

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**MAY 6, 2002**  
**6:00 P.M.**

- Time & Place**                    A regular City Commission meeting was held on Monday, May 6, 2002, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present**                Mayor Smith indicated for the record that Commissioners Netschert, Oitzinger, Parriman and Pouliot were present. Acting City Manager Troy McGee, City Attorney David Nielsen and Deputy City Clerk Barb Fairhurst were present. Jim Christnacht of the Helena Citizens Council was also present.
- Pledge of Allegiance**            Mayor Smith lead those persons present in the pledge of allegiance.
- Minutes**                            The minutes of the regular city commission meeting of April 22, 2002 were approved as submitted.
- Proclamation**                    PROCLAMATIONS
- A.     Buddy Poppy Day
  - B.     National Historic Preservation Week Plus!
- Mayor Smith read the "Buddy Poppy Day" proclamation.
- Shirley Pouliot accepted the Buddy Poppy Day proclamation. Mrs. Pouliot is the president of The Ladies Auxiliary to the Veterans of Foreign Wars for Post 1116 in Helena. She thanked the commission for the proclamation. The Buddy Poppy is made by disabled American veterans in veteran hospitals and distributed by veterans for needy veterans. This has been done for 75 years. All the monies collected through donations are kept in Helena and used for veterans at the VA hospital and for other veterans who are in need of food or clothing.
- Mayor Smith stated that Commissioner Pouliot is a past national commander of the Veterans of Foreign Wars and a distinguished veteran. Mayor Smith thanked Commissioner Pouliot for his service to the country.
- Commissioner Pouliot stated he has been very active in veteran's organizations since Vietnam. He is a member of VFW Post in Helena and the American Legion. The donations collected from the buddy poppies are used to help out veterans and is called the "Relief Fund."
- Mayor Smith read the "National Historic Preservation Week Plus!" proclamation.
- Mr. Ron Cullen accepted the proclamation and thanked the commission. Mr. Cullen invited the commission to attend a celebration of events pertaining to National Historic Preservation Week and they include:
- May 10** - The observation of the annual military museum wine tasting fair at the Algeria Shrine Temple.
  - May 13**, at 4:00 p.m. - A guided tour of the historic lion kilns tour.
  - May 15** - An economic power of preservation event in Great Falls with a national renowned speaker addressing the economic development of historic preservation.
  - May 16** - A tour of Reeders Alley.

**May 17**, at 12:00 p.m. - A luncheon at the Montana Club which recognizes the people in the community who have excelled in historic preservation.

**May 18**, from 9:00 a.m. until 2:00 p.m. - A cemetery clean up day at the Benton cemetery.

**May 19**, at 10:00 a.m. - A tour and a garage sale at the Benton cemetery.

These events will be listed on radio spots, TV spots and time in the "Your Time" pullout of Friday's edition of the Independent Record.

### Consent Agenda

#### CONSENT AGENDA

- A. Claims
- B. Contract for the development of a communication and consensus-building plan for the creation of public/livability spaces in downtown Helena.
- C. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles)
- D. Acceptance of grant funding from the Montana Board of Crime Control in the amount of \$61,654 for a records and technology system network.
- E. Contract for codification services.

Acting City Manager Troy McGee recommended approval of the claims and the consent agenda.

### Motion

**Commissioner Netschert moved approval of the consent agenda, items A - E.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

### Communications

#### COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger stated the new carousel is splendid. There are many artistic works associated with the carousel that speak so highly of Helena and of our state as a whole.

Commissioner Pouliot stated there is a fundraiser for the military museum on Friday, May 10. He is pleased to see all the items listed on the historic preservation brochure.

Commissioner Netschert stated he received a phone call from Doug Stewart, 915 Poplar, who is the owner of P&E Supply. Several months ago, there was a closure of the street and Mr. Stewart would like to know the status of that closure. Public Works Director John Rundquist reported his staff would look into this matter.

Commissioner Netschert stated the Helena Housing Authority has lost 50 plus years worth of experience to people leaving. A former employee of the Helena Housing Authority contacted Commissioner Netschert because he was concerned they can lose ratings that may or may not affect costs and he would like his concerns passed along to the commission. Director of Community Development Michael Barros reported he is aware of the resignations from the Helena Housing Authority, but is not aware of any affect it would have on Housing and Urban Development funding. He will look into the matter.

Mayor Smith stated he will out of state for the May 20 commission meeting. Commissioner Netschert will be Mayor Pro Tem for that meeting. In regards to item 11D of the agenda, the Resolution of Annexation, public

testimony will be limited to the annexation issue only and not the sale of the property.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen had nothing to report on.

**Report of the City Manager**

REPORT OF THE CITY MANAGER

Acting City Manager Troy McGee had nothing to report on.

**Annexation/  
Sewer service for  
Mountain Meadow  
Inn**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX PRIVATE PROPERTY LEGALLY DESCRIBED AS THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, T10N, R4W, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED AT 2245 HEAD LANE.

**Staff Report**

Project Manager Hal Fossum reported the Planning Division has received an application for annexation from John and Kathy Ramirez, proprietors and owners of the Mountain Meadow Inn, an existing bed and breakfast business on 40 acres of land (35 of it classed as agricultural) at 2245 Head Lane. The property is about 1.75 miles from the nearest city limits.

