

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
June 2, 2003
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, June 2, 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.

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, May 19, 2003 were approved as submitted.

Consent Agenda CONSENT AGENDA:

- A. Claims
- B. Amended Plat of Lots 3-6, Block W of the Mauldin Addition Helena, Lewis and Clark County, Montana, for property with an address of 917 Gilbert Street, to meet the conditions of Resolution No. 11715 which vacated a portion of LeGrande Cannon Boulevard and provided for dedication of right-of-way; included in this action is a Resolution Amending Resolution No. 11715
- C. A resolution amending Resolution No. 11715 which vacated a portion of LeGrande Cannon Boulevard in the Maudlin Addition in the City of Helena, Montana, to correct the legal description of the vacated right-of-way contained in Resolution No. 11715, recorded on December 19, 2001, in BK-M25 PG-7658, as Document No. 3011499 **Res. #11968**
- D. Consider a Project Cooperation Agreement between the Department of the Army and the City of Helena for construction of the Missouri River Water Treatment Plant improvements
- E. Agreement for engineering services (Amendment No. 4) between the City of Helena and HDR Engineering, Inc. for the Water System Improvements project.
- F. Consider approval of the Section 5311 operating contract for the Helena Area Transit Service for Fiscal Year 2004.
- G. Use of contingency appropriations for East Valley Fire District Debt related to annexations.
- H. Utility bill insert - NAMI Montana
- I. Utility bill insert - Intermountain Children's Home
- J. Resolution of intention setting fees charged for disposal of garbage and refuse at the City of Helena Transfer Station for Fiscal Year 2004. **Res. #11969**
- K. Resolution of intention to establish charges for collection and disposal of residential garbage and refuse in the City of Helena for Fiscal Year 2004. **Res. #11970**
- L. Resolution of intention to establish a rate matrix for service charges for commercial collection and disposal of garbage and refuse in the City of Helena for Fiscal Year 2004. **Res. #11971**

City Manager Tim Burton recommended approval of the claims.

Discussion Mayor Smith asked that item I be pulled for further discussion.

Motion Commissioner Pouliot moved approval of items A through L, except for I on the consent agenda. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Discussion Mayor Smith noted the Intermountain Children's Home insert does not have a disclaimer at the bottom stating, "Although this request has no direct connection with the City of Helena, you may return your gift with the water bill and it will be forwarded to the Intermountain Children's Home". Mayor Smith asked if having the disclaimer is a policy? Mr. Burton stated it has worked both ways in the past; however, if the commission would like to require that be the case on this insert as well as any future inserts staff will make sure that occurs. Mayor Smith asked that the disclaimer be placed on this insert.

Motion Commissioner Pouliot moved approval of consent agenda item I. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Introduction and Confirmation INTRODUCTION AND CONFIRMATION
A. Police Officer Jay Hellbusch
B. Police Officer Gary Herbst

Chief of Police Troy McGee introduced Police Officer Jay Hellbusch and Police Officer Gary Herbst, gave a brief history on both officers and recommended approval of the confirmation of Jay Hellbusch and Gary Herbst as police officers of the Helena Police Department.

Motion Commissioner Oitzinger moved to approve confirmation of Jay Hellbusch and Gary Herbst as police officers with the Helena Police Department. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Gary Herbst thanked Chief McGee, his coworkers, and the commission and stated it's an honor and a privilege to be with the Helena Police Department and to serve the citizens of Helena.

Jay Hellbusch thanked the commission and stated he could not have made this career changed without the support of his family.

Chief McGee mentioned there was a deputy killed last week in Blaine County and wanted to ask the citizens of Helena to keep in their thoughts the family of this deputy.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger stated she has some subsets of data on the street maintenance fees effects of the proposal, which is being considered as a resolution of intention, and in the past there has been some sensitivity of having a persons name and address made part of a public record link. Commissioner Oitzinger asked if it would be preferable to have names redacted before the subsets would be put into the record? City Attorney David Nielsen stated they are all ready part of the public record; however, it is appropriate not to air it any more then necessary. Commissioner Oitzinger asked if she could redact those names as late as tomorrow? City Attorney David Nielsen concurred. Mayor Smith asked if those redactions would be done before the public hearing?

Commissioner Oitzinger stated she would like to have it attached to tonight's meeting minutes.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

A. Request for use of fire tower symbol

City Attorney David Nielsen reported the Helena Sports Hall of Fame Corporation, a charitable, not-for-profit corporation, has requested permission to use the Fire Tower symbol as part of its logo for the Helena Sports Hall of Fame. The logo would appear on letterhead stationery & brochures, and commemorative plaques. Mr. Nielsen recommended approval of use of the Fire Tower symbol

Public Comment

Joe Mazurek 516 Hayes Avenue stated he is an attorney with the law firm of Crowley Haughey Hanson Toole & Dietrich and he represents the Helena Sports Hall of Fame Corporation. Mr. Mazurek explained the HSHF is about to conduct its first group of inductees into the hall.

Casey Molloy 1700 Winne Avenue gave a brief history on the HSHF.

Mr. Mazurek explained the difference between the HSHF and the city of Helena seal and stated there will be a disclaimer placed on the HSHF flyer.

Motion

Commissioner Parriman moved to approve use of the Fire Tower symbol by the Helena Sports Hall of Fame Corporation. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Cellular Phone Tower

CONSIDER A LAND EASEMENT AGREEMENT FOR PLACEMENT OF A CELLULAR PHONE TOWER AND SUPPORT FACILITIES IN SIXTH WARD PARK, HELENA MONTANA

Staff Report

Director of Parks and Recreation Randy Lilje recommend tabling the item pending some further information and to allow the applicant to complete extra groundwork with the neighborhood. This item will be brought back to the commission at an administrative meeting and then a subsequent city commission meeting.

