

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
JUNE 3, 2002
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, June 3, 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. City Manager Tim Burton, City Attorney David Nielsen and Clerk of the Commission Debbie Havens were present.
Jerry Hutch of the Helena Citizens Council was also present.

Pledge of Allegiance Mayor Smith lead those persons present in the pledge of allegiance.

Introductions of Pavlodar Delegation INTRODUCTIONS OF PAVLODAR DELEGATION
Public Works Director John Rundquist introduced the Pavlodar Delegation to include the following: Sansyzbai Akimbekov, Pavlodar City Maslikhat Secretary; Nikolai Patrushev, Department of Municipal Housing Director; Vladimir Meged, Director of Pavlodar-Vodokanal Ltd.; Yuriy Rossinsky, Deputy Director of Drug Rehab Center; Rinat Khassanov, ICMA Interpreter; and Anna Mazurova, ICMA Interpreter.
Mayor Smith welcomed the delegation and presented them with gifts from the Commission.

Minutes The minutes of the regular city commission meeting of May 20, 2002 were approved as submitted.

Appointment APPOINTMENT
A. Civil Service Board

Mayor Smith asked for commission concurrence on the following appointment:

Civil Service Board
Paula Stoll
51 S. Howie
Helena, MT 59601
First term will expire May 1, 2005.

Motion **Commissioner Netschert moved approval of the appointment of Paula Stoll to the Civil Service Board, term will expire May 1, 2005.**
Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Presentation of FY 03 Budget PRESENTATION OF FISCAL YEAR 2003 PRELIMINARY BUDGET
City Manager Tim Burton presented the City of Helena's Fiscal Year 2003 Preliminary Budget.
Mayor Smith asked City Manager Burton if it is his recommendation to go back up to the fully authorized level under HB 124. Mr. Burton concurred that is his recommendation. He then reviewed what action the commission took last year to reduce taxes. However, with the various factors including the COPS grant funds going away; the rising health insurance costs and any changes to the

pay study that may be recommended, it is staff's recommendation to go back up to the fully authorized level under HB 124.

Mayor Smith asked for clarification on the proposed 4% health insurance premium increase. City Manager Burton explained the health insurance plan the city employees are under and how the premiums work. Last year there was approximately a 40% increase in premiums. After the changes that were made last year, the reserves have been rebuilt and therefore only a 4% increase is being recommended.

Mayor Smith thanked City Manager Burton and city staff for the budget presentation. Mayor Smith reminded the commission of the budget work session on June 5, 2002.

Consent Agenda

CONSENT AGENDA

- A. Claims
- B. Non-Motorized Plan MOU with Montana Department of Transportation to provide \$11,000 in MDT planning funds to match city, county and local funds to develop a Non-Motorized Transportation Plan for the Helena area.
- C. MACI Grant MOU with Montana Department of Transportation to provide \$1,100,000 in funds to optimize 41 traffic signals on the city limits.

Commissioner Netschert asked to have Item C removed for discussion.

Motion

Commissioner Parriman moved approval of the consent agenda, items A & B. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Discussion

Commissioner Netschert spoke on the importance of this project and how it will better the air quality in Helena when the project is completed. He asked Ms. Kathy Harris when the project would begin.

Ms. Harris stated the MACI Grant is a program that MDT administers. It is a program that helps with the air pollution problems within a community. The city's signal hardware will all be upgraded and then the signals will be coordinated to help traffic flow.

Staff has spent a fair amount of time on the MOU and there is a \$25,000 commitment from the city. The timing for the project is a three-year timeframe, with the planning being done in the first year and construction during the other two.

Motion

Commissioner Netschert moved approval of Item C of the consent agenda. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Mayor Smith asked City Manager Burton how he represents the claims. City Manager Burton recommended approval of the claims.

Motion

Commissioner Netschert moved approval of the claims. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Bid Award

Bid Award

- A. Sunhaven Outfall, Project # 99-10

Staff Report

City Engineer Chuck Hanson reported this construction project will rehabilitate approximately 3,620 lineal feet of 10" vitrified clay sanitary sewer main using the cured-in-place pipe method. Rehabilitation restores the sanitary sewer main to a watertight condition. This project will also help alleviate a capacity problem in Helena's Westside sanitary sewer infrastructure.

The project was advertised and bids were opened on May 23, 2002, with only one bid received. Planned and Engineered Construction Inc. of Helena submitted the low bid of \$168,355.00. A total of \$225,680.00 remains for the project in fiscal year 2002.

Staff recommends awarding the work to Planned and Engineered Construction Inc.

Discussion

Commissioner Parriman asked Mr. Hanson for his thoughts on why only one bid was received? City Engineer Chuck Hanson explained this work is a very specialized type of construction. There are not a lot of companies in the northwest that do this type of work.

Motion

Commissioner Pouliot moved to award City Project No. 99-10 to Planned and Engineered Construction Inc. in the amount of \$168,355.00.

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger thanked Mayor Smith for allowing her to welcome the Girl's State Delegation to the City of Helena.

