Manager Tim Burton reported spoke of setting fees for city court services not covered by state statute. Helena City Court currently does not charge the public for copies of court records, certification of court records, notary services, or record searches. The City Court wants to maintain services wherever possible and has estimated the costs to provide services not covered by state statute as follows:

- |    |                            |   |
|----|----------------------------|---|
| 1. | Civil Forms                | \$ 3.00 per case                            |
| 2. | Record Checks              | \$ 25.00 per record check                   |
| 3. | Certified Copies           | \$ 1.00 per page                            |
| 4. | Notary Services            | \$ 5.00 per notary                          |
| 5. | Copy Costs (non certified) | \$ 1.00 for the first page & .50 thereafter |

The above requests for information from the court have continued to increase. Most courts charge these types of fees. Disposition information on matters in City Court can be obtained through the Montana Department of Justice Identification Bureau and the Department of Motor Vehicles.

**Public Testimony**

No persons came forward to testify.

**Motion**

**Commissioner Groepper moved to approve a resolution to establish fees for City Court Services as represented in the November 21, 2001 memo.** Commissioner Smith seconded the motion. All voted aye, motion carried.

- B. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN ELEMENTARY SCHOOL TO BE LOCATED IN AN R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT. LEGALLY DESCRIBED AS ALL OF BLOCK 29 OF THE LENNOX ADDITION, HELENA, LEWIS AND CLARK COUNTY, MONTANA; LOCATED BETWEEN CALIFORNIA AND OREGON STREETS AND BROADWAY AND HIGHLAND STREETS WITH A STREET ADDRESS OF 2331 BROADWAY STREET.

Staff Report

Lucy Morell-Gengler, City Planner, reported that the applicant has requested the public hearing for the subject proposal be postponed until the January 14, 2002 city commission meeting. The applicant would like to conduct a neighborhood meeting and address the issues brought before the zoning commission and to address the conditions of a previous CUP.

Motion

**Commissioner Groepper moved that the public hearing for the subject proposal be postponed until the January 14, city commission meeting.** Commissioner Smith seconded the motion. All voted aye, motion carried.

- C. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 2-UNIT RESIDENTIAL CONDOMINIUM TO BE LOCATED IN AN R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT. [APPLICATION INCLUDES A REQUEST FOR A VARIANCE FROM THE MINIMUM 1,000 SQUARE FEET OF FLOOR AREA IN THE LIVING QUARTERS TO ALLOW EACH RESIDENCE TO HAVE 700 SQUARE FEET OF FLOOR AREA.] LEGALLY DESCRIBED AS BLOCK P, EAST 35 FEET OF LOT 2, BLAKE ADDITION, HELENA, LEWIS AND CLARK COUNTY, MONTANA; LOCATED ON THE SOUTH SIDE OF BROADWAY BETWEEN HOBACK AND SHILAND STREETS WITH A STREET ADDRESS OF 839 BROADWAY.

Staff Report

Lucy Morell-Gengler, City Planner, reported the applicant is proposing to convert the existing building into a two-unit condominium. The one-bedroom condominium units would contain approximately 764 and 714 square feet. Section 11-5-4 of the Zoning Ordinance relating to the R-2 District requires "*Each residence shall have a minimum of one thousand (1,000) square feet of floor area in its living quarters.*" Since each unit is considered an independent single-family unit, each unit will require a variance from the R-2, 1,000 square foot minimum floor area requirements. The proposal provides 4 off street parking spaces. The lot measures 35 feet by 100 feet and contains a lot area of 3,500 square feet. Because the lot is pre-existing and the house was constructed prior to 1969, the lot area, lot width, setback requirements, and lot coverage requirements are legally non-conforming or "grandfathered" and no variances for those items are required. Although the applicant has indicated the structure has been used as a duplex, there is not adequate documentation at this time to establish a "grandfathered" status for a duplex use.

On November 13, 2001, the Zoning Commission unanimously recommended APPROVAL (by 5 to 0 vote) of the proposed CUP subject to the conditions which are:

1. Unit Ownership Act.

Condominiums must be established on the subject property in compliance with the Montana "Unit Ownership Act".

