

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
JANUARY 27,2003  
6:00 P.M.**

**Time & Place** A regular City Commission meeting was held on Monday, January 27 2003, 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 Oitzinger, Netschert, Pouliot, Commissioner Parriman were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Jacki Pierson were present. HCC members included Jerry Hutch and the Youth Advisory Council Member included Jake Blade.

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

**Minutes** Mayor Smith stated the minutes of the regular city commission meeting of January 13, 2003 will be approved on February 10, 2003.

**Proclamation** PROCLAMATION:  
A. Carroll College football team

Mayor Smith read the Carroll College football team proclamation and congratulated the team. Coach Van Diest stated it is a great honor to be here tonight. It is great having former graduates, athletes and alumni of Carroll College here and the support from the community has been great.

**Mayor's State of The City Address** Mayor Smith presented the State of the City Address. A copy is attached to the minutes and made a part thereof.

**Appointment** APPOINTMENT:  
A. Building Board of Appeals

**Building Board of Appeals**  
John M. Murphy  
Unexpired term begins upon appointment and expires December 31, 2003.

**Motion** **Commissioner Netschert moved approval of John M. Murphy for second term on the Building Board of Appeals.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Consent Agenda** CONSENT AGENDA:  
A. Claims  
B. Contract for engineering standards development  
C. Sub-Recipient Agreement - Gateway Economic Development Corporation  
D. Second passage of Ordinance 2949 - rezoning Lot D in Block 159 in the Syndicate Addition and the portion of the alley north of and adjacent to Lot D prior to annexation into the city of Helena, Montana

City Manager Tim Burton recommended approval of the claims.

**Motion** **Commissioner Pouliot moved approval of items A through D on the consent agenda.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Bid Award**  
BID AWARD:  
A. Bulk PEC Polymer - Water Treatment Division  
B. Transfer trailer - Solid Waste Division

**Bulk PEC Polymer Staff Report**  
A. Water/Wastewater Treatment Superintendent Leonard Willett reported the existing annual chemical contract for PIC has expired and a new contract is desired.  
Mr. Willett recommended approval for the annual chemical bid for PEC in the amount of \$.50 per pound with Polydyne.

**Motion** **Commissioner Netschert moved to award the bid for bulk PEC to Polydyne at .50 cents per pound Polydyne.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Transfer Trailer Staff Report**  
B. Fleet Manager Ed Robinson reported bids were received for a new transfer trailer for replacement and trade of unit #231. The transfer trailers are used to haul solid waste from the Transfer Station to the Lewis and Clark County landfill. The low bid was from Wilkens Industries. Wilkens Industries bid a 2003 Wilkens Model 45115SCGOT at price of \$38,968.00 after trade. The FY03 budget appropriation for this unit is \$55,000.00.  
Mr. Robinson recommended the purchase of the new transfer trailer from Wilkens Industries at the bid price of \$38,968.00 for the replacement of unit #231.

**Motion** **Commissioner Parriman moved to accept the bid from Wilkens Industries for a new Transfer Trailer for the bid price of \$38,968.00.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Communications**  
COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Commissioner Parriman stated he has a couple of dear friends who lost their daughter earlier this week to hypothermia and wanted to let Barb and Steve Morris know that his heart goes out to them.  
Commissioner Pouliot wanted to thank Mayor Smith for the excellent remarks during the State of the City and thought he touched on many aspects of what is going on in the city. Commissioner Pouliot wanted to recognize the Boy Scout Troop who is in attendance.

**Report of the City Attorney**  
REPORT OF THE CITY ATTORNEY  
City Attorney David Nielsen wanted to congratulate Mayor Smith on his State of the City address.

**Report of the City Manager**  
REPORT OF THE CITY MANAGER  
City Manager Tim Burton stated he wanted to report on the legislative and if there have been affects on the city of Helena. There have been a few issues relative to local authorities, whether they are land use issues or special improvement district proposed changes that have been addressed. There haven't been many financial issues to date, they are talking about taking the law

enforcement academy out of the general fund and obviously there would be an affect on the city of Helena and Chief McGee as he trains new officers. For the most part there is little to report on.

City Manager Tim Burton stated, with the commission's permission, he would like to invite the Human Resource Director Salty Payne up to report on the Labors International Union Local 254 agreement and the fact that an agreement has been reached. Mr. Payne stated the city has settled with the laborers union. The settlement was within the guidelines the commission established for the FY03 budget and there is a two-year agreement. The city has also successfully settled contracts with the Helena Police Department and the Helena Parking Commission.

**Sanders Street  
Extension**

**CONSIDER PROFESSIONAL SERVICES CONTRACT AND BUDGET  
TRANSFER FOR SANDERS STREET EXTENSION**

**Staff Report**

Public Works Director John Rundquist reported there is presently considerable interest for the extension of Sanders Street to serve undeveloped properties along this future street location. Some right-of-way has already been dedicated and the Montana Department of Transportation has agreed to the location of a new traffic signal at the future intersection of Sanders and Custer Avenue. If successful, this project would result in the construction of about 4,200 feet of new street that would parallel Montana Avenue and provide an alternate corridor for traffic between businesses in this commercial area.

Professional assistance is needed to confirm a right-of-way corridor and conceptual street design with the adjacent property owners and to assist in obtaining the appropriate right-of-way dedications.

Mr. Rundquist recommended approval to contract with Barry Damschen Consulting for services associated with preparation of an SID proposal and dedications of right-of-way. Surveying services associated with right-of-way legal descriptions and plats will be proposed by separate contract with a licensed land surveyor. Staff recommends a realignment of existing capital budgets to provide the necessary budget authority. The City has saved over \$15,000 in vehicle purchases in the General Capital (440) fund and is proposing to use these savings to fund this proposal. Staff also recommends the creation of an SID construction budget to account for these preliminary expenditures. When the SID is ultimately created, this budget would be reimbursed from the bond proceeds. If the SID should fail, another fund such as gas tax could reimburse the construction budget for these expenditures. The Administrative Services Department has approved this funding recommendation.

**Discussion**

Commissioner Parriman stated the costs are a disadvantage and asked if those monies would be refunded when the SID is formed? Mr. Rundquist stated staff will keep track of these cost and they would go into the total SID package for reimbursement. Commissioner Parriman stated it was his intention to try to come up with roughly a \$200,000 surplus at the end of the year. Commissioner Parriman explained that he applauds saving money and that the city is working under budget, however, he would rather not see that money spent elsewhere. Mr. Rundquist stated if the SID isn't successful the city could bring forth a proposal to pay for it out of gas tax, which is the cities roadway fund so that it doesn't affect any previous budget.

Commissioner Oitzinger stated she can visualize where this area is and asked if this is a commercial area? Mr. Rundquist concurred. Commissioner

Oitzinger stated with an additional right-of-way and a street, it's conceivable that this could be an investment for the city of Helena. Mr. Rundquist concurred.

**Motion** **Commissioner Pouliot moved approval of the professional services contract with Barry Damschen Consulting in an amount not to exceed \$9,890.00 and to reassign an amount not to exceed \$15,000 of existing budget transfer and appropriation for the General Capital (440) fund to the SID Capital Projects (451) fund.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Police Services Fee Increase** CONSIDER A RESOLUTION OF INTENTION TO INCREASE FEES CHARGED TO USERS OF OUTSIDE POLICE SERVICES

**Staff Report** Chief of Police Troy McGee reported a number of years ago; the HPD required that all organizations/sponsors of events that requested extra duty services sign a contract which effectively guaranteed reimbursement for our services. The majority of our extra work is derived from the School District Athletic Office, the State of Montana, the Civic Center and Carroll College, although requests have expanded to include Helena College of Technology activities, Alive at Five, the Montana Club Festival of Trees, etc.