The city's Fort Harrison sewer line runs adjacent to the property. Because of the age and condition of the lodge's existing septic system, the City-County Health Department has limited the use of guest rooms in their facility to five of 19 rooms pending installation of an updated septic or sewer service.

Under state policy, before a new septic service can be constructed, property owners within 500 feet of an existing sewer line must be denied permission to connect to that line. State law (7-13-4314 MCA) provides that "any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town."

The city has no near-term plans to extend comprehensive city services to the area of this property. Such services include water, road improvements, drainage facilities, pedestrian ways and fire hydrants.

Section 6-5-1 et seq. of City Code specifies a certain order of events when an outlying property owner wishes to connect to city water or sewer:

1. An attempt to annexation must be made. The commission first must consider, and deny, a motion to annex the property before alternatives can be considered. To deny annexation, the commission must find that good and sufficient cause is shown and that hardship would result from annexation.

- A. The commission may then consider a proposal to extend sewer and/or water service boundaries if the property owners waive the right to protest future annexation, and the property is: (a) contiguous to the boundary of the service area as the same exists; (b) entirely within the city's full service, urban planning area; and (c) entirely within the city's facilities planning area.

In the short-term, the annexation of this property would create substantial costs for both the property owner and city taxpayers. Costs to city taxpayers include bringing street maintenance, police and fire protection to this remote area. Costs

to the property owners would include: (a) facility upgrades needed to meet fire codes, (b) costs of extending required city infrastructure, and (c) tax increases from reclassification of the property as urban commercial.

Staff recommends that the City Commission deny the annexation request based on the high cost to taxpayers of providing street, fire and police services and direct staff to initiate the public process of extending the city's sewer service area to include all of the Fort Harrison sewer line easement. The Ramirez property could be considered for inclusion in that service area extension.

At the time it considers extension of the sewer service area, City Commission could specify *conditions for inclusion of this property in the sewer service area*. We suggest that certain provisions could be embodied in an agreement, to be in legal form approved by the City Attorney, recorded with the County Clerk and Recorder, run with the land, and signed by the owners:

1. **Protest to annexation and SID waived.** Under the City Code, legal rights of protest to annexation must be waived. We recommend that protest to participating in financing for required infrastructure also be waived.
2. **Agree to sewer fees, inspections, use metering.** Each sewer service connection is subject to all applications, inspections, fees and rules associated with building, tapping and using the system in the same manner and basis as apply to properties and property owners within the city. Among those rules is a requirement that the property owners install water meters to enable usage of the sewer utility to be measured for billing purposes.
3. **Limited rights to service.** Application for each service connection must be made to the city, which may for any reason approve or deny each individual sewer service connection. Two new sewer connections are contemplated and authorized by this application: (1) for the existing lodge facility, and (2) for a new single family residence to be constructed on the property.

The first condition is specified in City Code (6-5-4-A). The second ensures that the city has the same rights to require inspections and fees as with other users in the city. The third is intended to preclude significant development of the property as may result if the property is granted unlimited rights to the city's sewer utility.

The recommended motion would set the stage for the city to extend the sewer service area to the property. A sewer connection would enable full utilization of the establishment, a historic lodge, while minimizing adverse water quality effects in this area of high ground water.

Discussion

The applicant, John Ramirez, stated staff has done an excellent job and thanked them for their work. He supports the denial of annexation at this time.

Motion

**Commissioner Pouliot moved to deny annexation to the City of Helena for property legally described as the Northwest 1/4 of the Northwest 1/4 of Section 14, T10N, R4W, Lewis & Clark County, Montana, generally located at 2245 Head Lane.** Commissioner Netschert seconded the motion. All voted aye, motion carried.

Discussion

Commissioner Netschert stated this is a good example of why annexation policies should be reexamined with regard to noncontiguous properties. We want to be good neighbors, but we have a responsibility to the taxpayers.

**Public Hearings**

**Extension of  
Sewer service  
Boundary**

CONSIDER A REQUEST TO INCLUDE THE FORT HARRISON SEWER MAIN AND THE MOUNTAIN MEADOW INN WITHIN THE CITY SEWER SERVICE AREA.

Staff Report

Public Works Director John Rundquist stated the Fort Harrison sewer main was installed in the summer of 2000 and serves the Fort which is currently within the sewer service area. The actual easement and the sewer main itself were inadvertently not included with the Fort Harrison request for inclusion within the service area.

In addition, the Mountain Meadow Inn has requested annexation in order to receive sewer service. The advertised public hearing is to allow consideration of the inclusion of the Mountain Meadow Inn for service in the event the annexation is refused.

The legal description of the Mountain Meadow Inn is: the NW 1/4 of the NW 1/4 of Section 14, Township 10 North, Range 4 West, the Mountain Meadow Inn, with an address of 2245 Head Lane.

This proposal allows the Inn to develop as they have planned and to include the new Fort Harrison main within our sewer service area.

Since the staff report and pursuant to the administrative meeting, additional conditions have been developed for the commission's consideration to go with the sewer service boundary extension. There is an alternate recommended motion.

Staff suggests a number of conditions associated with the boundary extension.