Commissioner Parriman reported that the Audit Committee met last week and is recommending that the City of Helena negotiate with Galusha, Higgins and Galusha for an additional two-year audit contract. The Audit Committee is unanimous in making this recommendation. City Manager Burton noted no formal action is necessary.

Mayor Smith encouraged everyone to get out and vote tomorrow.

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

City Manager Tim Burton had no items to report on.

Contiguous Government 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 & 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 commission held a public hearing on May 6, 2002 and it was closed at that time. The commission tabled action until tonight's meeting.

Discussion

Mayor Smith asked City Manager Burton for his comments. City Manager Burton noted that this topic was discussed at an administrative meeting and the commission received a copy of the file on the property. The proposal tonight is to annex the property.

City Manager Burton noted that some of what he has read and heard has accused city staff of being unethical and he took exception to that. The record is clear on what transactions have taken place. Staff met with Mr. Waterman, attorney for the Donaldson's to discuss the issue of annexation. There is consensus between all parties that the property should not be purchased with water department funds. However, Mr. Waterman believes that the annexation should wait. Mr. Burton noted this proposal fits within the annexation plan and he continues to recommend approval.

In terms of the disposition of the property, staff needs to look at all options available within the budget. There may also be a partnership with other interested parties. The commission has the authority to dispose of the property to a private sector with the water department being reimbursed.

After reviewing the location of the property and noting that there is a trail easement through the property that adjoins parkland, Commissioner Oitzinger offered the following motion:

Motion

Commissioner Oitzinger moved to direct the City Manager to take the necessary steps through the budget process to insure that the so called "Donaldson" property will be maintained in open space into perpetuity. Motion dies for a lack of a second.

Commissioner Pouliot stated he does not mind if the property becomes a park or part of the city's open space, however, does not believe the city should fund it.

Commissioner Oitzinger asked Commissioner Pouliot if he would second a motion directing the City Manager to explore all options to maintain it as open space. Commissioner Pouliot noted he thought there were citizens who showed interest in purchasing the property and would make sure it was kept as open space. He confirmed that he would like the private parties to have an opportunity to do that.

Commissioner Netschert stated he concurs with City Manager Burton's comments regarding the disposal of the property. There has been a lot of contention and a lot of misinformation being given out regarding this property. There will be ample time to discuss the disposal of the property.

Motion

Commissioner Netschert moved approval of 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 Parriman seconded the motion.

Discussion

Commissioner Pouliot stated he believes a decision on disposal should be made prior to annexation and will not vote in favor of the motion. Mayor Smith noted that he would support the motion for annexation; however, he too would like to see continued discussion on the disposal of the property.

Vote Motion carried 3-2 with Commissioners Oitzinger and Pouliot voting no.
Resolution 11756

Motion **Commissioner Netschert moved to direct the City Manager to have staff put together a package of options, for commission review, on the disposal of the property and put it on the next available administrative meeting agenda.** Commissioner Pouliot seconded the motion.

Discussion Commissioner Netschert noted there is already a process for the disposal of surplus property and he would be cautious not to deviate from that process. It may set a precedent.

Commissioner Oitzinger asked that the options for disposal should be for open space only. Commissioner Netschert stated it should be all options and not specifically open space.

Mayor Smith stated he will not support the motion. He believes the process should not be accelerated.

Vote Motion carries 3-2 with Commissioner Oitzinger and Mayor Smith voting no.

Density Restrictions CONSIDER A REQUEST TO REMOVE DENSITY RESTRICTIONS REQUIRED BY COVENANTS FOR 3.18 ACRES IN AN R-2 DISTRICT; PROPERTY IS GENERALLY LOCATED NORTH OF COLE AVENUE, EAST OF THE GOLF COURSE AND WEST OF MCHUGH DRIVE.

Staff Report Planner Kathy Macefield reported in 1996, Bev and Steve Spencer applied for a zone change from R-2 (Single-Family Residential) to R-3 (Medium-Density Residential) District for 3.186 (166,213 square feet) generally located north of Cole Avenue, west of McHugh Drive, and east and south of the Bill Roberts Golf Course. At that time, they had anticipated acquiring additional property to the west that would be included with their property for a subdivision proposal. That additional acquisition did not take place.

Based upon the current R-2 zoning, up to 23 single-family homes could be built on the 166,213 square foot property. If the zoning was changed to R-3, up to 33 single-family residences or up to 55 multi-family residences could be built.

In order to address concerns related to density and traffic generation if the zone changed to R-3 was approved, the Spencer's placed covenants (M Book 18, Page 8567) restricting the number of dwelling units to a maximum of 39 dwelling units. The covenants include the statement that they could not be amended without the approval of the City Commission. However, the zone change request was not approved, and the R-2 zoning continues to remain in effect.

The Spencer's have a potential buyer for the 3.186-acre property and would like to amend the covenants to delete the restriction on the number of dwelling units, and to delete the language that makes the city a party to the covenants. The future buyer would be limited to the number of dwelling units allowed by the R-2 zoning. If a greater number of dwelling units were desired by the future buyer, a zone change or a conditional use permit for a planned unit development would be required, or a variance must be obtained from the Board of Adjustment to exceed the density limit of the R-2 District by allowing smaller lots.