A flat rate is charged for the officer's services and the officers working the event are paid their appropriate overtime rate. In some cases, the flat rate exceeds the officer's overtime rate, however it evens out over the year as some of the officer's overtime salaries are more, i.e., Sergeant, Lieutenants, Captains and occasionally the Assistant Chief's. Our current rate of \$30 per hour with a 3-hour minimum has been in place since July 1, 1999. To date we have been successful in breaking even or accumulating a small nest egg. However, we will begin to experience a deficit if rates are not increased proportionately with officer salaries and benefits.

Mr. McGee proposed a \$2 per hour increase be instituted July 1, 2003 for all extra work activities. A letter of intention to raise rates will be mailed this month to those event sponsors who will be affected most by this change. This advance notice will give these sponsors enough time to increase their budgets accordingly.

Mr. McGee recommended approval of the resolution of intention to increase of the hourly rate increase for the Police Services from \$30 per hour to \$32 per hour and set a public hearing date for February 10, 2003.

**Motion** **Commissioner Netschert moved approval of a resolution of intention to increase fees charged to users of outside police services from \$30 per hour to \$32 per hour and set a public hearing date for February 10, 2003.** Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #11840**

**Counter-Terrorism Grant** CONSIDER ACCEPTANCE OF FEMA FY 2002 SUPPLEMENTAL APPROPRIATIONS GRANT FOR COUNTER-TERRORISM

**Staff Report** Deputy Fire Marshal Fritz Zettel reported the City of Helena Fire Department is currently the recipient of a grant from the Federal Emergency Management Agency (FEMA) as part of the FY 2002 Supplemental Appropriations for State and local governments to develop or update existing Emergency Operations Plans (EOP) to address the unique planning

requirements associated with terrorism and weapons of mass destruction. The Counter-Terrorism Response Plan that will be developed is specifically designed to address:

1. The response to and management of incidents involving the intentional release of hazardous materials or substances, including the use of Weapons of Mass Destruction; the use of tactical violence, and/or other acts of terrorism.
2. The response to and management of incidents involving the accidental release of hazardous materials or substances that constitutes a threat to the public safety or health of the community.
3. Provide for and ensure the interoperability and coordination of the plan with other existing programs and plans, or those that are in the stages of being developed, such as:
  - A. The Public Health Emergency Preparedness and Response Plan for Bioterrorism.
  - B. The Federal Bureau of Investigation (FBI) Chemical/Biological Incident Contingency and Nuclear Incident Contingency Plans.
  - C. The State of Montana Three Year Statewide Domestic Preparedness Strategy.
  - D. The Citizens Corps Program (Community Analysis and Assessment; Support of the efforts of Montana's Homeland Security Task Force; Community Emergency Response Team (CERT) training, etc.)
  - E. The State of Montana Hazardous Materials Response Plan (DRAFT Document 01-15-02).
4. The need to promote interagency collaboration and coordination in assessing the threat to particular targets, enabling the City of Helena, Lewis and Clark County, the State of Montana, and the Federal government to better focus their prevention and preparedness efforts and to enhance response capabilities.

Mr. Zettel recommended approval of the FEMA Supplemental Appropriations Grants in the amount of \$70,000.00 and development of a Counter-Terrorism Response Plan.

**Motion**

**Commissioner Netschert moved to accept the FEMA FY 2002 Supplemental Appropriations Grant for Counter-Terrorism in the amount of \$70,000.00.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Traffic Revision**

CONSIDER 14TH AND FRONT STREETS TRAFFIC REVISION [TABLED FROM JANUARY 13,2003]

**Staff Report**

Public Works Director John Rundquist reported staff has received a request to consider changing the stop signs at the 14th and Front Street intersection. The current stop signs were warranted when Front Street was the through street and carried more north/south traffic. With the completion of the new Federal Center, Front Street has been cut-off and is essentially a parking area north of 14th Street. The current build-out of the Great Northern area is

contributing to the increased traffic on 14th Street causing some delay problems at the intersection.

The traffic studies for both the Great Northern and the Federal Center recognized the potential conflict of this intersection and recommended that 14th would become the through street and the stops would be moved to Front Street.

Mr. Rundquist recommended approving a traffic control revision to make 14th Street a through street at Front by moving the stops from 14th to Front Street as recommended by the Great Northern and Federal Center traffic studies.

Discussion

Commissioner Parriman stated this decision seems more appropriate after the installation of a stoplight on Last Chance Gulch and Main Street and a traffic study is complete. Mr. Rundquist concurred and stated there are two conflicting petitions regarding this area, which would also require a traffic study.

Mayor Smith stated he concurred with Commissioner Parriman.

City Manager Tim Burton stated it makes sense to study the entire area and the impacts that the lights and the new development have as an overall area wide review. Mr. Burton stated a tabling or a deny motion would get the commission beyond this topic this evening and this issue would be included in the overall transportation review of that area.

Motion

**Commissioner Pouliot moved to table the traffic control revision at 14th and Front by moving the existing stop signs from 14th Street to Front Street.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Helena Bus & Trolley

CONSIDER APPROVAL OF THE PROPOSED OPERATING BUDGETS FOR THE HELENA BUS AND TROLLEY AND AUTHORIZE STAFF TO COMPLETE AND SUBMIT THE FY04 SECTION 5311 TRANSPORTATION GRANT APPLICATION

Staff Report

Transportation Superintendent Ed Robinson reported this budget is proposed to cover the cost of operations of the Helena Dial-A-Ride Bus system and the Helena Trolley for FY2004. The total proposed operating budget for FY2004 is \$462,745.00. Items to note are included on the attached. The requested federal match for the projected budget is \$205,473.00, which is the 50% match of the estimated net operation deficit.

Capital expenditures proposed for the Helens Dial-A-Ride Bus system include one (1) renew 21-passenger bus. The City's 20% match would be \$11,300.00. The Federal Grant appropriation would be \$45,200.00. Total capital expenditures would be \$56,500.00.

Mr. Robinson recommended approval of the proposed operating budget for the Helena Bus and Helena Trolley and authorize staff to complete and submit the FY04 Section 5311 Transportation Assistance Grant application.

Discussion

City Manager Tim Burton stated the timing on this issue is a little out of the budget process. Mr. Burton explained this action is primarily for submittal of the grant, this actual budget will be back before the commission for final decisions through the normal process.

Motion

**Commissioner Pouliot moved to approve the proposed operating budget for the Helena Bus and Helena Trolley and authorize staff to complete and submit the FY04 Section 5311 Transportation Assistance**

**Grant application.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Resolution of  
Annexation**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF CITY OF HELENA, MONTANA, PROPERTY LEGALLY DESCRIBED AS LOT 159 IN THE SYNDICATE ADDITION, LEWIS & CLARK COUNTY, MONTANA, GENERALLY LOCATED AT 1730 CHOTEAU STREET ON HELENA'S WEST SIDE AND ESTABLISH CONDITIONS OF 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, first class cities and property owners of the area to be annexed may mutually agree upon the timing and financing of city services. Under the present proposal, we expect that some required city infrastructure improvements will be completed by the time of annexation.

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 the City for conformance with its zoning and infrastructure requirements would review any further building prior to the completion of annexation.

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

The annexation of adjacent rights of way will be brought forward at a later date, to be coordinated with the final approval of annexation of this property. The adjacent Choteau and Laurel Streets are now within the City. Staff will propose the annexation of an alleyway segment between Laurel Street and the existing City limits to the east, which is the portion of the alleyway adjacent to the subject property.

Mr. Fossum recommended approval of the conditions for the resolution of intention to annex the platted properties at 1730 Choteau Street, a property in Helena's West Side, subject to the following conditions: 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, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in 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.