2 Parking.

Four off-street paved parking spaces must be provided in accordance with Section 11-22-4F of the Zoning Ordinance.

3. Water and Sewer.

A. A Condominium association must be formed to be responsible for ownership, maintenance, and utility payments of water and sewer services.

B. In order to provide individual utility bills, separate water and sewer service lines must be installed. Optionally, a sub-meter to be read and maintained by the condominium association may be installed downstream of the city meter.

The need for variances from the floor area requirements was not apparent until after the Zoning commission reviewed the proposal, therefore a recommendation was not made for the proposed variances.

The proposal allows continuation of an existing situation that has demonstrated few negative impacts. It allows for infill development and higher utilization of an existing structure. The proposal could provide affordable housing.

Ms. Morell-Gengler used the overhead projector to explain the property.

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

Public Testimony

Mike Dowling recently purchased this house. He intends to do a 2-unit condominium. Mr. Dowling questions two of the conditions and asks that they be reconsidered. The first is that since it does have to be established as a condominium, a condominium association does have to be established. There are common utilities and the power and the gas and so, shared use of that has to happen by law. Condition # 3 requires that the sub meter for the water be accomplished. Other utilities other than water and sewer have to go into a common pot and shared and he doesn't understand why he would have to separate water and sewer. The second is the paved parking spaces. The one off of Broadway is paved. The three off the alley are not paved and he doesn't think they should have to be paved.

Commissioner Groepper asked about the renters sharing the cost of the water bill. Mr. Dowling stated that there would be one meter and that the cost of the water bill would be separate from the rent, but included in the condominium association fee.

Public Works Director, John Rundquist reported that condominiums are like apartments, but with separate ownerships. Our codes require water services per separate ownerships and condos can either have a separate service to each condo from our main. A service in our city codes is a pipe which connects from our main to the meter. Water service is owned by the property owner and maintained by the property owner. In regards to condos, there should be one service per ownership or that the condo association itself owns the service. In this case, since there are two condos, there would be either two meters and services and each the responsibility of the individual owners or there would be one service and one meter which would be the responsibility of the condo association.

Commissioner Groepper asked about 3b of the conditions from the zoning board which regarded the sub-meter. As long as Mr. Dowling owns both

the condos, only one meter is necessary?

Public Works Director, John Rundquist reported that as long as it's written in the condo association by-laws or rules that the service line is the ownership of the condo association and not the individual property owners. That was Mr. Dowling's intention.

## Motion

**Commissioner Groepper moved approval of adoption of a resolution of a conditional use permit (CUP) to allow a two-unit residential condominium to be located in an R-2 (single-family residential) District subject to the conditions in the staff report as amended by the commission for property legally described as Block P, East 35 feet of Lot 2, Blake Addition located in the SW 1/4 of Section 30, T10N, R3W, Helena, Lewis and Clark County, Montana; located on the south side of Broadway between Hoback and Shiland Streets with a street address of 839 Broadway. The conditions attached would #1 from zoning report #3 B as written as the following modification – separate water and sewer lines must be installed – single meter adequate.** Variance request on the square footage. Lucy said zoning commission added #5. Conditions in the transmittal as Mayor indicated? This is the motion from the zoning commission. Expanded the motion. Commissioner Smith seconded the motion. All voted aye. Motion carried. Asphalt or concrete is what is utilized. Gives permaneteability.

Commissioner Groepper asked about paved parking in r2 district. There are requirements for 2 paved parking.

D. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 32-UNIT ONE-BEDROOM LOW-INCOME APARTMENT COMPLEX IN A B-2 (GENERAL COMMERCIAL) DISTRICT CONSISTING OF FIVE FOUR-PLEXES, TWO SIX-PLEXES AND ONE COMMUNITY ROOM. [APPLICATION INCLUDES REQUEST FOR VARIANCES FROM OFF-STREET PARKING, LOADING AND SCREENING REQUIREMENTS.] LEGALLY DESCRIBED AS LOT 8A, BLOCK 2, SKELTON ADDITION, HELENA, MONTANA; GENERALLY LOCATED AT THE NORTHWEST CORNER OF PTARMIGAN LANE.

