

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**AUGUST 26, 2002**  
**6:00 P.M.**

**Time & Place**                    A regular City Commission meeting was held on Monday, August 26, 2002, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

**Members Present**            Mayor Jim Smith indicated for the record that Commissioners Netschert, Oitzinger, and Parriman were present. Commissioner Pouliot was excused. City Manager Tim Burton, City Attorney David Nielsen and City Clerk Debbie Havens were present.  
                                         There was not an HCC representative present.

**Pledge of Allegiance**            Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.

**Minutes**                            The minutes of the regular city commission meeting of August 12, 2002 were approved as submitted.

**Proclamation**            PROCLAMATION  
                                 a.        Helena Senators Baseball Team  
  
                                 Mayor Smith read the Helena Senators Baseball Team proclamation and presented it to Coach Thennis and the players. Coach Thennis thanked Mayor Smith and the Commissioners for the proclamation. Coach Thennis then spoke on the caliber of the players that were on the Helena Senators team this season. He congratulated each player and thanked the assistant coaches.

**Firefighter**                    INTRODUCTION AND CONFIRMATION OF FIREFIGHTER COLETTE SUMMERS  
  
                                 Fire Chief Steve Larson introduced Firefighter Colette Summers and recommended her confirmation. Chief Larson introduced Ms. Summer's family and spoke of her dedication to being a Helena firefighter.  
                                 Ms. Summers thanked the commission for their consideration and confirmation. She spoke of her first year as the first female firefighter hired with the Helena Fire Department.

**Motion** Commissioner Oitzinger moved the confirmation of Firefighter Colette Summers. Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Police Officer** INTRODUCTION AND CONFIRMATION OF POLICE OFFICER TRAVIS BRUYER

Police Chief Troy McGee introduced Officer Travis Bruyer and recommended his confirmation. Chief McGee introduced Assistant Chief Mark Lerum, Captain Billi Heigh, Sergeant Rich Drysdale, Police Officers Keltner and Marietta.

Chief McGee stated under state law officer are hired for a one-year probation. After the completion of the one year, it is required that police officer be confirmed by the governing body. Chief McGee then spoke on Travis Bruyer's work background prior to joining the Helena Police Department.

Police Officer Travis Bruyer thanked the commission for their consideration and confirmation. He also spoke of his work history in the Coast Guard and Flathead County.

**Motion** Commissioner Parriman moved the confirmation of Police Officer Travis Bruyer. Commissioner Netschert seconded the motion. All voted aye, motion carried.

**Appointments** APPOINTMENTS  
a. Airport Authority  
b. City-County Parks Board  
c. Helena Housing Authority  
d. Historic Preservation Commission

Mayor Smith asked for commission concurrence on the following appointments:

**Airport Authority Commission**

Mitch Rygg Reappointment to first full term –  
Expires 09-01-05

**City-County Parks Board**

Jerry Spencer Second Term – Expires –09-30-05

**Helena Housing Authority**

Bob Schleicher First Term – Expires 08-01-07

**Historic Preservation Commission**

Lori Hampa-Chamberlain Second Term – Expires 06-30-05  
Wayne Waters Second Term – Expires 06-05-05

**Motion**

**Commissioner Oitzinger moved approval of the board appointments as recommended by Mayor Smith and outlined above.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

***Consent Agenda*** CONSENT AGENDA

- a. Claims
- b. Acceptance of a FEMA Fire Act grant in the amount of \$32,580; authorize a budget amendment; authorize the City Manager to expend such funds
- c. Acceptance of a Center for Disease Control grant in the amount of \$11,000; authorize a budget amendment; authorize the City Manager to expend such funds
- d. Acceptance of a \$6,000 CDBG planning grant from the Department of Commerce; budget amendment to expend the grant funds; approval to enter into a contract with the Department of Commerce, and authorize the City Manager to sign the contract

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

**Motion**

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

**Bid Awards**

BID AWARDS

- a. Mount Ascension Fuel Mitigation Project

Director of Parks and Recreation Randy Lilje noted in December 2001, the city commission approved the expenditure of \$7,250 of open space bond funds to match a Federal Emergency Management Administration (FEMA) grant to do fuel mitigation work on Mount Ascension Park to help reduce wildfire potential.

A fuel mitigation plan was developed to create a firebreak along the mountain by utilizing an old road that runs east/west. From the road, further tree thinning would be done 132-feet on either side of the road. The slash will be chipped up and either applied on the road as a trail bed surfacing or hauled off.

A bid opening was held on August 14, 2002. Only one bid was submitted by NorthWest Management, Inc. in the amount of \$30,500. The budgeted amount is \$27,500 or approximately 11 percent below the bid amount.

Mr. Lilje recommend awarding the contract to NorthWest Management, Inc. and reduction of the contract amount to \$27,250 as well as reduction of the area covered by approximately 11 percent. If other grant funds become available to perform the full project, then a change order could be executed.

Commissioner Netschert asked what is the length of the road that will be used to create a firebreak along the mountain? Mr. Lilje estimated the length of the road to be  $\frac{1}{4}$  of a mile long.

**Motion**

**Commissioner Netschert moved approval to award the contract to NorthWest Management, Inc. and the reduction of the contract amount to \$27,250 as well as reduction of the area covered by approximately 11 percent and if other grant monies become available, to perform the whole project.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

b. Woolston Reservoir Piping, Project No. 02-15

Public Works Director John Rundquist reported bids were opened on August 13, 2002 for this project. The work will replace an old leaky main that traverses private property without easements. The leakage of the main has impacted the properties, which will also be repaired with this project.

