

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 17, 2003
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, November 17, 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. Representing the Helena Citizens Council was Jerry Hutch and representing the Youth Advisory Council was Anne Pitchette. Others present were Boy Scouts Pack 205.

Pledge of Allegiance Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance lead by Boy Scouts Pack 205.

Minutes The minutes of the regular city commission meeting of November 3, 2003 were approved as submitted.

Appointments APPOINTMENTS:
A. Business Improvement/Helena Parking Commission
B. Golf Course Advisory Board

Mayor Smith explained the appointment to the Golf Course Advisory Board would be tabled because the time in which to apply has not been closed. Mayor Smith recommended Peter Sullivan for the Business Improvement/Helena Parking Commission.

Motion Commissioner Pouliot moved approval of the appointment of Peter Sullivan to the Business Improvement District/Helena Parking Commission. Commissioner Oitzinger seconded the motion.

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

Vote All voted aye, motion carried.

Introduction INTRODUCTION AND CONFIRMATION OF:
A. Police Officer William Harrington

Police Chief Troy McGee introduced Police Officer William Harrington, gave a brief history and recommended approval of the confirmation.

Motion Commissioner Oitzinger moved the confirmation of Police Officer William Harrington. Commissioner Netschert seconded the motion. All voted aye, motion carried.

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

Discussion Officer Harrington thanked the commission, the police department and everybody who stood behind him.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Acceptance of Highway Traffic Safety Division grant funds for overtime traffic enforcement and equipment purchases
- C. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Res. #12056**
- D. Water Quality Protection District Interlocal Agreement
- E. Second passage of Ordinance No. 2980 – Amending Ordinance No. 2691 that approved the Helena Visitor and Commerce Center as an Urban renewal project and amending Ordinance No. 2559
- F. Utility Bill Insert – Lewis & Clark Library

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 item A through F on the consent agenda. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

- A. Front Load Refuse Truck –Solid Waste Division

Staff Report

Fleet Manager Ed Robinson reported bids were received for one (1) new-front load refuse truck to replace unit #210 and trade in of the existing unit. The low bid was from Western Star Trucks. Western Star bid a 2004 Sterling Condor with a Wittke Super Duty compaction body at a price of \$110,663.00 after trade and including extended warranties. The FY04 Budget appropriation for this unit is \$159,650.00.

Mr. Robinson recommended the purchase of the new unit at the bid price of \$110,663.00 for the replacement unit #210. Unit #210 will be submitted for trade to Western Star.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved approval to accept the bid from Western Star Trucks for One (1) Front-load Refuse Truck for the bid price of \$110,663.00. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

- B. Administrative and Fleet Services Vehicles

Staff Report

Fleet Manager Ed Robinson reported the State of Montana requested and opened bids for Administrative and Service Vehicles in October 2003. The city of Helena included a number of vehicles identified for fleet replacement from all division in the bid process.

Parks: Bennett Motors/GMC Sierra 1500	\$12,530.00
Traffic: Bison Ford/Ford F250 SD 2WD	\$14,461.00
Building: Grimes Motors/GMC Canyon	\$15,983.00
Water Treatment: Karl Tyler Chevrolet/ Chevrolet Silverado	\$16,380.00

Water Treatment: Bennett Motors/	\$17,373.00
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GMC Sierra 1500
Waste Water Treatment: Bison Ford/ \$17,885.00
Ford F250 SD 4WD

Mr. Robinson recommended the purchase of these new vehicles at the bid prices as presented on the bid summary. All vehicles replaced will be declared surplus and sold at the State auction in September 2004.

Public Comment

Mayor Smith asked for public comment, none was received.

Discussion

Mayor Smith asked if these are replacement vehicles? Mr. Robinson concurred.

Commissioner Parriman asked regarding the utility box that is included in the budget price for Bison Ford? Mr. Robinson explained the budget does include the utility box; however, this bid is for the cab and chase. The utility box will be purchased separately.

Motion

Commissioner Oitzinger moved approval to award the low bids to those dealers as outlined above. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Parriman asked Police Chief Troy McGee to come forward and inform the commission on the police officer named Officer of the year. Chief McGee explained the officer was Sergeant Steve Haggan. He was awarded for his efforts in preventing violence against women

Commissioner Parriman asked regarding a letter he received from Meg Louis regarding the Reeders Village Homeowners Association playground plans. City Manager Tim Burton explained early last week he learned of an effort by neighbors up around Adam Street and Reeders Village that are raising money to install playground equipment on city parkland. To date they have raised about \$4,000. He was very appreciated and impressed by the work these neighbors have done to date. Commissioner Parriman stated it is nice to see neighbors working together on a project, such as this, and asked if the city would be matching funds for the playground equipment. Mr. Burton explained there is no program in place other than a direct appropriation through the budget process from the commission.

