

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
JULY 8, 2002  
6:00 P.M.**

- Time & Place** A regular City Commission meeting was held on Monday, July 8, 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 Deputy City Clerk Barb Fairhurst were 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 June 17, 2002 were approved as submitted.
- Appointment** APPOINTMENT:  
A. HOLMAC  
  
Mayor Smith asked for commission concurrence on the following appointment:  
  
**HOLMAC**  
Jim Cancroft – Second term will expire 06/30/05
- Motion** **Commissioner Netschert moved approval of the re-appointment of Jim Cancroft to the Helena Open Lands Management Advisory Committee.**  
Commissioner Pouliot seconded the motion. All voted aye, motion carried.
- Consent Agenda** CONSENT AGENDA  
A. Claims  
B. Consider 2nd passage of Ordinance 2939 amending Chapters 2, 3 & 7 of Title 3 of the Helena City Code.  
C. Violence against Women Grant  
D. FY2003 Section 5311 Operating Contract for the Dial-A-Ride Bus  
E. Consider Water/Wastewater Service Area Boundary Extensions - Energy Laboratories on Lyndale Avenue, just east of the city shop.  
F. Consider MDT letter agreement to adjust sewer manholes and water valves on Lyndale and Montana.  
G. Consider a resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the sale of said property (stadium seats) **Resolution 11767**  
H. Consider a use agreement to allow an encroachment on city parkland in the Reber Subdivision.  
I. Consider a resolution approving the assignment of the Cable Television Franchise to Bresnan Communications, LLC. **Resolution 11768**  
J. Resolutions of Intention to levy and assess the following annual charges:  
(a) Tree Planting and Maintenance District - **Resolution 11769**  
(b) Dust Control Districts #4, #5, #6, #7 and #8 -**Resolution 11770**  
(c) Street Maintenance Districts #1 and #2 - **Tabled**  
(d) S.I.D.'s - **Resolution 11771**  
(e) Lighting Districts -**Resolution 11772**  
(f) Sidewalk Improvement Program - **Resolution 11773**  
(g) Storm Water Drainage District - **Resolution 11774**

- K. Resolution of Intention to approve the proposed budget of the Helena Parking Commission for fiscal year 2003 - **Resolution 11775**
- L. Resolution of Intention to approve the proposed budget of the Business Improvement District for fiscal year 2003 - **Resolution 11776**
- M. Resolution of Intention to approve the proposed budget of the Support Services Division for fiscal year 2003 - **Resolution 11777**
- N. Resolution of Intention to approve the proposed 9-1-1 Fund Budget for fiscal year 2003 - **Resolution 11778**
- O. Resolution of Intention to budget additional property tax revenue for fiscal year 2003 - **Resolution 11779**

Commissioner Netschert asked to have items D, G, J-c, L and O removed from the Consent Agenda for discussion.

**Motion**

**Commissioner Netschert moved approval of the Consent Agenda, items A, B, C, E, F, H, I, K, M, N and items J (a, b, d, e f, and g).**

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

City Manager Tim Burton recommended approval of the claims.

**Discussion**

Commissioner Netschert asked, in regards to item D, if there is a time restraint on passing this particular portion. Superintendent Ed Robinson stated this is the operating grant for the Helena Dial-A-Ride bus and it needs to be returned to the state to facilitate us applying for the grant funds. The state has not identified a deadline, but we would submit our first application at the end of the first quarter. Commissioner Netschert asked if this was just for the grant portion from the state and Mr. Robinson stated yes.

**Motion**

**Commissioner Netschert moved approval of item D on the Consent Agenda.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Discussion**

Commissioner Netschert stated, in regards to item G, it deals with the declaration of 120 stadium seats as surplus property and wanted to know if the prices quoted are F.O.B. Helena (free on board or purchaser pays for shipping). Parks and Recreation Director Randy Lilje stated they will come and pick them up.

**Motion**

**Commissioner Netschert moved approval of item G on the Consent Agenda.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Discussion**

Commissioner Netschert stated, in regards to item J(c), is the Street Maintenance Districts and the city is proposing to continue the methodology. Commissioner Netschert is very interested in the methodology and how it is presented. He would like to propose that the methodology is looked at further for this upcoming year because of inequities that need to be addressed. Administrative Services Director Tim Magee stated what the commission is approving is the intent to hold a public hearing, rather than the actual assessments. The Street Maintenance District, instead of addressing it, can be pulled and done at a later date. We are not at a deadline, but are doing it in conjunction with the budget process. Commissioner Netschert asked if we go

forward at a future meeting and approve the methodology, can we come back at a later date and change the methodology before the next fiscal year? Mr. Magee stated the actual due date is September 1 so it can be transmitted to the county on the final assessments. Instead of proceeding with an intent, if we want to change the methodology, we should pull this item so we can go through getting the commissions opinions as to what methodology the commission is interested in pursuing so the differences can be calculated before the public hearing. We want to have the public hearing on the actual assessment that we do intend to make.

**Motion**

**Commissioner Netschert moved to table item J(c) from the Consent Agenda and have discussion at a future date.** Commissioner Pouliot seconded the motion. Motion carried 4-1 with Mayor Smith voting no.

**Discussion**

City Manager Tim Burton stated that Commissioner Netschert has, for a long time, had a concern on the methodology. September 1 is the deadline to transmit the assessments to the county. There are files on this topic and can be reviewed by the commission members. If the methodology changes by September 1, there will be a lot of work to do to get this done.

Mayor Smith asked when the public hearing is scheduled for this item. Mr. Magee stated all the assessments are scheduled for July 22, 2002. Mayor Smith asked City Manager Burton if making adjustments to this methodology by July 22 is realistic. Mr. Burton stated it will be a challenge. At previous meetings, there was little consensus on how to change the methodology. It is a conversation that has been around for a long time and this is not new. Mayor Smith asked what the consequences are of not having an alternative methodology agreed upon and heard before the public by September 1? City Manager Burton stated we have a drop-dead time frame to submit our levies and our assessments to the Department of Revenue by September 1 to ensure they are on the tax bill. Mayor Smith asked if those districts would be included on the tax bills? City Manager Burton stated if the assessment is not passed, than they would not be included on the tax bill.

Commissioner Netschert stated if we pull this tonight, it can be put back on the agenda at a future date in its present form. He would like to have a conversation on the methodology of street maintenance assessment with the commission to see if there is a general consensus to change it or leave it alone and go forward from that point.

Commissioner Parriman would support Commissioner Netschert's motion. He is not familiar with the methodology and would like an opportunity to take a look at it to make sure everyone is comfortable with this method. He would like something in place by September 1.

Commissioner Oitzinger stated she would like to discuss this, but wants to move forward as quickly as possible.

Mayor Smith will not support the motion, but urges the commissioners who do support the motion to get together with Mr. Magee or City Manager Burton to discuss the methodology because it will be back on the July 22 agenda.

Commissioner Pouliot recommends putting this issue on the next administrative meeting agenda. Mayor Smith stated that agenda is for budget discussion and is hesitant to add another complex item, but to have this back before the commission on July 22, it will have to be added.

Commissioner Netschert will have information available to the commissioners and staff for their review and comment before that meeting.

Commissioner Netschert stated, in regards to item L, the BID is proposing a 10% increase in salaries and the city is holding our salary increases to the COLAS and there is disparity. The BID is quasi city organization. He would propose reducing the total amount of salary increase by \$5,950.00 to equal a 3% raise which would be more in line with what the rest of the departments are experiencing.

**Motion** Commissioner Netschert moved to reduce the salary increase by \$5,950.00 to equal a 3% raise. Commissioner Pouliot seconded the motion.

**Discussion** City Manager Tim Burton stated no one from the BID is present at the meeting. He is not aware of the details of their market-based study, but when they made their presentation to the commission, they had conducted some market based analysis and the 10% was discussed. It would be appropriate if someone from the BID was present to represent their interests.

Administrative Services Director Tim Magee stated this resolution of intention sets up the hearing and Mr. Reichert from the BID is planning on being at the hearing at July 22. An action could be taken at that time to modify the proposal. The actual action in front of the commission is to consider whether they want to have a hearing on the proposed budget. This information will be given to Mr. Reichert so he is prepared for the July 22 hearing.

Mayor Smith asked Commissioner Netschert if it was his intention to reintroduce this motion July 22 and Commissioner Netschert stated yes. Mayor Smith stated Mr. Reichert had previously made the comment at an administrative meeting that within their personnel at the BID, they don't have a step and grade system, nor do they have any provisions for automatic cost of living adjustments. Anything that is done is approved by the BID Board of Directors.

**Motion** Commissioner Netschert moved to withdraw his previous motion and moved to approve the Resolution of Intention to approve the budget of the Business Improvement District for fiscal year 2003 and set a public hearing date for July 22, 2002. Commissioner Pouliot withdrew his second with the caveat that there will be a discussion on that item.

Commissioner Netschert stated, in regards to item O, the proposed budget includes tax revenue increases for the CPIU inflation factor of 1.7% or \$50,000, which he would support. He would not support raising the general property tax revenue as discussed last year during the budget meeting.

Administrative Services Director Tim Magee stated with the Resolution of Intent, it would give us the opportunity to place it front of the public and receive comments. All action would be best held until we have the public hearing.