**Motion**

**Commissioner Oitzinger moved to approve a resolution of intention to annex into the City of Helena, Montana, property legally described as Lot D in Block 159 in the Syndicate Addition, Lewis & Clark County, Montana, generally located at the 1730 Chateau Street on Helena's West Side, subject to the conditions outlined above.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11839**

**Crest View Estates**

CONSIDER A MAJOR SUBDIVISION/PRELIMINARY PLAT OF THE SECOND PHASE FOR CREST VIEW ESTATES SUBDIVISION CONTAINING 17 SINGLE-FAMILY LOTS IN AN R-1 (SINGLE-FAMILY RESIDENTIAL LARGE LOTS) DISTRICT. THE PROPOSAL INCLUDES THE APPLICANT'S REQUEST FOR THREE VARIANCES FROM SECTION 12-4-2 OF THE HELENA SUBDIVISION REGULATIONS (STREET STANDARDS); LEGALLY DESCRIBED AS THE COURTHOUSE ADDITION, BLOCK 7, LOTS 19-23 AND 24A; BLOCK 8, LOTS 1-6, 29-34; BLOCK 11, LOTS 1-5, 30-34, AND EAST 11 FEET OF LOTS 6 AND 29; BLOCK 12, LOTS 11-18, 19-28 AND LOTS 10A AND 29A; BLOCK 13, LOTS 1-36; BLOCK 14, LOTS 1-5, 30-34, AND EAST 11 FEET OF LOTS 6 AND 29; BLOCK 17, LOTS 1-3 AND EAST 11 FEET OF LOT 4; BLOCK 18, LOTS 1-9; AND ALL VACATED STREET AND ALLEY RIGHTS-OF-WAY ADJACENT TO THESE LOTS, AND LOT 1A IDENTIFIED ON CERTIFICATE OF SURVEY #622953-B AS FILED IN LEWIS AND CLARK COUNTY, MONTANA. THIS PROPERTY IS GENERALLY LOCATED IN SOUTH OF RHODE ISLAND STREET, SOUTHEAST OF BEATTIE STREET, AND WEST OF CREST VIEW ESTATES PHASE 1, HELENA, MONTANA. [TABLED FROM JANUARY 13, 2003]

**Discussion**

City Manager Tim Burton stated on January 13, 2003 the commission tabled the item and carried it over to this meeting. The commission has reviewed the staff report, listened to public testimony, and this period of time is set aside for questions and answers from the commission and working up to a decision. Mr. Burton stated tonight is a point where the commission has to make a decision within the statutory time-frame. Additionally, there were some comments made that the draft findings of fact; it may be inappropriate to present those at the time of a staff report and frankly those draft findings of facts are staffs attempt to complement the staff report itself and that is a document, just like the staff report, that can be amended or modified.

City Attorney David Nielsen stated under the Montana statute of the subdivision act, if the commission approves a subdivision with conditions or denies it, then the commission is obligated to reduce that decision-making in written findings of fact. Staff works under a 60 working day time frame to come to resolution and decision on subdivision proposals; staff has been presenting, as part of it's report, a draft findings of fact document, which staff believes that the evidence has shown or will show. Mr. Nielsen stated this is a working document; it outlines to the commission the key areas that the city has to have findings on statutorily.

Mayor Smith stated this is the time and place for the commission to question staff, have discussion and form an action for this proposal. Mr. Burton stated if the need arises within the commission to ask a question outside of staff that would be appropriate.

Commissioner Pouliot stated he knows the three applicants and consider them friends; yet by the same token he knows many of those that were in opposition and he considers them his friends. Commissioner Pouliot wanted to

make that clear for the record and that he will participate in the discussion and vote. However, his vote will not be based on any consideration except which would be in the best interest of the city.

Mayor Smith stated he lives in that neighborhood, knows some of those in opposition and knows one of the applicants. Mayor Smith stated for the record that he will be voting based on the best interest for the city.

Commissioner Parriman asked Fire Chief Steve Larson for his point of view regarding the cul-de-sac turn around area at the end of the 1500-foot dead end street and the grades associated with the interior access road shown on the preliminary plat and if those items are workable for the fire department. Chief Larson stated the turn around at the south end meets the requirements, however, the interior access does not meet the requirements for emergency turn around. Chief Larson stated it wasn't wide enough; there was no documentation that stated it would be a minimum of 20 feet wide or that it would be signed off as no parking for fire department access only. Mr. Larson stated in addition, there were some issues coming off of the main street, that it was an extremely steep grade going down and then coming up.

Lucy Morell-Gengler stated the question was regarding the grade of the access to Lot 17 and Lot 16. Ms. Morell-Gengler stated the initial grade in this area is approximately 30%; that would be part of the fill area for the construction of Crest View Drive.

Fire Marshal Craig Trapp stated one of the concerns is the turn around and the grade but it's the approach angles also.

Commissioner Parriman asked if the applicants can work with city staff to try and accomplish something that is workable, that does meet grades requirements and has a proper street design? City Manager Tim Burton concurred and stated when the city works with an applicant; the city tries to apply the cities regulations to the very early design elements where appropriate.

Commissioner Pouliot asked if he could ask the applicant's engineer to address the question on the grade? City Attorney David Nielsen concurred.

Commissioner Pouliot asked if he could ask the applicants engineer regarding the concerns that have been raised on that secondary interior access. Mark Brooke stated he is prepared to submit a design that shows they can meet acceptable road grades. Mr. Brooke stated he can show a 15% grade coming off the fill slope that comes off of the development of Crest View Drive. Mr. Brooke explained the preliminary plat did not show the completed design of the secondary interior road. Mr. Brooke stated they have worked with staff and the fire chief regarding the long length of dead end street as proposed in the subdivision and they looked at other comparable roads that are of a similar length. Mr. Brooke stated the Fire Chief indicated that the fire department has not had a problem with the longer dead end streets providing emergency access.

Commissioner Pouliot asked Chief Larson to comment on Mr. Brooke's comments. Mr. Larson stated he has a lot of concerns about the entire roadway. He stated the interior access, even at 15% grade, is still steeper than what is up at Reeder's Village. Mr. Larson explained that the Crest View area is on the edge of an Urban Interface area and when involved in a wild land fire there is smoke, flying embers, reduced visibility and high winds it creates a situation to where you can't see and it gets very dangerous. Mr. Larson stated the wild land standards recommend two ways in and two ways out and stated this is where his concerns come about this particular development. Mr. Larson stated it looks like a raised berm, with limited access around that 24-foot wide street and that is extremely narrow. Mr. Larson stated that his job is to prepare defense and to

protect the community the best way possible from a wild urban interface fire and in the Crest View Estates area that would be very difficult. In addition to protecting the community, he also needs to protect the firefighters and it is very fusible, in the right conditions that he would not put fire fighters up in that area.

Commissioner Pouliot stated the engineer indicated that this was not part of the preliminary plat and asked how that is possible it wasn't a part of the preliminary plat. Ms. Morrell-Gengler explained that Mr. Brooke was commenting on the information just handed out and stated the access to those two lots was part of the preliminary plat and it was something staff did review. Commissioner Pouliot stated they were intending to put an access road, however, it wasn't known about until tonight. Ms. Morrell-Gengler stated they identified it as a private drive and while evaluating access to these lots, it was determined that it will serve more than one lot and it would not be a private drive but perhaps a private street and would require city standards be met for this access to provide access for fire services and also city services.

City Manager Tim Burton stated the information received tonight was new information for the city staff and wasn't available at the time the original staff report was drafted.

Commissioner Netschert asked about the storm water runoff and after looking around he could see why the neighborhood is concerned; however, he could see where some of those issues have already been handled. Mr. Rundquist stated there are a couple issues regarding storm water drainage; to control the run off from the site they're proposing some storm water retention ponds, however, currently there is no access to those ponds and without access, the much needed maintenance to those ponds cannot be completed; and with the steeper slopes the drainage has to find it's way across neighboring properties to reach the culverts and drainage way that lead to the ponds. Essentially there are no easements provided for drainage, to allow that to happen.