Helena Sand & Gravel submitted the low bid in the amount of \$42,776.50.

Mr. Rundquist recommended awarding the project to Helena Sand & Gravel in the amount of \$42,776.50.

Commissioner Netschert asked where the Woolston Reservoir is located. Mr. Rundquist stated it is located near the entrance of Mount Helena Park.

**Motion**

**Commissioner Netschert moved approval to award the project to Helena Sand & Gravel in the amount of \$42,776.50.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger stated the commission was sent an email regarding the truck traffic going into the Crestview Subdivision. She asked Public Works Director John Rundquist to address this concern.

Mr. Rundquist explained the activity going on is the development of the infrastructure. This is heavy earthwork, there is rock that has to be excavated and fill is being hauled in. The noise is something that will just have to be until the roads are complete.

Mayor Smith asked how long this phase of the project would take? Mr. Rundquist stated he hasn't spoken to the developer; however, it should be finished before winter.

Mayor Smith asked if there is any dust control mitigation activities going on? Mr. Rundquist stated he would have to go out on site to see if there is dust control going on.

Commissioner Oitzinger asked that this be put on the next administrative meeting agenda.

Commissioner Netschert stated he would like to forego the administrative meeting and ask City Manager Burton to direct staff to contact the contractors and to mediate the problems.

Commissioner Parriman asked City Manager Burton, under the Report of the City Manager, to address the clean indoor air ordinance enforcement policies discussion that may have taken place at the Board of Health.

Mayor Smith stated the anniversary of September 11<sup>th</sup> is coming up soon. There will be an Open House at Fire Station Number One. There will also be a formal ceremony at the Capitol at 12:00 noon.

**Report of the City Attorney** REPORT OF THE CITY ATTORNEY

City Attorney Nielsen reported the city has received a letter from an attorney, representing Montana Sign Works, regarding the recently installed trees on Euclid Avenue. Mr. Nielsen will follow-up on the letter and report back.

**Report of the City Manager** REPORT OF THE CITY MANAGER

City Manager Burton reported at the last administrative meeting there was discussion on the enforcement of the clean air ordinance. He was instructed to follow-up with the Department of Health regarding the regularity of enforcement. City Prosecutor Bob Woods, City Manager Burton and Commissioner Oitzinger brought this issue up at the meeting. The Board of Health directed the Health Department staff to meet with the appropriate city staff

and discuss the protocol for the enforcement. If there are recommended amendments to the protocol, the Board of Health will have to reconvene to consider any amendments.

As soon as there is any new information, City Manager Burton will inform the commission via email.

**Amending  
Resolution 10695**

CONSIDER A RESOLUTION AMENDING RESOLUTION 10695 WHICH GRANTED A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 220 RENTAL UNIT RETIREMENT COMMUNITY/CONGREGATE LIVING/PERSONAL CARE FACILITY AND NURSING HOME LOCATED IN THE R-0 DISTRICT; LEGALLY DESCRIBED AS 11.52-ACRES SHOWN ON COS #535416/E, LOCATED IN SECTION 30, T10N, R3W, WITH A PROPERTY ADDRESS OF 915 SADDLE DRIVE.

**Staff Report**

Planner Kathy Macefield explained the proposal would allow one additional duplex at the Waterford complex located in the R-0 District. In exchange with this density adjustment, which is a minor adjustment to the CUP, the number of assisted living units would be reduced from 10 to 8 units.

If the amendment is approved the applicant would be able to utilize the northeast corner of the property. The overall number of 220 units would remain unchanged.

Ms. Macefield recommended approval of a resolution amending Resolution 10695, as a minor adjustment to the previously-approved conditional use permit (CUP) for a retirement community/congregate living/personal care facility and nursing home, to allow one additional duplex and to reduce the number of assisted living/personal care units by 2 units. The property is legally described as 11.52-acres shown on COS #535416/E, located in Section 30, T10N, R3W, with a property address of 915 Saddle Drive.

**Motion**

**Commissioner Netschert moved approval of a resolution amending Resolution 10695, as a minor adjustment to the previously-approved conditional use permit (CUP) for a retirement community/congregate living/personal care facility and nursing home, to allow one additional duplex and to reduce the number of assisted living/personal care units by 2 units. The property is legally described as 11.52-acres shown on COS #535416/E, located in Section 30, T10N, R3W, with a**

**property address of 915 Saddle Drive.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution 11811**

**Resolution of Annexation**

CONSIDER A RESOLUTION OF ANNEXATION FOR LOTS 17-19 IN BLOCK 180 OF THE SYNDICATE ADDITION, AND LOTS 18-32 IN BLOCK 180 OF THE BROOKE ADDITIN, LEWIS & CLARK COUNTY; GENERALLY LOCATED ON THE NORTH SIDE OF THE 2000 BLOCK OF HAUSER BOULEVARD BETWEEN JOSLYN STREET AND WINSTON STREET.

**Staff Report**

Project Coordinator Hal Fossum reported on July 8, 2002, the City Commission established conditions for annexation of this residential property to the City of Helena (Resolution 11781), and the property was rezoned in the R-2 District (Ordinance 2943). The affected property owners are eager to complete annexation so they can proceed with needed sewer work.

The subject property is adjacent to existing city limits. Annexation would not create any additional wholly surrounded areas. The annexation of related street rights of way is being prepared for consideration by the city commission. That proposal will include portions of Hauser Boulevard, Winston Street, and the alleyway between Hauser and Knight Street.

Conditions for annexation included the following:

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 deferment 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 applicant 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.