Discussion

Commissioner Netschert stated he does have some concerns with this issue and supports the tabling. He would like to let the applicant and staff know with regard to esthetic considerations that might be made for this project. He would like to see a proposal that included some rather than a regular unattractive cell tower.

Commissioner Pouliot stated he supports the tabling of this item so that the commission can discuss the issues at an administrative meeting.

Motion

Commissioner Pouliot moved to table the land easement agreement with Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless in Sixth Ward Park, Helena, Montana as noted in the agreement for a cellular phone tower and support facilities. Commissioner Netschert seconded the motion.

- Discussion Commissioner Oitzinger asked if the Parks Board has considered this matter? Mr. Lilje stated the Parks Board would discuss the issue on June 4, 2003.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Vote** All voted aye, motion carried.
- American Flag Illumination** CONSIDER SECOND PASSAGE OF ORDINANCE NO. 2964 AMENDING SECTION 10-2-4, AMERICAN FLAG ILLUMINATION, OF THE HELENA CITY CODE
- Staff Report Director of Community Development Michael Barros reported on May 19, 2003, the city commission held a public hearing and approved first passage of an amendment to City Ordinance 10-2-4. The amendment increases permitted brightness of American flag lighting from 25,000 to 275,000 mean lumens.
Mr. Barros recommended approval of the amended ordinance.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Motion** Commissioner Pouliot moved approval for second passage of Ord. 2964, amending section 10-2-4, American Flag Illumination, of the Helena City Code. Commissioner Netschert seconded the motion. All voted aye, motion carried. **Ord. #2964**
- Shopko Minor Subdivision** CONSIDER A FINAL PLAT FOR SHOPKO MINOR SUBDIVISION CREATING LOTS 1A-1, 1A-2, AND 1A-3 FROM 29.36 ACRES IN THE B-2 DISTRICT; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF MONTANA AVENUE
- Staff Report City Planner Belinda Waters reported currently Lot 1A-1 houses the Shopko building while Lots 1A-2 and Lot 1A-3 are vacant. All three lots are currently located in the Dakota Square PUD with B-2 underlying City zoning. At the present time, access to the lots is from either Custer or Montana Avenue. All three lots in the proposed subdivision will meet lot area and width requirements for this zoning district.
The city commission gave preliminary plat approval to create three lots on September 23, 2002. The conditions have been met through a development agreement, which has been approved and signed, and a financial guarantee has been provided.
Ms. Waters recommended approval of final plat for a minor subdivision creating three lots, ranging in size from .52 acres to 21.44 acres; generally located north of Custer Avenue and east of Montana Avenue.
- Motion** Commissioner Parriman moved approval of the final plat for the Shopko Minor Subdivision, creating Lots 1A-1, 1A-2, and 1A-3 from 29.36 acres in the B-2 District; generally located north of Custer Avenue and east of Montana Avenue. Commissioner Netschert seconded the motion.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Vote** All voted aye, motion carried.

**LeGrande Cannon
Annexation**

CONSIDER A RESOLUTION GRANTING A TWO-YEAR EXTENSION OF RESOLUTION NO. 11076, WHICH CONDITIONALLY APPROVED ANNEXATION OF A 20,000 SQUARE FOOT TRACT OF LAND IN THE SE1/4 NE1/4 OF SECTION 26, T10N, R4W, LEWIS AND CLARK COUNTY, INTO THE CITY OF HELENA, MONTANA, WITH A PROPERTY ADDRESS OF 1525 LEGRANDE CANNON BOULEVARD, AND AMENDING THE CONDITIONS OF RESOLUTION NO. 11502 WHICH AMENDED THE CONDITIONS OF RESOLUTION NO. 11349 WHICH AMENDED THE CONDITIONS OF RESOLUTION NO. 11076

Staff Report

City Planner Kathy Macefield reported in 1996 the city commission conditionally approved annexation of property generally located south of LeGrande Cannon Boulevard and west of Forest Estates Subdivision for Denise and Gary Ingman. The city commission extended that conditional approval in 1999 and again on May 8, 2000 approved a three-year extension of that annexation approval. The most recent approval was subject to 6 conditions, which included water and sewer; covenants; access and utility easements; waiver of protest of SID's; financial guarantee; and additional conditions.

The applicant has requested the two-year extension to give time to allow the upgrade of the Forrest Estates water pump station and to complete the house designs. Some of these conditions have been completed which would eliminate the necessity of restating them in the new resolution extension. Some of the original circumstances that had required certain conditions have also changed, so some of the conditions would be revised with the current proposal.

Initially water was to be obtained by connecting the Forrest Estates Subdivision pump station. However, this pump station must be upgraded before any additional connections can be made; this upgrade is tentatively scheduled for FY'05. The first condition has been amended to state this property cannot connect to the pump station prior to that upgrade, and to allow the applicant the option of extending the water main to LeGrande Cannon Boulevard instead. The applicant has submitted the necessary documentation to the City Engineer who was able to determine extending the sewer across the property frontage in LeGrande Cannon Boulevard is not a viable engineering option. The remaining original conditions are still applicable to the proposal. A signed SID waiver for the installation of the water and street paving was submitted in 1999.