The proposal would be to amend covenants for Spencer and Company property (M Book 18, Page 8567) to:

- 1) Delete the reference to the maximum amount of dwelling units that could be constructed on 3.816 acres located in the R-2 (Single-Family Residential) District; and
- 2) Delete the requirement that states "...the foregoing restrictions, covenants, and conditions shall not be altered, amended or revoked without the express, written consent of the City of Helena, Montana, acting through its City Commission."

The advantage would be the Spencer's will be able to sell the property and the property can be developed to R-2 zoning standards, making the additional density limitation unnecessary.

Discussion

Ron Thompson, Broker with Big Sky Brokers, explained if the covenants are amended as recommended by staff, it will make it easier for the Spenders to sell their property.

Motion

Commissioner Netschert moved approval to amend the covenants for Spencer and Company property (M Book 18, Page 8567) to: 1) Delete the reference to the maximum amount of dwelling units that could be constructed on 3.816 acres located in the R-2 (Single-Family Residential) District; and 2) Delete the requirement that states "...the foregoing restrictions, covenants, and conditions shall not be altered, amended or revoked without the express, written consent of the City of Helena, Montana, acting through its City Commission. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Davis Gulch

CONSIDER THE PURCHASE OF APPROXIMATELY FIVE ACRES OF PROPERTY ALONG DAVIS GULCH (LOT 70, MINERAL SURVEY #386) THAT BRIDGES A GAP IN CITY-OWNED PROPERTIES AND PROVIDES A KEY LINK IN THE HELENA OPEN SPACE TRAILS SYSTEM.

Staff Report

Director of Parks and Recreation Randy Lilje reported staff has negotiated to purchase land from Mrs. Lois DeFord for \$32,000 and other considerations. Though the April 15, 2002 letter outlines in broad terms the agreement of the sale, we are still awaiting the buy-sell agreement to be returned from the seller. We do not anticipate any significant changes. The land was appraised at \$45,000.

OSBAC is currently considering the purchase of this property. However, the OSBAC process is longer than the DeFord's want to wait. Staff is recommending purchasing the property out of the parks maintenance budget from line items that are anticipated to be unspent. There are sufficient dollars available in this fund to purchase the property. If OSBAC does agree to contribute to all or part of the acquisition, then the general fund can be reimbursed from the open space bond.

The purchase will secure a very important link to one of the main trails used to get up into the open space system. If the land is not acquired, the public would be forced back out onto the Davis Gulch Road. This road is narrow with no real escape routes for bicyclists and pedestrians. Therefore, the acquisition provides a much safer non-motorized route.

Mr. Lilje thanked Mrs. DeFord and her attorney Larry Murphy for their work and patience in putting this proposal together. He then recommended approval of the purchase of the DeFord Property.

Discussion

Commissioner Netschert noted the money is coming out of the Parks Maintenance Fund and asked how that will affect the total fund. Mr. Lilje explained staff has identified some projects that did not happen and those funds could be used. Mr. Lilje reviewed how the city acquired the original property from Mrs. Lois DeFord. A portion of the trail was mistakably built on Mrs. DeFord's property and Mr. Lilje apologized to Mrs. DeFord for that.

Commissioner Netschert thanked staff and Mrs. DeFord for working through this issue. Mayor Smith also thanked everyone for getting this issue resolved.

Motion

Commissioner Netschert moved approval of the purchase of the DeFord property (Lot 70, Mineral Survey #386) in the amount of \$32,000 plus closing costs \$1,000. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Crestview Road Fill

CONSIDER A PROPOSAL FOR CONSTRUCTION OF ROAD FILL ON CITY WATER DIVISION PROPERTY (CRESTVIEW SUBDIVISION). [TABLED FROM 05/20/02]

Staff Report

Public Works Director John Rundquist reported the preliminary plat for the Crestview Estates Subdivision was approved last year by the City Commission with a number of conditions. One of these conditions was that the developers obtain separate approval (easement) from the city for any proposed road fill that would be placed upon the adjacent city owned property.

The developer's proposal for filling on city property was considered at the May 20th meeting and tabled. Direction was given to staff to work with the developer to determine if staff's conditions for approval could be met. Since that meeting the developer has proposed to move the location of Hoback Street to the general north/south alignment of Hoback Court.

Staff recommends the request to withdraw the proposal to fill on city property be approved. Withdrawal of the proposal will prevent installation of potentially unsafe street, retain existing city property (open space) in the natural condition and prevent unsatisfactory recreational and visual impacts.

Discussion

Commissioner Parriman asked if the new proposal meets the 8% street grade. Public Works Director John Rundquist stated he believes that is correct and noted that James Nicholson, Engineer with Morrison & Maierle will address that.

Mr. James Nicholson with Morrison & Maierle explained how the developers had gone back and re-looked at all the options for Hoback Street and have submitted a new plan. The new proposal for Hoback Street is within grade and meets city standards.

Commissioner Pouliot asked if the developers are in agreement with the additional expenses to bring the road to the 8% grade. Mr. Nicholson concurred.

Commissioner Oitzinger asked if the new proposal to raise the grade on Rhode Island meet all the city standards? Mr. Nicholson noted the new proposal does meet the requirements of the 8% maximum grade and intersection maximum grade.