Commissioner Netschert congratulated Commissioner Pouliot and Commissioner Elect Paul Cartwright. He mentioned he received a letter asking him to be honored on the Wall of Tolerance in Alabama.

Commissioner Oitzinger congratulated Commissioner Netschert on the Wall of Tolerance designation.

Mayor Smith congratulated Commissioner Pouliot and offered his condolences to Commissioner Netschert. He mentioned he would be out of town from November 19 through November 30 and asked Commissioner Netschert to take his place as Mayor Pro Tem Netschert. Commissioner Netschert accepted.

Commissioner Pouliot thanked Commissioner Netschert for the four years he has given to the city of Helena and this commission.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY
No report was given.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

A. Intent to use contingency appropriations to meet the city's obligation for 50% of the Fire Department arbitrator costs

City Manager Tim Burton invited Human Resource Director Salty Payne forward to discuss the arbitrator costs. Mr. Payne reported final and binding arbitration is required by State statute in lieu of the right to strike over Fire Union contracts. The Arbitrator's total fee was \$6,793.50. The city's half of that fee is \$3,396.75. It is city policy to pay such fees out of the Human Resources Department as a normal cost of doing business. The FY 2004 Human Resources budget needs to be amended in order to cover this cost.

Mr. Payne recommended approval to authorize \$3,397 from the General Fund Contingency.

Motion

Commissioner Oitzinger moved approval to accept the City Manager's report on the intent to use contingency appropriations to meet the City's obligation for 50% of the Fire Arbitrator costs. Commissioner Pouliot seconded the motion.

Public Comment

Mayor Smith asked for public comment, none was received.

Vote

All voted aye, motion carried.

Mr. Burton invited Director of Public Works John Rundquist forward to introduce the latest member of the management team. Mr. Rundquist explained Water Wastewater Treatment Superintendent Lenord Willet retired in September and stated the new Superintendent would be Don Clark. Mr. Clark thanked the city for the opportunity.

**HPC/Working
Agreement**

CONSIDER A WORKING AGREEMENT OUTLINING THE POWERS, DUTIES AND RESPONSIBILITIES OF THE HELENA PARKING COMMISSION

Staff Report

City Attorney David Nielsen reported the HPC's authority traditionally has been derived from three different legal documents: the Montana Code Annotated, the Helena City Code and the Helena Parking Commission Board Resolutions. These documents, created at different times and under different circumstances over the past 25 years, have resulted in conflicts of authority, duties and responsibilities between the city and the HPC. Consequently, the HPC has been limited in its ability to efficiently and effectively manage the downtown on and off-street parking system.

The proposed agreement reconciles some of the different legal documents and provides the HPC with a framework to better manage the downtown parking system. The agreement empowers the HPC's Board of Trustees with the ability to establish parking fees and adopt parking regulations after a public hearing, while allowing the Helena City Commission the ability to determine the penalties and fines for parking violations city-wide. Additionally, the agreement provides a template for re-writing the parking regulations in the Helena City Code by defining the roles and responsibilities of the HPC inside and outside its jurisdictional boundary.

Public Comment

Mayor Smith asked for public comment, none was received.

- Motion** **Commissioner Pouliot moved approval of the proposed agreement between the city of Helena and the Helena Parking Commission.**
Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
- Walking Mall Project** CONSIDER A CONTRACT FOR PHASE I DESIGN OF THE LAST CHANCE WALKING MALL PROJECT
- Staff Report** Community Facilities Director Gery Carpenter reported the Last Chance Walking Mall Project has been funded at a level of \$1,850,000.00 without clear definition as to the projects that will be studied, designed, approved and completed. Contract with HKM Engineering, Inc. at the cost of \$75,000.00 to provide through a five-task process a Downtown Vision Plan that will include: 1) Four public workshops, 2) Documented statement of Goals and Objectives, 3) Transportation Summary Report, 4) Market Analysis Report, 5) Base Map and Case Studies on Urban Form, 6) Color coded mapping with color and black/white renderings depicting concepts in an understandable visual scale, 7) A presentation of case study comparison, 8) Artistic renderings of refined concepts and 9) Mapping illustrating the alternatives. The consensus committee has reviewed both the Scope of Services provided in the proposal and the cost and have approved both.
Mr. Carpenter recommended approval of the contract for Phase One design of the Last Chance Walking Mall Project with HKM Engineering, Inc.
- Discussion** Commissioner Oitzinger asked for discussion on Phase Two and Phase Three and whether or not those Phases will come in at the same cost of Phase One. Mr. Carpenter stated this initial cost will be more then the other two phases put together.
- Public Comment** Mayor Smith asked for public comment, none was received.
- Motion** **Commissioner Pouliot moved approval of the contract for Phase One design of the Last Chance Walking Mall Project with HKM Engineering, Inc and authorize the city manager to sign the contract.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
- Great Northern PUD** CONSIDER A RESOLUTION AMENDING RESOLUTION #11224 TO ELIMINATE THE CUP CONDITION FOR A COVENANT PROVISION FOR A BUILDING SETBACK ALONG THE SOUTHERN BOUNDARY OF BLOCK A IN THE GREAT NORTHERN PUD
- Staff Report** City Planner Kathy Macefield reported the applicant has requested additional time and asked that the commission table this item.
- Public Comment** Mayor Smith asked for public comment, none was received.
- Motion** **Commissioner Oitzinger moved to table a resolution amending Resolution #11224 to remove condition #11.A. requiring the covenants to include a provision for a 10-foot wide building setback along the southern boundary of Block A in the Great Northern Planned Unit Development (PUD).** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Zone Change

