

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
April 7, 2003
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, April 7, 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, Parriman and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Jacki Pierson were present. Youth Advisory members included Jason Swant, Tom Ryan, Jake Blade, Jessica Freeman, Libby Snedeker, Rick Pembroke, and Anne Pichette.

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, March 24, 2003 were approved as submitted.

Consent Agenda CONSENT AGENDA:

- A. Claims
- B. Release of utility easement located between Lot 10 and Lot 11, Block 1, Skelton Addition Subdivision, Phase1; generally located northwest of the intersection of Dredge Drive and Road Runner Road
- C. Refund of rezoning application fee paid by Tony and Penny Herbert
- D. Resolution designating an Environmental Certifying Official for the HOME Investment Partnership grant and CDBG Programs (Penkay Eagles Manor) **Res. #11851**
- E. Utility bill insert - Susan G Komen Breast Cancer Foundation Montana Race for the Cure
- F. Consultant contract for City-owned sidewalks

City Manager Tim Burton recommended approval of the claims and recommended pulling item F for further discussion.

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

Discussion City Manager Tim Burton explained there was a discussion among the commission regarding a \$75,000 TIF allocation for the Neil Avenue pathway and pedestrian access. At that time the commission was discussing the potential of reallocating some of the CTEP monies towards the project and away from the Sidewalk Program. This consultant contract deals with the sidewalk project the commission approved last year through the budget process. Mr. Burton explained even with the upfront money from the TIF the commission would have to have a lengthy process in terms of design; public comment; and reaching an actual proposal with estimated costs. Mr. Burton recommended proceeding with the sidewalk project; however, when the commission reaches final decisions regarding the TIF monies, the commission should also look allocating CTEP funds towards that project.

Commissioner Oitzinger stated she supports the project and she believes the Neil Avenue project can be completed with the next installment.

Commissioner Pouliot asked when the next installments of CTEP funds would become available? City Manager Tim Burton stated since they operate on a Federal Fiscal Year the monies would be available in October.

Motion **Commissioner Pouliot moved approval of item F on the consent agenda.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot mentioned the flag was flying at half-mast because it is Victims of Crime Week. Commissioner Pouliot stated he would like to have discussion regarding the potholes and asked Mr. Burton when the repairs will begin. Mr. Burton explained the hot plant has opened up and staff will be coming back before the commission to reallocate some project monies because the problem is larger than the present budget. There is about \$25,000 in the present budget and staff is projecting that it's going to cost around \$130,000 to fix the pothole problem. Public Works Director John Rundquist explained with the hot plant open the street repairs are the top priority. Mr. Burton asked what the time frame would be in fixing the most serious problems? Mr. Rundquist stated the more serious potholes that are potential safety hazards will be taken care of first; however there are some areas where the material underneath the roads have been totally destroyed and the extra money needed will be specifically used to repair those larger problems.

Commissioner Oitzinger asked if the hot plant is a private operation that the city contracts with? Mr. Rundquist concurred.

Mayor Smith asked regarding the possibility of raising the street maintenance fees? Mr. Rundquist stated Public Works will divert additional money from Gas Tax into street maintenance.

Commissioner Parriman explained the Old Glory Flag has received the building permit and asked if the commission would be willing to waive the building fee? Commissioner Netschert asked Commissioner Parriman how much he was thinking of waiving? Commissioner Parriman stated \$200 or \$300. Mr. Burton asked the commission to authorize him to pay the fee waiver through the contingency fund, if the commission chooses to waive the fee.

Motion **Commissioner Netschert moved to pay the building fee at the City Managers discretion.** Commissioner Parriman seconded the motion.

Amended Motion **Commissioner Netschert amended the motion to pay the building fee from the Commission Office budget.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen had no report.

Report of the City Manager

REPORT OF THE CITY MANAGER

Mr. Burton explained the memo from Tim McGee to himself concerning the Kindrick Field. Mr. Burton stated if there were no objection from the commission he would place it in the City Clerk's office to keep on record. Mayor Smith stated without objection the commission will enter it into the record.

Mr. Burton explained in terms of the TIF process itself the commission tentatively allocated TIF money towards particular projects. Towards the end of

that discussion the commission still had priority decisions to make in terms of those projects. Mr. Burton stated he would like to add discussion time on to the next Administrative Meeting regarding those priorities.

**Resolution of
Intention**

CONSIDER A RESOLUTION OF INTENTION ESTABLISHING THE CONDITIONS FOR ANNEXATION; LEGALLY DESCRIBED AS LOTS 13-A, BLOCK 13, IN THE HIGHLAND PARK ADDITION, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED EAST OF GRANITE AVENUE AND SOUTH OF WOODWARD STREET WITH A PROPERTY ADDRESS OF 2522 WOODWARD STREET

Staff Report

Project Manager Hal Fossum reported the owners of this property, Anthony J. and Penny J. Herbert, have applied for annexation to the City of Helena. The platted residential property is located on Woodward Street, one-half block from existing City limits. The property owner seeks annexation to enable connections to City utilities for the existing residence and a new lot that is pending creating through the county subdivision approval process. The proposed annexation would not create any additional wholly surrounded areas.