Motion Commissioner Pouliot moved approval of the Crestview Estates developer's request to withdraw the proposal to use city water department property for the construction of road fill associated with the Crestview Estates Subdivision and Hoback Street. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Crestview Estates Preliminary Plat CONSIDER A MINOR AMENDMENT TO THE PRELIMINARY PLAT FOR THE CRESTVIEW SUBDIVISION TO ALLOW RELOCATION OF HOBACK STREET.

Staff Report Public Works Director John Rundquist reported the preliminary plat for the Crestview Estates Subdivision was approved last year by the City Commission with a number of conditions. One of these conditions was that the developers obtain separate approval (easement) from the city for any proposed road fill that would be placed upon the adjacent city owned property.

The developer's proposal for filling on city property was considered at the May 20th meeting and tabled. Direction was given to staff to work with the developer to determine if staff's conditions for approval could be met. Since that meeting the developer has proposed to move the location of Hoback Street to the general north/south alignment of Hoback Court. The developer has further indicated that the new alignment for Hoback Street will meet all city standards including grade.

The proposed amendment will not affect the number of lots, size of lots and general street access and configuration and therefore can be considered a minor amendment.

Staff recommends that the minor amendment to the preliminary plat be approved.

The new location for Hoback Street will prevent installation of potentially unsafe street, retain existing city property (open space) in the natural condition and prevent unsatisfactory recreational and visual impacts.

Commissioner Netschert thanked staff for working with the developers to develop a proposal that will work for both the developer and the city.

Motion Commissioner Pouliot moved approval of the minor amendment to the Crestview Estates preliminary plat to realign Hoback Street as indicated in the fax proposal from Morrison-Maierle, Inc. Dated May 23, 2002. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Residential Collection CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH CHARGES FOR COLLECTION AND DISPOSAL OF RESIDENTIAL GARBAGE AND REFUSE IN THE CITY OF HELENA, MONTANA FOR FY2003.

Commercial Collection CONSIDER A REOSLUTION OF INTENTION TO ESTABLISH A RATE MATRIX FOR SERVICE CHARGES FOR COMMERCIAL COLLECTION AND DISPOSAL OF GARBAGE AND REFUSE IN THE CITY OF HELENA, MONTANA FOR FY2003.

Transfer Station Fees CONSIDER A RESOLUTION OF INTENTION SETTING FEES CHARGED FOR THE DISPOSAL OF GARBAGE AND REFUSE AT THE TRANSFER STATION FOR FY2003.

Staff Report

Assistant Public Works Director Phil Hauck reported the commission passes a resolution annually establishing charges for residential garbage and refuse in the City of Helena; establish a rate matrix for service charges for commercial collection and setting fees charged for the Transfer Station. The Public Works Department is not recommending any increase in FY2003 charges for residential sanitation or commercial collection. The Public Works Department is recommending adjusting the tipping fee to \$52.10 to insure positive cash flow and to meet bond coverage requirements. No other fee increases are proposed for FY 03.

Passage of these resolutions will allow the department to hold three separate public hearings on June 17, 2002.

Discussion

Commissioner Pouliot asked for clarification on how the rates will not change with the increase in the tipping fee. Mr. Hauck explained the tipping fee is an internal transfer between the transfer station and the landfill. The tonnage has decreased overall necessitating this increase.

Motion

Commissioner Pouliot moved approval of a resolution of intention to establish charges for collection and disposal of residential garbage and refuse in the City of Helena, Montana for FY03 and set a public hearing date of June 17, 2002. Commissioner Netschert seconded the motion. All voted aye, motion carried. **Resolution 11757**

Motion

Commissioner Oitzinger moved approval of a resolution of intention to establish rate matrix for service charges for commercial collection and disposal of garbage and refuse in the City of Helena, Montana for FY03 and set a public hearing date of June 17, 2002. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Resolution 11758**

Motion

Commissioner Netschert moved approval of a resolution of intention to supersede Resolution No. 11648 and set fees charged for disposal of garbage and refuse at the City of Helena Transfer Station for Fiscal Year 2003 and set a public hearing date of June 17, 2002. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution 11759**

PUBLIC HEARINGS

Dial-A-Ride

CONSIDER A RESOLUTION INCREASING FARES FOR DIAL-A-RIDE BUS SERVICE EFFECTIVE JULY 1, 2002.

Staff Report

Public Works Director John Rundquist reported the legal ad was sent to the Independent Record, however, it was not published. Therefore, Mr. Rundquist recommended the resolution be tabled until the public hearing can be held on June 17, 2002.

Motion

Commissioner Pouliot moved to table a resolution increasing Helena Dial-A-Ride fares until June 17, 2002.

Commissioner Oitzinger asked Commissioner Pouliot if he would consider amending his motion to table this issue permanently. Commissioner Pouliot stated he would let his motion stand.

Commissioner Netschert seconded the motion. Motion carries 4-1 with Commissioner Oitzinger voting no.