Staff has verified that all the conditions have been met. The final steps are a resolution of annexation, and administrative transfer of responsibilities from county to city providers.

Mr. Fossum recommended approval of the resolution of annexation.

**Motion**

**Commissioner Netschert moved approval of a resolution of annexation for Lots 17-19 in Block 180 of the Syndicate Addition, and Lots 18-32 in Block 180 of the Brooke Addition, Lewis & Clark County; generally located on the north side of the 2000 block of Hauser Boulevard between Joslyn Street and Winston Street.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution 11812**

**Great Northern**

CONSIDER CLOSE-OUT OF THE GREAT NORTHERN DEVELOPMENT AGREEMENT

**Staff Report**

City Attorney David Nielsen reported in 1998, Artisan, LLP, borrowed \$880,000 from the city for purchase of the Great Northern property. The loan was generated from tax increments in the Urban Renewal District. Subsequently, City Manager Dennis Taylor entered in a Development Agreement with Artisan, LLP, in July 1998. Under the agreement, among other conditions, the city agreed to earmark tax increments generated from the construction of the hotel for assistance in developing the hotel or ancillary facilities. In order to comply with this provision, Artisan and the city have proposed the attached Satisfaction Agreement that outlines a specific procedure to fulfill the original intent of the Development Agreement. This is the last item that the city needs to satisfy in order to completely meet all of its obligations under the original Development Agreement.

The proposed Satisfaction Agreement restructures the repayment of the original loan by deferring payments for five years and adjusting the principal amount of the loan for tax increments generated prior to the closeout of the tax increment district, which is July 1, 2005.

The Satisfaction Agreement completes the city's obligations under the original Development Agreement and fulfills the original intent of the parties that the city would encourage and promote the construction of the hotel by dedicating future tax increments



generated from the hotel construction for that development. This new Satisfaction Agreement amicably resolves future disputes over the particulars of how the city should meet its final obligation under the Development Agreement.

City Attorney Nielsen recommended approval of the Satisfaction Agreement between the City of Helena and Artisan, LLP.

City Manager Burton stated this development agreement demonstrates a real positive partnership between the city and Artisan, LLP. This development has brought millions of dollars into the community.

Mr. Alan Nicholson stated he agrees with City Manager Burton that this successfully closes out the original Development Agreement.

Mr. Nicholson spoke on the history of the development from the conception to total build out. Mr. Nicholson commended the city commission and staff for their work on this project.

**Motion**

**Commissioner Parriman moved approval of the Satisfaction Agreement between the City of Helena and Artisan, LLP.** Commissioner Oitzinger seconded the agreement. All voted aye, motion carried.

**Public Hearings**

**PUBLIC HEARINGS**

- a. CONSIDER ACCEPTANCE OF FY02-03 LAW ENFORCEMENT BLOCK GRANT FUNDING IN THE AMOUNT OF \$35,065.

**Staff Report**

Police Chief Troy McGee reported the Helena Police Department has received funding from Bureau of Justice Assistance (BJA) for the past five years, which has been used to retain 1-2 officer positions that may have otherwise been eliminated due to budget cuts. Funding is for a two-year period, however, because we have chosen to use ours for salaries, our funding last for only one year.

Chief McGee recommended acceptance of grant funding in the amount of \$35,065 from the BJA to be used for officer salary and benefits.

**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, Mayor Smith closed the public hearing.

**Motion**

**Commissioner Netschert moved acceptance of the FY02-03 Law Enforcement Block Grant Funding in the amount of \$35,065 to be used for officer salary and benefits.**

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

- b. CONSIDER A RESOLUTION TO LEVY ASSESSMENTS FOR DUST CONTROL DISTRICTS 4, 5, 6, 7 AND 8 FOR FY 2003.

**Staff Report**

Administrative Services Director Tim Magee explained each year the commission must levy and assess the appropriate annual charges in order for them to be placed on the upcoming tax bills.

Based on available information on estimated dust control application needs, costs and estimated reserve funds, it was determined that no additional funding would be needed for anticipated dust control applications in the coming year. On July 22, 2002, the commission adopted a resolution for the above Dust Control Districts, which would levy no assessments for fiscal year 2003.

More recent needs and cost information for dust control applications in District 6 have disclosed that available reserve funds in that district will not be sufficient to cover the projected costs. Therefore, an assessment will be required to be levied against property owners in that district.

Mr. Magee recommended approval of the resolution to levy assessments for Dust Control Districts 4, 5, 6, 7 and 8 for FY 03.

Commissioner Parriman stated the recommended motion lists all the districts. Mr. Magee stated the annual assessments are being set, however, all of them except District 6, will be zero balance.

Commissioner Netschert asked if there is a specific cause why this district would need an additional treatment, could it be caused by the large amount of transient traffic and not the local traffic? Administrative Services Director Magee stated Dust Control District #6 is the Brady Street area.

Commissioner Netschert then asked if it would be possible for the public works department to pick up part of this assessment?

Mr. Magee clarified that the public works department is bearing some of the costs. Commissioner Netschert again emphasized that the dust from the traffic on Brady Street is not being caused by the residents but from the traffic from the ballpark and fairgrounds. City Manager Burton stated staff would look at the public works budgets, however, the budgets have been set and the money has been allocated. At this time, City Manager Burton stated he could not make a recommendation. This dust control district has been in effect for years, staff has increased the service because of the extra traffic, but the neighborhood does have some responsibility. He reminded the commission that MDT plans to pave Brady Street sometime next spring.