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 **[TABLED FROM OCTOBER 6, 2003]**

Staff Report

City Planner Kathy Macefield reported On October 6, 2003 the city commission held a public hearing for a zone change from PLI to R-2 District for a vacant, undeveloped 21,750 square foot (slightly less than ½ acre) tract of land. This proposal had originally been included with a zone change for 5 residential properties located north of Clarke Street that has been approved.

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 all of the multiple properties located on the north and south sides of Clarke Street.

Twenty property owners are located within 150 feet of the subject property (not including the subject property). Four of those adjacent property owners have submitted written protests to the proposed zone change.

Montana law (76-2-305 MCA) states: *an amendment may not become effective except upon a favorable vote of two-thirds of the present and voting member of the city or town council or legislative body of the municipality if a protest against a change...is signed by the owners of 25% or more of: (a) the area of the lots included in the proposed change; or (b) those lots 150 feet from a lot included in the proposed change.*

The amount of protest received for the zone change from PLI to R-2 for the vacant undeveloped 21,750-square foot property is less than 25% requiring an affirmative vote by four out of five city commissioners.

Ms. Macefield recommended adoption of an ordinance for a zone change from PLI (Public Land and Institutions) to a R-2 (Single-Family Residential) District for a vacant undeveloped property.

Discussion

Commissioner Oitzinger asked Ms. Macefield to differentiate between R-1 and R-2 zoning? Ms. Macefield stated the zoning on the south side of Clarke Street is currently zoned R-1, the north side of Clarke Street is currently zoned R-2. The difference in the two zones is lot size. The R-1 zone, the minimum lot size is 12,500-square feet with a minimum of 100 feet wide. In the R-2 zone, it is a minimum of 7,000-square feet with a minimum of 70 feet wide. The property in question would be able to have 3 single-family residences there if it was to be subdivided under R-2. If the property were zone R-1, then the property would be limited to 1 single-family residence.

Commissioner Parriman asked if this property remains PLI, is development still possible? Ms. Macefield explained development is possible in regards to government office buildings and community residential facilities.

Commissioner Pouliot asked if there were discussions, with the Zoning Commission, about whether or not this should be zoned in as R-1 or R-2? Ms. Macefield concurred and explained they discussed many issues; whether or not the zoning boundary would be more appropriate with Park Street and zoning this property R-1, whether or not having the R-2 zoning on both sides of the street was appropriate or whether or not the zoning should retain it's PLI zoning designation.

Commissioner Netschert asked Ms. Macefield to expand on the community residential facilities. Ms. Macefield explained they could include group home situations, which are allowed by right in all residential zones and allowed by right in the PLI District.

Commissioner Oitzinger asked City Attorney David Nielsen regarding a prescriptive easement for foot traffic. Mr. Nielsen explained the case, which he was referred to, was a case out of California. They had sustained a prescriptive easement for recreational uses. There are four cases that have gone to the Montana Supreme Court from 1984 through 2003, where the issue has been raised as to whether a public prescriptive easement was created by a recreational use and in all four cases the Montana Supreme Court has said that recreational uses do not constitute the continuous use and they are to much of an occasional use to raise the presumption for a prescriptive easement. Commissioner Oitzinger asked if the city could sustain any liability for it's zoning decision? Mr. Nielsen explained in looking at the California case, they did award attorney fees to the successful party; however, Montana has no comparable statute and in looking at the Montana case law, he doesn't believe there is any liability risk to the city.