1. **Sewer fees, inspections, use and metering.** Each sewer service connection is subject to all city applications, inspections, fees and rules associated with building, tapping and using the system. The wells providing water to the structures must be metered by meters approved by the city. The property owner shall allow authorized city personnel access to the property to read, service and maintain any meter.
2. **Annexation.** The property owner shall give in writing a waiver of protest and consent to future annexation of the parcel by the city.
3. **Infrastructure Financing.** The property owner shall give in writing a waiver of right to protest the creation of special improvement districts for the construction of water and street systems to city standards.
4. **Limitation of Approval.** This approval is only for: (1) for the existing lodge facility, and (2) for one new single-family residence to be constructed on the property. This approval does not authorize sewer service to any other structures or improvements on the property. Additional sewer connections are permitted only upon approval by the City Commission.
5. **Conditions as covenant.** These conditions must be contained in a written agreement with the city, which will be recorded with the County

Clerk and which will run as covenants upon the property.

**Discussion** Commissioner Parriman asked how much the system development fee would be for the Mountain Meadow Inn. Public Works Director John Rundquist stated it has not yet been determined. It depends on how much water demand the buildings need and the physical size of the water meter that needs to be installed. The base fee is for standard residential meters. If you need a larger meter, the SDF goes up in proportion to the size of the meter. The fee is defined in our ordinances by meter size.

**Public Testimony** Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.  
There being no persons wishing to address the commission, the public portion of the hearing was closed.

**Motion** **Commissioner Pouliot moved to approve extension of the City of Helena sewer service area to include all of the Fort Harrison sewer main easement and the present lodge facility and one proposed residential structure to be constructed, both located in the NW1/4NW1/4, Section 14, T10N, R4W, P.M.M., Lewis & Clark County, Montana, with an address of 2245 Head Lane. This grant of extension of the sewer service area to these structures is subject to the following conditions listed above.**  
Commissioner Netschert seconded the motion. All voted aye, motion carried.

**Discussion** Commissioner Netschert stated this is environmentally and economically responsible. The commission should further look at the annexation policies and system development fee issues.

**Kindergarten CUP** CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A PRIVATE KINDERGARTEN FOR 20 CHILDREN AND ONE TEACHER TO BE LOCATED IN AN R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT. LEGALLY DESCRIBED AS TRACT A LOCATED IN THE SE 1/4 OF SECTION 32 AND THE SW 1/4 OF SECTION 33, T10N, R3W, HELENA, MONTANA AS SHOWN ON CERTIFICATE OF SURVEY #551265; GENERALLY LOCATED NORTH OF BELT VIEW DRIVE AND EAST OF CALIFORNIA STREET WITH A PROPERTY ADDRESS OF 545 CALIFORNIA STREET.

**Staff Report** City Planner Kathy Macefield reported that according to the applicant, the preschool/daycare currently has 10 employees (including part-time employees) but has the equivalency of 6 full-time employees with lunch-time comprising their highest staffing requirement. This property received a variance from the Board of Adjustment on December 6, 1980 to reduce the number of onsite parking spaces from six to four.  
The 3 R's preschool and daycare received a CUP for a nursery school for up to 45 children on November 22, 1982 (Resolution #9469). This CUP required sidewalk to be installed; whether or not this condition has been met may be questionable because the existing sidewalk has not been installed across the full lot frontage adjacent to California Street.  
On Tuesday, March 12, 2002, the Helena Zoning Commission tabled this request until April 9, to resolve issues related to parking and safety concerns. On April 9, 2002, the Zoning Commission unanimously recommended APPROVAL

for the CUP (4:0 vote) and APPROVAL for the parking variances (3:1 vote), subject to 5 conditions. The Zoning Commission also recommended consideration of installing signs prohibiting U-turns at the California/Belt View intersection.

With this proposal, a 700 square foot addition would be constructed on the south side of the existing 1,196 square foot preschool building. The proposed kindergarten would operate Monday-Friday, 7:00 a.m. - 5:30 p.m. and would also provide after-school care. One additional staff person would be added for the kindergarten.

The applicant has stated the proposed kindergarten would be an advantage to parents since they believe the "majority of the students enrolled in the program will be from the immediate geographic area. Those students would be likely attending Smith School. Since Smith School offers only a half day kindergarten program, parents must provide or arrange transportation home or to an after school program at 11 a.m. Since the proposed program is a full day program with after school care, parents need only to make one trip in the morning and one in the evening, as opposed to four."

Said approval is subject to the following conditions:

1. **Parking**
  - A. Onsite parking and loading spaces must be provided that are consistent with the number of spaces required by the Zoning Ordinance for a total of 8 parking spaces for 11 employees, one parking space for persons with disabilities, and 8 loading spaces for 65 children.
  - B. If a variance is granted from the 17 onsite parking and loading requirements, the handicap-accessible parking space and two loading spaces shall be provided on the property, and 6 loading spaces must be provided adjacent to the property on Belt View Drive and California Street. These spaces must be appropriately signed to restrict parking. The loading spaces must also be signed "Loading Only No Parking" or 15-minute parking."
  - C. If the parking variances are granted, parking must be installed as shown on the site plan submitted March 27, 2002.
  - D. The following signs must be installed for the driveway:  
California exit -- "one way" and "exit" signs  
Belt View Drive entrance -- "one way" and "entrance"
2. **Sidewalk**
  - A. Sidewalk must be installed around the southwest corner of the property, including an ADA ramp at the corner of California Street and Belt View Drive.
  - B. The damaged portions of sidewalk and curb gutter must be removed and replaced as required by the Public Works Department.
3. **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:

  - A. Sidewalk
  - B. Parking and loading control signs.
4. **Building Permit**

Applicant shall obtain a building permit within one year.