Commissioner Oitzinger asked if a motion was needed to approve items L and O? Mayor Smith stated yes.

**Motion** Commissioner Oitzinger moved approval of items L and O on the consent agenda. Commissioner Pouliot seconded the motion. Motion carried 4-1 with Commissioner Netschert voting no.

**Communications**            COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Parriman stated in regards to the tax cut, last year a \$210,000 tax cut was approved for fiscal year 2002. This has been budgeted back in the proposed budget for 2003 and he is not in support of raising those levels back up. He had a discussion with City Manager Burton expressing those concerns and asked Mr. Burton to put together a list of possible cuts in order to hold the present levels were they are right now as long as we can maintain the existing level of city services.

City Manager Tim Burton stated that staff could be prepared to have that discussion at the next administrative meeting. When looking at a \$40 million dollar budget, this portion is about \$11 million and that is the general fund. Last year, at the time that the \$210,000 cut was made, the commission was aware of the issues we would face this year including the elimination of the cops grant so funding for four police officers is going away. The results on the market based pay plan will be available at the next administrative meeting. If we do sustain a cut of this level it will affect our service level somewhat.

Commissioner Oitzinger stated that we were determined to get a fleet management plan in place and we held off on vehicle purchases while awaiting the fleet management plan that is in place now. She is concerned that if we don't restore the funds, we will compromise services.

Mayor Smith stated he feels that a request of that nature would be best coming from the entire commission rather than individually. Staff has made their professional recommendation they go back up to the full level. He asked Commissioner Parriman to make a motion so they can get a vote of the commission.

**Motion**

**Commissioner Parriman moved to have City Manager Tim Burton and Administrative Director Tim Magee put together a list of possible cuts reducing the budget by \$200,000 and have the information to the commission by the July 16 administrative meeting.** Commissioner Netschert seconded the motion. Motion carried 3-2 with Commission Oitzinger and Mayor Smith voting no.

**Discussion**

Commissioner Netschert received a phone call from Mr. John Wall, owner of Power Townsend. Mr. Wall is proposing a substantial addition to their business and one of the issues is access off of Custer. They were lead to believe they would have left hand turn access off of Custer, but now that they have gone through the architecture and the engineering, they are finding that this might not be possible. Mr. Wall asked if the city would submit a request to the state to make sure that all options have been exhausted in providing access that would permit left-hand turns onto Custer. Commissioner Netschert asked for commission concurrent to bring this issue up at the TCC meeting on July 9. Mayor Smith asked in order to fulfill the request of the Wall family, Commissioner Netschert is proposing to raise this issue at the TCC meeting and Commissioner Netschert stated yes. Mayor Smith stated there is always time for additional discussion so it is an appropriate request, but without a thorough knowledge of what was proposed or what the issues are, he would be hesitant to support this request. Commissioner Netschert stated Mr. Wall is asking for the cities support of asking the state to make sure that all options have been thoroughly exhausted in providing left hand turn access off of Custer. Mayor Smith asked the commission what their consensus is regarding Commissioner Netschert's

request. Commissioner Oitzinger does not know because she thought Power Townsend was right off of Custer and how does this affect everybody else? She has not been present at the meetings so she does not know why this is not being done. Commissioner Parriman had a discussion last week with another business owner, Mr. Morris of the River Grille, and he had similar concerns as Mr. Wall. They have a parking lot that faces Custer as well and he would support Commissioner Netschert in asking MDT to explore every possibility in trying to accommodate those existing businesses. Commissioner Pouliot does not think they would lose any credibility by asking them to explore whatever options might be available and he would support the endorsement. Mayor Smith asked Commissioner Netschert if he wanted to make a motion and Commissioner Netschert stated he just wanted to be comfortable with everyone's decision about asking the state to look into this matter.

Mayor Smith stated that he, Commissioner Netschert, Commissioner Oitzinger and City Clerk Debbie Havens attended a session last Thursday, Friday and Saturday in Big Sky called "Strengthening Council Effectiveness" that was put on by the National League of Cities. It was attended by 100 people from 28 states and there was very good content and information given.

**Report of the City  
Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen reported nothing new has happened with the litigation that was filed in reference to the indoor clean air ordinance. He will keep the commission advised when something new happens. Mayor Smith stated they all received Mr. Nielsen's memo on the litigation and thanked him for the update and if he needs additional resources to enable the city to defend itself in this proceeding, please let the commission know.

**Report of the City  
Manager**

REPORT OF THE CITY MANAGER

City Manager Tim Burton invited Mike Casey to the podium. Mr. Casey is a member of the Helena Public Art Committee and he briefed the commission on an art project that they are getting ready to do in the Cruse Avenue tunnel. Mr. Casey thanked Mr. Burton for the invitation to speak. He would like to encourage the cities participation in the summer youth programs sponsored by the Career Training Institute who provided funds to employ two young artists who will work with four youth who were identified and considered at risk and low income. Over the course of the last several days, they have been working on budgeting, outlining, planning and implementation of a mural project in the Cruse Avenue tunnel by the library. They spent the first week cleaning, sweeping, painting, preparing and priming and then worked with all the invited groups of nonprofits and social service agencies that work with the youth in the community. Mr. Casey wanted to express how impressed he is with the work these kids have done. A public panel discussion of how to work with the youth and public art projects for the community in a positive way will be July 26 at the library. This is a publicly funded project in part by the Montana Arts Council and the Career Training Institute, but does not receive any public funds from the City of Helena or the community. It is a fine demonstration of how we can leverage our talents to create a more beautiful and enriching experience.

Mr. Casey also noted the women's mural is a piece of public art, but it has been at risk and the committee has asked Mr. Casey to work with the property owners and others in bringing forth to the commission more concern

about caring and preserving for that art which we have. Mayor Smith stated they look forward to recommendations from the Public Art Committee on how to preserve that women's mural.

Dial-A-Ride                    CONSIDER A RESOLUTION INCREASING FARES FOR DIAL-A-RIDE BUS SERVICE EFFECTIVE JULY 1, 2002. [TABLED FROM 06/17/02].

Staff Report                    The Helena Dial-A-Ride bus fares are currently \$.85 for Checkpoint, \$1.50 for Curb-to-Curb service and the Disabled and Elderly fare is \$.85. These fares have been held at this level for over ten years. Fares raise an estimated \$35,000.00 annually at this level. The average cost per ride in FY2001 was \$7.88. Advertising rates are \$50.00/mo. for the large signs at the rear of the bus and \$35.00/mo. for any other signs.

Staff is recommending authorization to increase fares to \$1.50 for Checkpoint, \$2.50 for Curb-to-Curb service and \$1.00 for Disabled and Elderly. We will continue to offer the Dial-A-Ride passes, providing 21 rides for the price of 20 for all services. The fare increase will provide an additional \$12,000.00 per year in revenues. Staff is recommending that the fare increase begin July 1, 2002. The objective of the proposed fare increase is to generate additional revenues for the operation of the Helena Bus service. Staff is not recommending increasing advertising rates at this time.

Approval would allow the Helena Bus System to generate additional revenues to assist in paying for the cost of operation.

Discussion                    Commissioner Pouliot stated he was absent at the last commission meeting, but feels he is ready to move forward. The people who use the Dial-A-Ride are most in need and they are senior citizens and retired people who cannot afford this rate increase.

Commissioner Oitzinger thanked Mr. O'Neil for coming forward and educating the commissioners about the proposed increase.

Motion                            **Commissioner Oitzinger moved to deny a resolution increasing fares for Dial-A-Ride Bus service.** Commissioner Pouliot seconded the motion.

Discussion                    Commissioner Netschert will not support the motion. There are other issues that need to be discussed such as the average cost per ride that we are paying and how we are providing the service. He would have a counter motion or supplemental motion to increase the fares to the staff recommendation that would be effective November 1. This would give the commission enough time to look at the methodology. He would raise it from \$.85 cents to \$1, but included in that dollar, two transfers which would save \$.70 cents per round trip.

Vote                                Motion carried 3-2 with Commissioners Netschert and Parriman voting no.

Recreational Trails Program                    CONSIDER THE EXPENDITURE OF \$3,500 IN BOND FUNDS AS A MATCH FOR THE \$17,000 RECREATIONAL TRAILS PROGRAM (RTP) GRANT AND TO ENTER INTO AN AGREEMENT WITH FISH, WILDLIFE AND PARKS TO CONSTRUCT A TRAILHEAD ON CITY-OWNED PROPERTY IN DUMP GULCH.

Staff Report

Director of Parks and Recreation Randy Lilje reported Montana Fish, Wildlife and Parks recently notified the city of Helena that it had been awarded an RTP grant to assist with the development of two trailheads in the open lands system. The trailhead proposals have been reviewed and approved by HOLMAC in the preliminary trail plan being prepared by the Prickly Pear Land Trust for the city. OSBAC has also reviewed the proposal and is recommending the expenditure of \$3,500 of open space bond funds as a match for the grant. This proposal will also include in-kind services coming from volunteers working on the projects.