Commissioner Netschert explained prescriptive easements are done through adverse possession and it must be hostile, open, notorious and continuous for a statutory period. He believes a prescriptive easement amounts to rewarding a person for illegal and unneighborly use; however, this doesn't seem to be the case with this situation. It does fall closer to a license, which is something that is personable, revocable and nonassignable. It can be given orally or generally for people to use the property but does not have anything to do with ownership of the land itself. Mr. Nielsen agreed with Commissioner Netschert explanation.

Commissioner Parriman asked Ms. Macefield if she has been in contact with the neighborhood regarding plans to purchase the lot or some other form of action? Ms. Macefield stated she had not.

Public Comment

Mayor Smith asked for public comment:

Bill Hallinan, 438 Clarke Street, stated Clarke Street is in miserable condition. Discussions should include the maintaining and improving of the short section of road on Clarke Street, from Harrison to Monroe Street, including it's sidewalks and curbs. The runoff from the dirt roads has caused many problems on Clarke Street and has blocked drainage.

John Wilson, 405 Monroe Avenue, stated this issue was brought before the Zoning Commission because it was zoned incorrectly as PLI. The lot in question is clearly contiguous with Mount Helena Park and includes a trail. Mr. Wilson asked the commission to try to leave the lot open space.

Ann Brodsky, 521 Clarke Street, explained there are no objections to the development of the lower portion of the property but the upper portion should remain open space. Ms. Brodsky stated she is still hopeful that there could be room to turn it into a win/win situation. It is her understanding that the city initiated the proposal and this property is shown as part of the Mount Helena Park on the Helena Open Lands Management Plan map. Ms. Brodsky urged the commission to allow the lot to remain open space.

Mary Chester, 520 Clarke Street, stated she would like to add her support to the comments of Mr. Wilson and Ms. Brodsky and encouraged the commission to visit the property. Ms. Chester explained she is a member of

several organizations who makes small grants, benefiting open lands and habitat. She mentioned she would be willing to make a contribution.

Andy Bower, Prickly Pear Land Trust, stated when looking at the property it's clear that it's divided into an upper portion and lower portion. He explained the trail could be moved up the hill a ways in order to make that option more palatable for the owner or future owner. The Land Trust would be happy to help in that process.

Barbara Bonefas, 401 Monroe, urged the commission to support open lands in Helena.

Shauna Thomas, 5539 York Road, stated the lot in question belongs to her and her husband. The zoning change was proposed by the city staff and it was discovered that the property had been inadvertently zoned PLI. Ms. Thomas stated the commission corrected the zoning for the houses on the north end of the rectangle and she requested that the commission do the same for their property.

Discussion

Commissioner Netschert stated during the last meeting there were a number of residents that testified stating they would be interested in working out a financial arrangement with the landowners. He asked Ms. Thomas if she had been approached with any offers? Ms. Thomas stated she had not.

Motion

Commissioner Parriman moved approval for first passage of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map from PLI (Public Lands and Institutions) to a R-2 (Single-Family Residential) District in reference to that property described as a vacant, undeveloped parcel located east of Monroe Avenue and south of Clarke Street in Helena, Montana; legally described as a 145-foot by 150-foot tract of land in the SW1/4 and the SE1/4 of Section 25, T10N, R4W, Helena, Montana and described in Book 174 Page 233. Commissioner Netschert seconded the motion. Motion passed 4:1 with Commissioner Oitzinger voting no. **Ord. #2981**

Intention to Annex

CONSIDER A RESOLUTION OF INTENTION TO ANNEX LOTS 9 AND 10 IN BLOCK 8 OF THE TOWNSITE OF WEST HELENA, AND THE ADJACENT SEGMENT OF CUTTING AVENUE FROM EXISTING CITY LIMITS AT COUNTRY CLUB AVENUE TO THE WESTERLY EXTENSION OF THE NORTH BOUNDARY OF THE PROPERTY, LOCATED AT 2308 COUNTRY CLUB AVENUE IN LEWIS & CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA, AND ESTABLISH CONDITIONS FOR ANNEXATION

Staff Report

City Planner Belinda Waters reported the owners of this property, P&S Properties, LLC, have applied for annexation to the city of Helena. The platted property has a single-family residence. It is located on Country Club Avenue adjacent to existing city limits, more particularly, on an incorporated corridor that runs west of the main body of the city, and is adjacent to similar properties that have annexed to the city. The proposed annexation would not create any additional wholly surrounded areas. No public hearing is required for this action.

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 complete a variety of city requirements.