5. **Occupancy Permit**  
Conditions 1-4 must be completed prior to the kindergarten's occupancy of the building.
- II. **APPROVAL** for the following variances from the onsite parking requirements:
  - A. To allow more than half of the eight required onsite parking spaces to be located across the street on the south side of Belt View Drive and the west side of California Street; and
  - B. To allow the six of the child loading and drop-off spaces to be located on Belt View Drive and California Street adjacent to the property.

Discussion

Commissioner Pouliot asked about the child drop-off area and Ms. Macefield reported there are three parking spaces on the property. They need a total of eight parking spaces. The only way to get five more spaces on the property is to redesign.

Commissioner Netschert asked about the drop-off spaces and if they would be long-term or short-term parking? Ms. Macefield stated they would be short-term parking. Commissioner Netschert asked how many parking spots would be required for the employees? Ms. Macefield reported they have 10 employees. The formula is to have one parking space for every two employees. Plus, they need two additional spaces and one loading space for every eight clients. They would need to have five plus two, so they would need seven spaces, plus the additional spaces for the drop-off. Commissioner Netschert asked if they considered having bicycle racks to alleviate the need for the parking spaces. Ms. Macefield stated that is an option and was mentioned at the Zoning Commission hearing.

Commissioner Parriman asked about the employee parking spaces and how many were needed. Ms. Macefield stated a total of eight parking spaces were needed for the employees. Two extra spots are located on the street and can be used for the child drop-off or the employee parking spots.

Commissioner Oitzinger stated the Zoning Commission vote on this was 3-1. Did that vote occur subsequent to changes in the schematic for parking? Ms. Macefield stated the Zoning Commission saw the earlier site plan and when they made their vote, the first thing that they voted on was the question on the conditional use permit. They unanimously recommended approval. The second thing they voted on was the variances for the parking and that was the 3-1 vote. Commissioner Oitzinger asked if there was an issue about the parents and children having to cross the street. Ms. Macefield stated one of the Zoning Commissioners had gone and watched the traffic patterns and she saw people making U-turns and had some concerns with that.

Mayor Smith stated there was a sidewalk that was to be installed in 1982 and has that CUP been met? Ms. Macefield reported there is a memo from a previous employee that states they had checked the property and the sidewalk is installed. It is not there on the corner, so that is one of the requirements with this CUP, is that the sidewalk would be finished out on the corner and the applicant has agreed to do that. Mayor Smith asked where the majority of the students would come from. Ms. Macefield reported half of the students came from the neighborhood and the new students would also come from the neighborhood. Mayor Smith asked if the addition would be single level and Ms. Macefield reported that is correct.

Commissioner Netschert asked if there has been a request for a review



of traffic patterns? Ms. Macefield reported she was in that area for a half hour and observed five cars run the stop sign. Commissioner Netschert asked if additional signage in the area was appropriate? Ms. Macefield stated the Zoning Commission asked if a crosswalk or additional signage could be installed. The city engineer expressed concerns and this issue is still being addressed.

Commissioner Pouliot stated he has no opposition to granting this CUP, however, it doesn't seem like it is ready for a decision. There are too many questions that are unanswered such as where the parking will be located. Would it be more appropriate to take this back to the planning committee for review? Ms. Macefield stated they have tried to address the Zoning Commission's concerns with the parking. The newest version has been shown to the city engineer and he indicated there were no problems with this layout.

#### Public Testimony

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

Dan Anderson, 625 Stadler Road, is the applicant and stated 3R's has been serving the community since 1982. 3R's provides high quality educational and social services for children ranging from 2 - 5 years of age. The school is regulated by the Montana Department of Public Health and Human Services and they are currently seeking accreditation from the National Association for the Education of Young Children. Once accreditation is attained, they will be one of only a few in the state to receive such recognition. They are proposing to construct a 600 square foot addition to the 2500 square foot building. The addition will house a private kindergarten for 20 students. The kindergarten program will utilize a curriculum based on reading, math and science. The kindergarten program proposed will be a full day program with an after school component built in. The full day program requires parents to drop their children off in the morning and then pick them up once in the evening. Public school programs require the child to be dropped off at 8:30, picked up again at 11:00 for delivery to an after school program and ultimately picked up again in the evening.

The CUP should be approved for the following reasons:

1. It conforms with the comprehensive plan.
2. It will not adversely affect the neighborhood.
3. The proposal meets density and other requirements in the district.
4. The proposed use is a natural and logical extension of educational services that are provided.
5. The proposal will help reduce traffic in the neighborhood since fewer trips are required by parents.
6. The addition is being designed by DT Architects and will be built in a manner that maintains the residential ambiance of the current building so that it blends seamlessly into the neighborhood.
7. The proposed use enhances educational opportunities in the neighborhood.
8. Quality preschool, pre-kindergarten and kindergarten education offers long term benefits to the community.

Ben Tintinger, architect with DT architects, stated there aren't any questionable issues with this CUP at this time. Mr. Anderson would like to get this built before the Fall semester starts. The employee parking spots would take the spaces that are across the street rather than adjacent to the property. There are eight drop-off spaces that are required. Three of them on-site and five of

them adjacent to the site and the eight employee parking spots as well and the one handicap, disabled space.

Jerry Hutch, 1111 E. State Street, asked about the parking space between the entry way and the intersection of Beltview and California. Under state law and city ordinance, there is a requirement for no parking in front of a stop sign. There is a stop sign at the corner of Beltview and California.