Commissioner Netschert asked Mr. Brooke to comment on the storm water runoff. Mr. Brooke stated regarding the access to the ponds, for basin 4, they have proposed an alternative to have the individual lot capture the storm water drainage off the individual lots, so that easements would not be required and city staff would not have to repair or perform maintenance on the ponds. At the time of the building permit, the applicant would have to demonstrate the design for storm water retention for that lot. Mr. Brooke stated the easements were not submitted on the preliminary plat yet the engineers can demonstrate that easements would be provided for maintenance for the larger storm water detention basins and for the drainage easements going to those basins.

Commissioner Netschert asked regarding the slope of the road berm and if there were plans to install guardrails. Mr. Brooke stated there was no correlation between accident frequencies as correlated to icy or winter road conditions and the number of accidents. Mr. Brooke stated regarding the issue with the steep embankment, the 33% fill slope, the engineers have not proposed a guardrail as part of the design because it's not required by the engineering standards for road design and the reason for that is the speeds generated on that slope are so low due to the curve in that road. Mr. Brooke stated, as an alternative, the trail system could be moved to create a 12-foot boulevard that would provide space for a driver to correct and get back on the road.

Commissioner Netschert stated the vegetation in the area might be degraded and asked for an explanation on the slope stabilization and any revegetation plans that would be included in the project. Mr. Brooke stated a

revegetation plan has not been submitted at this time, that is something that typically occurs after the preliminary plat approval. Mr. Brooke explained that the engineers will work with city staff and the parks director to come up with a revegetation plan that will work best for the type of development and the type of land use being proposed for the subdivision.

Commissioner Pouliot asked regarding the ten foot pedestrian bike path, located on the west side of the subdivision and stated if that wasn't approved the applicant would work with staff to locate another area that would be appropriate. Mr. Brooke concurred and stated they have tried to provide a walkway on the east side and a trail system on west side, however, if it wasn't approved the applicant can work with staff to put boulevard sidewalks on both sides of the road.

Commissioner Pouliot asked if the applicant could work with staff to mitigate some of the issues concerning the secondary interior access road? Mr. Brooke stated under the current subdivision regulations a private driveway can be used to access two lots. Mr. Brooke explained that the applicant is able to demonstrate that there is legal and physical access to all lots in the subdivision as proposed and at the time of both final plat and the building permit, those issues can be resolved.

Commissioner Outliner asked if there are standards available for wild land interface that differ from ITE? Chief Larson stated in the information he has gathered in his training, the general recommendation is there needs to be two ways in and two ways out for the emergency crews. Mr. Larson stated there are different strategies when dealing with a structural fire verses an urban interface fire. With the threats being different, one of the strategies is that firefighters need to have an area of safety. Commissioner Oitzinger explained the subdivision regulations limit the one way access to 700 feet to build in that kind of protection for these wild land interface areas and what's being asked for here is a variance from an ordinance that is already in place. Commissioner Oitzinger stated the subdivision presents some challenges for fire and emergency personnel, not only in street length but also with the pumping devices and because this area is unique, being so close to the forested areas. Commissioner Oitzinger asked if these problems, that might be less troublesome in a flatter more urbanized area, raise additional challenges? Mr. Larson concurred and stated it's a compound and effect over the different circumstances, when the impacts start adding up you have to ask yourself; is this a development, in this fashion, that the city should be under taking?

Mayor Smith stated he is curious regarding the lots that lie west of Raleigh Street and the extremely steep, long embankment and asked Ms. Morrell-Gengler if it's her understanding that the applicant's intention would be to fill and level the area for those lots? Ms. Morrell-Gengler stated the preliminary plat indicates that fill would encompass most of the area, there would be a retaining wall to hold some of the fill from entering into the Beattie Street Park and the fill would not be level, it would be approximately 33% grade, through out the area.

Mayor Smith asked for clarification on the repeated reference regarding the areas density, low density or medium density. Ms. Morrell-Gengler stated it could be both, depending on how it's looked at. The applicant has submitted that the density of the proposed subdivision, for this phase, is low density because it is slightly less than two units per acre, however, it's R-1 zoning which allows three units per acre.

Mayor Smith asked for the length of Raleigh Street at 8%? Ms. Morrell

stated it is about 1200 feet.

Mr. Brooke stated the applicant did propose that is was a low-density development as defined by ITE standards and that also includes the development of Phase I. The subdivision is a total acreage of about 18 acres and 31 lots; it comes out to less then 2 lots per acre. Mr. Brooke stated there are some extremely large lots on the south end of the property and explained they looked at alternatives to try and reach some additional road design. However, the property could be developed higher then that under the existing road design standards of 8%, it is believed that those lots cannot be subdivided in the future, which means the development should remain low density. Mr. Brooke stated it is approximately 1200 feet in length at 8% from the start of Phase I all the way through as shown. Mr. Brooke commented on the issue of urban wild land interface and stated the applicant spent a lot of money to develop an urban wild life interface for the area. Mr. Brooke explained what the report found was that the behaviors of a wild fire tend to move uphill, so to take this land and turn it from a wild land open space development to a residential, you change the land use, thus moving the point of wild fire further up the slope. Mr. Brooke stated the engineers feel this design does not jeopardize public health, welfare, or safety.

Mayor Smith asked Mr. Rundquist to comment on the issues regarding the pump system. Mr. Rundquist stated that the Helena community normally relies on the concept of having large volume reservoirs fed by pump stations, yet the reservoirs are there with a reserve capacity for fire protection or any number of other emergencies. Mr. Rundquist explained the developers proposed a fire pump station, it's intended to deliver both domestic flows and fire protection flows, without the use of a larger reservoir. Mr. Rundquist stated the reservoir concept relies on gravity, which is completely reliable. A pump station can only approximate that reliability by adding on features and controls, yet still never achieving gravities reliability. Mr. Rundquist explained that pump stations require constant attention, which isn't anticipated in the rate structure, in other words it cost more to take care of pump station systems then it does for the gravity feed. In addition, when looking at the cost; what's more expensive, a pump station or a system that has a small pump station but a larger reservoir that is elevated above the subdivision? Mr. Rundquist explained from the developers perspective it's just the cost of the pump station, they haven't added in the cost of the annual maintenance or the replacement of the pump station. Mr. Rundquist stated a pump station and a reservoir are fairly close in cost, however, the developer hasn't shown that the long-term cost of the pump station is any less expensive to the city and city residents then a pump station and a reservoir. Mayor Smith stated in one, possible two occasions, in the Helena Master Water Plan, there was an envisioned reservoir in that area and with a revision of that plan that idea vanished and Mayor Smith asked what the circumstances were pertaining to that plan? Mr. Rundquist stated that reservoir was a vision, it was never officially planned out and if there is a reservoir added to that area it would not simulate that reservoir plan.

Commissioner Pouliot stated that Reeders Village currently has a pump station and asked if these same discussions took place concerning the pumps. Mr. Rundquist concurred. Commissioner Pouliot asked what the staff recommendation was? Mr. Rundquist stated staff recommended against a pump station and recommended a reservoir and a pump combination.

Commissioner Oitzinger stated the engineer mentioned that the storm water retention ponds did not need access, however, the city thinks they need

access. Mr. Rundquist concurred and stated the ponds are going to be city property and the city's responsibility to keep maintained and there needs to be appropriate access to them. Mr. Rundquist explained the retention of storm water drainage in the upper basin is extremely important to the city system, without it flooding problems will be severe in the downtown area and the Helena valley. The least cost approach to the prevention of flooding in the downtown area is to build appropriate retention in the upper area to retain the flow that has increased due to the increase of impervious area due to streets and roads and driveways. Commissioner Oitzinger asked if some of the real cost of the subdivision, that's not properly designed, will be externalized to the city? Mr. Rundquist concurred.