Commissioner Oitzinger stated she agrees with Commissioner Netschert that the city should look at other sources of funding and not assess the residents. She spoke of the high traffic volume on Brady Street. She asked that this be put on the next admin agenda.

Commissioner Netschert asked if there is a drop dead on adopting this resolution. The assessment would have to be set prior to September 1, 2002.

City Manager Burton stated once the commission approves the assessments, they are put on the tax bills. City Manager Burton stated he believes the city has fulfilled their role with increased services Brady Street. He recommended the residents pick up the costs for the additional dust control treatment. If the commission chooses not to put the assessment on Brady Street, the resolution can be passed with zero assessments.

Commissioner Parriman stated he would like to pass this resolution with zero assessments and then reconsider at a later date. The traffic on Brady Street is mostly from transient traffic and not from the residents.

Administrative Services Director Tim Magee stated if the commission denies this resolution the assessments would remain at a zero rate.

Commissioner Oitzinger asked if the assessment to the district would be \$1,416.00? Administrative Services Director Magee explained the \$1,416.00 is the total amount, however, there is a cash balance and the amount to be assessed to the residents would be approximately just over \$900.00.

#### 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, Mayor Smith closed the public hearing.

**Motion**

**Commissioner Oitzinger moved to deny a resolution to levy assessments for Dust Control Districts #4, #5, #6, #7 and #8 for FY 2003.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Sale of Surplus Property**

CONSIDER A RESOLUTION AUTHORIZING THE SALE OF SURPLUS PROPERTY OWNED BY THE CITY OF HELENA; 14.98-ACRES GENERALLY LOCATED ON THE UPPER EAST SIDE ADJACENT TO THE EXISTING CITY LIMITS AND ON THE SADDLE DRIVE RIGHT OF WAY.

**Staff Report**

City Attorney David Nielsen stated this property was purchased as a possible site for the east side water tank prior to the Nob Hill property being donated to the City for that site. The Nob Hill property was eventually used as the east side water tank site. The 14.98-acres was purchased with water funds that may only be used for procuring, producing, treating, storing, and distributing municipal water. Further, through an agreement with Mrs. Donaldson, the city is prohibited from developing the property. Since the property was not used as the tank site, it would be appropriate to sell it and reimburse the water fund.

Mr. Nielsen recommended approval of the resolution authorizing the sale of surplus property owned by the City of Helena; 14.98-acres generally located on the Upper East Side adjacent to the existing city limits and on the Saddle Drive right of way. Mr. Nielsen also recommended that City Manager Burton be authorized to explore an offer for the disposition of the property. Any recommendation for final disposition would have to be approved by the commission.

A written proposal to purchase the property was received from Mr. & Mrs. Tom Kruse and Mr. & Mrs. Mark Dietz.

Commissioner Netschert referred to the memo from City Attorney David Nielsen and under "disadvantage" it states the sale of the property may result in it being developed by a third party, rather than being retained as open space. Commissioner Netschert stated he does not believe development is a disadvantage. Both options have to be considered.

Commissioner Parriman asked if the resolution is approved tonight, could direction be given to the City Manager to explore the disposition. City Attorney David Nielsen stated the direction could

be given tonight.

#### 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 appeared before the commission to address the resolution authorizing the sale of surplus property.

**Becky Donaldson**, 7190 Austin Road, read a prepared statement on her intent for the property when she agreed to sell it to the city water division

**Ron Waterman**, attorney representing Mrs. Becky Donaldson, spoke on the history of the property. He encouraged the commission to give the City Manager the direction on how to dispose of the property. He recommended the following alternatives and encouraged the commission to consider them in the sequence and in the priority in which he lists them: 1) transfer the land to City Parks & Recreation and hold it as open space; 2) transfer to Parks & Recreation and ask them to reimburse the Water Division; 3) transfer the land to Parks & Recreation, with the direction that the Water Department repay the \$104,000 over a period of time, 5 to 10 years; 4) hold the land until an open space entity could acquire the property, and then sell it for \$104,000; 5) hold the land until an open space entity could purchase, but put a time line one it, 5 to 10 years to acquire it; 6) sell it to an individual or entity who agrees themselves to hold the land until an open space entity can buy it; 7) sell the land to an individual or entity who agrees to hold the land for a period of years, 5 to 10 years, agreeing to sell the land to an open space entity and then to allow those persons to develop the property if the land does not sell.

Mr. Waterman stated any of the above considerations would encompass the offer from the Mr. & Mrs. Dietz and Mr. & Mrs. Kruse. Mr. Waterman stated the city should move the property to open space.

**Erin Donaldson**, 912Waukesha, encouraged the commission to leave the property as open space. He concurred with Mr. Waterman's recommendation to hold the land and not declare the property as surplus.

**David Jordan**, 424 W. Lawrence, encouraged the commission to take the necessary steps to dispose of this property in such a way that is will remain open space.

**Kathy Gerl**, 700 Red Letter, read a letter into the record from Mark & Denise Dietz, 1235 Southhills Drive. Ms. Gerl concurred with Mr. Waterman's priorities for the disposal of the

property.

**Amy Kruse**, 1241 Southhills Drive, read a prepared statement and then encouraged the commission not to surplus the property. Ms. Kruse stated she and her husband have offered to purchase the property and will keep it as open space.

**Anna Furshong**, 938 Highland Street, spoke of the Donaldson's intent for the property. She then spoke on the integrity of city government and how important it is for the commission to the property as open space.

**Tom Kruse**, 1241 S. Hills Drive, stated the public would like the property to be kept open space. He then read a prepared statement. Mr. Kruse stated it is the sole responsibility of the city to keep this property as open space. That was the intent of the Donaldson's when they agreed to sell the property to the city.