The westward extension of Charlie Russell Drive was dedicated with the final plat of the Swaney minor subdivision. There fore no access easement is needed for this proposal. Additionally, a certificate of survey (COS #589909/B) with the required utility easements was filed with the Clerk and Recorder on December 17, 1998.

The \$300 per acre sewer annexation fee would still be applicable because the Ordinance repealing this requirement from Section 1-5-9 of the Helena City Code states: "This ordinance does not apply to properties for which the city commission has approved a resolution of intention to establish conditions for annexation, but which have not been annexed prior to the effective date this ordinance."

Ms. Macefield recommended approval for a two-year extension of Resolution No. 11502 which conditionally approved annexation of a 20,000 square foot tract of land in the SE1/4 NE1/4 of Section 26, T10N, R4W, Lewis and Clark County into the City of Helena, Montana, with a property address of 1525 LeGrande Cannon Boulevard and shown on COS#589909/B.

Discussion

Mayor Smith asked when the initial resolution was first granted? Ms. Macefield stated 1996 and in 1999 an extension was given of the conditional approval and again in the year 2000.

Public Comment

Gary Ingman 1110 8th Avenue stated he just received the documentation for the changes to the conditions of annexation and they are in agreement with everything; however; there are some issues over the proposed changes in language to condition 1B. Mr. Ingman stated during the first request of annexation into the city they proposed a service connection to the Forrest Estates pump system, which ends at the end of Charlie Russell Street, the city approved the proposal. Since that time there have been problems with that water main reaching the property due to bedrock. Mr. Ingman explained he was being held to those conditions of annexation and he just asks that the city honor its commitment to him.

Discussion

Mayor Smith asked what the problems are with the pump station? Public Works Director John Rundquist stated the Forrest Estates pump station is obligated to provide water to 3 more lots and to take on an additional service would put the system at risk. Mr. Rundquist stated another alternative would be to extend the main to the newly annexed area along LeGrande Cannon. That being said the city has proposed in the Capital Improvements Plan FY05 to replace the Forrest Estates pump station. Mayor Smith asked if this was unforeseen when it was originally approved? Mr. Rundquist stated he is unsure of the status of the build out of that subdivision.

Commissioner Parriman mentioned Mr. Ingman stated his adjacent neighbor was allowed to make a service connection due to the bedrock and asked if that was correct? Mr. Rundquist stated the only information staff could find was the original construction of that water main, which occurred in 1987, and the reasons for stopping that construction could have been budget constraints due to the heavy digging. Mr. Rundquist stated an existing city lot was able to connect to that water main; however; he's not sure what the basis of that decision was. Commissioner Parriman asked if Mr. Ingman were to extend that water main in Charlie Russell Drive would the 3 newly annexed lots to the west be able to hook up to that system as well before the pump station is upgraded? Mr. Rundquist concurred. Commissioner Parriman asked if Mr. Ingman would go to the expense of installing the water main in would he be inline for a rebate from the owners of those three newly annexed lots? Mr. Rundquist concurred.

Commissioner Oitzinger asked if the Swaney Subdivision wasn't going to be developed. City Manager Tim Burton stated the city did subdivide those lots and the city has to assume that they are developable until such time that the city's engaged for some other use. Commissioner Oitzinger stated she would hate to have somebody peg their expectations on a rebate that may never happen.

Mayor Smith asked; due to that language being stricken; will Charlie Russell Drive not be extended with curbs, gutters and sidewalks? Ms. Macefield stated that has to do with a waiver of protest, which has already been submitted.

Mayor Smith asked if Mr. Ingman's largest concern is the language, which was amended in 1B? Mr. Ingman stated the original conditions for annexation directed him to connect a service line to the Charlie Russell main and there were discussions if in the future that main needed to be extended to serve properties to the west, he signed a waiver of protest and he would contribute

financially, presumably to the extension of that main, at the time it was needed. Mr. Ingman stated they are told they could not make a connection to the water

main, until the Forrest Estates Subdivision is upgraded and that leaves them in limbo. He stated he would like to have a water main extended to his property.

Commissioner Parriman stated during the annexation of the Swaney Subdivision there was a lot of concern from the surrounding neighbors regarding the pump station capabilities and although Mr. Ingman would benefit from the connection, he feels there would be a great deal of outcry from the Forrest Park Subdivision. Commissioner Parriman asked if there is a possibility of installing a pressure booster until the upgrade is complete on the pump station? Mr. Rundquist stated if pressure wasn't an issue, coming off of LeGrande Cannon, a pressure booster is a possibility; however, coming off of the Forrest Estates pump service line would exasperate the problem with the existing system because the pressure would be pulled down even further for the other residences.

Mayor Smith stated the options available are tabling the proposal and allowing more time to develop a solution or the commission could grant approval of the two-year extension and make it a priority to accomplish the upgrade on the pump station.

Commissioner Pouliot stated the third option would be to grant an extension and amend item 1B and replace it with the previous language. Commissioner Pouliot stated he would like to see this tabled because he believes the city has made a commitment to the applicant and it is unfair for the city at this time to change a condition so that he might not be able to build. He would like to see the city and the applicant come to some agreement or to see the previous language reinstated.

Commissioner Netschert asked Mr. Ingman if he would be put in a worse position if the commission tabled this proposal? Mr. Ingman stated he is in agreement with the tabling and asked if drilling a well is option. Mayor Smith stated if the property is in the city limits then the only wells that are permitted by policy are those for irrigation purposes. Mayor Smith asked if the property has been annexed into the city? Mr. Ingman stated the property was approved for annexation with attached conditions and most of those conditions were associated with the building permit.

