

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

Time & Place A regular City Commission meeting was held on Monday, October 6, 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 September 8 and September 22, 2003 were approved as submitted.

Proclamation PROCLAMATION:
A. Fire Prevention Week

Mayor Smith read the Fire Prevention Week proclamation and presented it to Fire Marshal Craig Trapp. Fire Marshal Trapp reviewed fire statistics and explained how the Helena Fire Department is participating and educating the public on fire safety.

Mayor Smith asked if the public is welcome to call the fire department for fire safety information? Mr. Trapp concurred.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Second passage of Ordinance 2978 – amending Section 11-23-2 and 11-23-9 of the Helena Zoning Ordinance for non-commercial signs.

City Manager Tim Burton recommended approval of the claims.

Public Comment Mayor Smith asked for public comment, none was received.

Motion Commissioner Pouliot moved approval of items A and B on the consent agenda. Commissioner Netschert seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot commented on the Frontier Fun Town and thanked the thousands of people who participated.

Commissioner Netschert echoed the comments of Commissioner Pouliot and thanked the community for their work on the playground. Commissioner Netschert mentioned looking into lighting or surveillance methods to keep the park safe.

Mayor Smith asked City Manager Tim Burton if the vandalism situation has been taken care of? Mr. Burton explained the Parks Department repaired the damage and mentioned the vandals have been apprehended.

Mayor Smith commented on the meetings at the Montana League of Cities and Towns Convention and explained that the city of Helena is on firm legal ground in its operations.

Public Comment Mayor Smith asked for public comment, none was received.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen commented on the Montana League of Cities and Towns and stated he gained some valuable information on ways the city can continue to improve.

Public Comment Mayor Smith asked for public comment, none was received.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Tim Burton commented on the Montana League of Cities and Towns and mentioned there was a statewide discussion on what the potential may be to pull the health insurance programs together. Mr. Burton explained Helena would join in with all the other cities and contribute to hiring a consultant to look at the feasibility of whether or not this is a good option to take. This expenditure, spread throughout Montana, won't be real significant but it also is an expenditure that the city of Helena didn't consider when the commission adopted the budget for this year. Mr. Burton will keep the commission informed on this issue.

Public Comment Mayor Smith asked for public comment, none was received.

Golf Fees

CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH GOLF FEES FOR THE 2004 SEASON

Staff Report

Director of Parks and Recreation Randy Lilje reported the Golf Advisory Board is recommending the attached fee schedule at Bill Roberts Golf Course for the 2004 season.

The fee schedule being recommended is set to provide funding for on-going maintenance and operation at the golf course and to pay existing debt. It is also set to allow for the replacement of at least 20 golf carts and the relining of the water hazard hole #2. Staff will continue to look for ways to accomplish the renovation of the practice range.

Once again the season tickets for golf will remain the same as the 2003 season. However, green fees, punch cards, cart rentals, and driving range prices will all see modest increases.

Mr. Lilje recommended approval of the resolution of intention and set a public hearing date for October 20, 2003.

Public Comment Mayor Smith asked for public comment, none was received.

Discussion

Mayor Smith asked why there was no change regarding the season pass fee? Mr. Lilje explained keeping the prices affordable would continue to promote golf, while maintaining a quality course.

Motion

Commissioner Netschert moved approval of a resolution of intention to establish fees to be charged for the Bill Roberts Golf Course for the 2004 season and set a public hearing date for October 20, 2003.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Res. #12049

Encroachment CONSIDER AN ENCROACHMENT AGREEMENT FOR THE CONSTRUCTION OF A NEW PARKING LOT ON THE SOUTH SIDE OF LEWIS AND CLARK LIBRARY

Staff Report Director of Parks and Recreation Randy Lilje reported at its June 4, 2003 meeting the Parks Board heard a presentation by Dave Stahly of Stahly Engineering regarding the Lewis and Clark Library's proposal to expand the parking lot. One of the aspects of the parking lot proposal was to add a parking lot on the south side of the library that would encroach on Pioneer Park by approximately 25 feet.

After discussion the Parks Board voted to recommend the city commission that it approve the parking lot encroachment into Pioneer Park and that the Library continue to work with Parks staff on an approved landscape plan around the parking lot.

Mr. Lilje recommended approval of the encroachment agreement.

Public Comment Mayor Smith asked for public comment.

Linda Saul 128 S. Benton explained how precious "green space" is in Helena and instead of encroaching onto the parkland; the Library staff should utilize the parking lot available across the street. Ms. Saul encouraged the commission to deny the proposal.

Discussion Mayor Smith asked Mr. Lilje to explain what an encroachment agreement entails. Mr. Lilje stated typically an encroachment agreement allows adjacent property owners to encroach on public property, while still allowing the city to service that property. Mayor Smith asked if a public hearing would be held on this proposal? Mr. Lilje stated a public hearing is not needed; however, if the commission wishes a public hearing date may be set.