Commissioner Parriman stated the developers are not precluded from using a pump system according to present city standards or city regulations and asked if the developer's request for a pump system is part of the requested variances? Mr. Rundquist stated there is no specific regulation or specific variance associated with the pump stations, this is a matter of the city's preference in terms of the utility and what the city sees as appropriate construction methods, materials and techniques.

Commissioner Netschert asked if a reservoir were to be installed would it be fair to assume that more people would benefit from that reservoir, then just those residing in the Crest View Estates subdivision? Mr. Rundquist stated staff has researched the idea, however, the location of the property is such, that if they did have a reservoir, it would only be able to serve the Crest View Estates subdivision.

Commissioner Netschert stated he thinks this proposal strikes a reasonable balance of development between open space and what was originally proposed. From the first time this area was proposed to be developed until now, the city and the taxpayers have paid 1.7 million dollars, 1.2 million of that came directly from the taxpayers, either through open space bond money or general fund monies. Commissioner Netschert stated he looks at that aspect and wonders how much longer does this need to go on and what is going to be reasonable. Commissioner Netschert stated a total of 18 acres and 30 homes, plus or minus a couple, is a reasonable balance. Regarding the variances that were requested, as far as the sidewalks and the separate trail, either is fine with him. Commissioner Netschert explained he feels the engineers have addressed all the issues that have come up and at this point the boulevard sidewalks is something that might be preferential in order to take care of some of the other issues that might be mitigated by that. Regarding the 200 vehicle trips per day, Commissioner Netschert stated he feels that Phase I and II could be considered two separate subdivisions, which means each subdivision would fall under that regulation. At the same time, Commissioner Netschert stated he respects the fire chief's wishes for a secondary access and would support a secondary emergency access. Regarding the dead end street, he does not have difficulty with it, obviously a secondary or shorter street would certainly be better, but nonetheless the commission has passed similar variances in other areas of Helena. Regarding the pump station versus the reservoir, Commissioner Netschert stated the reservoir is not a requirement at this point and pump stations have been approved in other areas. Regarding the grades, slope stabilization and revegetation plan, all those issues will be addressed in the final plat.

Commissioner Oitzinger stated in regards to the historical variances that

the city provides, she looks at that in the totally opposite way. The city needs to draw that line, so that the city doesn't cumulatively over tax the emergency services. The city's decision point is public health and safety and with a Planning Board recommendation that was 7-2 against the subdivision. Commissioner Oitzinger explained the history of this subdivision and the density that was brought forward in the beginning was hubris, the lawsuit against the city for the denial of this subdivision was hubris and she believes that this second stage of this development is also hubris. Commissioner Oitzinger stated she feels it is critically important that the city draws a line and moves forward with a decision based on what the city's responsibilities are today.

Commissioner Pouliot stated he would like to reiterate what most people are thinking is that it's too bad this property is being developed. Two years ago there was a settlement in court that ruled 142 acres be purchased for open space and it's too bad they weren't all purchased, yet 18-acres were left to the owners and they were told they could develop that area. Regarding the pedestrian bike path, Commissioner Pouliot stated it's an excellent idea, that it would more closely retain the natural character of the land if it was developed in that way, however, if that variance is not approved tonight the developer stated they would work with staff to mitigate that trail system and build those streets according to code. Commissioner Pouliot stated this preliminary plat is not cast in stone, it can change much between now and the request for the final plat.

Commissioner Parriman stated he's comfortable with the secondary interior access road and that can be worked out in the final plat. Commissioner Parriman stated the secondary emergency route is intriguing and asked for comments on that idea. Ms. Morrell-Gengler stated there is a private access easement, it follows the existing roadway, extends through what the applicant proposed as parkland dedication and goes up the hillside. The concern is that this is up hill, secondly there might not be legal access all the way back to the street network and maintenance of this emergency access would require widening that to accommodate emergency vehicles, accommodate two way traffic and maintained during the winter. Ms. Morrell-Gengler stated this is an option, however, there are a lot of hurdles that would have to be crossed to establish that as an emergency access.

Mayor Smith stated he was prepared to approve Crest View Phase I, II and III, however, he shares a comment with Ms. North that was made at the public hear; Phase I doesn't look very much like what was proposed on the final plat. Mayor Smith stated he begins to wonder if what is being approved is what will be built. Regarding the 7-2 vote against the subdivision made by the Planning Board, Mayor Smith stated he is reluctant to overturn a decision that is made by one of the city's appointed boards and stated that he won't be voting to approve this subdivision.

City Attorney David Nielsen stated there are one of three decisions the commission can make tonight; approve, approve with conditions or deny. The commission cannot table unless the applicant agrees to table. In the subdivision act, this stage is the preliminary plat, which gives the deception that it's still a work in progress; however, for the most part what you see is what you get. Mr. Nielsen explained that if the commission approves without conditions, the applicant is not legally bound to follow staff's recommendations and once a decision has been reached it is locked in and the commission cannot add conditions or change conditions between now and final plat. Mr. Nielsen stated the findings that the commission make must be based on evidence and the staff report contains some of staff's interpretation of the environmental impact

statement and some preliminary documents, however, the findings that the commission has also include testimony and evidence that was received at the public hearing held before the Planning Board. That's why with good conscientious staff finds a slight variance or difference between the findings of fact and the staff report. In addition, the law in the city of Helena is that you cannot have a dead-end street more than 700-feet, that's the ordinance and that's the law. If the commission is going to grant a variance, it has to be done when the spirit of the rule can be met but there's not a technical compliance and that there's a hardship or that there's a hardship which is not created by the person asking for the variance. The commission cannot create their own variance. The law is 700-feet and Mr. Nielsen stated he's not arguing the discussion but in the past before there was a law that was 700 feet, other distances were allowed but under the city's variance for the requirements for the subdivision regulations there should be some showing that the spirit is met or that there is a hardship that could not otherwise be mitigated.

Mayor Smith asked if the commission could take motions on each variance individually or just have one motion on the entire proposal? Mr. Nielsen recommended that the commission vote on each one of the three independently because there are not necessarily linked. Mr. Nielsen explained that the decision that the commission has to make for a variance is a different decision than has to made for the subdivision. Denial does not foreclose a subdivision or land from ever being developed, it simply says this particular design has too many problems and that need to be addressed. Regarding the standards on the variances, the commission has to look at a hardship and if there's some sort of mitigation and if the spirit of the rule for which the variance is still met.

Mayor Smith reiterated that the commission takes motions on the variances and then a separate motion on the subdivision. Mr. Nielsen concurred and stated the commission might like to decide on the subdivision first and then make the variances after that.

Commissioner Netschert asked how it works if a condition superceded a particular variance? Mr. Nielsen stated the variance could be worded to coincide with the condition.

Mayor Smith stated he doesn't think the commission should start rewriting the variance requests tonight.

Commissioner Pouliot stated the secondary interior access road for Lots 16 and 17, an example would be if the commission made it a condition that it be a private drive to Lot 17 only, how would that be addressed? Commissioner Pouliot asked if the commission would address it before the preliminary plat motion or would all the conditions be put out front to begin with? Mayor Smith stated he believes the commission should take a motion on the entire preliminary plat and then make motions on the variances. Mr. Nielsen concurred; however, Commissioner Pouliot's question was if you can attach conditions as part of the approval and the cleanest way to do this is vote on the motion, if it's a motion to approve with conditions, the motion should set forth what those conditions would be.