City Manager Tim Burton explained one of the reasons for conditions of approval is that a standard is set along with a time frame and that agreement works both ways. However, that doesn't mean that it can always be accomplished and there are challenges on the city side as well as the challenges Mr. Ingman is facing. Mr. Burton stated he is willing to discuss the options with Mr. Ingman but he's not sure the engineering aspect can be changed.

Commissioner Oitzinger stated it seems to her from the statement of Mr. Rundquist that one more connection would tip the balance and she is concerned about the other occupants of the neighborhood.

Commissioner Parriman stated he would support a tabling motion. He explained the commission has to be careful not to sacrifice the good of the many for the good of one individual.

Motion

Commissioner Netschert moved to table the resolution granting a two-year extension of Resolution No. 11076 which conditionally approved annexation of a 20,000 square foot tract of land in the SE 1/4 NE 1/4 of section 26, T10N, R4W, Lewis and Clark County, into the City of Helena.

Montana, with a property address of 1525 LeGrande Cannon Boulevard, and amending the conditions of Resolution No. 11502 which amended the conditions of Resolution No. 11349 which amended the conditions of Resolution No. 11076, for property shown on Exhibit "A" (COS#589909/B)

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

Levy and Assess

CONSIDER RESOLUTIONS OF INTENTION TO LEVY AND ASSESS THE FOLLOWING ANNUAL CHARGES:

- A. TREE PLANTING AND MAINTENANCE DISTRICT
 - B. DUST CONTROL DISTRICTS #4, #5, #6, #7 AND #8
 - C. STREET MAINTENANCE DISTRICTS #1 AND #2
 - D. S.I.D.'S
 - E. LIGHTING DISTRICTS
 - F. SIDEWALK IMPROVEMENT PROGRAM
 - G. STORM WATER DRAINAGE DISTRICT
- AND SET A PUBLIC HEARING DATE

Staff Report

Budget Manager Robert Ricker reported the resolutions of intention each set a June 23, 2003 public hearing on the budget related items and adopting these resolution of intention does not commit the city commission to any proposed taxes, assessments or budget approvals. The proposed street assessments that provides for an assessment method change and an assessment rate increase. The BID Budget was not discussed during the budget work sessions; however; Paul Reichert will be available for questions on June 23, 2003. The proposed tax levy increase of 1.22 %, for the inflation, which is allowed by state law.

Tree Planting and Maintenance District: The proposal is to keep the assessment rate the same at \$10 per GEO code or parcel.

Dust Control Districts: Due to no requests for applications, no districts will be assessed this year.

Street Maintenance Districts: Both the rates, and assessment methodology are proposed to be changed.

Special Improvement Districts (SIDs): The SID assessments are for outstanding debt. New SIDs or advanced payments of assessments will automatically create related budget adjustments.

Lighting Districts: Lighting districts assessments are based upon the anticipated cost of electric utility bills and administrative services.

Sidewalk Improvement Program: The Sidewalk Improvement Program resolution of intention lists all parties who voluntarily participated in the 2001 program but have not elected to pay their assessment in full. It also shows the total amount of annual assessments that will be placed on the tax bills for the 2000 and prior programs.

Stormwater Drainage District: The Stormwater Drainage Utility District resolution of intention anticipates no increase in the rate or change in the method of assessment.

Public Comment

Mayor Smith asked for public comment, non-was received.

Discussion

Commissioner Oitzinger asked if it would be in order to move all of the resolutions of intention except for the street maintenance? Mayor Smith concurred.

Motion Commissioner Oitzinger moved approval of the resolutions of intention to levy and assess the following annual charges: a. Tree Planting and Maintenance District; b. Dust Control Districts #4, #5, #6, #7 and #8; d. S.I.D.'s; e. Lighting Districts; f. Sidewalk Improvement Program; g. Storm Water Drainage District and set a public hearing date for June 23, 2003. Commissioner Pouliot seconded the motion.

Discussion Commissioner Oitzinger stated the timing of the proposed changes to the street maintenance districts #1 and #2 is unfortunate and ill advised.

Mayor Smith stated he thought the commission had reached a comfortable position and will be supporting item C.

Vote All voted aye, motion carried. **Res. #11973, 11974, 11976, 11977, 11978, 11979**

Motion Commissioner Parriman moved to approve resolution of intention to establish the levy assessment the annual charges for item C. Street Maintenance Districts #1 and #2 and set a public hearing date of June 23, 2003. Commissioner Netschert seconded the motion.

Discussion Commissioner Parriman stated this item has been discussed in great length and great detail. He believes Commissioner Netschert came up with a solution that works and he understands the reasons behind the increase.

Commissioner Oitzinger stated the fee shift that is proposed provides relief to a great number of people who may not need it, while it provides increased fees for a great number for people who do not need increased fees. She stated she understands the need; however; she would like to explore the need further to take into account Helena's growth, demands and additional revenues expected before the commission makes this kind of change that will harm the most vulnerable among us.

Public Comment Mayor Smith asked for public comment, non-was received.

Vote Motion carried 4-1 with Commissioner Oitzinger voting no. **Res. #11975**

HPC Budget CONSIDER A RESOLUTION OF INTENTION TO APPROVE THE PROPOSED BUDGET OF THE HELENA PARKING COMMISSION FOR FISCAL YEAR 2004 AND SET A PUBLIC HEARING DATE

Staff Report Budget Manager Robert Ricker reported state law (7-14-4614) requires that the city commission approve the budget of any appointed board.