**Mark Gerl**, 700 Red Letter, spoke on the importance of honoring the original agreement to keep the property as open space.

**Gus Byrom**, 703 Red Letter, stated a balance needs to be kept between open space and development. He asked that the commission allow additional time for all parties to explore additional solutions.

**Bev Rewerts**, 407 Valley View, stated the city commission needs to be held accountable on what they told the Donaldson's when the property was purchased.

**Mary Burke**, 841 6<sup>th</sup> Avenue, noted the only public comment that she has heard is in favor to keep the property as open space. There are many constituents in town who support keeping it as open space.

**Joe Mueller**, 2002 Sweet Grass, showed the location of the 15-acres and of the 6-acres he has an option to purchase. There is approximately five-acres that he may need to acquire in order to develop the 6-acres. Mr. Mueller showed pictures of the view of both parcels of land from the water tank site.

Mr. Mueller stated there have been comments about the ethics of the city staff and city commission. He has seen nothing but professionalism shown by city staff.

**Monica Heetderks**, 28 Tiger Gulch, stated ethics is the bottom line.

**Ann Ripley**, 3919 Bullet Drive, East Helena, stated the city should honor the original contract that was signed with the Donaldson's.

**Erin Donaldson**, 912 Waukesha, stated the commission would be weighing the possibility of ten homes being built versus

the hundreds who want to keep it as open space.

**Carrie Fairbrother**, 642 Dearborn, spoke on the ethics of the contract. She then asked those who support the original contract to stand.

There being no further persons wishing to address the commission, Mayor Smith closed the public hearing.

#### Discussion

City Manager Burton stated he certainly does not want to debate the comments from the public. However he does take issue with a few things that have been said. Early in the process when the question before the commission was annexation, the commission asked for and received the entire file regarding this transaction. There is no documentation that the city acted in bad faith. The city ended up with two sites for the water tank and the property that was not used needs to be surplus. There is nothing in the file that demonstrates unethical behavior. There currently is no arrangement with Mr. Mueller or anyone else. The only question the city needs to address is if the property is surplus to the water department. Montana law requires that in enterprise funds, that those funds be used for that utility. There are a number of ways to dispose of the property from the water department, and the commission can discuss those options.

Mr. Burton stated Mr. & Mrs. Tom Kruse and Mr. & Mrs. Mark Dietz did submit an offer to purchase the property. There was a meeting to discuss the offer and at that meeting he was told that they would like to explore an option with a conservation easement and no development and look at getting this property into open space. However, that is not what was testified to during the public hearing.

City Attorney David Nielsen stated he is disappointed in what he perceives as personal attacks. He summarized by saying there are many significant issues of Mrs. Donaldson's testimony that he took issue with and does not believe they are supported in the public record. He invited any member of the public, any person who has testified, if they want the details of all the transactions that went on with the Donaldson's, to contact him and he will show them all the records and give a full explanation.

Commissioner Oitzinger asked if OSBAC ever considered purchasing the Donaldson property. Mr. Lilje stated he was not any part of the negotiations when the water department purchased land. Through the OSBAC's property acquisition consultant, there was an offer to purchase 60-acres, which the 15-acres was a part of, from

the Donaldson's. An appraisal was done and after it was completed, the per acre price was not satisfactory to the Donaldson's. They had a boundary line relocation done to readjust that particular parcel of ground. OSBAC made an offer and another appraisal was done on 46-acres; six-acres were subdivided off to drive up the cost per acre. OSBAC then offered to buy the 40-acres for the price of the 46-acres and that was as high as OSBAC felt it could recommend. The appraiser would not appraise the other six-acres because he didn't feel comfortable with the process. After OSBAC purchased the 40-acres, there were some negotiations that went on regarding the 15-acres. The water department ended up with the property. The city manger, through Mr. Lilje, mentioned to OSBAC if they wanted this property to remain as open space, then it must consider recommending the expenditure of bond funds for the purchase price. OSBAC discussed the purchase of this property on a number of times and decided they did not want to do that. Mr. Lilje stated at no time does he remember any city staff saying to OSBAC, that this property would automatically go to open space without a commitment to buy the property.

Commissioner Oitzinger thanked Mr. Lilje for his comments. She stated in no way does it change her desire to keep the property as open space. She would like to see the parks department purchase the property over time from the water department, which has to be made whole. There seems to be a consensus to offer this property for private purchase under special conditions that would guarantee it remain open space.

Commissioner Netschert stated this has been a very long and contentious process. He stated he is most upset with the misinformation and how the commission has been browbeaten from citizens who have not read the entire file. He noted the original appraiser bowed out of the process because of an ethics issue. It is not the responsibility of the city to keep this land open space. He encouraged any citizen to review the entire file. Is this issue really about keeping open space or preventing any future development? The city has held up their end of responsibility.

Commissioner Parriman stated he is prepared to surplus the property. He noted that he continues to hope that the property can remain as open space. However, he does not see it as a responsibility of the city. He would like the city to recoup their costs and if the property is sold, that a permanent conservation easement be obtained. Mr. Parriman stated he would like this issue to be resolved in the 30 to 60 days. The water department



needs to be reimbursed for actual costs in the amount of approximately \$109,000. If a private party purchases the property, then a permanent conservation easement is required to make sure it remains open space. However, the testimony given tonight is not the same as what was originally stated. The group interested in purchasing the property may want to do a minor subdivision with three houses. Commissioner Parriman again stated he is prepared to surplus the property and give the City Manager direction to work with the interested parties to purchase the property and to keep it as open space.