John Axeline, 907 8th Avenue, stated he is in support of Mr. Anderson's proposal. His daughters have attended 3R's since 1994 through 2001. The parking is very transient, very quick.

There being no other persons wishing to address the commission, the public portion of the hearing was closed.

#### Discussion

Commissioner Pouliot stated he has concerns about unanswered questions involving parking spaces. He would like those concerns taken care of before it comes before the commission.

Commissioner Parriman stated his kids went to preschool at 3R's daycare. He was very happy with the care his children received. They are doing their best to accommodate requirements and there are enough parking spaces available. He does have concerns with people going back and forth across the street because that is a fairly busy area. It is a comprehensive, good plan and he is in favor of approving the CUP.

Planner Kathy Macefield addressed Jerry Hutch's question about parking in front of a stop sign. According to a section of the city code, they are in compliance.

Commissioner Netschert asked Mr. Tintinger if there had been any attempts to encourage the employees to carpool or ride bicycles. Mr. Tintinger stated that on the site plan, there are two bicycle-parking areas shown on the plaza next to the handicap space. By zoning code, they are allowed to subtract one required parking space for every two bike parking areas. Dan Anderson reported they currently have a mix of people carpooling and biking.

To address Commissioner Pouliot's concerns, Ben Tintinger reported there are enough spaces required for employees and they do have enough spaces required for the drop-off. This is a safer plan than WalMart where children and parents are walking through drive aisles.

Mayor Smith shares the concerns of Commissioner Pouliot.

Commissioner Oitzinger stated she also shares those concerns. Will the signage specify this is employee parking? Ms. Macefield stated the signage recommended is for the child drop-off/pick-up areas. Commissioner Oitzinger stated there was a neighborhood meeting. What was the outcome of that meeting? Mr. Anderson stated they sent out more than a dozen letters to adjacent neighbors and told them the intention of 3R and invited them to a meeting at the preschool. Three people showed up and those folks were supportive of the school.

Mr. Anderson addressed the parking issues. The drop-off area will be through the driveway, but also adjacent to the property, along the street. This school has been in operation since 1982 and there has never been an injury related to people bringing their children to the school. The employee parking will be across the street.

Commissioner Pouliot asked about a crosswalk being installed. Mr. Anderson stated they are supportive of having a crosswalk installed, but the issue comes down to maintenance. The maintenance people indicated they did

not have the time to maintain a crosswalk.

Acting City Manager McGee stated the parking for employees would not be designated as such. It is general public parking. There would be no signs that say "Employee parking" as you cannot do that on a public street. In regards to a crosswalk, there would have to be studies done by the engineering department because of criteria about the site.

Commissioner Netschert stated he appreciates everybody's testimony but he has concerns about the applicant coming back yet another time. In regard to parking as a condition, the employer of 3R's should continue to ask their employees to park across the street and to continue their carpooling and encourage alternative modes of transportation. In addition, the applicant should ask staff to review the traffic control situation in the area.

Mr. Anderson stated they already encourage employees to park across the street and to carpool and ride their bikes.

Commissioner Netschert asked what the formal procedure was to ask for a traffic review. Public Works Director John Rundquist stated they could do traffic counts and watch the intersection over a period of time.

Mayor Smith stated there were comments made earlier about enforcement in that area and asked Chief McGee for his opinion. Chief McGee stated they enforce these areas the best they can. There are numerous intersections that need to be watched.

**Motion**

**Commissioner Netschert moved approval for a resolution for a Conditional Use Permit (CUP) to allow a kindergarten with 20 students to be combined with an existing daycare/preschool (with 45 children) to be located in a R-2 (Single-Family Residential) District with variances for the on-site parking with adjustments being made for that as described in the transmittal memo of April 24, 2002, subject to conditions noted therein, with the addition that condition E (that the employees be asked to park across the street and continue to carpool and use alternative modes of transportation) and with condition F (to announce to clients the proper drop-off procedures with regard to traffic usage) and to all other conditions contained therein and as legally described as in the transmittal letter of April 24, 2002. Said property is legally described as Tract A located in the SE 1/4 of Section 32 and the SW 1/4 of Section 33, T10N, R3W, Helena, Montana as shown on Certificate of Survey #551265; generally located north of Belt View Drive and east of California Street with a property address of 545 California Street.** Said approval is subject to the conditions listed above in the staff report and the additional conditions stated in the motion. Commissioner Oitzinger seconded the motion. Commissioners Netschert, Parriman and Oitzinger voted aye and Commissioner Pouliot and Mayor Smith voted no. Motion passes 3-2.  
**Resolution No. 11753**

**Discussion**

Commissioner Pouliot stated he is not opposed to this CUP, but believes it is premature at this time to come before the commission.

**Zone change from R-2 to PLI**

CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-2 (SINGLE-FAMILY RESIDENTIAL) TO PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT. LEGALLY DESCRIBED AS LOTS 1-24, AND LOTS 27-49, BLOCK 2, AND LOTS 8-16, AND LOTS 41-54, BLOCK 3, CAPITAL HILL ADDITION, HELENA, MONTANA; GENERALLY LOCATED NORTH OF

LYNDALE AVENUE BETWEEN PARK AVENUE AND GETCHELL STREET, WITH PROPERTY ADDRESSES OF 153-183 HENRY STREET, 154-198 LYNDALE AVENUE AND 1105 PARK AVENUE, ALL LOCATED IN BLOCK 2; AND 144-180 HENRY STREET, AND 165 AND 187 RALPH STREET, ALL LOCATED IN BLOCK 3.