More particularly, the owners have received preliminary plat approval in the county for a subdivision that would divide their property into two parcels, each suitable for a single family residence. The proposed annexation would enable the entire one-acre property to connect to City utilities and develop to City standards. Under separate action, the City Commission is expected to consider a proposal to prezone this and several properties in the vicinity in the Single-Family Residential (R-2) District.

It is the usual practice of the City to establish conditions to annexation as an intermediate step toward the finalization of annexation. Establishing conditions enables City staff to work with the applicant to make arrangements to complete a variety of City requirements.

Mr. Fossum recommended approval of a resolution of intention 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.

Discussion

Commissioner Pouliot asked if staff anticipates annexation from the property to the east also? Mr. Fossum stated the owners of that property have not petitioned for annexation and staff does not contemplate annexation of the property.

Mayor Smith asked if city water or sewer serves the adjacent property? Mr. Fossum stated it does not.

Commissioner Parriman asked if the commission annexes properties that are not contiguous isn't there a possibility that the commission could create wholly surrounded properties? Mr. Fossum stated it is possible; however; this proposal does not entail or contemplate any surrounding effect, in addition if the property becomes surrounded by city limits the commission is then empowered to act on the annexation yet is certainly not required to. Commissioner Parriman asked if the development agreement is in essence a waiver of protest or an agreement to participate in the SID? Mr. Fossum concurred and stated it's the centerpiece of a development agreement and is a waiver of right to protest future SID's. Mr. Fossum explained staff expects the main body of the water and sewer infrastructure to be completed at the time of annexation and staff also expects the street improvements to Woodward and Granite be deferred until such time as those improvements can move on as more of a neighborhood improvement. Commissioner Parriman asked if the fire hydrants would be installed when the SID takes place? Mr. Fossum concurred and stated in this case there are fire hydrants at the end of Woodward Circle and on Silverette Avenue, which satisfies the fire department's base line needs.

Mr. Burton explained past endeavors regarding annexing wholly surrounded property and stated the law allows the commission, without a public hearing, to annex a platted subdivision located next to the city boundary.

Tony Herbert, 2522 Woodward Avenue stated if the commission approves the conditions they will come up with a development agreement that will work. He mentioned a plan has been discussed to install a fire hydrant on the corner of Woodward and Granite.

Mayor Smith asked Mr. Herbert if he is comfortable with the conditions. Mr. Herbert concurred and stated their intention would be to extend sewer lines down the street and to cover the costs associated with that and the connections to their home and to the new building site.

Commissioner Pouliot asked Mr. Herbert if he had talked with his neighbors regarding the proposal and if they are supportive? Mr. Herbert concurred.

Commissioner Netschert stated he will not be supporting the annexation and explained the annexation policy does not allow property to be annexed without fully annexing all the properties.

Motion

Commissioner Pouliot moved to approve a resolution of intention to annex into the City of Helena, Montana, property legally described as Parcel 13-A in Block 13 of the Highland Park Subdivision as shown on COS#288574, Lewis and Clark County, Montana, generally located at 2522 Woodward Street on Helena's West Side, subject to the conditions listed above. Commissioner Oitzinger seconded the motion. Motion carried 4-1 with Commissioner Netschert voting no. **Res. #11852**

Resolution of

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF

Intention

HELENA, MONTANA, A 9.3-ACRE PARCEL OF LAND BEING A PROTION OF TRACT B OF CERTIFICATE OF SURVEY 575711/C IN THE NW ¼ OF

SECTION 4 AND NE¼ QUARTER OF SECTION5, T9N, R3W, P.M.M., LOCATED IN LEWIS AND CLARK COUNTY, MONTANA, PROPOSED TO BE DESCRIBED AS TRACT B-1, AND TO ESTABLISH CONDITIONS OF ANNEXATION

Staff Report

Project Manager Hal Fossum reported the owner of this property, Richard and Betti C. Hill, has applied for annexation to the City of Helena. The property is located south of Gold Rush Avenue and southeast of Winscott Lane. The property is contiguous with existing City limits, in the Open Space-Residential zoning district. Its annexation would not create any additional wholly surrounded areas.

The proposed tract is the remainder of Red Letter subdivision, which is in the process of creation. The property has received preliminary plat approval in the County and needs to establish sanitary service as one condition of County final plat approval.

The first proposed condition requires the property be duly created prior to annexation. The second proposed condition requires the installation of infrastructure improvements. City policy requires that improvements be installed at the time of annexation or be assured through a plan or development agreement. The third condition requires that the extension of Winscott Lane, as needed to serve the property, be dedicated as public right of way.

The fourth proposed condition requires the applicants to seek a change in zoning. The subject property is currently in the Open Space-Residential (OSR) District. It is the policy and practice of the City to rezone OSR-zoned properties in an urban residential zoning district prior to annexation.

The fifth proposed condition ensures that the City for conformance with its building, zoning and infrastructure requirements would review any further building prior to the completion of annexation, and the appropriate fees are paid to the City. 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.

Mr. Fossum recommended approval of the resolution on intention subject to the following conditions:

1. Establishing of Tract: The applicant must duly establish the Property as a tract of record.
2. Infrastructure: The applicant must install infrastructure improvements as required by the City and to City standards, including water, sewer, fire hydrants, street, turnaround, curb, gutter, and sidewalks, or enter into a development agreement acceptable to the City that defines responsibility for the installation or deferment of the improvements.
3. Street right of way: The applicant must dedicate right of way nexessary for completion of the street and turnaround as required by the city.
4. Rezoning: The applicant must seek to rezone the property into the Single-Family Residential -Large Lot (R-1) District, or Single-Family Residential (R-2) District.
5. 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 building, 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.