Mayor Smith stated the City Manager is recommending to be given 30-days to continue the negotiations that are in process.

Mayor Smith stated when he first moved to Helena there was no development on the eastside of town. There has been a lot of development on that side of town. He too has reviewed the entire file and found no agreement that the property would remain as open space. There was a statement that says the sale can be used as a water tank site or as open space. That is the only condition in the entire file that addresses the issue. Mayor Smith stated he has visited with a number of people involved with OSBAC and asked why they never recommended the purchase of the property. The general answer was that other properties were a higher priority.

Mayor Smith stated he has not visited with Mrs. Donaldson because counsel is representing her. However, he has read everything she has submitted.

## Motion

**Commissioner Netschert moved approval of a resolution authorizing the sale of surplus real property owned by the City of Helena; 14.98-acres generally located on the Upper East Side adjacent to the existing city limits and on the Saddle Drive.** Commissioner Parriman seconded the motion.

Commissioner Parriman asked if the motion just made by Commissioner Netschert would just surplus the property, or could restrictions and direction be given also.

City Attorney David Nielsen recommended a two-step process. The first step would be to decide on whether to surplus the property. The second step would be on the disposition of the property.

Mayor Smith asked if the motion is approved and there is no subsequent motion, what would happen to the property. City Manager Burton stated there are city ordinances that govern the

process on how to surplus property.

City Manager Burton stated if the motion is approved, then he will ask direction from the commission before moving forward in disposing of the property. The property will not go for sale to anybody until a process has been worked out.

**Vote**

All voted aye, motion carried. **Resolution 11813**

Commissioner Parriman stated he would like to give City Manager Burton some time to pursue all options in the disposal of the property. He would recommend that the city recover all their costs (approximately \$109,000) and that a permanent conservation easement be put on the property. He stated he would like to see the process be concluded within 30 to 60 days. If the original goal cannot be met, City Manager Burton can always ask for an extension of time.

Commissioner Oitzinger stated she concurs with Commissioner Parriman's comments, but would like the dollar amount left out at this point. She totally agrees with the airtight conservation easement with no development, however, she would like the City Manager to come back before he would open it up for competitive bidding.

City Manager Burton stated he would like a directional motion on how to proceed with the disposal of the property.

Commissioner Netschert stated he appreciates the offer received from the Kruse's and Dietz's. Commissioner Netschert stated that the bidding process should be open to all interested parties and not just those who want to keep it as open space. He believes the city of Helena has enough open space and is having a hard time maintaining what they already own.

Commissioner Netschert would like to see the manager report back within 30 days and to look at reasonable appreciation or the property and associated expenses.

**Motion**

**Commissioner Parriman moved to allow the City Manager to negotiate with any interested parties, set the minimum price at the city's cost of approximately \$109,000, that a permanent conservation easement be placed on the property and that he report back within 30-days.** Commissioner Oitzinger seconded the motion.

Commissioner Netschert stated that he would vote against the motion. He believes that all interested parties should be able to negotiate with the City Manager.

Mayor Smith asked Commissioner Parriman if his motion would require a permanent conservation easement placed on the property. Commissioner Parriman concurred his motion would require a permanent conservation easement.

Commissioner Oitzinger asked Commissioner Parriman if it is his intent that there will be no residential development on the property. Commissioner Parriman stated it is his intention that no residential development would occur on the property. However, if an interested party cannot purchase the property that agrees to the permanent conservation easement, then it could be opened for competitive bidding.

Mayor Smith stated as he listened to Mr. Mueller's testimony, he believes there may be an amicable resolution for all interested parties.

City Manager Burton asked that he be given some flexibility in the 30-day timeframe to bring this back to the commission. It was the consensus of the commission to allow City Manager Burton the flexibility in bringing this back to the commission within a 30-day timeframe.

**Vote**

**Motion carried 3-1 with Commissioner Netschert voting no.**

- d. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT REVIEW FOR A 43.57-ACRE TRACT OF LAND LOCATED IN THE AIRPORT ZONING DISTRICT; LEGALLY DESCRIBED AS THE NORTH ½ OF SECTION 21, T10N, R3W, HELENA, MONTANA; GENERALLY LOCATED NORTH OF THE HELENA IRRIGATION DISTRICT MAIN CANAL AND SOUTH OF CANYON FERRY ROAD.

**Staff Report**

Planner Belinda Waters reported the subject tract is currently vacant and undeveloped with the Main Helena Valley Irrigation Canal running east to west along the southern portion of the proposed lot. Access of the proposed subdivision will be from Canyon Ferry Road. The lot is located south of Canyon Ferry Road and east of Kelleher Lane. Only those uses outlined in the Airport Zoning District classification are allowed, such as golf courses, hangers, government offices, and flight schools. There are no restrictions for lot area, width or building coverage for this zone. Ms. Waters showed the location of the property and surrounding

area.

Ms. Waters recommended approval of the preliminary plat for a minor subdivision creating one 43.57-acre lot from a tract of land located in the N ½ of the N ½ of Section 21, T10N, R3W, Helena, Montana, and to adopt the Finding of Fact and the conditions contained therein. The approval would be subject to the following conditions:

1. The conditions of approval imposed to mitigate the adverse effects on Agriculture and Agricultural Water User Facilities are as follows:

The irrigation canal must be maintained for agricultural purposes.