## Motion

**Commissioner Parriman moved approval of the preliminary plat for the second phase of the Crest View Estates major subdivision creating 17 residential lots from a 12.04-acre tract of land for property located in the R-1 District and legally described as, Block 7, Lots 19-23 and 24A; Block 8, Lots 1-6, 29-34; Block 11, Lots 1-5, 30-34, and east 11 feet of Lots 6 and 29; Block 12, Lots 11-18, 19-28 and Lots 10A and 29A; Block 13, Lots 1-36;**

**Block 14, Lots 1-5, 30-34, and east 11 feet of Lots 6 and 29; Block 17, Lots 1-3 and east 11 feet of Lot 4; Block 18, Lots 1-9; and all vacated street and alley rights-of-way adjacent to these lots in the Courthouse Addition, and Lot 1A identified in Certificate of Survey #622953-B as filed in Lewis & Clark County, Montana; generally located in the SE ¼ Section 31, T10N, R3W, P.P.M. and south of Rhode Island Street, southeast of Beattie Street, and west of Crest View Estates Phase I, Helena, Lewis & Clark County, Montana. Attached Conditions: The secondary street either be a private drive, just for the one Lot and if it is not that it should be improved to Helena Street Standards as per the city's subdivision regulations.**

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

#### Discussion

Mayor Smith asked if Commissioner Parriman made a proper motion as regards to the conditions? Ms. Morrell-Gengler asked if that is the only condition placed on the proposed preliminary plat? Commissioner Parriman stated that is the only one he intended.

Mr. Burton stated it was a proper motion with one condition, that doesn't preclude after the commission deals with this motion, other discussion or motions on additional conditions.

Commissioner Pouliot stated there was some discussion about an emergency exit and there was some talk about an easement that the city already had and the commission didn't make that a condition and can't make it a condition but could the commission direct the staff to try to see if there could be another emergency exit, created some how or another? Commissioner Pouliot stated Raleigh Street is near by and so is Woodbridge and Touchstone, all of those are very near by and could eliminate the difficulty with the access easement that the city has that goes up hill.

City Manager Tim Burton stated he would prefer that if the commission could proceed, in terms of trying to address that issue, that it's in the form of a motion, directed as a condition of approval.

Mayor Smith stated suggestions to staff, at this point, are pass the time frame, however, a condition that a secondary access be created is in order.

Commissioner Pouliot stated he would like to see a secondary access, however, it might not be possible and he's not going to make it a condition.

Commissioner Parriman stated he would like to see a provision for a secondary emergency access and stated he is willing to make a motion to that effect, however, he's not sure he's comfortable putting a stipulation on the preliminary plat of forcing that as a condition of getting a subdivision done, as getting an emergency through Touchstone and asked if that was appropriate.

Mr. Nielsen stated if there is a desire that there be a second access, is simply make that as a condition and then the developer will have to figure how and where that will be connected. Some of that may involve trying to involve getting either private or public right-of-way or easements in order to complete that depending on where that second access is going to be.

Commissioner Netschert asked if a motion to that effect was made could the words be added; "where if reasonably feasible", would that be enough to cover it or would that be a little to broad based. Mr. Nielsen stated it's a little to weak.

Commissioner Oitzinger stated she thought Commissioner Parriman was going to make a motion. Commissioner Parriman stated he doesn't want that condition be the one that makes or breaks the subdivision.

Commissioner Oitzinger asked if the commission attaches a condition that can't be satisfied is that the end of it then, the subdivision fails? Mr. Nielsen stated it certainly presents some additional challenges for the engineers. If the commission makes a condition that they have to have a second access then they will have to figure out where they can have one. It is possible that conditions can absolutely stop a subdivision if they can't be met. Commissioner Oitzinger asked if the developer were not able to get an easement for a secondary access could they bring that dilemma back to the commission and could the commission reconsider? Mr. Nielsen stated if a developer comes back to the commission because they can't meet the condition, the commission can't go back and change the conditions but the developer could request relief.

**Motion**

**Commissioner Oitzinger moved to add a condition to the subdivision that a secondary access be provided and that access for the purpose of maintenance of the storm water retention ponds be added.**  
Commissioner Oitzinger withdrew the motion.

**Discussion**

Commissioner Pouliot stated if the motion was made in two separate parts the commission may be able to precede a little better with what is intended.

Commissioner Netschert asked if the applicant could come back at later date and to apply for a second access outside of this process here tonight? Mr. Nielsen concurred. Commissioner Netschert asked if the commission could add a condition that would allow the applicant to try and identify a secondary access? Mr. Nielsen asked if the question meant that the applicant would have to identify a second access? Commissioner Netschert stated that they would apply to seek a secondary access and perhaps proceed with that if one can be feasibly identified. Mr. Nielsen stated he doesn't think that condition would mean anything.

**Motion**

**Commissioner Oitzinger moved that the subdivision be conditioned upon a secondary access being provided.** Commissioner Parriman seconded the motion. Motion carried 3-2 with Commissioner Pouliot and Commissioner Netschert voting no.

**Discussion**

Mr. Burton stated typically in a discussion on a subdivision review and a preliminary plat, there are some standard conditions that come with that and so far they are not included in this motion as he understands and it might be worth some discussion with Ms. Morrell-Gengler on what those standard conditions are. Ms. Morrell-Gengler stated that some of the conditions that are typically put in refer to meeting city standards for water and sewer, guidelines; fire hydrants must meet fire marshals approval; fire flows must meet fire standards. On this particular subdivision staff would also put in a condition that the storm water detention ponds have easements and that they have maintenance access. There might be other conditions that staff might look at that address some of the standard conditions.

Mayor Smith asked when those conditions would be imposed upon this subdivision? Ms. Morrell-Gengler stated one option might be to ask the applicant to allow the commission to postpone their decision on the conditions until the next city commission meeting. Staff would develop these conditions for review and then the city commission will have the opportunity to review them prior to the meeting.

Mayor Smith stated he would entertain a motion to impose the standard

conditions on this subdivision that would be imposed on any other subdivision. However he is hesitant because of the idea that the commission is going to ask for a hold over and staff would develop additional conditions.

Commissioner Parriman asked if the commission just couldn't put that condition on there, stipulating that any developments in regards to this subdivision would have to be constructed to city of Helena standards. He stated he thought that was a condition with the preliminary plat.

Mr. Burton stated the issue from staff, through the planning board and then the recommendation from the planning board was for denial, so there weren't conditions of approval. Typically that would be the case, however, the commission is up against the deadline and without the applicants request to extend that deadline there needs to be decision by January 31, 2003. The commission could convene back to review what the standard conditions are and also what decisions the commission has made to date and still be within the statutory deadline. However, there is not a regular scheduled meeting before January 31st that would give the staff time to develop the conditions for the commission's consideration.

Commissioner Parriman asked if there are standard guidelines for construction in the city of Helena; standards in relation to subdivisions and could the commission apply those standards to the preliminary plat? Mr. Nielsen stated the standards the city has through the fire code and building code and through city ordinances, those are self executing and staff sometimes lists some of those as conditions just as a friendly reminder but those are self executing. The thing is, staff has conditions that would be recommended to mitigate some of the impacts that are identified in the proposed findings of fact. Those would be the conditions that go beyond the standard conditions and require things in addition to what the city would have by ordinance. By ordinance the developer has to do a storm water drainage plan and put in hydrants within a certain distance. Mr. Nielsen stated if the commission had an opportunity to look through and figure out what kind of conditions could be recommended that would go beyond what is normally required by city standards, that would be for a better quality development.