Mr. Ricker recommended approval of the resolution of intention to approve the Helena Parking Commission's proposed budget.

Motion Commissioner Netschert moved approval of the resolution of intention to approve the proposed budget of the Helena Parking Commission for Fiscal Year 2004 and that a public hearing be set for Monday, June 23, 2003. Commissioner Pouliot seconded the motion.

Public Comment Mayor Smith asked for public comment, non-was received.

Vote All voted aye, motion carried. **Res. #11980**

- BID Budget** CONSIDER A RESOLUTION OF INTENTION TO APPROVE THE PROPOSED BUDGET OF THE BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2004 AND SET A PUBLIC HEARING DATE
- Staff Report Budget Manager Robert Ricker reported the assessment methodology is unchanged and outlined in the attached resolution of intention. The BID's proposal is that, after receiving public comment, the city commission approve the work plan, and assessment methodology as submitted.
Mr. Ricker recommended approval of the resolution of intention to approve the BID's proposed budget.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Motion** **Commissioner Parriman moved approval of the resolution of intention to levy an assessment for the City of Helena Business Improvement District (BID) and to approve the proposed work plan and budget of the Business Improvement District (BID) and to approve the proposed work plan and budget of the Business Improvement District for fiscal year 2004 and set a public hearing for Monday, June 23, 2003.**
Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #11981**
- SSD Budget** CONSIDER A RESOLUTION OF INTENTION TO APPROVE THE PROPOSED BUDGET OF THE SUPPORT SERVICES DIVISION FOR FISCAL YEAR 2004 AND SET A PUBLIC HEARING DATE ON JUNE 23, 2003
- Staff Report Budget Manager Robert Ricker reported Support Services Division has presented its proposed 2004 budget to the city commission for consideration.
Mr. Ricker recommended approval of the resolution of intention to approve the Support Services Division proposed budget.
- Public Comment Mayor Smith asked for public comment, non-was received.
- Motion** **Commissioner Pouliot moved approval of the resolution of intention to approve the proposed budget of the Support Services Division for fiscal year 2004 and set a public hearing date for June 23, 2003.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11982**
- 9-1-1 Fund Budget** CONSIDER A RESOLUTION OF INTENTION TO APPROVE THE PROPOSED 9-1-1 FUND BUDGET FOR FISCAL YEAR 2004 AND SET A PUBLIC HEARING DATE
- Staff Report Budget Manager Robert Ricker reported the 9-1-1 funds fall under the direction of the Support Services Division Board, which has presented the proposed budget to the city commission for consideration.
Mr. Ricker recommended approval of the resolution of intention, which allows public input on the 9-1-1 fund budget.
- Public Comment Mayor Smith asked for public comment, non-was received.

Discussion Commissioner Parriman asked if the city was over budget regarding St. Peter's Hospital Training Reimbursement? Mr. Ricker stated he believes it has to do with the amount of training requested through St. Peter's Hospital. Chief McGee explained it's set at \$8,000 because that is the amount set in the ambulance contract. Each year it's set at \$8,000 and the city can spend up to that amount. City Manager Tim Burton stated when the city contracts with St. Peter's through the city/county ambulance districts that was created, it is an important and quality service that St. Peter's provides the city's first responders.

Motion Commissioner Pouliot moved approval of the resolution of intention to approve the proposed budget of the 9-1-1 funds for fiscal year 2004 and set a public hearing for June 23, 2003. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11983**

Property Tax Revenue Budget CONSIDER A RESOLUTION OF INTENTION TO BUDGET ADDITIONAL PROPERTY TAX REVENUE FOR FISCAL YEAR 2004 AND SET A PUBLIC HEARING DATE

Staff Report Budget Manager Robert Ricker reported the total General Fund property taxes of \$4,509,196 do not even cover the 5,797,677 costs of Police and Fire services. Property tax revenue growth has not kept up with inflation, and has caused the city to limit services that the community has asked for and needs. Mr. Ricker recommended approval of a resolution of intention, which set the public hearing to budget additional Property Tax revenue, for 6PM, June 23, 2003.

Public Comment Mayor Smith asked for public comment, non-was received.

Motion Commissioner Oitzinger moved approval of resolution of intention to budget additional tax levy revenue and set a public hearing for June 23, 2003. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #11984**

Public Hearings PUBLIC HEARINGS
Bill Roberts Golf Course Fees A. CONSIDER A RESOLUTION TO ESTABLISH FEES TO BE CHARGED AT BILL ROBERTS GOLF COURSE FOR THE 2003 SEASON

Staff Report Director of Parks and Recreation Randy Lilje reported with the reorganization of the golf course division, fees that were previously part of the golf professional's contract have now become part of the golf course's revenue sources. While not increasing from the level that was charged by the golf professional, these fees do need to be officially approved by the city commission. The fees that are being added to the city's fee schedule show as \$0 because staff did not have this revenue source. Now they are being added but not increased from what the golf professional charged last season. Mr. Lilje recommended adding to the golf course fee schedule: power cart rental fees, driving range fees, pull cart rental fees, golf club rental fees, and handicap establishment fees.

Public Hearing 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.