Staff Report

City Planner Belinda Waters reported approval of the requested zone change would allow the property to be developed for public and quasi-public related uses. The applicant seeks the zone change to allow for the construction of a new residence hall. All uses in the PLI District would be allowed if the proposed zone change was approved.

The majority of the property in the area of the proposed zone change is already developed. Access to the property will be from Park Avenue and Getchell Street. In the PLI District, there are no restrictions on lot area, lot width, building coverage and yards except for those portions constituting loading berths, parking areas and landscaping. All new structures are required to conform to the Uniform Building Code and Uniform Fire Code.

The applicant is proposing to rezone a two-block area between Ralph Street and Lyndale Avenue from R-2 (Single Family Residential) to PLI (Public Lands and Institutions). Carroll's master plan call for the construction of a new residence hall on Block 3 of the subject property.

The Growth Policy promotes more intense and efficient use of land and facilities. The PLI zoning would allow more intense use of the land. Infrastructure (water, sewer, storm water drainage and streets) to serve the area is already in place representing an efficient use of land, infrastructure, energy and other resources. The proposed zone change appears to conform to the goals, objectives and policies of the 2001 Growth Policy.

Public Testimony

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

**Dr. Tom Trebon**, 425 Gilbert Street, is the President of Carroll College. Carroll College has hopes and dreams for this proposal. Carroll College is becoming the leading, quality catholic Liberal Arts College in the Northwest. It is important for the college to interact closely with the community. Carroll has a \$30 million dollar impact on the community in terms of employees who earn a salary at Carroll and then go out in the community and contribute that money in various ways in the community. Our commitment for a number of years has been to develop a campus plan with the physical space from approximately Lyndale to the transfer station; from Benton to the park. In the area between Lyndale and Ralph, including Henry and Getchell and Park, we have planned a student village. That is an area that will focus on the development of community among the students and will help develop that community called Carroll College. Focus has been on land use planning; siting of regions of activity including classroom and formal learning region; the academic area; the athletic area; campus community and the residential area. We have looked at emergency needs for emergency vehicles to move on and off campus. We have looked at the orientation of campus which is an east/west orientation. That is within the context of the strategic plan of the college and that plan calls for Carroll College to move to about 1500 students. We want to move to about a 1,000 residential students. We want to bring more students to campus and bring students back to campus. There is evidence that students academically do better when they live

on campus. We need the leadership on campus of the juniors and seniors for the freshman and sophomores. We believe that providing greater residential opportunities, including this residence hall, will increase the retention of students at Carroll College. A residence hall builds the community of the college. The campus wide plan looks to developing student housing, residential life, to reflect a transition of independence. Our long- range plan looks to the building of apartments and townhouses along the eastern rim of the campus. The more immediate short-term is to build the residence hall for sophomores and juniors so they can move back onto campus. We would like this built by the Fall of 2003. We need to begin building by July or August of 2002. The Board of Trustees has given authorization to move forward and build the residence hall.

**Kim Rybicki**, a student at Carroll College, represents the Associated Students of Carroll College and is their treasurer. She is a sophomore and lives in Guadalupe Hall, but is moving off campus because of lack of residence facilities on campus. The students are in favor of the residence hall. It will bring back the upper classmen which will help mentoring programs.

**Attorney Michael Kakuk**, 1717 Harrison Avenue, represents Jackie Anders. There have been four proposals; two formal proposals and two formal counter proposals. Ms. Anders is not opposed to this plan and she is not asking the commission to deny the zoning ordinance request, but is asking for a short delay, until May 20, to allow for negotiations to continue unimpeded and uncomplicated by the zoning. If this parcel gets rezoned, Ms. Anders will have a nonconforming, residential use in a PLI zone. This rezoning will complicate the appraisal process and devalue the property. It will be difficult for her to find a comparable property. Ms. Anders hopes the dreams and rights of the citizens who live in that area are given equal consideration. There is another option and that is to bifurcate. Henry Street runs east and west, bisecting the zone into two sections, north and south. The residence hall is going in the north section. The Anders property is in the south section, the section below Henry Street. The City Attorney informed Mr. Kakuk that it would be possible to bifurcate this action. This idea was given to Carroll College and they were told it would not work.

There being no other persons wishing to address the commission, the public portion of the hearing was closed.

#### Discussion

Commissioner Netschert supports Dr. Trebon's vision, but has concerns about the property owners who have not worked out their issues with the college. This should be tabled for more discussion. There could be difficulties with property values in that area.

Commissioner Pouliot would like to have this divided into two different issues. If divided into north and south of Henry Street, would it interfere with the plans of the college to build on the north side? City Attorney David Nielsen stated legally, it would not be a problem approving a portion of it and tabling approval or disapproval of the other portion.

Mayor Smith asked if there is any correspondence from neighbors who are adjacent to where the residence hall may be built? Planner Belinda Waters reported there was one adjacent property owner, who resides at 1108 Park Avenue, who was in opposition of the proposal. Mayor Smith asked if there is discussion between the college and that property owner? Ms. Waters reported all their discussions are strictly within Block 3 which is where the new residence hall would be located and Block 2. Dr. Trebon reported the college is in discussion with property owners in the two impacted areas as well as across the

street in the zone between Park and Benton. They have come to an agreement with one of the property owners in the north section, between Henry and Ralph, regarding the sale of that property.