6. 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 year of the date of approval of this Resolution of Intention, the City is under no obligation to annex the property.

Discussion

Commissioner Parriman asked if the Hills applied for annexation hoping to be denied in order to obtain a septic permit? Mr. Rundquist concurred and stated in order for the city commission to consider extending sewer services to the property, they must first be under city ordinance considered for annexation. If the commission considers and determines that annexation of the property is not appropriate, then the property owners may apply for extension of sewer service area to the property. In the event that is denied then the property owners can go back to the county and secure a septic permit for the property. Commissioner Parriman asked if the process of connecting the water and sewer to the building site would be at the owner's expense? Mr. Fossum concurred.

Mayor Smith mentioned the topography of the area looks as though it would be over the 8% street grade limitation and asked if the building envelope is acceptable according to that? Mr. Fossum stated the street standards in that zone conform to the particular standards in the South Hills plan. He mentioned the property owners are not proposing a subdivision in that area and they could construct a road to reach the building site under the specifications and design guidelines set out in the South Hills plan, which generally calls for a 10% slope grade.

Commissioner Oitzinger mentioned there is a pending subdivision before the county and asked if the city commission annexed the property would the subdivision come before the city commission for approval? Mr. Fossum stated the county would finalize the existing preliminary plat. Essentially the property owners determined that they could develop the eastern part of the property as an addition to the city and come before the city to establish conditions of preliminary plat, which is now known as the preliminary plat for the Red Letter Subdivision. The remainder of the property is subject to the underlining county subdivision. The property owners are attempting to satisfy conditions of the county subdivision and in order to do that the property owners must show a septic service or some kind of a sanitary service to the property. Commissioner Oitzinger stated if the commission annexed, the next decision point for the commission is whether or not services should be extended. Mr. Fossum stated the recommended conditions of annexation include that the property be created; meaning the county subdivision be finalized, so that there will be property to annex.

Commissioner Parriman asked what the difficulties for city services are involving a single residence with a private drive? Mr. Fossum stated guidelines are intended to create access to the property and only 150 feet of the road way could be deemed a private drive, in terms of being a driveway. The rest would be essentially a public access, in order for the fire department to serve the property they would need to see a reasonable accessible and nearby fire hydrant, which depending on the location of the building site could be difficult to install.

Commissioner Pouliot stated the city standard for streets is 8% and asked why there is a 10% street grade for the South Hills area? Mr. Fossum stated as a matter of subdivision design guidelines, there is an 8% standard for streets; in this case there is no proposed subdivision and any street that would

conform to regulations in the underlining requirements the South Hills Plan could be conforming to city regulations.

Jeff Larson Stahly Engineering stated he is representing Rick and Betty Hill. Mr. Larson explained there is an underling two-lot subdivision in the county, which needs to be done first in order to divide off that piece of property for the city subdivision. The property in question; the county conditions require only one resident be allowed on that lot and that a building envelope has do be defined; which is on top of the knob. Mr. Larson stated the property owners would take an easement through the adjacent property to the south in order to build an access road at the required grades. This issue is to resolve the sanitary issue.

Commissioner Oitzinger asked what the time line is on the county subdivision and is it already done? Mr. Larson explained the city commission's decision would allow the property owners to finish what needs to be done on the county side.

Mayor Smith asked Mr. Larson to discuss his view of the 8% verses the 10% street grades? Mr. Larson explained if the property is annexed into the city there will need to be an 8% street grade. Mayor Smith asked if the 10% grade is a special exemption within the city itself or is it the county standard for the South Hills? Mr. Larson stated it has to do with the special area in the South Hills that was set aside and there are special requirements associated with that area regarding street grades, drive ways, etc.

Bob Haseman 2447 Gold Rush Avenue, explained if the city commission allows annexation the only practical location for a building site, that would meet city standards, would be directly behind his property because it's the most level area on the property. However, because of the drainage ditch it would have be located south of the drainage ditch, directly behind and visible to all of the residences. Mr. Haseman stated the residents urge the commission to place the building envelope on the southern half of the property, which would be the hilltop.

Commissioner Oitzinger asked Mr. Haseman if he is equating an annexation by the city with houses ending up where he would prefer not the have them? Mr. Haseman concurred and stated an annexation would require the building envelope to be placed directly behind his property.

Mr. Burton asked if the city does not annex the property and remains in the county, what fire protection would cover the property? Mr. Larson explained the county recently annexed a large part of that area into their fire service area and stated the property is under county protection. Mr. Fossum explained although the property is under county fire protection, the property is in the fire belt of Helena and it is likely the Helena Fire Department would be called upon if a fire should occur. There are mutual aid agreements in place and if the fire department thought is was necessary to serve that residence, it's likely they would respond.