Non-Conforming Use

CONSIDER A RESOLUTION FOR A CHANGE OF NON-CONFORMING USE TO ALLOW A SPRINKLER AND LANDSCAPING BUSINESS TO BE LOCATED IN A R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT. LEGALLY DESCRIBED AS CERTIFICATE OF SURVEY #369541 LOCATED IN THE NW 1/4 OF SECTION 24, T10N, R4W, HELENA, MONTANA, CONTAINING 33,996 SQUARE FEET OR .78 ACRES; GENERALLY LOCATED SOUTH OF ANDERSON BOULEVARD AND EAST OF HENDERSON STREET WITH A STREET ADDRESS OF 2201 HENDERSON.

Staff Report

City Planner Belinda Waters, via overhead maps, showed the site plan map and the general location of the property. The property currently houses a 5,000 square foot building utilized by Montana Sign Works, which is an existing previously approved non-conforming use since 1983. The building has been used as a non-conforming use since 1960. The subject property is adjacent to residential uses to the north and east with undeveloped land to the west and railroad property to the south. The total property is 33,996 square feet (.78 acres).

The request is to allow a sprinkler/landscaping business to use the site for the company's headquarters, to store equipment, and as a holding nursery for their plants, shrubs and trees. Proposed business hours, during the winter months, will be from 8:00 a.m. to 5:00 p.m., Monday through Friday. During seasonal months, March through November, business hours will be from 7:00 a.m. to 6:00 p.m., Monday through Friday. During peak operating months, the business will have 15 to 20 employees with only 4 employees on-site during winter months. Some equipment will leave and return daily to the site, while other pieces of equipment will be moved directly from job site to job site. The shop area of the building would be used for repairs to their equipment. This is not a retail-type business.

The proposed use is expected to have less of an impact to the neighborhood than the existing Montana Sign Works business.

The Helena Zoning Commission unanimously recommended denial for a change of non-conforming use to allow a sprinkler/landscaping business in a R-2 (Single Family Residential) District.

In the staff memo dated May 7, 2002, staff recommended approval for a resolution for a change of non-conforming use to allow a sprinkler and landscaping business in a R-2 (Single-Family Residential) District. Said approval would be subject to the following conditions:

1. Site Improvements
 - a. The off-street parking areas must be paved
 - b. Approximately 220 square feet of sidewalk, 40 lineal feet of curb and gutter, and 124 square feet of drive approach must be removed and replaced.
2. Landscaping

The applicant must come into compliance with condition #6 as outlined in Resolution 9590, which states screening and landscaping will be installed along all property lines abutting Lots 1 and 2 in Block 14 of the

fifth Subdivision of Sunhaven Addition so as to screen these adjoining single-family lots on Kevin Court from the business and parking lot.

Ms. Waters noted the applicant received copies of letters of support from 11 residents. Staff received three letters of opposition and there has been a lot of neighborhood opposition to the proposal.

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 proposed change to the non-conforming use:

Tim Gleason, 245 Anderson Boulevard, spoke in opposition to the proposal. Mr. Gleason spoke on the history of the property and the impact on the neighborhood with a commercial use.

Roxanne Alzheimer, 253 Hartley, spoke in opposition to the proposal. Ms. Alzheimer noted with the new pedestrian walking path on Henderson Avenue there is an additional danger with semi tractor trucks turning into the property.

Laura Sullivan, 259 Anderson Blvd, spoke in opposition to the proposal. Ms. Sullivan noted this is a very close neighborhood and the truck traffic is a huge concern. She noted the 11 residents noted in support are not in support but not opposed either.

Mary Kistler, 1 Kevin Court, spoke in opposition to the proposal. Ms. Kistler noted her property adjoins the property on two sides. She reiterated the importance of not having a commercial business in a residential zone. Ms. Kistler also noted that when she purchased her property, the realtor told her that once the current business moves off the property, it would go back to residential use.

Michael Sullivan, 259 Anderson, spoke in opposition to a commercial use on the property. The residents have been consistent in opposition to any commercial use.

Peggy Colvin, 254 Hartley, concurred with the previous opposition and emphasized the safety of the neighborhood children.

The following persons spoke in support of the proposed change to the non-conforming use:

Alan Bock, Broker's First Real Estate, stated the owner spoke to him regarding the sell of the property. The advice given to the owner by Mr. Bock was to try and use it as residential. There were several meetings with city staff to determine the best use of the property. Mr. Bock noted that Mr. Darin Job is interested in purchasing the property for the landscape/sprinkler business.

Mr. Bock noted that Montana Sign Works is considering moving a portion of their business back into the building.

Darin Job, applicant, spoke in support of the proposal. The proposal would include the administrative office, shop and holding nursery. His business is currently located on North Main. Mr. Job noted that the majority of their business is conducted at the job site. He also spoke on the access to the property and how the site will be improved.

Roxanne Rickman, 1207 Williams, Comp Controller for Montana Sign Works, explained the owners of the property tried to find a developer to build residential units. Ms. Rickman stated if the owner cannot find a buyer for the property that will use it as residential and if the commission denies this proposal, Montana Sign Works will move back into the building and use it as part of the

sign business.