Motion

**Commissioner Oitzinger moved approval of the expenditure of \$3,500 of open space bonds funds for the development of the Davis Gulch and Dump Gulch trailheads.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

Motion

**Commissioner Oitzinger moved approval of the Recreational Trails Program Agreement for the development of the Davis Gulch and Dump Gulch trailheads.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Resolution of  
Intention to Annex

CONSIDER A RESOLUTION OF INTENTION TO ANNEX A 17.29 ACRE PARCEL SHOWN AS TRACT S ON (COS #589909/B) LEGALLY DESCRIBED AS SECTION 26, R4W, T10N, LEWIS & CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA, GENERALLY LOCATED SOUTH OF LEGRANDE CANNON BOULEVARD AND WEST OF THE FOREST ESTATES SUBDIVISION AND ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

Project Coordinator Hal Fossum reported when a proposed subdivision is proposed to be annexed to a municipality, state subdivision laws (MCA § 36-3-601, 605) direct the city government to coordinate the subdivisions review and annexations procedures to minimize duplication of hearings, reports and other requirements whenever possible, including joint hearings on preliminary plat and annexations. It is the common practice of the city to initiate the process of annexations by means of resolution of intention to annex. The function of the resolution is to establish any conditions that must be met before annexation can be completed, and to coordinate the completion of annexation with the subdivision so as to minimize the duplication of requirements.

Annexation is proposed to be completed under the petition method, which is detailed in state law under MCA § 7-2-4601 et seq. All affected property owners have requested annexation. Under the applicable laws, whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits. When the governing body approves the petition, staff will prepare a resolution providing for the annexation for the commission's consideration.

The key practical significance of annexation is to provide for the provision of city services to the developing area. Annexation is linked to the subdivision process under City Codes (6-5-4), which require that properties be annexed before they can receive city utility services. The city received a completed application for annexation and rezoning the subject property from the applicant, Alexandra Swaney. The property is proposed for residential land use. The applicant's representative has stated, however, that the largest portion of the property is expected to be donated to the city after subdivision.

MCA § 7-2-4610 specifies that city services may be provided (a) according to a plan for extension of services or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must comply with MCA § 7-2-4736 which concerns the extension of city garbage services to newly annexed areas.

Under this proposal, the 17.29 acre Swaney Minor Subdivision would be annexed to the city of Helena on or before the time of approval of the final plat for the development, with the timing of that annexation coordinated with the wishes of the applicant. Provision of city services called for in MCA 7-2-4610 will be provided either by a development agreement to be reached between the city and property owners, or by a plan for extension of services to be prepared by city staff.

The main elements of the provision of services involve infrastructure requirements, which are embodied in the conditions of the subdivision preliminary plat, and would be incorporated by reference into the service plan or development agreement. Other elements of services, such as police, fire and garbage services would be identified in the service plan or development agreement and presented to the City Commission for its approval prior to annexation.

This annexation approval is subject to the following conditions:

1. Taxes and assessments shall be paid and current at the time of annexation.
2. The applicant must notify the City Community Development Department in writing upon completion of the conditions for the subdivision established by the city.
3. The applicant must notify the City Community Development Department in writing upon completion of the conditions of annexation. If the conditions are not completed within one year of the date of approval of this resolution, the city is under no obligation to annex the property and may discontinue any city services, including water and sewer.

#### Discussion

Commissioner Netschert asked if this property is contiguous to the city and will this create any wholly surrounded areas? Mr. Fossum stated this property proposed for annexation/subdivision/prezoning is already wholly surrounded by the city and it is also directly adjacent to existing city limits. No part of this will create any additional surrounded areas.

Commissioner Parriman stated he attended a zoning meeting and there were many residents that voiced their concerns over the water pressure in the area. Can the commission place restrictions on a piece of property to assure that those water pressure problems will be addressed? Mr. Fossum stated what we are doing with this particular agenda item is considering whether the annexation should continue and this question is best placed with the minor subdivision which occurs later on this agenda.

Commissioner Pouliot stated on the staff memo, it indicates that all affected property owners have requested annexation. Who are all affected property owners? Mr. Fossum stated that would be Alexander Swaney, the sole property owner.

#### Motion

**Commissioner Pouliot moved approval of a resolution of intention to annex a 17.29 acre parcel shown as Tract S on COS #589909/B, legally described as Section 26, R4W, T10N, Lewis & Clark County, Montana, into the City of Helena, Montana, generally located south of LeGrande Cannon**



contiguous to city limits, but no this would not create any additional wholly surrounded properties.

Mr. Fossum stated the recommendation of the zoning commission was to zone this property in R-2 the Single Family Residential District. It is significant to note under item 15E, is consideration of an ordinance rezoning to R-2 the Single Family Residential District.

**Motion**

**Commissioner Netschert moved approval of a resolution of intention to annex Lots 17-19 in Block 180 of the Syndicate Addition, and Lots 18-32 in Block 180 of the Brooke Addition located in Lewis & Clark County, Montana and to the City of Helena, Montana, generally located on the north side of the 2000 block of Hauser Boulevard between Joslyn Street and Winston Street, subject to the conditions outlined above.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution 11781**

**Resolution of Intention to Annex**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX LOT 1A AND LOTS 2-7 AND 13-15 IN BLOCK 190 OF THE BRADFORD ADDITION LOCATED IN LEWIS AND CLARK COUNTY, MONTANA AND TO THE CITY OF HELENA, MONTANA, GENERALLY LOCATED AT 1825 UNIVERSITY STREET AND THE PROPERTY FRONTING LEGRANDE CANNON BOULEVARD ON THE SAME BLOCK AND ESTABLISH CONDITIONS FOR ANNEXATION.

**Staff Report**

Project Coordinator Hal Fossum reported all properties in the city are required to meet certain standards for infrastructure including sewer, water, storm drainage, fire hydrants, streets and sidewalks. Under MCA 7-2-4610, the timing and financing of city services may be mutually agreed upon by first class cities and property owners of the area to be annexed. Under the present proposal, we expect that some required city infrastructure improvements will be completed by the time of annexation and need not be deferred. Staff expects that any required improvements to the existing house on University Street may be deferred until the needed improvements are completed on a larger scale.

Any residential construction work following passage of this resolution would be undertaken in anticipation of annexation. Therefore, any construction prior to annexation should be completed in conformance with city requirements, including zoning, building, public works and fire codes. Building permits for commercial structures outside city limits are permitted by the state, the review of which covers fire and building codes. A condition is included to ensure that any further building prior to the completion of annexation would be reviewed by the city for conformance with its zoning and infrastructure requirements.

The payment in full of all taxes and assessments is required by city ordinance. The recommended condition for timely notification and completion of conditions is intended to provide a reasonable time frame for completion of this process.

Following are the conditions for annexation:

1. **Infrastructure:** The applicants must install infrastructure improvements as required by the city and to city standards, including water, sewer, fire hydrants, street, curb, gutter and sidewalks, or enter into a development agreement acceptable to the city of Helena that defines responsibility for the installation or deferral of the improvements.
2. **Review of new construction:** For all construction commenced subsequent to the adoption of this resolution, the property owners shall

submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning and Uniform Fire Code requirements of the city.

3. Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the resolution of annexation.
4. Completion of conditions: The applicants shall notify City Planning in writing upon completion of the conditions for approval of annexation. If the conditions are not completed within one (1) year of the date of approval of this resolution of intention, the city is under no obligation to annex the property or to continue any city services, including water and sewer.

Discussion

Commissioner Netschert asked if this is contiguous or wholly surrounded? Mr. Fossum stated this property is adjacent to existing city limits. This would not create any wholly surrounded territory because it is all wholly surrounded by the city of Helena by virtue of the fact that Joslyn Street has been added to the city.

Commissioner Parriman noted he will abstain from voting, as he is one of the applicants.

Motion

**Commissioner Netschert moved approval and of a resolution of intention to annex Lot 1A and Lots 2-7 and 13-15 in Block 190 of the Bradford Addition located in Lewis and Clark County, Montana and to the City of Helena, Montana, generally located at 1825 University Street and the property fronting LeGrande Cannon Boulevard on the same block, subject to the conditions outlined above.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried with Commissioner Parriman abstaining.  
**Resolution 11782**

Resolution of Intention to Annex

CONSIDER A RESOLUTION OF INTENTION TO ANNEX A 5.364 ACRE PARCEL IN THE NE ¼ OF SECTION 4, TOWNSHIP 9 NORTH, RANGE 3 WEST, P.M.M., LOCATED IN LEWIS AND CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA; GENERALLY LOCATED SOUTH OF GOLD RUSH AVENUE AND CRYSTAL DRIVE, AND ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

Project Coordinator Hal Fossum reported when a proposed subdivision is also proposed to be annexed to a municipality, state subdivision laws (MCA 36-3-601, 605) direct the city government to coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports and other requirements whenever possible, including joint hearings on preliminary plat and annexation. It is the common practice of the city to initiate the process of annexation by means of a resolution of intention to annex. The function of the resolution is to establish any conditions that must be met before annexation can be completed, and to coordinate the completion of annexation with the subdivision so as to minimize the duplication of requirements.

Annexation is proposed to be completed under the petition method, which is detailed in state law under MCA 7-2-4601, et seq. All affected property owners have requested annexation. Under the applicable laws, whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits. When the governing body approves the petition, staff will prepare a resolution providing for the annexation for the commission's consideration.