## Staff Report

Lucy Morell-Gengler, City Planner, reported this project will provide housing for citizens of low income consisting of five four-plexes, two six-plexes, and one community room. Each unit will have a single bedroom. The applicant is requesting variances for off-street parking, screening, and omission of an off-street loading berth. Boulevard sidewalks are proposed and landscaping requirements have been met.

The property is currently vacant and undeveloped. The subject property is adjacent to and has access from an existing city street, Ptarmigan Lane. The total property area is 111,135 square feet and is generally located on the northwest corner of Ptarmigan Lane.

The proposed conditional use permit would encourage the development of property in this area as well as facilitate in-fill development. This project is consistent with the various goals, objectives and policies of the 1994 Comprehensive Plan and the 2001 Growth Policy. This type of housing was ranked as the number one need in the Greater Helena Area Housing Affordability Strategies.

Lucy used the overhead to explain the property. In the B2 zoning district. A loading berth be required. Zoning commission approved this proposal.

Mayor Morrison asked about b2 area. Mixed use proposal. Right up against r3. Why don't they maintain b2 area?

Lucy stated this is a large lot.

Commissioner Netschert asked if applicant has to pay sdf? John answered question. The water and sewer system ownership – one meter for apt. complex. Applicant has an option.

Public testimony

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

The applicant, Margaret ? 19 S. Davis, architect, working with Rocky Mountain Development council. There being no persons wishing to address the commission, the public portion of the hearing was closed.

**Commissioner Groepper asked if this was continuing expansion for affordable housing. A forum was held and people were positive. The units are small – 600 – 700 feet. A need for single bedroom units in the community.**

**Gene Leuwer, 1601 Jerome, Helena, MT. This project is a continuation of ptarmigan. They rented those out in 2.5 months and had a waiting list. \$340 a month rent. Will serve people at 50 % medium.**

**Mayor Morrison asked about commercial property and R3 property. Why are they coming to the commission instead of coming into the R3.**

**It is the configuration of the lots. They need a parcel of ground that is large enough to accommodate a lot of units. It was a discussion with the owner of the lot.**

**Commissioner Groepper**

**Gene answered his question. Talked about working out access issues.**

**Debbie Joes, Brookline Drive, Dr. Robert Joes, dentist. Directly across unit that was placed. Do agree that there is a need for this type of additon. Doesn't feel this is the appropriate place for it. Concern for the area is the parking. Parking lot is occupied by residents of the unit. Concerned that there are single occupants in these residencies. Wants to keep cars off the street. Cars park in front of her mailbox and mail can't be delivered which affects her biness. Should be more of a commercial area than residential. I**

**They would prefer to see businesses there. She doesn't want it residential.**

**Linda Moranti, 3945 Yuhas, has same concerns of Debbie. Objections would be to grant the variances in parking. Loading is an important issue. If parking was addressed, that is one of her main concerns.**

**Commissioner Groepper asked about van accessible space?**

**Lucy reported there is additional item. Variance # 1 relates to parking. If**

not approved, then condition for parking would be affected. If not approved, then #1 overridden.

Commissioner Groepper asked architect about parking.

She addressed his question. The Ptarmigan residents asked for more parking spaces. This application was not modified. If taken out court yard area, could get 7 more spaces.

Mayor Morrison asked Gene another question. Wouldn't need another CUP? Gene would ask that they go forward. They recognize the parking issue.

Groepper – need low income housing. In support of program. Wants to approve project, but address parking issues.

Debbie responded and asked about taking the greenery out? Will check with the staff.

Mayor Morrison stated there are many other areas where this could be built. Why do a CUP when there is other available land? Put it where it is designated to go. Shouldn't be in a commercial area.

Gene said it wasn't available when they looked a couple years ago.