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

Discussion

Commissioner Netschert noted there are a number of issues to consider tonight; the existing use could continue or the commission could approve the proposal tonight that may have a less impact on the neighborhood. Commissioner Netschert asked Mr. Job to review his plans for landscaping of the building. Mr. Job referred the commission to the landscaping plan that was submitted to city staff. He noted the property would be brought into compliance with city codes in reference to the parking and landscaping. The front of the building would have a variety of landscaping techniques and would be changed periodically. Commissioner Netschert asked approximately how many semi trucks accessed the business at the Montana Sign Company. Mr. Job could not speak on how many truck accessed the site for Montana Sign Company, however, he would have a semi-truck approximately every two to three weeks. Commissioner Netschert noted that Ms. Kistler was opposed to the proposal and asked Mr. Job if he would add additional landscaping to help reduce the neighborhood concerns. Mr. Job explained the holding site for the nursery products is located closest to the residents. The equipment parking would be off of Henderson.

Commissioner Netschert then asked Mr. Job if he would be willing to try and control the deliveries to times when the children in the neighborhood would generally be in school. Mr. Job stated as much as possible he is willing to work with the deliveries schedule.

Commissioner Oitzinger asked if the HCC has taken a position on this item. Mr. Jerry Hutch noted the HCC did not make a recommendation on this proposal.

Commissioner Oitzinger pointed out that the landscaping requirements from the original CUP had never been installed. She then asked City Attorney David Nielsen if the city has any recourse if the original conditions are not met.

City Attorney David Nielsen explained the city does have several options for enforcement. Any time there is a violation of the zoning, that is a misdemeanor and the city could actually site the owner of the property. Secondly, staff could always come back and ask the commission to consider revocation of that non-conforming use since it is subject to a condition that is not being met.

Commissioner Netschert noted the building has been used as a non-conforming use since 1960 and the current use since 1985. He asked how many of those in opposition have lived in the neighborhood prior to 1983. No residents raised their hand.

Commissioner Oitzinger noted that some of the residents purchased their homes with the understanding that the current business was a non-conforming use and would revert back to residential.

Motion

Commissioner Pouliot moved to deny a resolution for a change of non-conforming use to allow a sprinkler and landscaping business in a R-2 (Single Family Residential) District. The proposal is legally described as Certificate of Survey #369541 located in the NW 1/4 of Section 24, T10N, R4W, Helena, Montana; generally located south of Anderson Boulevard and east of Henderson Street with a street address of 2201 Henderson Street.

Commissioner Oitzinger seconded the motion. Motion carried 3-2 with Commissioner Netschert and Parriman voting no.

**Professional Office -
Historic District**

CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A PROFESSIONAL/BUSINESS OFFICE TO BE LOCATED IN AN R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT AND THE HELENA HISTORIC DISTRICT. THE CUP APPLICATION INCLUDES REQUESTS FOR VARIANCES FROM THE MINIMUM REQUIREMENTS FOR LOT AREA, LOT WIDTH AND ONSITE PARKING. LEGALLY DESCRIBED AS THE EAST 66 FEET OF LOT 11, AND THE EAST 49 FEET OF THE NORTH 34 1/2 FEET OF LOT 10, BLOCK 52, HELENA TOWNSITE, SECTION 25, T10N, R4W, HELENA, MONTANA; GENERALLY LOCATED ON THE SOUTHWEST CORNER OF CLARKE AND BENTON STREETS WITH AN ADDRESS OF 303 CLARKE STREET.

Staff Report

City Planner Lucy Morell-Gengler reported the applicant is requesting a Conditional Use Permit (CUP) to allow converting the existing single-family use to a professional/business office to be located in an R-3 District.

Use of the building would be for offices and related storage for Water Right Solutions, Inc., a small company that currently employs a total of three people, but may expand in the future. They provide consulting for water rights and environmental issues relating to hydrogeology. Office hours would generally be weekdays 8 a.m. to 5 p.m. According to the applicant, clientele are typically ranchers, subdivision owners or single resident owners that need help with their water rights and are typically met out of the office.

The property is located within the Helena Historic District and according to the applicant; the only planned modification to the exterior of the building is to paint the garage. Because of the historic nature of the lot, the applicants are requesting a variance from the lot area and width requirements for a nonresidential use in an R-3 District and from the parking requirements.

Compared to the existing residential use, the proposal would reduce parking demand in the area during evenings and weekends, which are often peak residential parking times. The proposal would retain the residential and historical appearance of the building. A small lot with little yard area on a relatively busy intersection may better accommodate an office use than a residential use.

The applicant is also requesting variances to allow rounding 6.04 down to 6 required parking spaces and to allow more than 50% of the required onsite parking to be located offsite and not adjacent to the subject property. The property currently only has one parking space that would comply with the parking regulations. There are four on-street parking spaces adjacent to the property but these spaces are designated for residential parking only and are located within the Parking Commission's boundaries. The Parking Commission has indicated that they do not issue residential only permits to non-residential uses, even though the only use for that building will be for an office. The Parking Commission has indicated if the city commission so indicated, they will move the residential parking signs back to allow permit parking. Ms. Morell-Gengler noted there is two-hour parking adjacent to the City-County Building; permit parking on Park Avenue and the parking garage. All of these options are within 700' of the proposal, which is the standard for shared parking. This facility does not meet the standards for shared parking, but to give the idea of what is acceptable in other instances.