2. The conditions of approval imposed to mitigate the adverse effects on Local Services are as follows:

a. The applicant must provide an easement to the City for the 20-inch water main as specified by the City Engineer.

b. A development plan for the installation of infrastructure, water and sewer, is required and must be submitted for review and approved by the City Engineer.

c. The developer must provide MDT and the City Engineer with a detailed site plan and trip generation for the development. The site plan should indicate the proposed access location and a well-defined boundary location of the subdivision.

d. If the proposed subdivision is projected to generate one hundred or more new vehicle trips per day, a traffic impact study is required.

e. Appropriate fire hydrants must be installed subject to review and approval by the Fire Marshal.

3. The Natural Environment and Wildlife and Wildlife Habitat

None.

4. Public Health and Safety

A storm water drainage plan must be submitted for review and approval by the City Engineer.

5. The Survey Requirements Provided for in Part 4 of this Chapter

Compliance with survey requirements will be thoroughly examined and approved prior to the final plat being filed with the Clerk and Recorder.

6. Helena Subdivision Regulations

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

b. Financial Guarantee: All of 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 these regulations.

- 1) Storm water drainage improvements;
- 2) Streets, curbs, and gutters;
- 3) Sidewalks;
- 4) Water and sewer main, manholes, and fire hydrants;  
and
- 5) Streetlights.

7. Easements

The applicant must provide an easement to the City for the 20-inch water main as specified by the City Engineer.

8. Final Plat Filing

The applicant must file the final plat for this subdivision with the County Clerk and Recorder within one year of preliminary plat approval.

Ms. Waters noted the commission received a petition against the minor subdivision, from residents in the area.

Public Testimony

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

**Ron Mercer**, Airport Manager, spoke in support of the minor subdivision. The 43-acre parcel may be a part of a land exchange with the neighboring property owners. At this point there are no definite plans for the development of the property. With the property being close to the Airport, there will be additional restrictions on any type of development.

**Greg Chadwick**, 2010 E. Custer Avenue, spoke against the proposed minor subdivision. With the plans being undetermined at this time, he asked the commission deny the proposal. There are 35-homeowners in the area that signed a petition against the proposal. Mr. Chadwick addressed the traffic on Canyon Ferry Road and having an additional access road off of it.

**Gordon Zulke**, 3175 White Drive, lives adjacent to the property and is very concerned on what may be built on the property. Mr. Zulke also addressed the issue of aircraft having to make emergency landings and having the vacant land allows for those type of situations.

**Laura Zulke**, 3175 White Drive, expressed concerns with the development of the property as far the view for the current residents, the safety in regards to aircraft and traffic.

**Dennis Lay**, Morrison-Maierle Survey Department, working with the Airport Authority with this project. At this time there are no specific plans for the development and if it were sold, it would have to come back to the commission for consideration for any zone change or development proposal.

Mr. Lay then addressed the following conditions:

2b. A development plan for the installation of infrastructure, water and sewer, is required and must be submitted for review and approved by the City Engineer. At this point, there are no plans for development and therefore, no infrastructure is planned.

2c. The developer must provide MDT and the City Engineer with a detailed site plan and trip generation for the development. The site plan should indicate the proposed access location and a well-defined boundary location of the subdivision. Again, until a development is proposed, this is a non-issue.

2e. Appropriate fire hydrants must be installed subject to review and approval by the Fire Marshal. The fire hydrants also would be a part of the infrastructure that would go in if it were developed.

4. A storm water drainage plan must be submitted for review and approval by the City Engineer. A storm water drainage plan would mitigate any run-off from the hard surfaces that are created. There are not any planned at this time.

Mr. Lay stated all of the above would address future development.

There being no further persons wishing to address the commission, Mayor Smith closed the public hearing.

Commissioner Netschert asked if development is approved is there any restrictions on building heights. Ms. Waters explained this area has various layers of zoning that this property would have to adhere to.

Commissioner Netschert asked Airport Manager Ron Mercer if there is a height restriction on the property. Mr. Mercer explained there are height restrictions and it varies within the property. Ms. Waters stated in the Airport Zoning and what could be allowed on that particular piece of land. She also noted the Airport Authority has to approve any development prior to city commission consideration.

Mayor Smith asked staff's comments regarding Mr. Lay's comments on the proposed conditions. Ms. Waters stated it is difficult for the applicant to put up a bond on the infrastructure when it is unknown at this time what will be developed. The Public Works Department and MDT have recommended the specific conditions Mr. Lay referred to. Ms. Waters stated she feels an agreement can be reached when a proposal for development is submitted.

City Manager Burton stated these conditions are template and will be further defined once a proposal is received.

## Motion

**Commissioner Parriman moved approval to conditionally approve the preliminary plat for a minor subdivision creating one 43.57-acre lot form a tract of land located in the N ½ of the N ½ of Section 21, T10N, R3W, Helena, Montana, and to adopt the Finding of Fact and the conditions contained therein.** Commissioner Netschert seconded the motion. All voted aye, motion carried.

Mayor Smith thanked those who testified during the public hearing and asked them to continue to monitor any proposals for future development. Commissioner Netschert concurred with Mayor Smith's comments and then asked Airport Manager Ron Mercer to keep in contact with the residents in the area. Commissioner Parriman also concurred with the previous comments of Mayor Smith and Commissioner Netschert.

## **Civic Center Fees** CONSIDER A RESOLUTION INCREASING THE FEES CHARGED BY THE HELENA CIVIC CENTER

### Staff Report

Civic Center Manager Diane Stavnes explained the current fee schedule was adopted prior to the 2000/2001 season. As has been past policy, prior to the upcoming season, a survey of the

other facilities in the state was conducted which showed that some of the rates charged were below other facilities in the surrounding area. The Civic Center Board's Fee committee in conjunction with staff reviewed the policy and recommended changes. The Civic Center Board approved the proposed schedule at a recent meeting.