Some required infrastructure improvements, notably for transportation and water system are expected to be deferred by mutual agreement, as allowed by state law (MCA §7-2-4610). Under the agreements, the property would continue to use a private well until it can be served by city water. The nearest water main is several hundred feet from the property.

The adjacent street right-of-way of Cutting Avenue is also anticipated for annexation and will be proposed for annexation at the time the subject property is annexed. Cutting Avenue is undeveloped, and no improvements to it are anticipated at this time. The simultaneous annexation of adjacent rights-of-way with private property is requirement of state law.

On August 4, 2003 the city commission passed an Ordinance, #2968, giving this property a pre-zoning designation of R-2 (Single-Family Residential) District.

Ms. Waters recommended approval of a resolution of intention to annex subject to the following conditions:

Infrastructure: The applicants must install infrastructure improvements as required by the city and to city standards, including water, sewer, fire hydrants, street, curb, and gutter, or enter into a development agreement acceptable to the city of Helena that defines responsibility for the installation or deferment of the improvements.

Review of new construction: For all construction commenced prior to annexation, 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 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.

Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the resolution of annexation.

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 to continue any city services, including water and sewer.

Discussion

Commissioner Pouliot asked if the infrastructure would include any construction of Cutting Street? Ms. Waters explained part of the development agreement does mention Cutting Avenue and the construction at a future date, if development continues on that county road.

Commissioner Parriman asked if the underlying reason behind the intention to annex is because of failing sewer systems? Ms. Waters concurred. Commissioner Parriman asked if it's a general practice to speak with the adjacent owners in order to annex in more at a time? Ms. Waters explained the adjacent owners were included in the discussion and they agreed to the rezoning of the R-2 and most of them realized they will need city services in the future but did not want to proceed at this time.

Mr. Burton explained the commission has the authority to annex most of that platted subdivision on the west side of town and stretching to Fort Harrison, without a public hearing. The city has chosen not to force the issue and has been working with the county to develop an infrastructure plan for water, sewer and storm water for the west side.

Commissioner Pouliot asked if water and sewer is already available for those properties? Mr. Burton stated he's not sure whether the water line is available but one of the conditions of approval is that at the appropriate time where there are enough properties services would be extended.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of a resolution of intention to annex Lots 9 and 10 in Block 8 of the Townsite of West Helens, and the adjacent segment of Cutting Avenue from existing City limits at Country Club Avenue to the westerly extension of the north boundary of the property, located in Lewis and Clark County, Montana, into the city of Helena, Montana, subject to the conditions outlined above. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12057**

**Public Hearings
CUP**

PUBLIC HEARINGS:

A. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A PROFESSIONAL AND BUSINESS OFFICE TO BE LOCATED IN THE R-3 DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS LOTS 1-3, BLOCK 2, HAUSER ADDITION, HELENA, MONTANA WITH A PROPERTY ADDRESS OF 800 NORTH BENTON

Staff Report

City Planner Kathy Macefield reported this property received a CUP in 1985 for administrative officers for long-term foster care (Res. #9781). The current use is expected to continue on the property for approximately one year. The current use would be allowed to continue as a professional business office with this CUP proposal. As a result, the original CUP would be superseded by the current proposal.

On October 14, 2003 the Helena Zoning Commission tabled action until November 4th for the public hearing to allow time for the applicant to meet with neighbors to discuss the proposal. A neighborhood meeting was held October 27, 2003.

Ms. Macefield recommended approval for a resolution for a Conditional Use Permit (CUP), subject to the following conditions:

1. Vehicular access to the property may not be changed without city approval.
2. Screening for the parking lot must be maintained along the north and west property boundaries.

Discussion

Mayor Smith asked if the current occupants, the Casey Family Program, would remain in that space for up to a year? Ms. Macefield concurred and explained the potential buyer would allow the Casey Program to lease back to them.

Commissioner Oitzinger stated a letter was received with concerns regarding parking and parking overflow out in the neighborhood and asked how the new owners would handle parking? Ms. Macefield explained the parking requirements are based on the type of building uses. Commissioner Oitzinger stated that she feels the neighborhood is heading toward parking restrictions. Ms. Macefield explained if the use of the building changed, variances would have to be requested.

Commissioner Parriman asked regarding vehicular access to the property, mentioned in the recommended motion and asked if that would cover the parking concerns? Ms. Macefield explained when this property was originally

developed, it was an apartment building, which burnt down, then a zone change and CUP was sought and received. There is only a single access, onto Stuart Street, and that would not be changed without approval from the city commission.