Commissioner Oitzinger said she shares Groeppers concerns. Doesn't want to detail timeline. She wants to go forward. Netschert agrees with the need for affordable housing, but echoes mayors concerns about building in ? zones. Need to address parking issues. Wants to table this for 2 weeks to iron out issues. Groepper doesn't want to table because land price will go up. Wants to approve it and encourage Gene to do alternate process. Mayor doesn't want Gene to pay more for land than he does now, but still wants 2 week delay to see if this will work. Smith wants applicant to talk about status of land acquisition. Gene reported that they do have buy/sell on the lot proposed. The Skelton subdivision folks own the r3 property talked about. The 2 week thing wouldn't mess up timeline. A CUP was on Ptarmigan also. Gene was amenable to a 2 week delay to get things straightened out.

#### Motion

Commissioner Smith moved to table the resolution until December 17, for a conditional use permit (CUP) to allow a 32-unit apartment complex in a B-2 to (General Commercial) District. The proposal is legally described as Lot 8-A, Block 2 of the Skelton Addition, Helena, Montana; generally located at the northwest corner of Ptarmigan Lane. Commissioner Netschert seconded the motion. All voted Aye. Motion carried.

- E. CONSIDER ADOPTION OF ORDINANCES FOR PREZONING PRIOR TO ANNEXATION OF THE PROPERTIES IN THREE AREAS IDENTIFIED BELOW. ZONING DISTRICT DESIGNATIONS CONTEMPLATED IN THESE PROPOSALS INCLUDE PUBLIC LANDS AND INSTITUTIONS (PLI); GENERAL COMMERCIAL (B-2); COMMERCIAL-LIGHT MANUFACTURING (CLM); AND MANUFACTURING AND INDUSTRIAL (M-I). GENERALLY, THESE CITY ZONING ACTIONS WOULD BECOME EFFECTIVE WHEN THE ANNEXATION IS COMPLETED.

1. Area I is generally located west of Montana Avenue and north of Custer Avenue, in the 900 and 1000 blocks of Custer Avenue, all within Section 18, T10N R4W, Lewis and Clark County, Montana.

**Area I**

1	The tract of real property described as Portion A per COS 495361/B	PLI
2	The 0.51 acre tract of land described in Book 280, Page 599 ½.	B-2
3	The tract of land described in Book M9, Page 353.	B-2
4	The tract of land described in Book M6, Page 3900.	B-2
5	The Mt Power Co tract shown on COS 434149/T.	PLI

2. Area II is generally located on and east of the private drive known as Pepsi Cola Drive, south of Airport Drive, and west of Carter Drive, all within Section 28, T10N R3W, Lewis and Clark County, Montana.

**Area II**

6	The private roadway known as Pepsi-Cola Dr. described on COS 265643.	CLM
7	A parcel of land in described in Book M 13, Page 9611, and shown as the Mr. Lucky's parcel on COS 265643.	CLM
8	The tract of real property described in Book M4, Page 5040 and shown as the 166.08 x 144.46 foot parcel on COS 265643.	CLM
9	The 1.0 acre Harrington Bottling Co parcel on COS 244584	CLM
10	The 0.126 acre parcel described on COS 296089.	CLM
11	The 0.553 acre parcel of land described on COS 297065.	CLM
12	The tract of land described in Book M.1, Page 5759.	CLM
13	The 0.097 acre tract shown on COS 297065.	CLM
14	The 0.502 acre parcel shown on COS 255822.	CLM
15	The 1.835 Acre parcel described on COS 410406/T.	CLM
16	The 10.079 acre tract of land described in COS 333319.	CLM
17	Tract 1, COS #403186.	CLM
18	Tract 2 COS #403186.	CLM
19	The tract of land described in Book M20 Page 891.	M-I

3. Area III includes properties north of Billings Avenue between Blaine Street and Carter Drive; south of Billings Avenue between Blaine Street and Market Street and north of the closed Butte

Street; east of Carter Drive between the vacated Billings Avenue and the railroad tracks; and east of Carter Drive in the 700 and 800 blocks of that street, all within Section 28, T10N R3W, Lewis & Clark County, Montana.