Commissioner Parriman asked if there would be screening installed? Mr. Lilje concurred. Commissioner Parriman asked if this would affect the numerous functions held in that area? Mr. Lilje explained there would be some affect; however, it could be compensated.

Mr. Burton explained staff respects the value of the park and believes this proposal has been worked through over the last couple months.

Commissioner Netschert stated the parking available to the west of the library could be utilized and if a problem continues to exist then this option could be looked at more closely.

Mayor Smith stated he would not be supporting the proposal.

Commissioner Parriman asked if the public had a chance to weigh in on this proposal? Mr. Burton concurred. County Public Works Director Erik Griffin explained there were two public hearings held on this matter.

Motion **Commissioner Oitzinger moved to table the encroachment agreement as drafted by the City Attorney according to city requirements.**
Motion died for a lack of second.

Motion **Commissioner Pouliot moved to approve the encroachment agreement as drafted by the City Attorney according to city requirements.**
Commissioner Parriman seconded the motion. Motion carried 3:2 with Commissioner Oitzinger and Mayor Smith voting no.

**Public Hearings
Zone Change**

PUBLIC HEARINGS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF IN REFERENCE TO THOSE MULTIPLE RESIDENTIAL PROPERTIES GENERALLY LOCATED EAST OF MONROE AVENUE, SOUTH OF LAWRENCE STREET AND NORTH OF CLARKE STREET, FOR A ZONE CHANGE FROM PLI TO A R-2 DISTRICT
- B. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF IN REFERENCE TO VACANT UNDEVELOPED PROPERTY GENERALLY LOCATED EAST OF MONROE AVENUE, SOUTH OF CLARKE STREET, FOR A ZONE CHANGE FROM PLI TO A R-2 DISTRICT

Staff Report

City Planner Kathy Macefield reported the properties included in the proposed zone change currently contain 5 single-family residences and one vacant undeveloped 21,750 square foot (slightly less than ½ acre) tract of land. The existing single-family residences are not permitted in the PLI District and are considered to be non-conforming uses. As non-conforming uses, the homes could not be expanded or added onto. With the proposed R-2 zoning, the existing lots would not comply with the minimum lot size of the R-2 District, and the existing structures may currently exceed the maximum lot coverage allowed in that zone. As a result, a variance would be required from the Board of Adjustment prior to adding onto the existing structure.

On September 9, 2003 the Helena Zoning Commission recommended approval (3:2 vote) for an ordinance for a zone change from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residential) District for multiple properties. Written comments have been received from 9 property owners in that area. Since that time, two of the property owners at 526 Clark Street have withdrawn their protest for the zone change.

Ms. Macefield recommended approval of the zone changes.

Discussion

Mayor Smith asked if PLI (Public Lands and Institutions) District covers all of Mount Helena? Ms. Macefield concurred.

Commissioner Pouliot asked who owns the vacant property and asked what their position is on this proposal? Ms. Macefield stated it belongs to Michael Roach and Shauna Thomas and explained they supported the R-2 zoning.

Commissioner Netschert stated there are five single-family properties located in the PLI District and asked if those residences would have been able to expand or build on the property with the current zoning? Ms. Macefield stated no.

Public Testimony

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

John Wilson, 405 Monroe Avenue, stated the neighborhood has been concerned regarding this proposal and believes that the open space lot should be left PLI because it is contiguous on both sides with a city park.

Bob Ream, 521 Clarke Street, explained he has no opposition with changing the area north of Clark Street to R-2 zoning; however he would like to

have the open space lot remain open space. Mr. Ream stated the property in question is bounded on both sides by city park and stated city trails make their way through the lot. Mr. Ream stated the lower half of the lot could be used if zoned R-2.

Tim Fox, 33 S. Last Chance Gulch, explained he is representing Michael Roach and Shauna Thomas, owners of the undeveloped property. Mr. Fox explained there was no knowledge of the incorrect zoning and some of the area residents were surprised to find out that Mr. Roach and Ms. Thomas's property was zoned PLI. Mr. Fox stated the owners would be looking for a buyer that is interested in building a single-family residence and also buyers interested in donating a portion of the property to open space.

Mary Alice Chester, 520 Clarke Street, stated this matter should be tabled in order for the commission to truly evaluate the property and it's usage.

Marshall Mayer, 524 Clarke Street, explained the city commission should act on the behalf of the land because it is special property. Mr. Mayer explained there is a good reason why this land has not been developed and stated until the commission adopts hillside standards for development, this proposal should be denied.

Paul Azevedo, 40 Harrison Avenue, encouraged the commission to give more time to the property owners to attempt to work out a settlement. He would prefer that the city of Helena pursue acquiring the land above the trail that was mentioned as open space for use of Mount Helena but he would support rezoning the land below the trail as an R-2 for single-family development.