Commissioner Netschert disclosed that he knows both of the potential buyers; however, there are no conflicts of interest and no financial benefit. Commissioner Netschert asked regarding the tax base increasing from \$500, with the current use, to \$5,600 with the proposed change? Ms. Macefield stated that was a statement made by one of the realtors working with the applicant and explained she has not verified that.

Public Hearing

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

Ron Waterman, 33 S. Last Chance Gulch, stated he represents the Casey Family Program and he stands in support of the proposal and urged the commission to approve the staff recommendation.

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

Motion

Commissioner Netschert moved approval of a resolution for a Conditional Use Permit (CUP) to allow a professional and business office to be located in a 4,000-square foot building (estimated size) currently used for administration of foster care services in the R-3 (Medium Density Residential) District. This CUP supersedes Resolution #9781. Legally described as Lots 1-3, Block 2, Hauser Addition, Helena, Montana; generally located west of Benton Avenue and north of Stuart Street with a property address of 800 North Benton. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12058**

Sports Field Development

B1. CONSIDER THE EXPENDITURE OF OPEN SPACE BOND FUNDS IN THE AMOUNT OF \$519,613 FOR THE DEVELOPMENT OF THE SOFTBALL COMPLEX AT CENTENNIAL PARK UPON APPROVAL OF A MAINTENANCE AGREEMENT BETWEEN THE CITY OF HELENA AND THE HELENA SOFTBALL ASSOCIATION

B2. CONSIDER THE EXPENDITURE OF OPEN SPACE BOND FUNDS IN THE AMOUNT OF \$327,613 FOR THE DEVELOPMENT OF ADDITIONAL SOCCER FIELDS AT THE AIRPORT SOCCER COMPLEX UPON APPROVAL OF A MAINTENANCE AGREEMENT BETWEEN THE CITY OF HELENA AND THE HELENA YOUTH SOCCER ASSOCIATION

Staff Report

Director of Parks and Recreation Randy Lilje reported at its October 7, 2003 meeting OSBAC took public comment on the expenditure of \$847,226.00 of Open Space Bond Funds for two projects; 1. Three additional soccer fields at the Airport Soccer Complex, and 2. A four-field softball complex at Centennial Park. These expenditures would commit the remaining Open Space Bond funds allocated for sports field development. The public comment was generally in favor of the two projects.

Once the public comment period was finished OSBAC once again reviewed the cost estimates for the 2 projects. Since both projects exceeded the funds available OSBAC needed to develop a way to fairly divide the money to get both off to a good start.

Taking into consideration how much had already gone into each project, OSBAC divided the funds so that the two projects were equally funded. Therefore, OSBAC is recommending the following distribution of funds for the projects: Airport Soccer Complex, \$327,613.00; and Centennial Park Softball Complex, \$519,613.00.

One of the tasks in the development of the Centennial Park Softball Complex, as well as, the ultimate development of the rest of Centennial Park is the removal and relocation of the power lines that currently run through the area. There were meetings with Montana Power Company and more recently Northwestern Energy to work this out. The city's share for the moving of the lines is \$105,000.00. This has been reviewed with OSBAC who have agreed that this will be paid from the Open Space Bond as part of the cost of softball complex.

Both the Helena Softball Association and Helena Youth Soccer Association have agreed that any expenses in the development of their respective projects that are in excess of the bond funds will be the responsibility of the associations. OSBAC also recommended the requirement from the associations that they both enter into a use and maintenance agreement with the city prior to getting the funds.

Mr. Lilje recommended allocating \$519,613.00 to the development of the Centennial Park Softball Complex and \$327,613.00 for additional fields at the Airport Soccer Complex.

Discussion

Commissioner Parriman asked if there was money appropriated to move some fill back into Centennial Park, in order to cover the old railroad ties? Mr. Lilje concurred. Commissioner Parriman asked regarding the state owned land located at Centennial Park and asked if the state would be willing to donate that land for additional parking? Mr. Burton explained the commission sent a letter asking the state to donate the 7-acre lot for future use within the city and the issue remains open. Essentially with this decision, upon concurrence, there will be a softball complex installed, where the Softball Association has agreed to maintain it on an annual basis.