**Area III**

20	Block 15, Boyce Add. & 1/2 closed adjacent Missoula St.	CLM
21	Block 22 Boyce Add & 1/2 closed adjacent Butte St	CLM
22	1/2 closed Missoula St adjacent to Block 22, Boyce Addn.	CLM
23	Block 21, Boyce Add. & ½ closed adjacent Market & Butte St.	CLM
24	Block 16, Boyce Add.	CLM
24	Block 16, Boyce Add.	CLM
25	Lot 9 & 10A, Block 3, Hewins Add. per COS 432510, and Tract B-1, Block 3 per COS 523087/B.	CLM
26	Block 4, Boyce Addition	CLM
27	Block 5A of the Boyce Add., COS 557092	B-2
28	Block 6 of the Boyce Add.	B-2
29	Parcel A-3A of Block 7A, Boyce Addition, COS 559087	CLM
30	Parcel A-1A of Block 7A, COS 559087	CLM
31	The Bailly parcel as described on COS #371449	CLM
32	Tract B of Bailly Minor Sub. COS #555300	CLM
33	Tract A of Bailly Minor Sub. COS #555300	CLM
34	The .79 acre tract in Blk 29, Boyce Addn	B-2
35A	Block 27, Boyce Addition, and portions of closed, adjacent streets Missoula and 20th as described in Book M11, Page 8175.	CLM
35B	Blocks 26, Boyce Addition, and a portion of closed, adjacent Missoula Street as described in Book M11, Page 8175.	B-2

**Staff Report**

Hal Fossum reported that the city is initiating a proposal to annex properties wholly surrounded by city limits in the vicinity of Custer Avenue and Montana Avenue.

Zoning prior to annexation (ie., rezoning) is required by City Code. On November 13, 2001, the Helena Zoning Commission held a duly advertised public hearing and recommended zoning designations (PLI and B-2) for the properties by a unanimous (5-0) vote.

Two zoning designations are contemplated in this area. Two properties on the western extent of the area are proposed for the Public Lands and Institutions (PLI) District. Those are owned and operated by the state Department of Fish Wildlife and Parks, respectively, and current uses conform to the zoning proposed.

Three parcels on the eastern extent of the area are proposed for the General Commercial (B-2) District. One of these parcels is in



residential use, which would become nonconforming under the proposed B-2 District. The other two properties include a variety of uses, and although some of the current uses are not permitted under the provisions of the B-2 District, this property's owner concurs that district appears best suited to the situation and future development potential of the district. Nonconforming uses would be permitted to abide in place, but could not be expanded.

It is notable that one of these properties is the location of seasonal fireworks sales, an activity that is banned by general City Codes; the prohibition on fireworks sales would not be "grandfathered" by this action. The property owner, Mr. George Watters, has received monthly payments for this use in the coming July 4 season, and has asked whether the use could be permitted for this summer only.

The Zoning Commission found that the zoning proposed for these properties is most consistent with the development trajectories of the subject properties and is consistent 12 criteria identified in state law. To date, no objection to the proposed zoning designations has been received by this office or the Zoning Commission.

Hal used the overhead to explain the property. Current as of last spring.

Commissioner Oitzinger a question. Hal reported that professional offices

#### Public Testimony

Chuck Waters testified. No problems except one thing. He has a firecracker stand that has been there for several years. The lease is for a 3 year lease and a \$500 a month lease. If annexation goes into affect, then he'll have to pay back ? amount. Can annexation be affective after July 5 date? He would have to pay back money?

Commissioner Netschert said the zoning seemed reasonable. Doesn't want to vote. Groepper has question of staff. If Zoning before annexation, does zoning apply outside of jurisdiction.

Hal stated that we are prezoning. No donught rule.

City Manager Burton stated that is correct and in the interim, they should look at options and report back to the commission about what exists. City attorney will look at options.

Groepper

Hal stated annexation would be complete upon the effective date of zoning. Zoning becomes effective 30 days after 2<sup>nd</sup> passage.

#### Motion

**(3 times) Commissioner Groepper moved to approve first passage of an ordinance November 23 memo area 1 establishing zoning prior to annexation of property legally described and to find that the zoning is consistent with the evaluative criteria. All affected properties are located in Section 18, T10N R3W, Lewis and Clark County, Montana.** Commissioner Smith seconded the motion. All voted aye. Motion carried.