Motion

Commissioner Pouliot moved denial of a resolution on intention to annex into the City of Helena, Montana, a 9.3-acre parcel of alnd being a portion of Tract B of COS#575711/C in the NW¼ of Section 4 and NE¼ quarter of Section 5, T9N, R3W, P.M.M., located in Lewis and Clark County, Montana, proposed to be described as Tract B-1, into the City of Helena, Montana, subject to the conditions listed above. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Engineering Design Contract **CONSIDER ENGINEERING DESIGN CONTRACT AMENDMENT #3 - MRTP REHABILITATION ENGINEERING PROJECT #00-26**

Staff Report Public Works Director John Rundquist reported the 2010 plan for the Missouri River Water Treatment Plant required minor upgrades to keep the plant safe and operational until the facility can be retired and a new facility constructed. One issue relative to operator safety and efficiency had been the powder activated carbon (PAC) systems. The original scope of services negotiated with HDR considered a PAC design concept in a precast underground vault. As the design progressed this concept proved to have potential operator safety problems. The consultant has recommended a new separate above ground structure for the PAC equipment as an alternative design concept. With this alternative concept, the new PAC facilities will be compatible with future reconstruction of the plant and will not have to be rebuilt. This recommendation was discussed and accepted by the project committee. HDR was directed to provide a cost and draft contract amendment to develop the new design.

Mr. Rundquist recommended approval of the Contract Amendment Number 3 with HDR Engineering of Missoula.

Motion **Commissioner Netschert moved approval of the contract amendment with HDR, Inc. in the amount of \$19,060 increasing the total contract amount to \$308,460.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Public Hearings CUP Amendment PUBLIC HEARINGS
A. CONSIDER A RESOLUTION AMENDING PREVIOUSLY-APPROVED CONDITINAL USE PERMIT (CUP), RESOLUTION #10656 APPROVED ON OCTOBER 4, 1993, FOR A PLANNED UNIT SHOPPING CENTER LOCATED IN A B-2 (GENERAL COMMERCIAL) DISTRICT TO ALLOW INSTALLATION OF AN ADDITIONAL FREESTANDING SIGN ALONG MONTANA AVENUE FOR LOT 1A-2; TO ALLOW THE CONSTRUCTION OF A BUILDING EXCEEDING THE MAXIMUM ALLOWABLE 34-FOOT BUIDLING HEIGHT OF THE B-2 DISTRICT BY 7 FEET. LEGALLY DESCRIBED AS LOTS 1A-2, SHOPKO MINOR SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED EAST OF MONTANA AVENUE AND NORTH OF CUSTER AVENUE

Staff Report City Planner Belinda Waters reported the property is currently vacant and undeveloped. The original conditional use permit (CUP for this Planned Unit Shopping Center included condition (#8.A) that states: "Due to the highly visible location of the development along an arterial and entranceway into the City, and in order to minimize the appearance of visual clutter by a multitude of free-standing signs for each building, and in accordance with the definition of a planned unit shopping center, the entire shopping center complex (Lots 1-4) shall be limited to two freestanding signs; additional freestanding signs for the rest of the property may be requested as an amendment to the conditional use permit." Condition #8.B of the original resolution states: "Signs shall comply with the regulations in the B-2 Distirct in accordance with Chapter 23 of the Helena Zoning Ordinance.

On March 11, 2003, the Helena Zoning Commission recommended approval of an amendment to a previously-approved Conditional Use Permit (CUP) to exceed the 34-foot building height limit by 7 feet for Lot 1A-2, and to

deny a freestanding sign 30 feet tall with a sign area of 143 square feet on Lot 1A-2 of the Shopko Minor Subdivision in a B-2 (General Commercial) District.

On March 26, 2003, in consultation with City staff, the applicant submitted a revised sign plan that reduces the sign area from 143 square feet to

90 square feet and reduces the sign height from 30 feet to 28 feet. In the applicant's letter requesting a compromise from their original sign proposal, the applicant explains that "signage is a significant marketing element for large retailers and their success is dependent on the total marketing package which includes street signage as a significant portion of the marketing package.

Ms. Waters recommended approval of the resolution for an amendment to a previously-approved Conditional Use Permit, granted under Resolution #10656, to allow a freestanding sign on Lot 1A-2, and to exceed the 34 foot building height limit in a B-2 (General Commercial) District.

Discussion

Commissioner Oitzinger asked if the Albertson's sign is located appropriately to share their sign. Ms. Waters stated it wouldn't because the Albertson's entryway will not be lined up to the entryway of the new development.

Mayor Smith asked if the previous CUP addressed building heights or signage square feet? Ms. Waters stated it wasn't and explained the previous CUP stated the PUD could have two freestanding signs but that additional signs could be requested. Mayor Smith asked if there are two freestanding signs in the PUD right now? Ms. Waters explained Shopko is considered one and also considered a directional sign, according to the building division and the Albertson's sign is the second one.

Public Testimony

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

Jim Coons Collaborative Design Architects, Inc., stated he represents the applicant Steve Corning, developer of the property. Mr. Coons explained the developer, as well as the tenants in the building have deemed the request for signage, necessary for their survival. Mr. Coons stated the proposal for the building height comes from the Ross store prototype. It is the standard package that Ross tries to do everywhere and it's difficult for them to deviate from that because it's also part of their image package. Mr. Coons asked the commission for approval for the building height and the freestanding sign design.

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

Motion

Commissioner Netschert moved approval of an amendment to previously approved Conditional Use Permit, Resolution #10656, for a freestanding sign 28 feet tall with a sign area of 90 square feet on Lot 1A-2 in a B-2 (General Commercial) District. Commissioner Parriman seconded the motion.