The key practical significance of annexation is to provide for the provision of city services to the developing area. Annexation is lined to the subdivision process under City Codes (6-5-4), which require that properties be annexed before they can receive city utility services. The city received a completed application for annexation and rezoning the subject property from the applicant, Rick Hill. The property is proposed for residential land use.

MCA 7-2-4610 specifies that city services may be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services may comply with MCA 7-2-4736 which concerns the extension of city garbage services to newly annexed areas.

This annexation approval is subject to the following conditions:

1. The final subdivision plat establishing Tract B-2 as described in this resolution must be approved and filed in the county.
2. Taxes shall be paid and current at the time of annexation.
3. The applicant must notify the City Community Development Department in writing upon completion of conditions for subdivision established by the city. If the conditions are not completed within one year of the date of approval of this resolution, the city is under no obligation to annex the property and may discontinue any city services, including water and sewer.

#### Discussion

Commissioner Oitzinger asked what conditions would cause the commission to disapprove an annexation? Mr. Fossum stated generally what you want to consider is whether the proposed annexation is a logical extension of the city boundaries and whether the annexation would create any kind of a hardship. Commissioner Oitzinger stated there is a letter from the Fish, Wildlife and Park Division which states, "We do not endorse expansion of the city limits to the south." If there is concern about the affect on the habitat and wildlife and the extension of the city into the south hills, than perhaps this is not logical. Commissioner Oitzinger will not support annexation of this area.

City Attorney David Nielsen stated that one of the conditions to this annexation is the subdivision conditions have to be completed so if the subdivision is not completed, than the annexation does not go through. One is inseparably linked to the other.

Commissioner Netschert stated that he is happy to see that FW&P is acknowledging the abundance of deer in the area. Perhaps we can use this letter at a later date to get the state to take care of their wildlife. He does not feel that 5.3 acres is going to significantly affect the wildlife in this area. Commissioner Netschert had heard about opposition to this proposal and he called Bill Leary, who serves on the Zoning Commission, to find out what the comments were in regards to opposition. Mr. Leary expressed it was his understanding the Zoning Commission turned it down based upon the inclusion of condominiums and it was not based upon the inclusion of Single Family Residence.

Commissioner Parriman believed there was a lot of opposition and still may be some somewhat, but that has been greatly tampered due to the fact the applicant has decided not to go ahead with condominiums.

#### Motion

**Commissioner Parriman moved approval of a resolution of intention to annex a 5.364 acre parcel in the NE 1/4 of Section 4, Township 9 North, Range 3 West, P.M.M. located in Lewis & Clark County, Montana, into the**

**City of Helena, Montana; generally located south of Gold Rush Avenue and Crystal Drive, subject to the conditions outlined above.** Commissioner Netschert seconded the motion. Motion carried 4-1 with Commissioner Oitzinger voting no. **Resolution 11783**

## **PUBLIC HEARING**

### **Zone Change**

CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A ZONE CHANGE FROM R-3 (MEDIUM-DENSITY RESIDENTIAL) TO R-O (RESIDENTIAL-OFFICE) DISTRICT FOR THE "HERMANN BUILDING" WHICH IS LOCATED IN THE SOUTH CENTRAL HELENA HISTORIC DISTRICT. LEGALLY DESCRIBED AS LOT 30, BLOCK 31, ORIGINAL HELENA TOWNSITE, HELENA, MONTANA; GENERALLY LOCATED EAST OF WARREN STREET AND SOUTH OF BROADWAY WITH PROPERTY ADDRESS OF 201 EAST BROADWAY.

### **Staff Report**

Planner Belinda Waters reported the property is currently zoned R-3, is bordered by the R-O District on the north and south sides, and has historically contained a variety of nonresidential uses. No opposition has been stated to the proposed zone change. Although the question of onsite parking tends to surface with this particular property, conditions cannot be placed on the approval of a zone change. As a historic building (built in 1872 and located in the South Central Historic District) that covers almost the entire lot, there is a rebuttable presumption to have a hardship when requesting a parking variance from the Board of Adjustment. Additionally, the applicant has discussed obtaining parking from the Helena Parking Commission.

The Helena Zoning Commission unanimously recommended approval for the proposed zone change on June 11, 2002.

This zone change would be consistent with the 2001 Helena Growth Policy; Montana zone change criteria; the adjacent zoning; and the viability of the historic building.

### **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 approval for first passage of an ordinance for a zone change from R-3 (Medium-Density residential) to R-O (Residential-Office) district for the "Hermann Building" which is located in the south central Helena historical district. Legally described as Lot 30, Block 31, Original Helena Townsite, Helena, Montana; generally located east of Warren Street and south of Broadway with a property address of 201 East Broadway.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Ordinance 2940**

### **Prezone**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING TO R-1 (LARGE LOT SINGLE FAMILY RESIDENTIAL) DISTRICT, PRIOR TO ANNEXATION, FOR 17.29 ACRES. LEGALLY DESCRIBED AS TRACT S (COS#589909/B) SECTION 26, R4W, T10N, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED SOUTH OF LEGRANDE CANNON BOULEVARD AND WEST OF THE FOREST ESTATES SUBDIVISION.

Staff Report

Project Coordinator Hal Fossum reported owners of the affected properties have duly applied for annexation and rezoning. A subdivision has also been proposed. The applicant contemplates creation of five lots, and has stated that the largest proposed parcel would be donated to the city as open space.

On June 11, 2002, the Zoning Commission held a duly advertised public hearing and unanimously (5-0) recommended rezoning the property in the Large-Lot Single Family Residential (R-1) District.

The City Zoning Ordinance (11-2-8-D) requires properties that seek annexation to the City of Helena be zoned prior to the completion of annexation, a procedure referred to as rezoning. Rezoning has no effect of regulating land use prior to the effective date of annexation.

The Zoning Commission recommends the R-1 District for this property. The proposed R-1 designation would be an extension of a larger R-1 District to the east. The property is not currently zoned.

Discussion

Mayor Smith asked if the commission proceeds with the rezoning, would that be Lot 5 and Mr. Fossum stated yes, the whole of this territory would be rezoned to the R-1 District. There would be no effect of that rezoning unless the annexation, the subdivision were in fact, consummated. Mayor Smith asked if Lot 5 is deeded back to the city, will that undergo a zone change? Mr. Fossum noted that may not be necessary, but will be discussed if that happens.

Commissioner Parriman asked if the commission rezones those five lots as one designation, can the larger piece be rezoned PLI to ensure that it will never be developed as residential lots? Mr. Fossum stated this proposed subdivision would create five lots total, including this large parcel. However, the large lot could be rezoned differently than the other four.

City Attorney David Nielsen stated yes, during this passage of an ordinance for rezoning, you could zone the larger parcel as PLI and the others as R-1 if so desired.

Public Testimony

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

**Bob Kiesling**, 46 S. Last Chance Gulch, stated there is a good reason to leave the proposal as submitted and not tamper with breaking out the largest portion identified as Lot 5 and designating that a different zone. There has been a concerted effort to put Lot 5 into open space, but it has become very complicated and has required getting gifts from members of the public who care about Mt. Helena. It has required the owner of the property to take a substantial reduction in the market value of the property. She will turn around and flip that portion of it to the city through a bargain sale. If the commission zoned that differently from R-1, it would have an adverse affect on the tax benefit she might derive from going through this procedure. Mr. Kiesling suggests that can be better handled in the event this is approved as planned. If approved, the open space program is prepared to purchase Lot 5. The funds have been lined up and if approved there will be a proposal through open space that would convert it to an add-on to Mt. Helena Park.

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

- Motion** Commissioner Pouliot moved approval for first passage of an ordinance rezoning to R-1 (Large Lot Single Family Residential) District, prior to annexation, for 17.29 acres. Legally described as Tract S (COS#589909/B), Section 26, R4W, T10N, Lewis & Clark County, Montana; generally located south of LeGrande Cannon Boulevard and west of the Forrest Estates Subdivision. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. Ordinance 2941
- Preliminary Plat** CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT OF 17.29 ACRES CREATING FIVE LOTS. LOT 5 CONSISTS OF 13.83 ACRES AND IS PROPOSED TO BECOME PART OF THE CITY'S OPEN SPACE. LOTS 1 THROUGH 4, EACH APPROXIMATELY 34,000 SQUARE FEET IN SIZE, ARE DESIGNATED AS SINGLE-FAMILY DWELLING SITES. LEGALLY DESCRIBED AS TRACT S (COS#589909/B) SECTION 26, R4W, T10N, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED SOUTH OF LEGRANDE CANNON BOULEVARD AND WEST OF THE FORREST ESTATES SUBDIVISION.
- Staff Report** Planner Belinda Waters reported the applicant is requesting to divide the tract into five lots. Lot 5 consists of 13.83 acres and is proposed to become part of the city's open space. Lots 1 - 4, each approximately 34,000 square feet in size, are designated as single-family dwelling sites.
- The subject tract is currently vacant and undeveloped, consisting of 17.29 acres, located south of LeGrande Cannon Boulevard and west of Charlie Russell Drive. A pre-zone and annexation application has been received. Proposed zoning for the subdivision is R-1 (Single Family Residential - Large Lot) District.
- All five lots in the proposed subdivision will meet lot area and width requirements for the R-1 District and almost 14 acres will become part of the city's open space.
- Discussion** Mayor Smith asked if it is the responsibility of the applicant to upgrade the Forrest Estates pumping station? Ms. Waters stated Assistant Public Works Director Phil Hauck has stated there is always a way to add more pumps to that station to bring more water up there, however, a reservoir for that entire area is needed. Mayor Smith stated a reservoir would be the city's responsibility.
- City Manager Tim Burton stated that generally, the conditions and process require that the applicant pay for the infrastructure that is going to serve that proposed subdivision.
- Public Testimony** Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.
- Andy Bauer**, Executive Director of the Prickly Pear Land Trust at 302 N. Last Chance Gulch, stated they wholeheartedly support this proposal. This will provide over 13 additional acres to Mt. Helena City Park. Prickly Pear was instrumental in securing some of the funding for this project. If this is approved, five lots will be created, but if you look at the alternative, more than 30 parcels could be created. The property also provides a wonderful opportunity to improve trail access to Mt. Helena including a potential trail head or neighborhood access point that would allow people to access the great trails up there as well as giving

information about Mt. Helena and the ecology of the area.