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

Motion

Commissioner Pouliot moved approval for the adoption of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those multiple properties, for a zone change from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residence) District. Legally described as Tract A shown on COS #575176 (528 Clarke Street); Lovely tract shown on COS#265518 (526 Clarke Street); a tract described in M Book 8 page 4395 (524 Clarke Street); and property described in M Book 24 Page 1129 (520 Clarke Street); property described in M Book 9 Page 1743 (531 W. Lawrence). Generally located east of Monroe Avenue, south of Lawrence Street and north of Clarke Street. Commissioner Oitzinger seconded the motion.

Discussion

Commissioner Oitzinger disclosed that she was invited by Bob Ream and Ann Brodski to take a look at the area and stated there was no information provided to her that has not been provided to the commission.

Mayor Smith stated this property has been characterized by some of testifiers as a case of mistaken zoning and asked Ms. Macefield if she concurred with that characterization? Ms. Macefield explained normally there would not be residences in the PLI zone and she cannot say how that property ended up being zoned PLI.

Commissioner Parriman asked if this PLI zoning happened at some point during the 70's? Ms. Macefield explained the earliest map she was able to look at was 1971 and the zoning language, used today, was adopted in 1969. It's a possibility that the zoning boundary was placed on the property at that time. Commissioner Parriman asked if there have been any modifications to those properties located in the PLI District? Ms. Macefield stated that is unknown.

Vote

All voted aye, motion carried. **Ord. #2979**

Discussion

Commissioner Pouliot asked if there is open space bond money available that could be used to purchase the lot? Mr. Burton explained the money is getting very tight, relative to that portion of the \$5 million that was set aside for acquiring open space land.

Mayor Smith asked if OSBAC ever looked at that lot for inclusion into the city park or into the open space network? Commissioner Oitzinger stated in her experience she doesn't think the lot was ever looked at. Mayor Smith asked if there were efforts within the neighborhood to raise or obtain the money to make an offer to the current owners? Ms. Macefield explained there has been inquiries from the neighborhood and the owners regarding the process of buying the lot and donating the upper half to the city. Mr. Fox explained while there may be possible discussions regarding the options for the sale of the property; he doesn't believe it would be a proper mechanism for this commission to table the issue and postpone it in hopes of finding a solution that satisfies everybody. He explained his clients hope for the zoning change approval for their piece of property, just as they have for the adjacent owners.

Mayor Smith asked Mr. Fox if he has been involved in discussions relating to the proposed division of the property. Mr. Fox explained there have been discussions centered on using the footpath as a line of demarcation and for the commissions information they have had engineers/builders look at the property and it is build able according to city standards.

Mr. Wilson stated if the commission passed this proposal it would be unlikely that the neighborhood would be able to come to a deal that would potentially allow for building down on Clarke Street and preserving the upper section.

Commissioner Oitzinger asked for use of PLI trails does any kind of prescriptive easement attach on public use if a path is well worn or is that a situation that is only pertinent to private property? Mr. Nielsen stated it is possible for a private prescriptive easement to arise from foot traffic, it's rare but possible.

Commissioner Parriman asked about relocating the trail onto city parklands? Mr. Burton explained trail relocation has been done in the past. Commissioner Parriman asked if the city has hillside standards for development? Public Works Director John Rundquist explained he is most familiar with the standards regarding the public right of way and streets. The city recently adopted a 10% maximum grade street standard. Ms. Macefield explained the open space residential zone, outside the city limits, have development standards for steeper slopes but for individual lots, not going through a review process, there are no development standards in place. Commissioner Parriman asked if the Building Department has requirements in relation to street grades? Ms. Macefield was unsure regarding the Building Department requirements but in the zoning ordinance there is nothing specified.

Mr. Burton explained the distinction regarding slopes was most recently changed by the commission regarding the subdivision regulations. When the lot is already in the city and is distinguished and the use is appropriate then there is no grade standard that applies.

Commissioner Netschert asked if the 10% standard street grade would be applied to this lot if it were developed? Ms. Macefield explained it is an existing lot on a platted street. Commissioner Netschert stated the commission's

job is to decide whether or not this lot should be zoned PLI or R-2 and he feels what we do for one we do for all. Commissioner Netschert stated he feels he should be respecting the private landowner in this case because they're being decent about it but at the same time it is still private land.

Commissioner Oitzinger asked Mr. Ream to comment on the R-3 zoning mentioned in an email from Tim Baker. Mr. Ream stated in the original proposal the request was made for either R-2 or R-3 zoning for the vacant lot area. Commissioner Oitzinger stated she feels the safest thing the commission could do to ensure a good outcome would be to leave it zoned as PLI.

Commissioner Pouliot asked how much time would be good to work through the problems? Mr. Wilson explained he has no idea how long it could take.