The proposal is to increase the building rental rate and establish fees for rental items such as sound systems, and on site equipment. In addition, a revision of the fees charged for the in-house ticketing system is proposed.

1. The flat rate for non-performing (convention) rate use of the entire building would increase from \$750/day to \$825/day. The rate would once again equate to charging the full rate for one room and half rate for the other room. Base rent for either room would change from \$500.00 to \$550.00/day rental rate. Set-up and teardown rates would increase on Monday-Thursday from \$150.00/day to \$200.00/day. Friday-Sunday rates would change from \$200.00/day to \$250.00/day. The first day rate for serving of food, and serving of alcohol has not been changed, but subsequent, consecutive rates have changed from \$25.00/day for additional days of food service to \$50.00/day and rates for additional days of serving alcohol are proposed to increase from \$50.00/day to \$75.00/day.
2. Adjustments to the equipment fees are proposed. Charges for on site equipment are increased for the rental of pipe and drape and for usage of in-house lighting equipment in the auditorium. In addition, rates are established for use of the ballroom surround sound system, for rental of items such as ficus trees, sound snakes, the dance floor, the scrim curtain, art pedestals, art display doors and display lights, music stands and robotic lights.
3. The fees for the in-house ticketing system have been revised from a sliding scale fee to a percentage of gross ticket sales. In addition, a ticket surcharge applies to each ticket sold plus a facility surcharge fee, which is based upon the number of persons attending the event. The costs for use of the Helena auditorium facility will be more comparable to other major venues in Montana that are using this method.

Ms. Stavnes noted in addition to the legal ad that was published, notices of the proposed increase was sent out to all the past users of the Civic Center. Ms. Stavnes recommended approval of a resolution increasing the fees charged by the Helena



Civic Center and become effective September 1, 2002.

Public Testimony Mayor Smith declared the public portion of the hearing opened 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 Netschert moved approval of a resolution increasing the fees charged by the Helena Civic Center, effective September 1, 2002. Commissioner seconded the motion. All voted aye, motion carried. **Resolution 11814**

**Expenditure of OSBAC Funds** CONSIDER THE EXPENDITURE OF \$24,116. PLUS CLOSING COSTS IN OPEN SPACE BOND FUNDS FOR APPROXIMATELY 5-ACRES OF LAND ON MOUNT ASCENSION; LEGALLY DESCRIBED AS TRACT 11-B LOCATED IN THE SE ¼ OF SECTION 31, T10N, R3W IN LEWIS AND CLARK COUNTY, MONTANA.

Staff Report Parks and Recreation Director Randy Lilje reported OSBAC is recommending the expenditure of \$24,116. plus closing costs to purchase approximately five-acres of property on Mount Ascension. Mr. Lilje noted the 5-acres is located between two other parcels of open space and is very important to the trail system as well as having a good view.

The Lands Subcommittee evaluated the land based on its criteria for open space and gave it a favorable recommendation. A public hearing was held at the last OSBAC meeting. Based on the favorable comments and evaluation, OSBAC unanimously voted to recommend the purchase.

Mr. Lilje concurred with the recommendation to approve the expenditure of \$24,116 plus closing costs in Open Space Bond funds for approximately five-acres of land on Mount Ascension described as Tract 11-B located in the SE ¼ of Section 31, T10N, R3W in Lewis and Clark County, Montana.

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

There being no further persons wishing to address the

commission, the public portion of the hearing was closed.

Commissioner Parriman asked Mr. Lilje if this property would be comparable to the water department's 14.98-acres? Mr. Lilje stated due to the fact that they are both undeveloped areas and have trees on them, yes. The 5-acres is probably higher sloped overall, but similar. The purchase price for the 5-acres is actually a lot less than what the 14.98-acres was per acres. Commissioner Parriman stated that is what he wanted to know because he heard several times during the public hearing, what a good deal the city got when they purchased the 14.98-acres.

Mr. Lilje noted one of the things that affect the price per acre is the size of the parcel. When the 14.98-acres was a part of the 60-acres, it was appraised for quite a bit less. The two parcels adjoining the 5-acres are large parcels; therefore, the price per acre is much less. The owner of the 5-acres wanted to sell the property for at least the price per acre that the adjoining property owners received.

**Motion**

**Commissioner Oitzinger moved approval for the expenditure of \$24,116 plus closing costs in Open Space Bond funds for approximately five-acres of land on Mount Ascension described as Tract 11-B located in the SE ¼ of Section 31, T10N, R3W in Lewis and Clark County, Montana.**

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

Commissioner Netschert stated he voted for the motion, however, he continues to be concerned with the costs to maintain the open space. He asked that a maintenance plan be included for any future purchases of open space.

**Public Communications**

**PUBLIC COMMUNICATIONS**

There were no persons present wishing to address the commission.

**Meetings of Interest**

**MEETINGS OF INTEREST**

City Manager Burton extended an invitation to the commission members to join some of the upper management team of City and the National Forest Service on September 20, 2002. Mr. Tom Clifford has offered to take the Forest Service's barge to the Merewether Lewis campground. It will be an all day trip and will afford an opportunity for the two groups to discuss the various joint

projects that are going on. He asked the commission members to let the City Clerk know if they will be able to attend.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 9:45 p.m.

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MAYOR

ATTEST:

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CLERK OF THE COMMISSION