**Kent Barnes**, 1636 LeGrande Cannon Boulevard, stated he is the adjacent landowner and has concerns regarding water drainage. There are already problems with flooding with some of the houses that front Floweree. He does not have problems now, but if this is approved, it could be directed to his house.

**Bob Kiesling**, 46 S. Last Chance Gulch, stated this is the most complicated path to creating open space that he has ever participated in, but in this instance, Ms. Swaney, the owner of the property, has had it in her ownership since 1987. She has looked at quite a number of possibilities for this ground and has explored various development possibilities for the property and in the end, she was persuaded it was better off being dedicated as open space. The city's open space program has allocated \$75,000 to make this possible. There are matching funds on tap through the State Fish, Wildlife and Parks Department. If this gets approved, the commission will be seeing it again as an open space proposal for most of this property. The reason for the five lot minor subdivision is shortage of funds.

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

#### Discussion

Mayor Smith asked if it would be possible to get the stormwater drained properly? Engineer Chuck Hanson stated he has not seen a storm drainage plan on this subdivision, but they have been able to do some types of storm drainage conveyance on other subdivisions that cross drainages like this. A large drainage ditch was put on the south side of LeGrande, but whether or not it will hold the extra water is not known. There are other options to take care of this.

Commissioner Parriman asked if there is a way to put in the new infrastructure without jeopardizing the water pressure in that area? Mr. Hanson stated what is needed is an actual engineered plan for the area. Right now, there are problems with the Forrest Estates pump station and more connections should not be added until an answer is found to fix the present problem.

Commissioner Pouliot stated Lot 5 is going to be deeded back to the city as open space. Assuming there is no development, is the water drainage being handled properly now? Mr. Hanson stated we are going through a master plan update of the whole storm water system. We hope to take a look at all of our drainages during the course of this update and provide any capital planning necessary to upgrade and make those more workable in the future.

City Attorney David Nielsen stated he would recommend the commission scrutinize this subdivision request as though no gifts were forthcoming since there are no binding transfers for gift. When subdivisions are approved, it is incumbent on the commission, if they approve it with the conditions or deny it, that there be Findings of Fact. On page 5 of the staff report, Ms. Waters has prepared proposed findings of fact and under each area, has left a line for commission comments. On pages 6, 7 and 8 are conditions and if the commission decides to approve the subdivision and impose the conditions, Mr. Nielsen proposes they use these conditions rather than the four that are in the proposed motion. These conditions are more complete and fit with the Findings of Fact.

Mayor Smith asked if the commission were to approve this with the conditions Mr. Nielsen suggested, do the conditions herein encompass those that are in the staff report? Mr. Nielsen stated that is correct.

**Motion**

**Commissioner Pouliot moved approval of a minor subdivision/preliminary plat of 17.29 acres creating five lots. Lot 5 consists of 13.83 acres and is proposed to become part of the city's open space. Lots 1 through 4, each approximately 34,000 square feet in size, are designated as single-family dwelling sites. Legally described as Tract S (COS #589909/B) Section 26, R4W, T10N, Lewis & Clark County, Montana; generally located south of LeGrande Cannon Boulevard and west of the Forrest Estates Subdivision. Said approval shall be subject to conditions 1-8 as shown on page 6 and 7 of the Findings of Fact.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Prezone**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING TO R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT, PRIOR TO ANNEXATION FOR LOTS 1A-7 (COS#3016559) AND 13-15, BLOCK 190, BRADFORD ADDITION, SECTION 26, R4W, T10N, LEWIS AND CLARK COUNTY; GENERALLY LOCATED WEST OF LAUREL STREET AND SOUTH OF UNIVERSITY WITH A PROPERTY ADDRESS OF 1825 UNIVERSITY STREET, PLUS UNDEVELOPED PROPERTY FRONTING LEGRANDE CANNON BOULEVARD ON THE SAME BLOCK.

**Staff Report**

Project Coordinator Hal Fossum reported owners of all affected properties have requested annexation to the City of Helena and application has been duly made. The largest part of this property is owned by Ron Bartsch and Rebekka Cantrell, who applied for annexation so the property can be developed with city utilities. Two adjacent property owners subsequently joined that application; for these properties annexation helps resolve a private boundary relocation issue.

On June 11, 2002, the Zoning Commission held a duly advertised public hearing and unanimously (5-0) recommended pre zoning the property in the Single Family Residential (R-2) District.

The City Zoning Ordinance (11-2-8-D) requires properties that seek annexation to the city of Helena be zoned prior to the completion of annexation, a procedure referred to as pre zoning. Pre zoning has no effect of regulating land use prior to the effective date of annexation.

The recommended pre zoning would complete a necessary step to incorporate this property into the city. The proposed pre zoning and annexation would enable connections to the nearby city utilities, and is expected to enhance environmental outcomes over a similar development without city utilities.

**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.

**Discussion**

Commissioner Parriman will abstain from voting as he is one of the applicants.

**Motion**

**Commissioner Pouliot moved approval for first passage of an ordinance pre zoning to R-2 (Single Family Residential) District, prior to annexation for Lots 1A-7 (COS #3016559) and 13-15, Block 190, Bradford Addition, Section 26, R4W, T10N, Lewis & Clark County; generally located**

**west of Laurel Street and south of University with a property address of 1825 University Street, plus undeveloped property fronting LeGrande Cannon Boulevard on the same block.** Commissioner Netschert seconded the motion. All voted aye. Motion carried 4-0 with Commissioner Parriman abstaining. **Ordinance 2942**

**Prezone**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING TO R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT, PRIOR TO ANNEXATION, FOR LOTS 17-19 IN BLOCK 180 OF THE SYNDICATE ADDITION AND LOTS 18-32, BLOCK 180, BROOKE ADDITION, SECTION 26, R4W, T10N, LEWIS AND CLARK COUNTY; GENERLALY LOCATED NORTH OF HAUSER BOULEVARD BETWEEN JOSLYN AND WINSTON STREETS WITH PROPERTY ADDRESSES OF 2000, 2014, 2020 AND 2034 HAUSER BOULEVARD.

**Staff Report**

Project Coordinator Hal Fossum reported this proposed annexation includes five existing houses on the north side of the 2000 block of Hauser Street. Application for annexation and pre zoning has been duly made. All houses currently have city water service and want to extend a nearby sewer main and connect to city sewer service. No further development is anticipated as a result of this application.

On June 11, 2002, the Zoning Commission held a duly advertised public hearing and unanimously (5-0) recommended pre zoning the property in the Single Family Residential (R-2) District.

The City Zoning Ordinance (11-2-8-D) requires properties that seek annexation to the City of Helena be zoned prior to the completion of annexation.

Three written comments were received and one outlines a conceptual approach to infrastructure extension, involving deferral of all annexations in the west side. Two, from adjacent property owners, express support for the proposed zoning and annexations. These call, in particular, for street improvements.

The Zoning Commission recommendation is consistent with the expressed wishes of one neighborhood group, which argued that single family zoning is necessary to protect the single family residential character of the neighborhood. The R-2 recommendation has the consent of the applicants. It should be noted, however, that the applicants had first requested, and staff recommended the Medium Density Residential (R-3) zone in this case. The staff recommendation was based on these main factors: (a) scattered apartments and other higher density units exist in this block and the unincorporated surrounding area, and these are not permitted in the R-2 zone but are permitted in the R-3, (b) the request of the applicants, particularly in light of two existing apartments in the subject block, and (c) given the existing platted lots and significant vacant property, the potential of the area around Joslyn Street, to accommodate higher density residential land use. Under the Zoning Commission recommendation, two apartment uses in the subject property would become non-conforming uses, and the stage would be set for extension of this zone to other multifamily residential properties, making them, too, nonconforming.

The recommended pre zoning would complete a necessary step to incorporate this property into the city. The proposed pre zoning and annexation would enable connections to the nearby city utilities, and so is expected to enhance environmental outcomes over the same houses with aged septic systems.