Motion

Commissioner Netschert moved approval for the adoption of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those multiple properties, for a zone change from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residence) District. Legally described as a 145-foot by 150-foot tract of land in the SW ¼ and the SE ¼ of Section 25, T10N, R4W, Helena, Montana and described in Book 174 Page 233. Generally located east of Monroe Avenue, south of Clarke Street. Commissioner Parriman seconded the motion. Motion failed 3:2 with Commissioner Oitzinger, Commissioner Pouliot and Mayor Smith voting no

Motion

Commissioner Pouliot moved to table for four weeks the adoption of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those multiple properties, for a zone change from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residence) District. Legally described as a 145-foot by 150-foot tract of land in the SW ¼ and the SE ¼ of Section 25, T10N, R4W, Helena, Montana and described in Book 174 Page 233. Generally located east of Monroe Avenue, south of Clarke Street. Motion died for a lack of a second.

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Further commission action taken.

Lighting Dist. No. 208 CONSIDER A RESOLUTION LEVYING AN ASSESSMENT UPON ALL PROPERTY IN SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 208 - PRIMROSE LANE - TO DEFRAY THE COST OF MAINTAINING IMPROVEMENTS IN SAID DISTRICT FOR FISCAL YEAR 2004

Staff Report

Tim Magee reported the city commission must levy and assess an annual charge for Special Improvement Lighting District No. 208 in order for the charge to be placed on the upcoming tax bills. Lighting district assessments are based upon the anticipated cost of electric utility bills and administrative services.

The city commission approved the resolution of intention to levy an assessment upon all property in Special Improvement Lighting District No. 208 on September 22, 2003.

Mr. Magee recommended approval of a resolution to assess Special Lighting District No. 208.

Public Testimony

Mayor Smith declared the public portion of the hearing open and called

for any persons wishing to address the commission.

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

Motion Commissioner Parriman moved approval of a resolution levying an assessment upon all property in Special Improvement District No. 208 to defray the cost of maintaining improvements in said district for fiscal year 2004. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12050**

Lighting Dist. No. 209 CONSIDER A RESOLUTION LEVYING AN ASSESSMENT UPON ALL PROPERTY IN SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 209 - DICK ANDERSON BUSINESS PARK - TO DEFRAY THE COST OF MAINTAINING IMPROVEMENTS IN SAID DISTRICT FOR FISCAL YEAR 2004

Staff Report Tim Magee reported the city commission must levy and assess an annual charge for Special Improvement Lighting District No. 209 in order for the charge to be placed on the upcoming tax bills. Lighting district assessments are based upon the anticipated cost of electric utility bills and administrative services.

The city commission approved the resolution of intention to levy an assessment upon all property in Special Improvement Lighting District No. 209 on September 22, 2003.

Mr. Magee recommended approval for a resolution to assess Special Lighting District No. 209.

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

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

Motion Commissioner Parriman moved approval of a resolution levying an assessment upon all property in Special Improvement Lighting District No. 209 to defray the cost of maintaining improvements in said district for fiscal year 2004. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12051**

***Discussion** Mayor Smith asked if an affirmative motion is needed from the commission regarding 11B on the agenda? Mr. Nielsen explained the precedence set by commission is that they always dealt with an issue either motion to approve, table or deny.

Motion Commissioner Pouliot moved to table the adoption of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those multiple properties, for a zone change from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residence) District. Legally described as a 145-foot by 150-foot tract of land in the SW ¼ and the SE ¼ of Section 25, T10N, R4W, Helena, Montana and described in Book 174 Page 233. Generally located east of Monroe Avenue, south of Clarke Street, to the call of the city manager.

Discussion Commissioner Parriman stated the city is dealing with private land and explained it's ridiculous that adjacent landowners can dictate to a neighbor what

they can do with their land.

Commissioner Netschert seconded the motion.

Vote

Motion carried 3:2 with Commissioner Oitzinger and Mayor Smith voting no.

**Public
Communications**

PUBLIC COMMUNICATIONS

Jim McFarland, 38 Spring Hollow Court, stated he is a volunteer member of the board with Live at the Civic. He explained the commission raised the concession fees from 10% to 15%. Mr. McFarland stated this creates a problem with this year's performers because contracts have been previously signed at 10% commission rate to be paid. He asked that the commission consider giving them temporary relief from the raised fee.

Mr. Burton asked the commission to allow him to research this issue and work with Mr. McFarland in order to find something that will work.

**Meetings of
Interest**

MEETINGS OF INTEREST

Mayor Smith stated the next Administrative Meeting is on October 15, 2003 and the next regular city commission meeting is on October 20, 2003. Commissioner Netschert mentioned the Firefighter Appreciation Dinner being held at the fairgrounds on October 7, 2003.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:15p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