Discussion

Commissioner Oitzinger asked if this proposal is regarding a CUP for an extra freestanding sign and a sign enlargement that is over what is allowed in the B-2 District? Ms. Waters stated the B-2 District does allow a sign up to 150 square feet.

Commissioner Parriman stated the board of adjustments have recently seen variance requests for freestanding signs and asked when the proposals appear before the Board of Adjustment and when to they appear before the city commission? Mr. Nielsen stated when the various planned unit shopping centers

were permitted there were some inconsistency. This one requires that signs come back as a CUP. The proposals that the Board of Adjustments are seeing are the ones that don't have the additional use permit language that this one does.

Vote Motion carried 4-1 with Commissioner Oitzinger voting no. **Res. #11853**

Motion **Commissioner Netschert moved approval to exceed the 34-foot building height limit by 7 feet for Lot 1A-2 of the Shopko Minor Subdivision in a B-2 (General Commercial) District; legally described as Lot 1A-2 and Lot 1A-3 Shopko Minor Subdivision T10N, R3W, Section 17, Helena, Montana; generally located north of Custer Avenue and east of Montana Avenue.** Commissioner Pouliot seconded the motion. Motion carried 3-2 with Mayor Smith and Commissioner Oitzinger voting no. **Res. #11854**

Carroll College B. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT CREATING 5 LOTS FROM 6.35 ACRES LOCATED IN A PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT; LEGALLY DESCRIBED AS ALL OF BLOCKS 2 AND 3, CAPITAL HILL ADDITION, HELENA, MONTANA; GENERALLY LOCATED NORTH OF LYNDALE AVENUE AND EAST OF BENTON AVENUE

Staff Report City Planner Ms. Waters reported the subject lots are all currently owned by Carroll College and contain single family residences, campus parking, and a new residence hall now under construction on Block 3. Access to all the lots will be from Park Avenue, Henry Street, and a newly dedicated Getchell Street. Lots 7, 8, 34, 35, and 36 are not part of the subdivision and are privately owned. All lots in the proposed subdivision are zoned PLI (Public Lands and Institutions) District.

Proposal:

1. Aggregated Lots 9 through 24, Lots 38 through 49 of Block 2, thereby creating Lot 9A (.239 acres), Lot 13A (1.008 acres) and Lot 24A (.245 acres);
2. Aggregate Lots 1 through 32, Lots 35 through 64 of Block 3, thereby creating Lot 1A (3.030 acres) and Lot 25A (1,200 acres), which includes Ralph Street and Park Avenue right-of-way; and
3. Establish a new 65-foot right-of-way for Getchell Street.

Ms. Waters recommended approval of the Minor Subdivision/Preliminary Plat creating 5 lots from 6.35 acres located in a PLI (Public Lands and Institutions) District 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:
None
2. The conditions of approval imposed to mitigate the adverse effects on Local Services are as follows:
Water and Sewer
 - a. The applicant must provide 20-foot wide easements to the City for utilities indicated on the preliminary plat in addition to the existing easements located in the alleys.
 - b. If the water line located on the 13-foot wide alley, running north to south in proposed Lot 25A, is abandoned in the spring of 2003, it must be abandoned at the mains per City Code.

Access

- a. The proposed newly dedicated Getchell Street must be designed and constructed to comply with Chapter 4 (Design Standards, Improvements) of the Helena Subdivision Regulations and other applicable street standards.
 - b. Ralph Street and a portion of Park Avenue must be excluded from the subdivision and remain as public right-of-way.
 - c. If the applicant's request is approved to vacate the three alleys indicated on the preliminary plat, the utility easements must be retained.
3. **The Natural Environment**
None
 4. **Effects on Wildlife and Wildlife Habitat**
None
 5. **Public Health and Safety**
 - a. Fire Hydrants
The fire protection system must be installed by the developer, including the location of the fire hydrants meeting fire flow requirements, must be submitted for review and approval by the City.
 - b. Storm water Drainage
All development with more than 5,000 square feet of impervious surface, must submit a storm drainage plan with the calculations prepared by an engineer.
 6. **The Survey Requirements Provided For In Part 4 of this Chapter**
The city needs the final plat to be tied to the City coordinate system on acceptable digital formats for archival and mapping purposes.
 7. **Helena Subdivision Regulations**
 - a. Financial Guarantee
All of the public improvements must be installed or the improvements must be financially guaranteed in accordance with Section 12-4-13 and 12-4-14 of the Helena Subdivision Regulations.
 8. **Easements**
 - a. The applicant must provide 20-foot wide easements to the City for utilities indicated on the preliminary plat in addition to the existing easements located in the alleys.
 - b. If the City vacates the three alleys, located in the proposed Lot 25A, Lot 24A, and Lot 13A, as indicated on the preliminary plat, the utility easements must be retained.
 10. **Legal and Physical Access**
A subdivision proposal must under go review for the following primary criteria according to Section 76-3-608 (3) (d)
Legal and physical access must be identified on the final plat.
 11. **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.

Public Testimony

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

Dennis Lay 2230 5th Avenue, stated he is a surveyor for Morrison-Maierle Inc. Mr. Lay stated there are no problems with the conditions of approval that have been set forth in the report with the exception of Ralph Street and Park Avenue.