Discussion

Commissioner Pouliot asked about grandfathering in property and if this pertained to apartments and Mr. Fossum stated yes. Commissioner Pouliot stated the recommendation was to grandfather them in, but that they could not be expanded. What if they want to sale, can it be sold as an apartments or would it no longer be grandfathered? Mr. Fossum stated a nonconforming use runs with the land, it is not a property right that is held by the owner of the property. If they use the apartment and it is vacated for a significant period of time, that right to the nonconforming use can be abandoned so the underlying land use constraint, in this case, the Single Family Residential, would revert and be in force. So long as that existing land use, in this case, Multi Family Residential, continues to be in use, that is a property right that runs with the land.

Mayor Smith stated on the agenda, it says first passage of an ordinance rezoning to R-3. Is this a typo? Mr. Fossum stated this was for an R-3 zoning. The Zoning Commission recommended differently, an R-2 zoning. The public notice contained in the legal advertisement did note exactly the situation the staff had proposed. On review of this situation with legal staff, we believe the public has been adequately noticed of the situation and there is no problem with the notice.

Mayor Smith stated if there is public testimony on this issue from the owner or applicant and they have concerns over R-2 vs. R-3, he would like to hear from them.

Public Testimony

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

**Jim Walczak**, 2000 Hauser Boulevard, stated all five applicants are in agreement with R-2.

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

Motion

**Commissioner Parriman moved approval for first passage of an ordinance rezoning to R-2 (Single Family Residential) District, prior to annexation, for Lots 17-19 in Block 180 of the Syndicate Addition, and Lots 18-32, Block 180, Brooke Addition, Section 26, R4W, T10N, Lewis & Clark County; generally located north of Hauser Boulevard between Joslyn and Winston Streets with property addresses of 2000, 2014, 2020, 2026 and 2034 Hauser Boulevard.** Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Ordinance 2943**

Pre-Zone

CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A PRE-ZONE TO R-1 (SINGLE-FAMILY RESIDENTIAL) DISTRICT, PRIOR TO ANNEXATION, FOR 5.36 ACRES. LEGALLY DESCRIBED AS (COS#575711C) TRACT B2 OF RED LETTER MINOR SUBDIVISION LOCATED IN THE NW QUARTER OF SECTION 4, AND NE QUARTER OF SECTION 5, T9N, R3W, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED SOUTH OF GOLD RUSH AVENUE AND CRYSTAL DRIVE.

Staff Report

Planner Lucy Morell-Gengler reported the property is located in Lewis & Clark County and annexation was reviewed by the commission. It is currently zoned OSR, Open Space Residential. This zoning is a city zoning and county zoning for property located in the county. This zoning is unique to this area. It is

designed specifically to address county development in this area. One of the issues at the Zoning Commission was whether the property should be annexed in under the OSR zoning. OSR zoning is unique in that it has it's own design standards for roads; it's own street grades; provisions for septic; for wells, a lot of the things that are inconsistent with development within the city. Our standards for streets are considerably more stringent than these. The lot sizes are similar to what you would find in the county, not what you would find in an urban area. The lot sizes are one acre to five acres, whereas, our zoning is more consistent with the residential zoning to the south of R-2 and R-3. When the commission considers the subdivision, you will see that the lots being proposed are considerably larger than the R-1 zoning would require. Therefore, staff is recommending R-1 zoning for this proposal and for the subdivision. R-1 is a Single Family Large Lot Residential Zone appropriate for city development as the lowest density zoning within the city.

Also noted in the memo to the City Commission was a state law that requires that 2/3 of the commission is required for zoning action if 25% of property owners within 150 feet of the proposed zoning protest. When Ms. Gengler wrote that memo, there were 5 in protest. Since that time, 2 of those who had written protest to this proposal have withdrawn and changed their position to support. Therefore, there is no longer the 25% of the property owners, 150 feet from this proposal, in opposition. Therefore, the 2/3 requirement for the commission to be in support of this is no longer applicable. It is a regular vote.

The property is varied. Some of the property is a flat area. Other sections of the area are wooded and somewhat steeper. The Zoning Commission recommended denial of the R-1 rezoning for this property.

#### Discussion

Commissioner Oitzinger stated there were comments from the Zoning Commission that the OSR zone does allow for clustering. Is that incorrect? Ms. Gengler stated it does allow a conditional use permit for cluster, but the requirements for clustering in the area required per unit is considerably larger than within the city. If you were to cluster five units, you would still need five acres. Commissioner Oitzinger stated under status quo, is there a limit on the number of residences that would be allowed in this area. Ms. Gengler stated yes, because of the OSR requirements for slope development, the properties would only be allowed one or two units. Probably one because of the slope of the parcel.

Commissioner Pouliot stated staff recommended R-1 and the Zoning Commission recommended denial of the R-1. Who are the two different groups and how did they vote and in what order? Ms. Gengler stated the process is that staff submits a staff report with a recommendation. The Zoning Commission reviews the staff report, holds a public hearing and then votes. At the time the Zoning Commission held the public hearing the applicant was proposing an 8-unit condominium for Lot 5. That was perhaps too excessive for Lot 5. After that meeting, the applicant withdrew that request and has indicated that Lot 5 would be a single-family lot. The Zoning Commission did not have the opportunity to review it under those conditions.

Commissioner Netschert stated the original proposal was for 12 units altogether and this proposal is only for five. Ms. Gengler stated when we address the subdivision, that is correct, right now we are just looking at the zoning. Commissioner Netschert asked of the 5.3 acres, what percentage is greater than 25%? Ms. Gengler does not have an approximate percentage, but

a majority of the property is over 25%. Lot 5 is predominantly over 25%. The average slope of that lot is approximately 32%. There are areas under 25% and some areas under 30%. Commissioner Netschert stated in the packet, there is some consideration for fire mitigation. Would there be ways to reduce the vegetative density in proximity of the homes to help negate some of those concerns? Ms. Gengler stated in the Wild Lands Interface Guidelines, there are vegetation reduction guidelines that may be appropriate for this subdivision. The applicant did include those in the covenant. Staff is recommending the city be a party to the covenant to assure enforcement of those vegetation guidelines.

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 support of the subdivision.

**Jeff Larson**, Stahly Engineering, represents the developer. R-1 is the appropriate zoning. OSR does conflict with standards in the city. The condos were controversial and the applicant withdrew those from further consideration. The proposal now is much more solid and much less controversial. If OSR zoning is passed, there is no way to move forward with the subdivision being proposed. Five lots cannot be put on the property under OSR zoning.

**Rick Hill**, 345 Janet, applicant, note the three proposals (annexation, prezone and subdivision) before the commission tonight are linked. If any one of those is denied, than the project does not go forward. If the subdivision is denied, this property will remain in the county and will remain OSR. City and county officials stated this property is suitable for development in the city. This will be a first-class development that will enhance the neighborhood, not detract from it. The neighbors around there are all zoned R-2 and R-3; this proposal is for R-1. Most of the disturbed area will be the area covered by the street. Fire mitigation will have to be done on this lot no matter what happens. Mr. Hill stated he withdrew the conditional use permit for Lot 5 out of respect for the opposition. There will be fairly minimal scarring to the land other than the area under the street. There will be retaining walls.

The following persons spoke in opposition to the subdivision

**Bob Summerer**, 2524 Lookout Circle, objects to subdivision as proposed. The Zoning Commission unanimously opposed the proposed zone and wished to keep it OSR. Other concerns from the Zoning Commission besides condos were potential scarring of the land due to the slope and to mitigate the fire hazard. This will damage the appearance of the land. That is a high-risk fire area. Mr. Summerer also has concerns with traffic on Crystal and on Gold Rush.

**Tom Harlen**, 2601 GoldRush, objects to the subdivision because of the topography and the slope grades on this property. This is located in heavily wooded areas and majority exceeds 25% grade. Developing would involve substantial cuts and fills into the mountainside to prevent run-off and erosion. This would detract from the cities natural mountain backdrop and degrade the existing environment. This development runs contrary to the environmental section of the 2001 Helena Growth Policy which calls for preservation with a natural mountain backdrop.

**Brian Taylor**, 2517 GoldRush, opposes the subdivision. The Zoning Commission voted to deny the conditional use permit which denied the condos.

They also denied the zoning request because of fire hazards, environment and so forth.

**Terry Tatchell**, 2515 Goldrush, opposes the subdivision. If this subdivision is granted, it will open the door to developing the rest of the South Hills in a residential manner.

**Richard Nielsen**, 2512 GoldRush Avenue, opposes this development.

**Cheryl Summerer**, 2524 Lookout Circle, this property is special. Trails are important and the new houses being built below Mt. Helena are ugly. You should look to the future and think about how you want Helena to look in 10 years. Development has a domino effect.

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

#### Discussion

Commissioner Pouliot asked if this property can still maintain the OSR designation? Ms. Gengler stated there has been property annexed into the city under the OSR zoning. That property with that zoning is not anticipated for development. OSR zoning is not a zoning you would apply to property that you anticipate to develop within the city. Yes, you can annex property with OSR zoning since it has been done in the past.

City Attorney David Nielsen stated the property is not annexed; it is ready to be annexed. Traditionally, we have never used the OSR zoning in the city. The reason is because it has county standards. We have used OSR in corroboration with the county as zoning for the county buffer around the city that we know is going to be annexed. That has been the purpose of the OSR zone.