On May 14, 2002, the Zoning Commission recommended APPROVAL (by 3 to 2 vote) of the proposed CUP subject to the following conditions:

1. Parking

Paved parking must be provided in accordance with Chapter 22 of the Zoning Ordinance; **or**

The applicants must comply with Section 11-22-10 of the Zoning Ordinance, Parking Deficiencies Within Parking Commission Districts; **or**

The applicants must obtain variances from the parking regulations and must obtain and maintain two parking permits for parking within 700 feet of the proposed office use.

2. Historic Appearance

To maintain the historic and residential appearance of the building, any structural exterior modifications to the building, all signage, and any exterior lighting must be approved by the local historic preservation officer or by the City's designated assistant to the Historic Preservation Commission.

3. Signs

Because of the residential and historic character of the area, the total area of signage on the property must not exceed 12 square feet and lighted signs of any type are not permitted.

4. Code Compliance

All applicable City Code requirements and all conditions of the CUP, including but not limited to sidewalks, and parking, must be met or financially guaranteed within one year of approval of this CUP and prior to utilizing any portion of the property for the proposed office use.

VARIANCES

Approval for the following variances from the Zoning Ordinances;

1. From section 11-6-3 (B) to allow 4,462 square feet of lot area and 66 feet of lot frontage instead of the required 7,000 square feet of lot area and 70 feet of lot frontage of the R-3 District.
2. From section 11-22-5 to allow rounding 6.04 down to 6 required parking spaces.
3. From section 11-22-11 to allow more than 50% of the required onsite parking to be located offsite and not adjacent to the subject property.

Mayor Smith asked how the parking percentage is calculated? Ms. Morell-Gengler noted it is calculated on the square footage of the use.

Commissioner Netschert asked if the applicant has indicated what the preference would be? Ms. Morell-Gengler stated the proposal she submitted tonight is the one they would prefer.

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 against the proposal:

Kerrie Fairbrother, 642 Dearborn, spoke against the proposal to allow any business in a residential zone.

Joe Goldes, 642 Dearborn Avenue, spoke in strong opposition to the proposal. Mr. Goldes noted that he is a member of the Historic Preservation and they are also in opposition to the proposal.

Robin S., 18 N. Benton, spoke in opposition to the proposal. The character of the neighborhood will change if a business is allowed. She also addressed the lack of a handicapped parking spot.

The following persons spoke in support of the proposal:

Roberta Spengler, 307 Clarke, stated that she and her husband Paul Spengler have no objections to the proposed use.

Brian Morris, 433 Clark Street, spoke in support of the proposal. Mr. Morris noted there are many rental units on Clarke Street and the turnover is very high. This proposal should help the parking situation during the evening hours when most of the residents are home.

Jasey McBurnett, 303 Clark Street, current owner of the property, spoke in support of the proposal. The property is located on a very small lot and is not conducive to owning a pet or having children. The area is very mixed and the applicants have assured them they will keep the house historic in nature.

David Schmitt, 634 S. Harris, applicant, spoke in support of the proposal. Mr. Schmidt noted that he and his partner would like to have their business in the historic district. Mr. Schmidt gave an overview of the business and explained most of the time they travel to their clientele. The business will have no more than five employees, at this time. Mr. Schmitt explained as a business owner, they are required to make reasonable accommodations. However, because the house is historic and cannot be altered, if a request is made for accommodation, they will travel to their client's location. If an employee were hired, it would be simply to hook up a computer and DSL line.

Mr. Schmitt noted that they are in agreement with Paul Reichert's recommendation to create four permit parking spaces to meet the parking requirements.

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

Discussion

Commissioner Pouliot asked if there is a requirement for an ADA parking spot. Ms. Gengler noted the Zoning Commission did not recommend approval of the variance. Mr. Schmitt stated if they have a handicap client, they would take their business to them.

Commissioner Oitzinger asked how a disabled employee would be accommodated? Mr. Schmitt explained there currently are three employees who will work on site. Other employees will work from remote locations. Commissioner Oitzinger clarified her question regarding an employee who may need accommodations. Mr. Schmitt again stated if that were the case, the employee would be set up in his or her own home.

Motion

Commissioner Oitzinger moved to table until the June 17, 2002 meeting, the adoption of a resolution for a conditional use permit (CUP) to allow a professional/business office to be located in an R-3 (Medium Density Residential) District. Legally described as, the east 66 feet of Lot

11 and the east 49 feet of north 34 1/2 feet of Lot 10, Block 52, Helena Townsite, Section 25, T10N, R4W, Helena, Montana; generally located on the southwest corner of Clarke and Benton streets with a property address of 303 Clarke Street; subject to the conditions and variances outlined above. Motion dies for a lack of a second.

Commissioner Oitzinger read the letter from Paul Putz, Historic Preservation Officer, opposing the proposal.