Jim Hardwick 744 S. California, stated he is the Vice President of Student Life at Carroll College. Mr. Hardwick stated he wanted to question

whether it would be appropriate for the city to retain ownership of Ralph Street and Park Avenue and explained he understands the concerns over utility and emergency access. However, Carroll has agreed to do an easement, both on Park Avenue and Ralph Street. The concern for Carroll College is being able to maintain control and security for those areas located in the interior boundaries of the campus. Mr. Hardwick explained Ralph Street would be converted into a 20-foot wide sidewalk between the two resident halls and would be used as an access for the fire department. Park Avenue would be converted into a looped parking area. Mr. Hardwick explained there would be no use for a reversal of use issue and stated Carroll College would like the city to vacate Ralph Street and Park Avenue.

John Sullivan, 1400 Charlie Russell Drive, stated he is here to address some legal issues that relate to the differences between a closure of a street, which has been recommended by city staff, and vacation of a street, which Carroll College's has proposed. Mr. Sullivan explained this proposal is based on an institutional development that is significantly different than the type of business development that has proposed a problem for the city in the past regarding vacating a street. Carroll College is proposing a permanent extension of the college campus and when a college makes a decision like that it's literally forever. Mr. Sullivan explained the reasons stated in the staff report regarding why the city would close the street as opposed to vacate the street were legitimate reasons; however, if this street is closed it remains owned by the city and it is therefore subject to the city's control and as such it creates a potential obstacle to efficient campus planning. The uses of this area, outside the fire access 20-foot area and the utility area, could arguably be subject to a need on the part of the college to come back before the commission and ask for permission about what it may or may not do with these particular areas. Mr. Sullivan explained in this circumstance, the commission would be spending time and energy on possibly micro-managing what activities would be permitted on the college campus. The closure could also create liability problems for the city and it would create security problems for the college. With closure the city remains the owner and could very well be in accident litigation. The college would also be named in the same kind of litigation and there would be two parties there with much opportunity for finger pointing. A vacated street is a situation in which the college would have the sole responsibility for what goes on in that area, the college would become the owner of that area and have the control and therefore also the liability that goes with it. Mr. Sullivan explained the college has its own security force and stated with a closed street there would be a situation where the police department would have some jurisdiction over what goes on within that area and an overlapping responsibility would occur. Mr. Sullivan stated the college would prefer to have the responsibility for security within the interior boundaries of the college. Finally a closed street would be reopened to the public at some point in the future. Mr. Sullivan stated he realizes it may be unlikely in a situation like this that might ever occur but the fact that it might occur again creates an impediment to the college's ability to control and determine what happens within the campus area.

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

Discussion

Commissioner Netschert asked the city attorney if he would be comfortable with the proposal that the applicants have brought forth with regard to the vacation? City Attorney David Nielsen stated he is not comfortable with the

proposal and explained rather than going along with a vacation and losing title to that property there would be underlying easements for existing utilities but would not have easements for future utilities, if that ever needed to be addressed. Regarding the question of enforcement on access, if the city loses the ownership the city loses the jurisdiction and the enforcement abilities which in some cases exceed that of the college. The city would do a closure and enter into a use agreement and establish a contractual relationship on how the area would be managed.

Commissioner Oitzinger asked Mr. Nielsen to describe the future easements. Mr. Nielsen stated on a public right-of-way certain utility companies have the right to use those right-of-ways to install power lines and gas lines etc. The law states if a right-of-way is vacated there is a remainder easement for whatever utilities are located there so some flexibility is lost for future utility needs that might come about.

Mayor Smith asked if this was unforeseeable when the commission approved the campus expansion? Mr. Burton explained this issue wasn't unforeseeable and has been discussed before between city staff and Carroll staff. Mr. Burton stated the city doesn't like to vacate roads.

Commissioner Pouliot asked if the city would maintain ownership of Henry Street and Getchell Street? Mr. Nielsen concurred.

Motion

Commissioner Netschert moved approval of the preliminary plat for a minor subdivision creating five lots from Lots 9 through 24 and Lots 38 through 49, Block 2 and Lots 1 through 32 and Lots 35 through 64, but not including Ralph Street and Park Avenue right-of-way, Block 3, Capital Hill Additions, Helena, Montana, consisting of 6.35 acres, and to adopt the Findings of Fact and the conditions contained therein as they are stated without amendments. Commissioner Parriman seconded the motion.

Discussion

Commissioner Pouliot asked how a motion would read if he were to make a substitute motion that would give Carroll College ownership of Park and Ralph Street? Mayor Smith stated it would have to read in the terms of vacation of Ralph and Henry Streets.

Substitute Motion

Commissioner Pouliot moved to approve the preliminary plat with except of condition #2B therein. Motion died for a lack of a second.

Substitute Motion

Commissioner Oitzinger moved to table the consideration of the preliminary plat for a minor subdivision creating five lots from Lots 9 through 24 and Lots 38 through 49, Block 2 and Lots 1 through 32 and Lots 35 through 64, but not including Ralph Street and Park Avenue right-of-way, Block 3, Capital Hill Additions, Helena, Montana, consisting of 6.35 acres, and to adopt the Findings of Fact and the conditions contained therein to call of the city manager. Motion died for a lack of a second.