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 Pouliot moved approval of an expenditure of Open Space Bond funds in the amount of \$519,613.00 for the development of the softball complex at Centennial Park upon approval of a maintenance agreement between the city of Helena and the Helena Softball Association. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion

Commissioner Pouliot moved approval of an expenditure of Open Space Bond funds in the amount of \$327,613.00 for the development of additional soccer fields at the Airport Soccer Complex upon approval of a maintenance agreement between the city of Helena and the Helena Youth Soccer Association. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Prezoning
(4 properties)**

C1. CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING 4 PARCELS OF PROPERTY TOTALING APPROXIMATELY 248 ACRES IN SECTION 1, T9N, R4W AND IN SECTION 6, T9N, R3W, ALL LOCATED IN LEWIS AND CLARK COUNTY ON THE SOUTH SIDE OF HELENA, PRIOR TO ANNEXATION INTO THE CITY OF HELENA, MONTANA, TO A PLI DISTRICT

Staff Report

City Planner Kathy Macefield reported these city-owned properties are currently located outside the city limits in Lewis and Clark County and currently zoned OSR (Open Space Residential) District. With this proposal, these 4 properties would be prezoned to PLI District prior to annexation. This prezoning would be accomplished with an ordinance amending city of Helena Ordinance #2359 and amending the official zoning map after the properties are annexed.

Two of the properties (5.119 and 56.37 acres) contain the southward extension of Davis Street; the smaller property was acquired with open space funds and contains a trail. The larger property includes the same trail and an archery range, and was originally acquired as water property at the turn of the century. The two remaining properties (approximately 37 and 149 acres) were also acquired with open space funds.

These properties were intended to become part of the city park system, are part of Mount Ascension Natural Park and will become a continuation of that park. Since the properties will be incorporated into Mount Ascension Park, they will no longer be separate tracts of land, and there is no need to extend water or sewer to serve these open space lands. The PLI District is currently the only zoning district to specifically identify "land in present or future use for *parks*, playground and *open spaces*" as permitted uses; open space is not a conditional use in any zoning district although parks are a conditional use in all residential districts.

On October 14, 2003 the Helena Zoning Commission unanimously (3:0 vote) recommended APPROVAL for the adoption of an ordinance for prezoning prior to annexation to a PLI (Public Lands and Institutions) District for 4 properties totaling approximately 248 acres.

Ms. Macefield recommended approval for the adoption of an ordinance for prezoning 4 parcels of property totaling approximately 248 acres.

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 Parriman moved approval for first passage of an ordinance prezoning 4 parcels of property totaling approximately 248 acres in Section 1, T9N, R4W and in Section 6, T9N, R3W, all located in Lewis and Clark County, prior to annexation into the city of Helena, Montana, to a PLI District. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ord. #2982**

**Prezoning
(3 properties)**

C2. CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING 3 PARCELS OF PROPERTY TOTALING APPROXIMATELY 150 ACRES IN SECTIONS 26, 35 AND 36, T10N, R4W, ALL LOCATED IN LEWIS AND CLARK COUNTY ON THE WEST AND SOUTHWEST SIDES OF HELENA, PRIOR TO ANNEXATION INTO THE CITY OF HELENA, MONTANA AS A PLI DISTRICT

Staff Report

City Planner Kathy Macefield reported these city-owned properties are currently located outside the city limits in Lewis and Clark County. This rezoning designation would be accomplished with an ordinance amending city of Helena Ordinance #2359 and amending the official zoning map after the property is annexed.

The western portion of the 32-acre tract included in this rezoning proposal is located outside the city. This rezoning proposal is accompanied by a simultaneous proposal for a zone change from R-1 to PLI for the eastern portion of the 32-acre tract is not included in the rezoning proposal.

These properties were acquired with open space bond funds to become part of the city park system, are located adjacent to Mount Helena Park, and will become a continuation of the park. Since the properties will be incorporated into Mount Helena Park, they will no longer be separate tracts of land, and there is no need to extend water or sewer to serve these extensions of the park. The PLI District is currently the only zoning district to specifically identify "land in present or future use for *parks*, playgrounds and *open space*" as permitted uses; open space is not a conditional use for any zoning district although parks are conditional use in all residential districts.

On October 14, 2003 the Helena Zoning Commission unanimously (3:0 vote) recommended APPROVAL for an ordinance rezoning multiple properties (approximately 150 acres).

Ms. Macefield recommended approval for an ordinance rezoning multiple properties.

Discussion

Commissioner Oitzinger asked if the commission should be considering an alternative zoning designation for open space since PLI allows building development? Ms. Macefield explained the Zoning Commission has discussed that issue and they have indicated an interest in looking at creating a special zoning category for open space properties.

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 first passage of an ordinance rezoning 3 parcels of property totaling approximately 150 acres in Section 26, 35 and 36, T10N, R4W, all located in Lewis and Clark County, prior to annexation into the city of Helena, Montana as a PLI District. Commissioner Oitzinger seconded the motion. **Ord. #2983**

Discussion

Commissioner Pouliot asked Fire Chief Steve Larson regarding fire protection of this land? Chief Larson explained this land would fall under the cities jurisdiction; however, the South Hills Mutual Aid Plan, DNRC, and the Forest Service would respond as well. The city pays for an Affidavit of Protection through the Department of Natural Resources to protect the Mount Helena Park.