Commissioner Pouliot asked City Attorney David Nielsen if what Mr. Schmitt proposed regarding ADA parking, would it comply with city regulations. City Attorney David Nielsen explained the city's handicap parking requirements in our code; pair the federal requirements under the ADA. The enforcement is two-fold; a business has to meet handicap accessibility requirements unless you can make reasonable accommodations. City Attorney David Nielsen recommended if there is a desire to waive the parking requirements, that on the record we provide what the basis is for the reasonable accommodations. What Mr. Schmitt has proposed has been offered in other situations as reasonable accommodations. There are some properties in Helena that cannot meet the handicap parking requirements and like Mr. Schmitt has proposed, they go to the customer.

Commissioner Pouliot asked if the waiver of reasonable accommodations is part of staff's recommendation? Ms. Morell-Gengler stated the recommendation from the Zoning Commission deleted that variance. If the commission wants to grant the variance they would need to move approval of a variance from Section 11-22-4 to allow the elimination of the requirement for accessible parking.

Mayor Smith stated if that variance is approved, then language should be added that the applicant is going to make reasonable accommodations for patrons or employees. Ms. Morell-Gengler concurred.

Motion:

Commissioner Parriman moved approval of a resolution for a conditional use permit (CUP) to allow a professional/business office to be located in an R-3 (Medium Density Residential) District and the Helena Historic District subject to the four conditions and three variances outlined above. Legally described as the east 66 feet of Lot 11, and the east 49 feet of the north 34 1/2 feet of Lot 10, Block 52, Helena Townsite, Section 25, T10N, R4W, Helena Montana; generally located on the southwest corner of Clarke and Benton Street with an address of 303 Clark Street.

Commissioner Netschert asked Commissioner Parriman if his motion included the inclusion of the variance from Section 11-22-4 to allow the elimination of the requirement for accessible parking. Commissioner Parriman concurred that his motion would include four variances.

Commissioner Netschert seconded the motion. Mayor Smith asked Clerk of the Commission Debbie Havens if she has the motion in its entirety. Ms. Havens indicated yes. City Attorney David Nielsen recommended the motion for approval of the CUP and the variances are separate motions.

Motion:

Commissioner Parriman amended his motion and moved approval of a resolution for a conditional use permit (CUP) to allow a professional/business office to be located in an R-3 (Medium Density Residential) District and the Helena Historic District subject to the four

conditions outlined above. Legally described as the east 66 feet of Lot 11, and the east 49 feet of the north 34 ½ feet of Lot 10, Block 52, Helena Townsite, Section 25, T10N, R4W, Helena Montana; generally located on the southwest corner of Clarke and Benton Street with an address of 303 Clark Street. Commissioner Netschert seconded the motion. Motion carried 3-2 with Commissioner Oitzinger and Mayor Smith voting no.

Motion

Commissioner Parriman moved approval of the following variances:
1) From section 11-6-3 (B) to allow 4,462 square feet of lot area and 66 feet of lot frontage instead of the required 7,000 square feet of lot area and 70 feet of lot frontage of the R-3 District; 2) From section 11-22-5 to allow rounding 6.04 down to 6 required parking spaces; 3) From section 11-22-4 to allow the elimination of the requirement for accessible parking; and 4) From section 11-22-11 to allow more than 50% of the required parking to be located offsite and not adjacent to the subject property. Commissioner Netschert seconded the motion. Motion carries 4-1 with Commissioner Oitzinger voting no.

**Public
Communications**

PUBLIC COMMUNICATIONS

Michael O'Neil, 621 Hillsdale, stated he would be out of town for the June 17, 2002 public hearing on the proposed fare increase for the Dial-A-Ride. Mr. O'Neil noted for the record that many of the users of the Dial-A-Ride will not be able to attend the public hearing because they will not have transportation. He encouraged the commission to look at all options that may be available to help those patrons get to the meeting.

Commissioner Oitzinger thanked Mr. O'Neil for making the commission aware of the possible barriers for those who may want to attend the public hearing.

Commissioner Pouliot noted that Mr. O'Neil suggested that the city make the bus available to those who may want to attend the public hearing and asked if that is something the city should consider.

City Manager Burton stated the suggestion is workable, however, it is not staff responsibility to identify those who may want to attend. Those interested in attending would need to contact city staff. Mr. Burton noted that staff would pursue all the options and have them ready for discussion at the next administrative meeting on June 12.

Mayor Smith noted the costs to provide this service also needs to be addressed.

Commissioner Pouliot asked if it is definite that there will be Dial-A-Ride service available the evening of June 17. Commissioner Netschert asked if there are other private services available to assist in transporting those who may want to attend the public hearing.

City Manager Burton again reiterated that all options would be researched and discussed at the June 12 administrative meeting.

Meetings of Interest

The next administrative meeting will be June 12, 2002 and the next City Commission meeting will be June 17, 2002.

Mayor Smith reminded the commission of the reception in honor of the Pavlodar delegation being held on Tuesday evening at the Historical Society.

City Commission Meeting
June 3, 2002
Page 18

Adjournment

There being no further business to come before the commission, the meeting was adjourned at 9:20 p.m. this 3rd day of June, 2002.

MAYOR

ATTEST:

CLERK OF THE COMMISSION