Discussion Mr. Nielsen stated the commission has to take an action on this proposal in 35 days, which is up. In order to table this proposal there would have to be consent from the applicant.

Amended Motion Commissioner Oitzinger moved to table the consideration of the preliminary plat for a minor subdivision creating five lots from Lots 9 through 24 and Lots 38 through 49, Block 2 and Lots 1 through 32 and Lots 35 through 64, but not including Ralph Street and Park Avenue right-of-way, Block 3, Capital Hill Additions, Helena, Montana, consisting of 6.35 acres, and to adopt the Findings of Fact and the conditions contained therein subject to the approval of the applicant.

Discussion Mr. Hardwick stated up until a month ago Carroll College's understanding was that these streets were going to be vacated. Mr. Hardwick stated he is concerned with delays in the building process and is hesitant to say that fire access is even an issue. Mr. Hardwick stated the college would in good faith grant permission for tabling but with great hesitancy because of deadlines. Mayor Smith stated there could be no reassurance regarding other city deadlines. Commissioner Pouliot suggested to Carroll College that because the city is asking them for permission to extend, they could give the commission a condition to extend for two weeks until the next city commission meeting. Mr. Sullivan concurred and stated they will grant reconsideration this issuing in the next city commission meeting in two weeks.

Amend Motion Commissioner Oitzinger amended her previous tabling motion to have the commission reconsider the tabled motion on April 21, 2003. Commissioner Pouliot seconded the motion.

Discussion Commissioner Netschert stated he continues to be in support of his previous motion, which supports the city attorney findings. Commissioner Parriman stated he is of the same opinion of Commissioner Netschert. He explained he understands the college's position; however, he still understands the city's position as well and everybody can accomplish what is wanted with a use agreement between the city and the college.

Vote on Tabling Motion Motion failed with Commissioner Parriman, Commissioner Netschert, and Mayor Smith voting no.

Vote/Commissioner Netschert's Original Motion Motion carried 3-2 with Mayor Smith, Commissioner Pouliot voting no.

Northwestern Energy Minor Subdivision C. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT TO CREATE 3 LOTS FROM 10.55 ACRES LOCATED IN A CLM (COMMERCIAL-LIGHT MANUFACTURING) DISTRICT; LEGALLY DESCRIBED AS LOTS 1,2, AND 3, NORTHWESTERN ENERGY MINOR SUBDIVISION, HELENA, MONTANA; GENERALLY LOCATED EAST OF NORTH LAST CHANCE GULCH AND SOUTH OF THE RAILROAD TRACKS

Staff Report

City Planner Belinda Waters reported Northwestern Energy all currently owns the subject lots with commercial structures located on all three lots. Access to both Lot 1 and Lot 2 will be from North Main as well as from an access easement noted on the preliminary plat. Lot 3 will get their access from Argyle Street. All lots in the proposed subdivision are zoned CLM (Commercial Light Manufacturing) District.

Ms. Waters recommended approval of the preliminary plat for a minor subdivision creating Lots 1,2, and 3 of the Northwestern Energy Minor Subdivision 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:**
None.
2. **The conditions of approval imposed to mitigate the adverse effects on Local Services are as follows:**
Water and Sewer
 - a. The applicant must provide a 20-foot wide easement for the existing water service line that provides water to Lot 2 that crosses Lot 1.
 - b. The applicant must provide a 20-foot wide easement for the existing sanitary sewer service line that provides sewer for Lot 1 that extends to the building located on Lot 2 and then travels north of the northern boundary property line of Lot 2.
3. **The Natural Environment**
None.
4. **Effects on Wildlife and Wildlife Habitat**
None.
5. **Public Health and Safety**
 - a. Fire Hydrants
The fire protection system must be installed by the developer, including the location of fire hydrants meeting fire flow requirements, must be submitted for review and approval by the City.
 - b. Storm water Drainage
All development with more than 5,000 square feet of impervious surface, must submit a storm drainage plan with the calculations prepared by an engineer.
6. **The Survey Requirements Provided for in Part 4 of this Chapter**
The City requires the final plat to be tied to the City coordinate system on acceptable digital formats for archival and mapping purposes.
7. **Helena Subdivision Regulations**
 - a. Financial Guarantee
All of the public improvements must be installed or the improvements must be financially guaranteed in accordance with Section 12-4-13 and 12-4-14 of the Helena Subdivision Regulations.
 - b. The applicant must receive approval from the City Commission to vacate Clewell Street.
8. **Easements**

The following easements must be provided and graphically shown on the final plat:

- a. A 20-foot wide easement for the existing water service line that provides water to Lot 2 that crosses Lot 1.
- b. A 20-foot wide easement for the existing sanitary sewer service line that provides sewer for Lot 1 that extends to the building located on Lot 2 and then travels north to the northern boundary property line of Lot 2.
- c. The 20-foot wide access easement shown on the preliminary plat that runs along northern edge of Lot 2 for access to the Ohs property needs to be granted and of record.

10. **Legal and Physical Access**

A subdivision proposal must undergo review for the following primary criteria according to Section 76-3-608(3)(d). Legal and physical access must be identified on the final plat.

11. **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.

Discussion

Commissioner Pouliot asked if they plan on selling Lot 1 and 3 and keeping Lot 2? Ms. Waters stated when this property was created it was a confusing tract of record. When the applicants entered into the subdivision to split up the land they decided to create a minor subdivision.