Mayor Smith asked if it was mentioned that the commission itself could request a postponement and hold this over for two weeks in order to draw up the conditions. Mr. Nielsen stated a preliminary plat has to be decided upon within 60 working days and that 60th working day is the 31st of January. The commission could table it up until that date and finalize whatever action the commission chooses. If the developer is agreeable to an extension, then the commission could go beyond the 31st. Mayor Smith asked if he asked the developer if he or she would like to request a postponement and they say no then, is he left to believe that the commission won't be able to apply any conditions other than those which are self executing, is that correct. Mr. Nielsen stated those conditions that the commission did not impose prior to the 31st of January, would require a special hearing.

Mayor Smith stated he is reluctant to adjourn the meeting to have the commission start writing up a bunch conditions, the applicant may or may not be aware of or comfortable with.

Commissioner Oitzinger asked if it would be appropriate to request the developer to let the commission know weather they would be willing to postpone for the purpose of standard conditions? Mayor Smith stated if he understands correctly, the standard conditions are self-executing and are not necessary in the form of another motion. However, Commissioner Oitzinger could ask the

developer if they would request a postponement or any other question.

Commissioner Oitzinger stated she would like to ask the applicant's engineer if they would request a postponement. Mr. Brooke stated the applicant received a staff report that recommends denial and findings of fact that recommends denial and so there's not a lot of guidance indicating what conditions may be placed on the subdivision. There are indications of deficiencies that the city is concerned about. The applicant would agree that as long as the scope of the conditions was part of what was originally mentioned as issues with the proposed development. It should be reasonable for staff to pull out those elements of those documents and place conditions before the commission before the statutory dead line. Mr. Brooke asked if that is something that the commission can vote on at that time? Mayor Smith stated the commission is not scheduled to meet for two weeks and explained that he has expressed his concern about trying to write up conditions, convene the commission and have a vote prior to January 31, 2003, that is not something he is comfortable with. Mayor Smith explained he takes Mr. Brooke's explanation so far for not requesting a postponement. Mr. Brooke stated if the commission can make a decision tonight that would be best, however, if they can't they will look at other alternatives.

**Motion**

**Commissioner Oitzinger moved that the subdivision that was approved be subject to the condition of providing access and easements to the storm water detention ponds.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Discussion**

Commissioner Parriman asked if Ms. Morrell-Gengler if she has a list generated that may be conditions out of the ordinary, which are not self-executing that should be included in this preliminary plat? Ms. Morrell-Gengler stated she does not have them available at this meeting.

Commissioner Oitzinger asked if the commission could move on with the remaining half of the agenda, while Ms. Morrell-Gengler retrieves the conditions the commission needs because without knowing what they are tonight; it will be necessary for the commission to meet on January 31, 2003. Mayor Smith stated he's not sure he agrees but he appreciates the comment and explained there is still work to do on the variances at this application. Mayor Smith asked if Ms. Morrell-Gengler would retrieve a copy of those conditions.

Commissioner Pouliot asked the applicant if they would like to grant some sort of continuance so that the commission may put together the conditions? Pete Hamper, 1529 Kahanabad Drive, Missoula 59802, stated they would be willing to grant a 14-day postponement for staff to present the additional conditions and for the engineers to work with them to work this out.

Mr. Burton stated he appreciates that postponement, its just going to be much more deliberate if the commission is able to reduce these conditions of approval to writing for the commission's review and consideration at the next commission meeting. Mr. Burton recommended a motion be made that the commission come back at the next commission meeting with the written conditions of approval incorporating those motions that have already been made and adopted and any other standard verbiage that typically is in front of the commission under this consideration. The commission would have the opportunity prior to the meeting and at the meeting to question staff and the developer as to that verbiage and make amendments as the commission so desires.

Mr. Nielsen stated he too recommends the commission make a motion to table the establishment of conditions until that next meeting and then the commission could table the variances as well and take those up at the February 10, 2003.

**Motion**

**Commissioner Parriman moved to table the requested variances and the conditions for preliminary plat approval until February 10, 2003 and direct staff to generate a list of standard conditions and the conditions that vary from the standard conditions.** Commissioner Netschert seconded the motion. All voted aye, motion carried.

Commissioner Parriman wanted to thank the applicants for granting the commission an extra two weeks, it will make for a more quality agreement between the city and the developers.

**Public Hearing  
Low Income Hearing  
Tax Credits**

**PUBLIC HEARING**

A. SOLICIT PUBLIC COMMENT FOR THE LOW INCOME HOUSING TAX CREDITS TO REHABILITATE THE PENKAY EAGLES MANOR FACILITY, 715 NORHT FEE STREET, CURRENTLY SERVING LOW-INCOME ELDERLY RESIDNETS, TO DETERMINE IF THIS PROPOSAL WOULD MEET COMMUNITY-HOUSING NEEDS

**Staff Report**

City Planner Belinda Waters reported Eagles Manor of Helena is a facility with 120 units that provides communal living for senior citizens, especially those with low and moderate incomes. The facility is comprised of two buildings, one building built in 1968 (Penkay Eagles Manor) and the other one in 1978 (Eagles Manor No. 2). Because of the low income of the tenants, rent constraints imposed by HUD prevent the Penkay facility from accumulating the reserves needed to perform significant repairs to this building.

Ms. Waters recommend rehabilitating the Penkay Eagles Manor facility utilizing the Low Income Housing Tax Credits because it meets the community housing needs.

**Public Testimony**

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

**Gene Leuwer, 1601 Jerome Street,** Executive Director of Rocky Mountain Development Council, asked the commission to determine that the project does meet a community house need. Mr. Leuwer explained he knew the commission has held previous public hearings that have resulted in your application for HOME and CBDG money for the project and there was a lot of testimony at that time from residents and other community members that were favorable to the project.

**Helen Foundrick, 407 E. King Street,** stated she is here on behalf of the Eagles Manor board and the residents, to encourage the commission look favorably on the request.

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

**Discussion**

Commissioner Pouliot asked what Low Income Housing Tax credits are? Mr. Leuwer stated the US Congress created Low Income Housing Tax Credits in the tax reform act of 1986. Each state receives an allocation of those tax credits, Montana receives essentially \$20 million of those a year and the State Board of

Housing will consider competing proposals to allocate those tax credits. This project would request \$3.6 million of tax credits; Eagles Manor would sell those to an investor for \$2.8 million dollars of cash and use that along with the \$1 million dollars the city has applied for and a private bank loan between 2 and 5 hundred thousand to complete the \$4.2 million dollar project.

**Motion**

**Commissioner Parriman moved to recognize that the proposed Low Income Housing Tax Credits project, for the Penkay Eagles Manor, 715 North Fee, meets community housing needs.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Ordinance for Multiple Zone Changes**

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR MULTIPLE ZONE CHANGES AFFECTING THE SAME 39.8- ACRE PROPERTY; APPROXIMATELY 21 ACRES ARE CURRENTLY LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT AND WOULD BE PARTIALLY AMENDED WITH THE FOLLOWING ZONE CHANGES: 1. FROM B-2 TO R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT (1.09 ACRES); AND 2. FROM B-2 TO R-0 (RESIDENTIAL OFFICE) DISTRICT (5.57 ACRES). 3. THE EXISTING R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT CURRENTLY CONTAINS 16 ACRES AND WOULD BE PARTIALLY AMENDED WITH THE FOLLOWING ZONE CHANGES: A. FROM R-3 TO B-2 DISTRICT (4.27 ACRES); AND B. FROM R-3 TO R-O ZONING DISTRICT (1.93 ACRES) 4. THIS PROPOSAL ALSO INCLUDES A ZONE CHANGE FROM PLI (PUBLIC LANDS & INSTITUTION) DISTRICT TO B-2 (2.13 ACRES) THE ENTIRE 39.8 ACRES ARE LEGALLY DESCRIBED AS TRACT B-2-A OF COS#613952/B IN SECTION 18, T10N, R3W, P.M.M., HELENA, MONTANA AND LOT A1 OF THE FWP MINOR SUBDIVISION; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF MCHUGH DRIVE.