Commissioner Parriman asked if this proposal was tabled, would it be a problem? Dr. Trebon stated that dividing the two sections, the north section and the south section, into two parts, raises forth the complication of the building of the parking lot on the section next to Getchell street. The more serious challenge is the need to obtain a foundation permit so they can begin building on the land which Carroll College already owns. Carroll has reached an agreement in principal with the owner for the property needed for the residence hall. We are asking for the zone change in both sectors because we are recommended to do that rather than to foster spot zoning.

Commissioner Netschert asked if there is a possibility of reaching agreements with the other parcels in question in two weeks time? Dr Trebon stated they do not need the property, under discussion, for this project or any project in the next 3-5 years. The zoning of that section does involve this property. Commissioner Netschert asked if it was tabled, would that cause hardship? Dr. Trebon stated it could involve significant delay in the beginning of the project. This needs to be ready by July of 2003. We need to draw the foundation permit very quickly and begin digging and putting in the foundation in July.

Mayor Smith asked about the foundation permit. City Attorney David Nielsen reported part of the process of issuing a foundation permit as part of a building permit is to make sure it complies with zoning. If you try to get a foundation permit in an R2, it may not meet the proper setbacks that it might otherwise meet in a PLI.

Mayor Smith asked about the tabling request. Mr. Kakuk reported Ms. Anders has a legitimate concern regarding unintentional, artificial devaluing of her property due to this appraisal process and not finding any comparable values. Mayor Smith stated that in Carroll College's letters to the landowners, they referred to fair market value. Is it Ms. Ander's position that fair market value would be diminished or rendered unclear by virtue of this zone change? Mr. Kakuk reported fair market value isn't defined. Fair market value can either be a market analysis or an appraisal.

**Motion** Commissioner Netschert moved to table the proposed adoption of an ordinance for a zone change from R2 (Single Family Residential) to PLI (Public Lands and Institutions) for approximately 4.2 acres to May 20, 2002.  
Motion dies for lack of a second.

**Motion** Commissioner Pouliot moved to bifurcate the approval and approve the zone change for Block 3 as legally described and table the request for a zone change for Block 2 until May 20, 2002. Commissioner Parriman seconded the motion. Commissioners Pouliot and Parriman voted aye. Commissioners Oitzinger and Netschert and Mayor Smith voted no. Motion fails 3-2.

**Motion** Commissioner Oitzinger moved approval of first passage of an ordinance for a zone change from R-2 (Single Family Residential) to PLI (Public Lands and Institutions) for approximately 4.2 Acres (182,875 square feet). Said property is legally described as Lots 1-24 and Lots 27-49, Block 2 and Lots 8-16 and Lots 41-54, Block 3, Capital Hill Addition, Helena, Lewis

**& Clark County, Montana; generally located north of Lyndale Avenue between Park Avenue and Getchell Street.** Commissioner Pouliot seconded the motion. Commissioners Parriman and Oitzinger and Mayor Smith voted aye. Commissioner Netschert voted no. Motion carries 4-1. **Ordinance 2938**

**East Side  
Property**

CONSIDER A RESOLUTION OF ANNEXATION FOR CONTIGUOUS GOVERNMENT PROPERTY; LEGALLY DESCRIBED AS TRACT A1 LOCATED IN THE NE 1/4 OF SECTION 4, T9N, R3W, P.M.M., LEWIS AND CLARK COUNTY, MONTANA, AS SHOWN ON COS #597474/B, CONTAINING 14.98 ACRES MORE OR LESS; GENERALLY LOCATED ON THE UPPER EAST SIDE ADJACENT TO THE EXISTING CITY LIMITS AND ON THE SADDLE DRIVE RIGHT OF WAY.

**Staff Report**

Project Manager Hal Fossum reported the City of Helena owns two parcels of land on the upper east side adjacent to existing city limits and on the Saddle Drive right of way. One of these parcels is in the process of being declared surplus property, and its sale is contemplated. Staff recommends that the property be annexed to the city prior to its sale.

Because the property is contiguous government-owned land, it may be annexed to the city by a method specifically targeted to that situation, as set forth in 7-2-4401 *et seq.*, MCA. Briefly, annexation by that method was initiated by receipt of a request to annex the property, and by passage on April 8 of a resolution of intent by the City Commission. The proposal to consider annexation of this property was duly advertised as specified under this part of state law. To date, no public comments have been received. The public comment period is scheduled to end on May 4, 2002, following which the City Commission may hold a public hearing and act on the proposal for annexation. If passed, the resolution of annexation would be effective 30 days following passage by the City Commission.

Annexation of this city-owned property will ensure that the properties, if developed, will meet city standards.

**Public Testimony**

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

The following persons spoke in opposition to the annexation:

Attorney Ron Waterman, 530 Hazelgreen; Aaron Donaldson, 912 Waukesha Avenue; Jim White, 631 Grant Street; Mark Dietz, 1235 South Hills Drive; Tom Kruse, 1241 South Hills Drive; Bill Shutterback, 1122 Saddle Drive; Dan Krings, 717 Redletter; Amy Kruse, 1241 South Hills Drive; Denise Dietz, 1235 South Hills Drive; Beverly Yost, 1 Hidden Cove Ct.; Karen Souza, 506 5th Avenue; Katheen Gerl, 700 Redletter Street; Mike Strukel, 2021 5th Avenue; Mary Burke, 841 6th Avenue.