Vote

All voted aye, motion carried.

**Annexation
(7 properties)**

A RESOLUTION ANNEXING SEVEN PARCELS OF CONTIGUOUS GOVERNMENT PROPERTY ON THE SOUTH AND WEST SIDES INTO THE CITY OF HELENA, MONTANA

Staff Report

Project Manager Hal Fossum reported on October 20, 2003, the city commission adopted a resolution of intention to annex contiguous government properties to the city of Helena (Res. #12053). Staff has initiated this procedure to facilitate extension of city police and park management services to adjacent city –owned properties. Following approval of zoning for the properties and a public hearing on this item, all due process requirements will be complete, and the commission may move to consider annexation of the properties.

Seven separate properties are proposed for annexation. All are on the city's southern boundaries: three adjoin Mount Helena City Park; two are in Davis Gulch; and two are near Davis Gulch to the east, just south of the open space properties the city acquired in the Timberline settlement. They total about 400 acres. All the properties are in open space land use. All but one are properties purchased by the city specifically for open space; the remaining was acquired to benefit Public Works many years ago. One public right-of-way, a segment of Davis Gulch road contained by the properties, will also be annexed by this action.

A public hearing will complete all legal requirements. Following passage by the city commission of the resolution of intention, the proposed annexations were duly advertised and a public comment period runs for 20 days. That comment period ended on November 15, 2003 and one letter of support was received from Tom Kilmer. City requirements that all properties annexed to the city must first be zoned must also be satisfied. Proposals to rezone some properties (from Open Space Residential and Single Family Residential to Public Lands and Institutions) and prezone others (to Public Lands and Institutions) will be proposed as a separate agenda items.

Mr. Fossum recommended approval of a resolution annexing seven parcels of contiguous government property into the city of Helena, Montana.

Discussion

Commissioner Pouliot asked if the city has been previously taking care of this land? Mr. Fossum concurred and explained the city would be assume management responsibility over a 1-mile long stretch of road in Dry Gulch.

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 Oitzinger moved approval of a resolution annexing seven parcels of contiguous government property into the city of Helena, Montana. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12059**

Zone Change

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF IN REFERENCE TO THAT PROPERTY DESCRIBED AS A PORTION OF A 32-ACRE TRACT DESCRIBED IN THAT WARRANTY DEED RECORDED IN M BOOK 22 PAGE 9801, LOCATED SOUTH OF MOUNT HELENA CITY PARK IN HELENA, MONTANA, FOR A ZONE CHANGE, FROM R-1 TO PLI DISTRICT

Staff Report

City Planner Kathy Macefield reported this property was acquired with open space bond funds to become part of the city park system; is located adjacent to and connects to Mount Helena Park. As a result, this property will

become part of Mount Helena Park and will expand the park. Since the property will be incorporated into Mount Helena Park, it will no longer be a separate tract of land, and there is no need to extend water or sewer to serve this extension of Mount Helena Park. The PLI District is currently the only zoning district to specifically identify "land is present or future use for *parks*, playgrounds and *open space*" as permitted uses; open space is not a conditional use in any zoning district although parks are conditional use in all residential districts.

On October 14, 2003 the Helena Zoning Commission unanimously (3:0 vote) recommended APPROVAL for an ordinance for a zone change from R-1 to PLI for city-owned property that will become part of Mount Helena Park.

Ms. Macefield recommended approval for the adoption of an ordinance-amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map.

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 Oitzinger moved approval for first passage of an ordinance amending city of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those to a portion of a 32-acre tract, for a zone change from R-1 (Single-Family Residential – Large Lot to PLI (Public Lands and Institutions) District. Legally described as the portion of a 32-acre tract of Placer Mining Claim in MS 788, Lot 53, ME 1366, and described in warranty deed recorded in Book M22, Page 9801, located east of the dividing line between Sections 35 and 36, T10N, R4W, PMM, Lewis and Clark County Montana; generally located south of Mount Helena Park. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Ord. #2984**

Public Communications

PUBLIC COMMUNICATIONS
No report was given.

Meetings of Interest

MEETINGS OF INTEREST
Mayor Smith reported the next Administrative Meeting will be held on November 24, 2003 and the next regular City Commission Meeting will be held on Monday, December 1, 2003.
City Manager Tim Burton reported a Town Hall Meeting, concerning the Open Space Management Plan on Thursday, December 18, 2003.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:45 p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