**Staff report**

City Planner Belinda Waters reported according to City Attorney Nielsen, the proposed zone change is connected to the newly created lots in the Anderson Business Park major subdivision, not with the existing zoning. Also, because this land use request was legally advertised for the City Commission meeting of January 27,2003, this item must appear on the agenda and be addressed at this time.

Ms. Waters recommended tabling the proposed adoption of an ordinance for a zone change from B-2 (General Commercial) District to R-3 (Medium Density Residential) District and R-3 (Medium Density Residential) District and to R-O (Residential Office) District; from R-3 (Medium Density Residential) District to B-2 and to R-O; and from PLI (Public Lands & Institution) to B-2 for approximately 39.8 acres until the final plat is approved. The property is legally described as Lot A1, FWP Minor Subdivision and Tract B-2-A of COS#613952/B in Section 18, T10N, R3W, P.M.M., Helena, Montana

**Public Testimony**

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

**Dick Anderson, 1800 Lodgepole**, stated he wouldn't have any problem with the tabling.

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

**Motion** Commissioner Netschert moved to table the proposed adoption of an ordinance for a zone change from B-2 (General Commercial) District to R-3 (Medium Density Residential) District and R-3 (Medium Density Residential) District and to R-O (Residential Office) District; from R-3 (Medium Density Residential) District to B-2 and to R-O; and from PLI (Public Lands & Institution) to B-2 for approximately 39.8 acres until the final plat is approved. Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Anderson Business Park Subdivision** CONSIDER A MAJOR SUBDIVISION/PRELIMINARY PLAT FOR THE ANDERSON BUSINESS PARK SUBDIVISION WHICH WILL BE LOCATED IN SEVERAL ZONING DISTRICTS AND WILL CREATE 42 LOTS RANGING IN SIZE FROM 8,000-125,453 SQUARE FEET AS A MIXED-USE DEVELOPMENT; LEGALLY DESCRIBED AS A 39.8-ACRE TRACT OF LAND LOCATED IN TRACT B-2A OF COS#613952/B AND LOT A1 FWP MINOR SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF MCHUGH DRIVE

**Staff Report** City Planner Belinda Waters reported the applicant is requesting approval of the preliminary plat for the proposed Anderson Business Park Subdivision, which is accompanied by a simulations request for a zone change. However, it has been determined by City Attorney Nielsen that the proposed zone change is tied to the major subdivision that creates the 42 lots, not to the existing zoning; therefore, the City Commission will act on the zone change at final plat approval.

**Discussion** Commissioner Pouliot asked if the Skelton Subdivision has been overall platted and this is another phase development. Ms. Waters stated there is a five-acre parcel that the State owns and the rest is the Skelton Subdivision.

Mayor Smith stated the Parks Board felt that a section of dedicated parkland should come into the city and asked if the Parks Board made an offer. Ms. Waters stated according to subdivision criteria a certain percentage of major subdivision has to be given in parkland dedication, or cash in lieu of. The developer is proposing a park; but keep it as a private park. The Parks Board would like to see the park dedicated to the city and connect with Skelton's park to the east. Mayor Smith asked if it stays the way it is, who owns the park? Ms. Waters stated Home Owners Association, maintenance agreement or some type of ownership would have to be placed on it because it's a private park. Mayor Smith asked if the Parks Board wants it to come into the city, what does the commission need to do to make that happen? Ms. Waters stated the developer would have to donate it as part of the parkland requirement. They have to give parkland dedication a certain percentage of their subdivision and their proposing that the parkland that they are going to give is still private not public.

Commissioner Oitzinger asked if they were proposing to give us funds in lieu of the parkland then? Ms. Waters stated in the original proposal that was submitted, the applicant did some evaluating of what they felt would be the requirement based on subdivision regulations but in there they said that they would work with the Parks Board and the city to determine the final amounts at that time.

Public Testimony

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

**Bob Lee, 901 Technology Boulevard**, stated he is the applicant's representative and a Land Use Planner working with Morrison, Merrile Inc. out of the Bozeman office.

Mr. Lee stated the park dedication that was proposed in the northeast corner of the property wasn't intended it to be private; the applicant intends that to be a public dedication.

Mr. Lee explained the design concept for this area is to create a mixed-use development in an area that's currently in transition in Helena. Mr. Anderson wants to accomplish two conditions; one being to preserve the elevation difference and to accomplish pedestrian circulation. Mr. Lee explained that this is a mixed-use development; it's going to have some apartments, single-family residences and office buildings. Trying to accommodate pedestrian movements, not only within the project but also through the project, was something that Mr. Anderson wants to achieve. Mr. Lee explained that some of the design concepts will be curvilinear sidewalks and within the interior of the project there are proposed landscape corridors that will continue north, south, east and west connections through the center of the project. For the record, Mr. Lee stated Morrison, Merrile, Inc, intends to develop a management plan with staff for the landscape setback areas to include trails, some storm water detention facilities and varying setbacks. Mr. Lee stated they would like to create a landscaping feature that makes an attractive pedestrian way through the core of the project and not be bound by the hard fence line. Mr. Lee stated he wanted to make a correction that this project creates 43 lots instead of 42. In the extreme southwest corner of the property, there is a track that was identified as parkland, however, it is intended to be sold to the adjacent property because they built their parking lot on it. Mr. Lee explained because of its small size they put a covenant on it because it would end up being problematic in terms of the B2 zoning and now they would like to remove it. Mr. Lee stated he would like to call attention to the condition regarding McHugh Lane. Based on the information learned in the meeting last Thursday regarding the participation in the area. Mr. Lee stated Mr. Anderson has requested to have that reworded to read; "The developer must participate with adjacent property owners to build McHugh Lane to a minor arterial standard". Mr. Lee stated staff has been easy to deal with and he recommended approving the proposal.

**Dick Anderson, 1800 Lodgepole**, stated he has some concerns regarding the kids making it to and from Four Georgians School. There are plans to put in paths. Mr. Anderson stated he wanted to reword the McHugh Lane condition because he's assuming there will be an SID on McHugh Lane.

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

Discussion

Mr. Burton stated for the commission's information that he usually doesn't review these issues until they have gone through the Planning Board and he feels that the condition on McHugh Lane does need additional work and the SID is probably an appropriate mechanism. Mr. Burton recommended this issue be carried over to the next city commission.

Commissioner Parriman stated he wanted to consult the developer and ask if tabling this issue would be okay for him. Mr. Anderson stated it would be fine.

**Motion**

**Commissioner Pouliot moved to table until February 10, 2003 the preliminary plat for the Anderson Business Park major subdivision creating forty-two lots from a 39.8-acre tract and to adopt the Findings of Fact and the conditions contained therein for property legally described as Tract B-2-A of River Rock Subdivision (COS#613952/B) in Section 18, T10N, R3W, P.M.M., Helena, Montana and Lot A1 of the FWP Minor Subdivision; generally north of Custer Avenue and east of McHugh Lane.** Commissioner seconded Parriman the motion. All voted aye, motion carried.

**Discussion**

Commissioner Pouliot wanted more clarification on the covenant that was mentioned. Mr. Nielsen stated the covenant has nothing to do with the commission and to remove it is up to the developer.

Mayor Smith asked for more clarification on the southwest corner and the relocation of a lot line. Mr. Nielsen stated that's not a concern either.

Ms. Waters stated that the 60-day review period would not end until after the February 10, 2003.

***Public Communications***

PUBLIC COMMUNICATIONS - There were no persons present wishing to address the commission

***Meetings of Interest***

MEETINGS OF INTEREST - No report given.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 10:13 p.m.

\_\_\_\_\_  
Mayor Smith

ATTEST:

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