The reasons for opposition include:

1. Zoning decisions can influence property values.
2. Property values are altered when annexation occurs and this eliminates options.
3. This annexation could affect the relationship between citizens and the City of Helena.
4. The City of Helena made representations and involved

- themselves in this action several years ago.
5. Those representations have not been fulfilled.
  6. At the time, Open Space money was available to buy the property.
  7. When the city signed an option with the Donaldson's, it was spelled out in the covenant that the city would restrict the development of the property for anything other than a water tank or parkland.
  8. The contract says that this land will be used for a water tank or for open land.
  9. The contract did not state the word "annexation."
  10. There is not enough information before the commission for them to make a fair judgment of annexation.
  11. The Zoning Commission tabled this issue because of controversy.
  12. If this property is annexed, it will be developed for residential property.
  13. The city is breaking their intent of the agreement with the Donaldsons.
  14. Helena is not being a "good neighbor" and is sending a bad message to the citizens of Helena.
  15. Offended that the commission won't discuss the real issues at hand, ie..sale of property.
  16. The property should be left as intended.
  17. Annexation is not an independent issue and is connected to development.
  18. The city is going back on their word.
  19. More is expected of local government.
  20. Annexation is not a benign event.
  21. This is an ethical issue.
  22. People all over Helena feel strongly about this issue, not just people who live in the South Hills area.
  23. Annexation compromises the intentions of the Donaldsons.

There being no other persons wishing to address the commission, the public portion of the hearing was closed.

#### Discussion

Mayor Smith stated that e-mails in opposition to the annexation were received from: James McDonnell, Wayne Chamberlin, Amy Kruse, Alison James, Mickey Cozzie, Tom and Judy Kilmer, Jack Stults, Spencer and Jan Sartorius and Robert Bachini.

Commissioner Pouliot asked what will happen if this property is not annexed tonight. Mr. Waterman stated that the message would be sent from the commission to city staff telling them they need to deal with this in a way other than is now being approached. Commissioner Pouliot asked if the Donaldsons are willing to buy the property back for \$104,000? Mr. Waterman stated they are not asking the city to make gifts. If the transaction is undone, the city gets back the money and the Donaldsons get back the land.

Commissioner Oitzinger asked if this issue was tabled, what would happen? Project Manager Hal Fossum reported a tabling motion would defer the item and the commission could then take it up at its pleasure or a date certain or at the call of the mayor.



Commissioner Netschert asked if this is annexed, would that preclude any possibility of an amenable solution that may fit with some of the people who testified tonight? City Attorney David Nielsen stated the process of annexation doesn't have any impact on the ultimate disposition or use of the property. It does allow us contiguity with the 40 acres the city owns to the east which would allow for that annexation more quickly than later so as to bring that open space land into the city's jurisdiction as well.

Commissioner Pouliot stated the city has decided they don't need this property and it is being put up as surplus property to sell.

Commissioner Parriman stated the city is not in the development business. It was not the city's intention to buy the land and auction it off at a later date to make money. An amicable solution can be worked out with the people opposed to annexation. If it is surplus property, the city needs to get rid of it one way or another.

Commissioner Oitzinger stated that the city is not losing anything by delaying this issue. More information is needed and this should be tabled.

**Motion**

**Commissioner Pouliot moved to table indefinitely, a resolution of annexation for contiguous government property. The property is legally described as Tract A1 located in the NE 1/4 of Section 4, T9N, R3W, P.M.M., Lewis & Clark County, Montana, as shown on COS #597474/B, containing 14.98 acres more or less, generally located on the upper east side adjacent to existing city limits and on the Saddle Drive right of way.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Motion**

**Commissioner Pouliot moved the mayor give direction to city staff to meet with the Donaldsons to make them a first offer to purchase the land back at the price of \$104,000.** Motion dies for lack of a second.

**Discussion**

Commissioner Netschert stated that a dollar limit should not be quoted as land value appreciations can change.

Commissioner Oitzinger stated there may be easement issues and an airtight direction should not be made to the city manager because of the sentiment stated tonight.

Acting City Manager Troy McGee stated the mayor can give direction to staff and he will speak with City Manager Tim Burton.

Mayor Smith stated that copies of the original contract, notes, memos or any paperwork that relates to discussion at the time of sale between the city and the owners of the property, should be given to the commissioners.

Commissioner Parriman asked if the Donaldsons are interested in buying the property back or are there other interested parties? City Attorney David Nielsen stated there have been discussions with the previous attorney of the Donaldsons concerning the possibilities of a repurchase.

Commissioner Netschert stated the property in question is the City of Helena's property. It is being referred to as the Donaldsons and they don't have an interest in this than what was previously discussed at the time they sold the property.

Commissioner Oitzinger stated it is the City of Helena Water Department property. If and when it is sold, the benefit will come back to the ratepayers as opposed to the taxpayers.

**Public  
Communications**

PUBLIC COMMUNICATIONS

There were no public comments.

**Meetings of Interest**

The next administrative meeting will be May 15, 2002 and the next City Commission meeting will be May 20, 2002.

**Adjournment**

There being no further business to come before the commission, the meeting was adjourned at 9:33 p.m. this 6th day of May, 2002.

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MAYOR

ATTEST:

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CLERK OF THE COMMISSION