Motion **Commissioner Netschert moved approval of the resolution establishing fees to be charged for the Bill Roberts Municipal Golf Course for the 2003 season.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11985**

Centennial Park CONSIDER A REQUEST FOR THE EXPENDITURE OF UP TO \$25,000 TO PERFORM ROUGH GRADING OF FILL MATERIAL AT CENTENNIAL PARK

Staff Report Director of Park and Recreation Randy Lilje reported at its May meeting OSBAC voted to recommend to the city commission that up to \$25,000 of Open Space Bond Funds be expended for the purpose of rough grading the fill material that has been placed on the old landfill, Phase 2. The purpose of the rough grading is to create a relatively level surface to begin development of softball fields as per the Centennial Park Master Plan.

Mr. Lilje recommended expending up to \$25,000 for the equipment work necessary to perform the above-described work.

Public Hearing 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.

Motion **Commissioner Netschert moved approval of the expenditure of up to \$25,000 of Open Space Bond Funds to perform rough grading work at Centennial Park.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Conditional Use Permit CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN ENGINEERING AND TECHNICAL CONSULTING BUSINESS, PROVIDING ENGINEERING AND ENVIRONMENTAL CONSULTING SERVICES TO A RANGE OF INDUSTRIAL, MUNICIPAL, AND PRIVATE CLIENTS, IN A M-I (MANUFACTURING AND INDUSTRIAL) DISTRICT

Staff Report City Planner Kathy Macefield reported on May 13, 2003 the Helena Zoning Commission unanimously recommended approval (3:0 vote) for a resolution for Conditional Use Permit (CUP) to allow an engineering and technical consulting business (SIC #891), providing engineering and environmental consulting services to a range of industrial, municipal, and private clients, in a M-I (Manufacturing and Industrial) District for property located at 3020 Bozeman Avenue.

The Zoning Commission also unanimously made the following recommendations for the city commission's consideration:

- 1) Hydrometrics should be given up to 5 years to install the sidewalk because they are small business; and
- 2) The City should review its 8 percent rate for the sidewalk replacement program so it is more of an incentive to participate instead of a deterrent with such a high interest rate.

Ms. Macefield recommended approval of a resolution for a CUP to allow an engineering and technical consulting business.

Discussion

Commissioner Netschert asked where the sidewalk would be installed? Ms. Macefield stated it would be located in the frontage along Bozeman and A Street. Ms. Macefield explained the zoning commission also recommended that city staff look at the interest rate for the sidewalk replacement program and also allow the applicant up to five years to install the sidewalk. Commissioner Netschert asked if it would be a curbside or a boulevard sidewalk? Ms. Macefield stated it would be a boulevard sidewalk. Commissioner Netschert asked if the boulevard sidewalk would encroach upon their current parking? Ms. Macefield stated it would alter their parking. Commissioner Netschert stated seeing how there are no adjacent properties that have sidewalks, the applicant's sidewalk would go nowhere. Ms. Macefield explained it is city policy to install sidewalks and if the commission would like to grant a variance from that it is the commission's option.

Mayor Smith stated a business like this should fit into the existing zoning of manufacturing and industrial and asked what the ideal zoning designation for a business like that be? Ms. Macefield stated a CLM (Commercial Light Manufacturing) zoning would work best.

Public Hearing

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

Mike Wignot, 72 Saddle Mountain Drive stated he is the president of Hydrometrics. Mr. Wignot explained they are in agreement with the cities conditional use permit except for the requirement of installing sidewalks. He explained the lack of sidewalks in the neighborhood and the cost of installing a sidewalk would be about \$10,000. He stated they agreed with the zoning commissions recommendation and as a compromise they agreed to install the sidewalks with the option of installing them over a five-year period to give them the opportunity to save funds.

Merle Guy, 10 Hilltop Drive, Montana City – spoke in support of the proposal.

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

Discussion

Commissioner Netschert mentioned allowing the applicant to install sidewalks at the time the adjacent businesses install sidewalks.

Mayor Smith stated five years, in this case, is reasonable but he's hesitant to change the conditions much beyond that.

Commissioner Oitzinger stated she is in support of the five-year extension.

Motion

Commissioner Netschert moved approval of a resolution for a Conditional Use Permit (CUP) to allow an engineering and technical consulting business (SIC #891), providing engineering and environmental consulting services to a range of industrial, municipal, and private clients, in a M-I (Manufacturing and Industrial) District. Legally described as Lot 1B, Block 4, Helena Industrial Site Addition, Helena, Montana; generally located north of Bozeman Avenue and west of A Street with a property address of 3020 Bozeman Avenue and included would be Hydrometric shall install sidewalks at such time when at least one or more of the adjacent properties are installing sidewalks which would be subject to any proper financial guarantees that might accompany that. Commissioner Parriman seconded the motion.

Discussion Commissioner Parriman asked if the condition is not met within the 5-year period would there be a penalty? City Attorney David Nielsen stated the answer depends upon how it's placed. If it's a conditional use permit and that's one of the conditions that a sidewalk has to be installed then that could defeat the conditional use permit. In this particular case, it is relying on the city code that says the time of granting a CUP, then the location of sidewalks must be determined. Commissioner Parriman asked what the penalty would be? Mr. Nielsen stated the city could install the sidewalk and bill that against the property.

Mayor Smith mentioned Commissioner Netschert's proposed motion left it opened ended and stated he would feel more comfortable if Commissioner Netschert addressed an adjacent property. City Manager Tim Burton stated he thinks Commissioner Netschert is trying to accomplish is a neighborhood approach to sidewalks at some point.