Commissioner Netschert asked if this property is not annexed into the city, would it be possible for them to develop it in the county? Ms. Gengler stated yes. There are some state guidelines regarding septic. If they are a certain distance within city sewer, they are required to connect. There has been some discussion as to whether refusal to annex frees the applicant from that requirement.

Mayor Smith asked if this property is in Lewis & Clark County or Jefferson County? Ms. Gengler stated it is in Lewis & Clark County.

Commissioner Oitzinger stated in regards to the letter from Fish, Wildlife and Parks, the woman who wrote the letter alluded to not having enough information to provide an answer. Was there something provided by the developer that was given to staff that was not forwarded? Ms. Gengler stated the developer, in submitting their proposal, was a major subdivision requiring environmental assessment. One of the criteria for the environmental assessment review is the effects on wildlife. Within that EA, there was an evaluation she felt was incomplete. Commissioner Oitzinger stated we still need to consider environmental impacts in our consideration of the ultimate subdivision.

Commissioner Oitzinger asked City Manager Burton to ask Chief Larson from the fire department if he considers development a panacea for fire danger. City Manager Tim Burton stated the fire department does review and has the opportunity to comment on all subdivision proposals. They do weigh in on a regular basis in terms on what standards they expect and those are applied. Staff is trained in wildfire mitigation and those standards are enforced also in our parkland. Commissioner Oitzinger asked Mr. Summerer about his statement regarding the chair of the Zoning Commission. She had walked the area and retaining the OSR zoning seemed more appropriate. OSR zoning met the Growth Policy guidelines more than R-1 zoning. Due to the fire hazard as

demonstrated by the fires in Colorado, development of this property could be irresponsible. Rezoning this property could set precedence for the area encouraging higher R-1 density development in the South Hills. Mr. Summerer stated that is exactly what he was referring to in his statements.

**Motion**

**Commissioner Parriman moved approval for first passage of an ordinance for a pre-zone to R-1 (Single Family Residential) District, prior to annexation, for 5.36 acres. Legally described as (COS #575711C), Tract B2 of Red Letter Minor Subdivision located in the NW quarter of Section 4, and NE quarter of Section 5, T9N, R3W, Lewis & Clark County, Montana; generally located south of Gold Rush Avenue and Crystal Drive.**

Commissioner Netschert seconded the motion. Motion carried 3-2 with Commissioners Oitzinger and Pouliot voting no. **Ordinance 2944**

**Preliminary Plat**

CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT FOR THE PROPOSED RED LETTER SUBDIVISION CREATING 5 RESIDENTIAL LOTS FROM 5.36 ACRES, LEGALLY DESCRIBED AS (COS#575711C), TRACT B2 OF RED LETTER MINOR SUBDIVISION LOCATED IN THE NW QUARTER OF SECTION 4, AND NE QUARTER OF SECTION 5, T9N, R3W, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED SOUTH OF GOLD RUSH AVENUE AND CRYSTAL DRIVE.

**Staff Report**

Planner Lucy Morell-Gengler reported the applicant is requesting to annex into the city 5.36 acres changing the zoning from OSR to R-1 and subsequently subdivide the property into 5 single-family lots. The property is currently wooded and undeveloped with most of the property having slopes in excess of 25%. The proposal had originally included a CUP for an 8-unit condominium to be located on Lot 5, that proposal has been withdrawn.

The subject property is Lot B2 of a minor subdivision recently approved by Lewis & Clark County. The final plat for the subdivision creating Lot B2 must be filed prior to filing the final plat.

Subdivision of 5.36 acres into 5 single-family lots; legally described as beginning at a stone marked with an "x" at the southwest corner of Lot 2 of Block 3 of the Bull Run Acres No. 3 Subdivision, the point of beginning, thence S 16d52'01" W, a distance of 501.52 feet, thence N 62d24'59" W a distance of 429.79 feet, then N 09d31'32" E a distance of 540.62 feet, thence S 60d00'23" E a distance of 504.56 feet to the point of beginning. Said tract contains 5.364 acres, more or less and will be known as Tract B2 as part of the Red Letter Subdivision, Lewis & Clark County, Montana; generally located south of Gold Rush Avenue and Crystal Drive.

The subdivision would allow more intense development of property in close proximity to city services providing more efficient development.

Said preliminary plat approval for the 5 lots must be subject to the following conditions which must be completed prior to filing the final plat:

- 1) Local Services  
Water and Sewer

Water and sewer must be installed or financially guaranteed in compliance with all applicable regulations and standards and be approved by the city engineer.

The fire protection system, including the placement and installation of fire hydrants meeting fire flow requirements, must be submitted for review and approval by the Fire Marshall.

2) The Natural Environment and Wildlife and Wildlife Habitat

An erosion control plan that addresses erosion control mechanisms, a weed control plan, and a revegetative and maintenance plan must be submitted to the city for approval.

3) Public Health and Safety

- A) A storm water drainage plan, including an evaluation of the new storm drainpipe, complete with drainage calculations provided by an engineer, not allowing drainage in excess of the historical run-off, must be submitted to the city engineer for review and approval.
- B) The installation of any storm water detention basins and drainages must meet all City of Helena standards and the detention basins must be blended into the landscaping.
- C) Building sites are prohibited on slopes 30% or greater; these "no Build" areas must be graphically shown on the final plat.
- D) Building sites are prohibited at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes); these "no Build" areas must be graphically shown on the final plat.

4) The Survey Requirements Provided for in Part 4 of this chapter  
The final plat for this subdivision must be tied to the city coordinate system and provided to the city on acceptable digital formats which include AutoCad 14 and higher for archival and mapping purposes.

5) Helena Subdivision Regulations

- A) The applicant must submit to the city documentation as to the disposition of the water rights for the property.
- B) The subdivision and final plat must comply with Chapter 4 (Design Standards, Improvements) of the Helena Subdivision Regulations and roadway pavement sections must be submitted for approval by the city engineer.
- C) Streets that dead-end and are over 150 feet long must incorporate a turn around that meet Fire Department design standards.
- D) Lot 5 must be designated as a single-family residential lot.
- E) Financial Guarantee  
All the following improvements must be installed or the improvements must be financially guaranteed in accordance with

Section 12-4-13 and 12-4-14 of the Helena Subdivision  
Regulations:

- 1) Storm water drainage improvements;
  - 2) Streets, curbs and gutters;
  - 3) Sidewalks;
  - 4) Erosion control;
  - 5) Water and sewer mains; manholes, fire hydrants, and other appurtenances and;
  - 6) Streetlights.
- 6) Easements
- A) Easements for storm water drainage, natural or man-made, and/or detention basins must be graphically shown on the plat. These easements must restrict any encroachments that may inhibit the required storm water drainage. These restrictions must be included in the covenants.
  - B) The purpose and extent of the access easement on Lot 5 must be identified on the plat.
- 7) Covenants
- A) References to Lot 7 must be deleted.
  - B) The South Hills Planning Study design guidelines are referenced in the covenants for some requirements; it should be noted city standards that are more stringent would supersede covenant requirements.
  - C) The city must be made a party of the covenants requiring city approval for changes to any of the requirements in the covenants that are a part of preliminary plat approval.
  - D) The covenants must include the following language:
    - 1) A culvert maintenance plan that requires drainages be clear of all debris that may inhibit the required storm drainage, and indicating what agency should be contacted if a culvert is blocked.
    - 2) The following minimum guidelines for cuts and fills on private lots should be included in the covenants unless more stringent guidelines are proposed by the developer:
      - a) Retaining walls of sufficient size and strength to securely retain the soil that the walls are holding, or other city approved erosion control measures which structurally stabilize the slope, should be installed where the slope exceeds a ratio of three to one (3:1).
      - b) At a minimum, stake sod or seed with quick germinating seed should be utilized for slopes between three to one (3:1) and four to one (4:1).

- c) At a minimum, seed with quick germinating seed should be installed for slopes less than four to one (4:1).
  - d) Drainage facilities should be installed when necessary for the protection of the property.
  - e) Slope protection should be completed within three (3) months after disturbance.
- 3) To mitigate the fire risk to development in areas with slopes exceeding 25%, the following requirements must be met:
- a) Building sites are prohibited on slopes 30% or greater.
  - b) Building sites are prohibited at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes)
  - c) Use only Class A or B fire rated roofing materials.
  - d) A vegetation reduction area must be established adjacent to structures in accordance with the 1993 Fire Protection Guidelines for Wild land Residential Interface Development.
  - e) If development of slopes over 30% is permitted, such development must incorporate one-hour exterior construction.
- 8) Final Plat Filing  
The applicant must file the final plat for this subdivision with the County Clerk and Recorder within three years in accordance with 76-3-610 MCA. Prior to filing the final plat for the subject minor subdivision the final plat for the minor subdivision tract B-2 must be filed.

Discussion

Commissioner Oitzinger stated there have been concerns expressed in letters about this subdivision as to safety issues. Can we take into consideration, safety issues that occur during the building phase? Ms. Gengler stated yes, such as requiring that structures not be built until a fire hydrant is in operation. Mayor Smith asked about the easement. Ms. Gengler stated the easement is a combination drainage access easement. It ranges in width from 20 feet to 80 feet.