Public Testimony

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

Dennis Lay 2230 5th Avenue, stated he is a surveyor for Morrison-Maierle Inc. Mr. Lay explained the one concern in the conditions of approval regarding the vacation of Clue Street requested that the north/south alleyway running south from Clue Street be included in that condition. Mr. Lay stated at this time it's Northwestern Energy's intent to sell Lot 1 and the other will be kept and utilized.

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

Discussion

Commissioner Pouliot asked for clarification on Mr. Lays concerns regarding the conditions of approval. Ms. Waters explained the request has been submitted and will be coming in front of the commission under separate action.

Mayor Smith asked Mr. Nielsen to explain the separate request for the vacation. Mr. Nielsen explained there is a city ordinance that sets forth the procedure for vacation of right-of-way and also for closure. From time to time, people will come in to vacate an entire plat and then redesignate streets and alleys.

Motion

Commissioner Pouliot moved approval of the preliminary plat for a minor subdivision creating Lots 1, 2, and 3 of the Northwestern Energy Minor Subdivision, Helena, Montana, consisting of 10.55, and to adopt the Findings of Fact and the conditions outlined above. Commissioner seconded Parriman the motion. All voted aye, motion carried.

**Highland Park
Addition**

D. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A PREZONING DESIGNATION OF R-1 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; LEGALLY DESCRIBED AS ALL OF THE PROPERTY LOCATED IN BLOCKS 12 AND LOTS 13-A AND 13-B IN BLOCK 13 IN THE HIGHLAND PARK ADDITION, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED BETWEEN FLOWEREE AND CHESSMAN AVENUE, AND 2445 FLOWEREE AVENUE

Staff Report

City Planner Kathy Macefield reported the property is presently located in County Special Zoning District #9 which has zoning requirements similar to the proposed R-1 District. This proposal was initiated because one of the owners at the southeast corner of Granite and Woodward Streets has applied for annexation to the City. This zoning proposal would establish the first R-1 zoning district in the area. The zoning analysis contemplates prezoning a larger area instead of crating a new zoning district for a single property that is not adjacent to other property located in the R-1 District. The property owners in the larger area have consented to the prezoning and are included in the proposal; however, the prezoning area only includes one annexation petition (for Tony and Penny Herbert) at this time.

If adopted, the R-1 prezoning designation would have no effect of regulating land use prior to annexation. The extension of the City R-1 zoning to the two-block area shown on the attached vicinity map ensures continuity of zoning, and would reduce the future cost of applying for annexation by the owners of these properties if they request annexation in the future.

Ms. Macefield recommended approval of the proposed adoption of an Ordinance for prezoning to an R-1 (Single-Family Residential) District for five properties (approximately four acres) in Blocks 12 and 13 of the Highland Park Addition in Lewis and Clark County prior to annexation into the City of Helena, Montana on the west side of Helena.

Public Testimony

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

Tony Herbert, 2522 Woodward Avenue urged the commission to support the proposal.

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

Motion

Commissioner Oitzinger moved approval for an first passage of an ordinance for prezoning five properties in Block 12 and 13 of the Highland Park Addition in Lewis and Clark County prior to annexation into the City of Helena, Montana. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Ord. #2956**

**Ordinance amending
Section 11-28-3 (C)**

E. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 11-28-3 (C) TO ELIMINATE THE REQUIREMENTS FOR A CONDITIONAL USE PERMIT IF A COMMUNITY RESIDENTIAL FACILITY IS LOCATED WITHIN 1,000 FEET OF ANOTHER COMMUNITY RESIDENTIAL FACILITY OF A DAYCARE FACILITY

Staff Report

City Planner Kathy Macefield reported currently a CUP is required if a community residential facility (as defined by Section 11-28-2) is located within

1,000 feet of another community residential facility of a daycare facility; as the Zoning Ordinance is currently written, this CUP could be denied. This proposal would affect all zoning districts throughout the city of Helena.

Ms. Macefield recommended approval for the adoption of an Ordinance, amending Section 11-28-3 (c) of the Helena City Code.

Discussion Mayor Smith asked if the commission proceeds with this proposal, what tools might be remaining available to the city to prevent the institutionalization of

a neighborhood? Ms. Macefield explained it would have to be looked at in order to draft an ordinance that would address that concern but still not be in violation of federal or state law.

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 hearing was closed.

Discussion Commissioner Pouliot explained that he would be opposing this proposal on the grounds that he thinks the city ordinance is working just fine. The initial concern that whole neighborhoods don't become grouped together is still a valid concern and if the ordinance is changed that may begin to occur.

Motion Commissioner Oitzinger moved approval for first passage of an ordinance, amending Section 11-28-3 (c) of the Helena City Code. Commissioner Netschert seconded the motion. Motion carried, 4-1 with Commissioner Pouliot voting no. **Ord. #2957**

Public Communications PUBLIC COMMUNICATIONS
Jason Swant, 4118 W US HWY 12 stated he is speaking on behalf of the youth and youth council and read a letter prepared by the youth regarding the TIF monies and the Youth Center.

Meetings of Interest MEETINGS OF INTEREST
No meeting noted.

Adjournment There being no further business to come before the Commission, the meeting was adjourned at 9:30p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