Vote Motion failed 2-3 with Commissioner Pouliot, Commissioner Oitzinger and Mayor Smith voting no. **Res. #11972**

Motion **Commissioner Oitzinger moved approval of a resolution for conditional use permit to allow an engineering technical consulting business (SIC#891) providing engineering and environmental consulting services to a range of industrial, municipal, and private clients, in a M-I (Manufacturing and Industrial) District. Legally described as Lot 1B, Block 4, Helena Industrial Site Addition, Helena, Montana; generally located north of Bozeman Avenue and west of A Street with a property address of 3020 Bozeman Avenue range of with a condition for installation of sidewalks to be allowed over a five year period.** Commissioner Pouliot seconded the motion.

Discussion Commissioner Netschert asked if and when the applicant does install the sidewalks, they would be able to apply for a variance from that requirement? City Attorney David Nielsen concurred.

Vote All voted aye, motion carried. **Res. #11986**

Clewell Street CONSIDER A RESOLUTION VACATING A PORTION OF CLEWELL STREET AND THE NORTH-SOUTH ALLEY IN BLOCK 3, BOTH IN THE DELACY ADDITION, CITY OF HELENA, MONTANA

Staff Report Public Works Director John Rundquist reported on January 24, 2003, the City received a petition to vacate the right of way of Clewell Street and intersecting alleyway as shown in the attached plat. This vacation is also associated with a minor subdivision of NW Energy property that was approved by the commission on March 24, 2003. The right of ways petitioned for vacation is not currently used for access of utilities and are now surrounded by Lot #3 of the subdivision. No private utilities, public utilities or emergency services departments have objected to the vacation through the standard notification process.

Mr. Rundquist recommended vacation of right-of-way as requested by the petition.

Public Hearing 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.

Motion Commissioner Netschert moved approval of a resolution to vacate a portion of Clewell Street, and the North-South alley in Block 3, both in the Delacy Addition. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11986**

City's Water Service Expansion CONSIDER EXPANSION OF THE CITY'S WATER SERVICE BOUNDARY TO INCLUDE THE BROADWATER ESTATES SUBDIVISION IN LEWIS & CLARK COUNTY WEST OF HELENA CITY LIMITS

Staff Report Public Works Director John Rundquist reported on May 5, 2003, the commission considered the petition of Frank Gruber for annexation of the Broadwater Estates Subdivision. The purpose of the annexation petition by the applicant was to obtain water service from the City and the applicant indicated that he was not in favor of being annexed as condition of water service. Staff recommended denial of the annexation request due to the distance from existing city limits and the cost of providing full urban services to the subdivision.

Mr. Gruber has requested that he be allowed to connect to an existing substandard 6-inch service that provides city water to the Broadwater Athletic Club. He has requested to extend water mains from this service to the new lots and to construct a reservoir and pump station to serve lots higher in elevation than can be served with existing pressure.

Mr. Gruber has contended that a 1976 agreement between the city and Norm Rodgers conveys a right to connect to the city's water transmission main. The City Attorney has provided an opinion that no such right was conveyed.

Mr. Gruber has not agreed to conditions required by ordinance and staff for potential expansion of service boundaries including: waiver of right to protest annexation as a condition of service; construction of water mains to City of Helena standards and; construction of other infrastructure to be compatible with the future extension of city services.

Discussion Mayor Smith asked if the applicant did agree to waiver of protest and annexation and connections that met all city standards; would the staff report be for approval of the proposal. Mr. Rundquist concurred.

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

Frank Gruber 4930 Hwy 12 West - gave a brief history on the proposal and provided documentation for public record, which included various letters of correspondence and agreements. Mr. Gruber stated while the city may now wish to develop a policy after the fact of not allowing use of city water outside city limits; agreements with the city cannot simply be breached to fit this policy. He has a contract signed in November 3, 1978 by City Attorney David Nielsen acknowledging, as late as February 10, 2000, that he has water rights but since then his position has changed. Mr. Gruber asked the commission not to table this issue again.

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

Discussion

Commissioner Parriman asked what the intent of the original contract was? Mr. Gruber stated included in the agreement between Mr. Rodgers and he is the unrestricted use of a 4" tap and he explained he would only be using 60 hook-ups. Commissioner Parriman asked if it would be Mr. Gruber's intent to install a 60-lot subdivision and no more than that? Mr. Gruber stated in order to get the 60 lots, because of height, there would have to be a reservoir built to serve the upper portion of the subdivision.

City Manager Tim Burton stated this issue has been around for 25 or 30 years and originally when he got engaged with Mr. Gruber, city staff and the engineers, he assumed there was some commitment, although clearly undefined, that the city needed to comply with whatever agreement was made in the past. Mr. Burton stated after reading the city attorney's conclusion all he could do is recommend denial. Mr. Burton stated he does not agree with Mr. Rundquist's answer regarding staff approval if Mr. Gruber accepted all the conditions and the reason being is that every time the city of Helena has made an exception and allowed substandard infrastructure to go in, there have been problems with failing tanks and pipes that are unable to hook up to the city's sewer and water lines.

City Attorney David Nielsen stated in looking at the engineering files that the city has, this is a small percent of the total documents that corresponded with Mr. Gruber. There were proposals but there was no agreement made. It becomes significant that a proposal is not an agreement. The city did install a 6" tap, when originally it was a 4" tap, and did provide service to the two properties. Mr. Nielsen stated the city has more than met the initial commitment that it made back in 1976 to Mr. Rodgers. He explained the water right is owned by the city of Helena and for the sale and resale of municipal purposes and there is no water right of record that goes with this property for this 4" tap.

Mayor Smith reiterated Mr. Nielsen's memo comments regarding Mr. Gruber's lack of the water rights and asked if that is a reasonable consideration for the commission. City Attorney David Nielsen concurred.