Motion 2

Motion 3 – page 3 of that memo

F. CONSIDER 2ND PASSAGE OF ORDINANCE 2925 AMENDING CHAPTER 3 OF TITLE 6 OF THE HELENA CITY CODE - WASTEWATER AND CONSIDER SECOND PASSAGE OF ORDINANCE 2926 REPEALING SECTION 1-5-9 OF THE HELENA CITY CODE. IN CONJUNCTION WITH PUBLIC HEARING F.

Staff Report

Public Works Director, John Rundquist, reported the amendment of current wastewater regulations is desirable to accomplish a number of needs identified by staff and the commission. The removal of the \$300 per acre annexation fee in HCC 1-5-9 has been recommended to eliminate a long-standing disincentive to annexation. Amendments to HCC 6-3 are needed to update old organizational titles and descriptions as part of the overall re-codification. Rules comparable with those found in the Water Regulations (HCC 6-2) are recommended to allow consistent regulation of both water and wastewater mains and services. Rebates for private extensions of sewer mains should be allowed for a 20-year term, similar to water regulations. Hookup charges (system development fees) for new sewer connections are recommended in lieu of annexation fees to address added capacity cost for new hookups.

Commissioner Netschert asked about fees?

John asked about timing issues. David said appeal would not be effective for 30 days.

Public Testimony

No persons came forward.

Motion

**Commissioner Smith moved to approve the ordinance to repeal Helena City Code 1-5-9 and move to approve the ordinance amending Chapter 3 of Title 6 of the Helena City Code.** Commissioner Groepper seconded the motion. All voted aye. Motion carried.

Motion

Commissioner Smith moved to approve the ordinance amending Chapter 3 of Title 6 of the Helena City Code.

G. CONSIDER A RESOLUTION CLOSING THE NORTH-SOUTH ALLEY IN BLOCK 41 OF THE GRAND AVENUE ADDITION.

Staff Report

Public Works Director, John Rundquist, reported that the existing dirt alley is bounded on the north by Cole Avenue and on the south by Elm Street. Block 41 is bounded on the east by Montana Avenue and on the west by Dodge Avenue. Both sides of the alley are zoned CLM.

First Assembly of God Church, the primary applicant, desires to increase parking in the vicinity of their facilities. First Assembly of God Church owns the lots bordering the alley on the west. Car Quest Parts Store and Hot Springs Spas, owners of the lots on the east have signed

the closure petition.

The alley is a low spot on Dodge Avenue. Improvements to the alley and church lot will address drainage. Montana Power (Gas) and Qwest Communications object to the closure because they have facilities in the alley.

The applicant proposes to improve Lots 7-12 and the alley to increase parking for the church and two businesses. The closure will allow the eastern 9 feet of the alley to be used for parallel parking. The public traveled way will shift to the west. The plans show curb cuts of 24 feet on both Elm street and Cole Avenue.

The applicants have signed a use agreement that outlines the responsibilities of the applicant. The applicants agree to accept an initial annual fee of \$50.00 and such future fee schedules as approved by the commission.

Approval of the closure will improve off street parking availability and south-north drainage of Dodge Avenue. The applicant will provide landscaping for the new lot design and still allow a travel path through the area.

Commissioner Smith asked if this had anything to do with the school?

Commissioner Oitzinger asked about schematics? This is architectural schematics. No level of detail.

Public Testimony

No persons came forward.

**Motion**

**Commissioner Oitzinger moved to approve resolution to close the alley in Block 41 Grand Avenue addition subject to the submission of an engineering approval and engineerd site drainal and** Commissioner seconded the motion. All voted aye. Motion carried.

**Public Communications**

PUBLIC COMMUNICATIONS

**December ?**

**Administrative meeting December 12 and joint city meeting**

**Meetings of Interest**

MEETINGS OF INTEREST

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at p.m this 3rd day of December, 2001.

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MAYOR

ATTEST:

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CLERK OF THE COMMISSION