Public Testimony

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

**Jeff Larson**, Stahly Engineering, stated they are in agreement with the conditions. Fire protection and slopes are the big issues. Fire protection is covered under the conditions. The condition that should be changed is condition (e) under item 3 underneath Section D on the covenant on the bottom of page 4. "If development of slopes over 30% is permitted, such development must incorporate one hour exterior construction." Since there is a previous condition that limits building on slopes greater than 30%, it would be wise to change this condition so it applies to any building on a slope over 25%. The conditions also cover scarring of the land. The comments from FWP and the environmental assessment were based on a development that included the condominium developments that have been withdrawn. It was based on 12 units, the current proposal is five single family residents. Because this is a minor subdivision, there is no parkland dedication required and the easement to open space is being provided voluntarily.

**Cheryl Summerer**, 2524 Lookout Circle, is opposed to this preliminary plat.

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

Discussion

Commissioner Netschert asked Mr. Larson about his condition change request. Our building requirements in town do not allow building on any slope greater than 25%. Would you suggest that be changed as well to be consistent with the city requirements? Mr. Larson stated a recent ordinance regarding slopes is not a "cut in stone" ordinance. It is more of a recommendation that was implied through the ordinance. You can exceed those slopes with special mitigation factors. Ms. Gengler stated recently we revised the subdivision regulations. One of the proposals at that time was to restrict development on slopes of 25% or greater. Through committee discussion and the commission's direction, total restriction was not incorporated. Instead, a special design area was designated for slopes over 25% which would establish more stringent guidelines for development in those areas such as those that are presented with this subdivision.

Commissioner Netschert asked Mr. Hill if he would object to the provision of an access easement to the open space that abuts the property? Mr. Hill stated no, he has no objection to that and he will work with staff to provide an access point through Lot 5 to the open space.

Motion

**Commissioner Netschert moved to include in the conditions, under the easement section, item # C, which provides an easement through that section of the property that provides access to the open spaces that are adjacent to the property.** Commissioner Parriman seconded the motion. Motion carried 4-1 with Commissioner Oitzinger voting no.

Discussion

Commissioner Netschert admonished the applicant to visit with the neighbors who have expressed concerns and opposition to see if those concerns can't be further mitigated throughout this process.

Commissioner Oitzinger stated that as a commission, there is no threat to maintaining the status quo. There has been discussion about improved fire protection as a result of the subdivision. Well, if there is fire concern there, you don't have to develop to solve it. This subdivision should be denied.

Commissioner Pouliot agrees with Commissioner Oitzinger.

Motion

**Commissioner Netschert moved approval of a minor subdivision/preliminary plat for the proposed Red Letter Subdivision creating 5 residential lots from 5.36 acres, legally described as (COS #575711C), Tract B2 of Red Letter Minor Subdivision located in the NW quarter of Section 4, and NE quarter of Section 5, T9N, R3W, Lewis & Clark County, Montana; generally located south of Gold Rush Avenue and Crystal Drive subject to the conditions outlined above.** Commissioner Parriman seconded the motion. Motion carried 3-2 with Commissioners Oitzinger and Pouliot voting no.

**Prezone  
St. Andrew School**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING PROPERTY BEING THE 3.711 ACRE TRACT A PER COS 493013, LEWIS AND CLARK COUNTY (ST. ANDREW SCHOOL) AS R-2; GENERALLY LOCATED WEST OF

THE INTERSECTION OF LINDEN AND FLOWEREE STREETS WITH A  
PROPERTY ADDRESS OF 1900 FLOWEREE STREET.

Staff Report

Project Manager Hal Fossum reported St. Andrew School has requested annexation to the City of Helena, and application for rezoning has been duly made. The need to redirect sewer service and establish a new connection to the sewer mains in the Reber PUD precipitated the annexation request. On September 24, 2001, the City Commission passed a resolution of intention for annexation establishing conditions (Resolution No. 11696).

On June 11, 2002, the Zoning Commission held a duly advertised public hearing and recommended rezoning the property in the Public Lands and Institutions (PLI) District by a vote of (4-1).

Staff have received two letters commenting on this proposal. Both express hope that annexation will expedite street improvements needed to control dust in the area. One opposes the recommended PLI zoning and urges R-2 instead.

The City Zoning Ordinance (11-2-8-D) requires properties that seek annexation to the City of Helena be zoned prior to the completion of annexation, a procedure referred to as rezoning. Rezoning has no effect of regulating land use prior to the effective date of annexation.

With the completion of a public hearing by the City Commission, all procedural and due process requirements will have been satisfied.

The Zoning Commission recommends the PLI District for this property. The proposed PLI designation is often applied to school land uses (as well as churches) in the city. The proposed zoning could appropriately be extended to include the Diocese property to the north. The land use would be permitted under that zone.

The recommended rezoning would complete a necessary step to incorporation of this property into the city. The proposed rezoning and annexation would enable connections to the nearby city utilities, and so is expected to enhance environmental outcomes over a similar development without city utilities.

Discussion

Commissioner Pouliot asked if this creates a wholly surrounded area? Mr. Fossum stated this property is adjacent to existing city limits. The property to the north is already surrounded.

Public Testimony

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

The following person spoke in support of the proposal.

**Steve Nistler**, 7691 Hwy 12 West, is a board member of St. Andrews School. It's a school and shouldn't be designated an R-2. Mr. Nistler recommended approval of the ordinance.

The following persons spoke in opposition to the proposal.

**Denise Wheeler**, 720 Laurel Street, stated the zoning doesn't go with the owner and it is not restricted to the present use that goes with the property. It is accessed by poorly maintained, unimproved dirt roads with water run-off problems and no traffic signs. The PLI designation is confusing. How does a private school qualify as a public or a quasi-public institutional use under the

intent of this designation? It directly impacts the residential nature and quality of the neighborhood, something an R-2 tries to preserve.

**Einar Larson**, 625 Linden Street, has the same concerns as Ms. Wheeler along with traffic concerns. If this is zoned R-2, does the city pay for the road? Does city pay half and county pay half? He is zoned county and lives right across the street from the school. Are you obligated to put up a 15mph sign for traffic designation? The school is a great neighbor.

**Jan Larson**, 625 Linden Street, stated the traffic is appalling.

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

#### Discussion

Mayor Smith asked Mr. Nistler to clarify a statement. Mr. Nistler stated in Ms. Wheeler's letter is the question regarding a public school vs. a private school. The board of St. Andrews always try to deal with the neighbors the best way they can because we are at their mercy to a certain extent. St. Andrews does not have any money coming in from anybody besides ourselves and we try to do our best to be good neighbors. It works both ways though, several times there have been windows from both the school van and the school itself, have been shot out for no apparent reason. That costs us, as individuals, money. The taxpayers pay for public school windows being shot out.

Commissioner Pouliot asked if the commission approved the rezoning, would there be any improvements made by the city to the streets and parks? Mr. Fossum stated upon annexation, staff would work out a development agreement with the property owners. The actual paving of the streets would be deferred until such time as those improvements can be done on a larger neighborhood scale achieving what cost efficiencies are possible. The streets in that territory are under stress and have been subject to significant growth in recent years. There is reason to attend to the street improvements.

Commissioner Parriman asked about the PLI designation vs. the R-2. If the commission annexes that in R-2, would that property become grandfathered in as a non-conforming use? If they wanted to do any further development, they would have to apply for a CUP? Mr. Fossum stated yes, in the R-2 zoning designation, a private school is permitted by CUP. Were St. Andrews brought into the city, in the R-2 designation, they would come in as a non-conforming use. Any further development expansion of the property would come to this body as a CUP.

Commissioner Parriman asked Mr. Nistler what his position was with the school. Mr. Nistler stated they started the school in 1996. There were 4-5 families that got it going. He has been a director since that time. Commissioner Parriman asked if his main goal was to get annexed into the city so they could use the city's services? Mr. Nistler stated that is their primary goal and he would not be opposed to an R-2.

Commissioner Oitzinger asked the grade parameters and is there childcare? Mr. Nistler stated it is K-12, but there are no preschool or after school programs and no athletic programs. Commissioner Oitzinger asked if the school is brought in under PLI, than should the school decide to develop an after school program or preschool, they would be at liberty to do so unlike if they came in R-2 with a CUP. Than, if they were going to do anything, they would have to come back for approval. Mr. Fossum stated yes, that is correct.

**Motion**

**Commissioner Pouliot moved approval for first passage of an ordinance rezoning property being the 3.711 acre Tract A per COS 493013, Lewis & Clark County (St. Andrew School) as R-2; generally located west of the intersection of Linden and Floweree Streets with a property address of 1900 Floweree Street.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance 2945**

**Discussion**

Commissioner Netschert asked if this action is legal. Mr. Nielsen stated yes, it is legal.

**Public Communications**

PUBLIC COMMUNICATIONS

There were no public comments.

**Meetings of Interest**

The next City Commission meeting will be July 22 and the next administrative meeting will be July 16 at 10 a.m.

Commissioner Pouliot stated that next Sunday, July 14, the Military Museum will have its grand opening at Fort Harrison and the following Sunday, the Guard Reserve complex, will have its grand opening.

**Adjournment**

There being no further business to come before the commission, the meeting was adjourned at 10:10 p.m. this 8th day of July, 2002.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF THE COMMISSION