Commissioner Netschert stated he doesn't have the background to adequately digest the 25 years of information and explained this is not the proper body to decide this issue.

Commissioner Oitzinger stated she agreed they need additional information and asked Mr. Nielsen if the 4" water transition main was not recorded or perfected? Mr. Nielsen concurred. Commissioner Oitzinger asked if at that time was the 4" tap right included? Mr. Nielsen stated it was not. Commissioner Oitzinger stated in the agreement with Mr. Rodgers the city was the grantee because they were receiving an easement for that 24" main and that easement was not timely recorded but it was later recorded and since the 4" didn't come along with that recording one has to wonder if it was intended. Mr. Nielsen stated the Rodgers agreement was never recorded, then over time there were some transfers of property between the state and the city and back to Mr. Gruber and he did not own where the transmission line was at one time, the city owned that. Then Mr. Gruber gave an easement back to the city for the transmission line and that is where there is no mention of the 4" tap.

Commissioner Netschert asked if there is more documentation that would be pertinent to this issue that has not been submitted? Mr. Nielsen concurred.

Commissioner Pouliot stated he agrees with Commissioner Netschert that this has degenerated into a legal argument.

Commissioner Parriman asked John Rundquist if there is enough water and water pressure to allow Mr. Gruber to use those systems? Mr. Rundquist concurred. Commissioner Parriman stated he wouldn't have a problem extending that water service area if Mr. Gruber were agreeable to the city conditions.

Mayor Smith stated he agrees with Commissioner Pouliot and Commissioner Netschert that this situation should be left to a court of law. He also finds himself agreeing with Commissioner Parriman that if this subdivision was willing to come into the city and not be a subdivision existing under two sets of rules but the hybrid nature does bother him.

Commissioner Netschert stated he wouldn't have any problems extending the services if the subdivision would come into the city.

Motion

Commissioner Oitzinger moved to deny expansion of the City's Water Service Area Boundary to include the Broadwater Estates Subdivision. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Consolidated
Urban Renewal
Projects**

CONSIDER SECOND PASSAGE OF ORDINANCE 2963 DESIGNATING AND APPROVING CERTAIN PROJECTS AS URBAN RENEWAL PROJECTS IN THE CONSOLIDATED CENTRAL URBAN RENEWAL AREA, AND AMENDING ORDINANCE NO. 2559

Staff Report

Administrative Services Director Tim Magee reported:

- July 1, 2005 the Tax Increment Financing District will sunset
- Approximately \$2.25 million is now available for TIF projects
- An additional \$3.75m is expected to become available for TIF Projects through July 1, 2005
- The TIF Advisory Board and the city commission have reviewed proposed projects, obtained public input, and identified Priority Projects
- On May 19, 2003, Ordinance 2963 was passed, and the public hearing was set for June 2, 2003

Mr. Magee recommended proceeding with proper authorization of TIF Projects on a timely basis.

Discussion

City Manager Tim Burton stated the issue before commission is \$1,850,000 for improvements to the mall, recommended by the consensus group. Tonight is not the public hearing on whether or not the commission is going to open up the walking mall, there will be a presentation in two weeks regarding some preliminary work that was done and talk procedurally on how the commission wants to engage the question of whether or not to open up trickle traffic on the walking mall.

Public Hearing

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

Mike Casey, 4624 Hwy 12 West, stated he was a member of the consensus group that met and fundamentally the vibrancy of the downtown is the issue. The commission's support tonight would set that funding in motion and to authorize city staff to facilitate that dialog.

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

- Motion** **Commissioner Pouliot moved approval for second passage of Ordinance 2963, Designating and Approving Certain Projects Urban Renewal Projects in the Consolidated Central Helena Urban Renewal Area, and Amending Ordinance No. 2559.** Commissioner Netschert seconded the motion. All voted aye, motion carried.
- Urban Renewal Projects** CONSIDER A RESOLUTION AUTHORIZING URBAN RENEWAL PROJECTS TO PROCEED IN ACCORDANCE WITH ORDINANCE 2963
- Staff Report** Administrative Services Director Tim Magee reported Ordinance 2963 is "An Ordinance Designating and Approving Certain Projects as Urban Renewal Projects in the Consolidated Central Helena Urban Renewal Area, and Amending Ordinance No. 2559". Section 3(A) provides that "the City Commission shall first pass a resolution authorizing the projects to proceed and be initiated and completed...".
Mr. Magee recommended proceeding with proper authorization of TIF Projects on a timely basis.
- Discussion** City Manager Tim Burton stated this resolution also sets some benchmarks the commission is going to require prior to the release of any real dollars. There has been discussion in the past on ownership of the Discovery Center and discussions are underway for that project with the Superintendent of Schools. Mr. Burton explained all the contracts would be back in front of the commission for final concurrence and approval.
- Public Hearing** 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.
- Motion** **Commissioner Netschert moved approval of a resolution authorizing Urban Renewal Projects to proceed in accordance with Ordinance 2963.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #11987**
- Public Communications** PUBLIC COMMUNICATIONS
Jerry Hutch reviewed the Helena Citizens Council's recommendation for trickle traffic in the walking mall.
- Meetings of Interest** MEETINGS OF INTEREST
Mayor Smith noted the next Administrative Meeting will be on June 18, 2003 from 4 to 6 p.m. and the next City Commission Meeting will be June 23, 2003 at 6 p.m.
- Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 9:40p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

