

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 15, 2003
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, December 15, 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, December 1, 2003 were approved as submitted.

Certificate of Recognition

CERTIFICATE OF RECOGNITION:

A. Will MacBride

Mayor Smith read and presented the Certificate of Recognition to Will MacBride.

Will MacBride thanked the commission and all the volunteers who participated in his project of building a fence along the Davis Gulch trail.

Appointments

APPOINTMENTS:

A. Board of Adjustments

Mayor Smith asked for commission concurrence for the following appointments:

Board of Adjustments

Bob Seliskar – Unexpired Term – will expire 10/01/04

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of Mayor Smith's recommendation to appoint Bob Seliskar to the Board of Adjustments. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Utility bill insert - Low Income Energy Assistance Program (LIEAP)
- C. HDR Contract Amendment #5 for financial assistance for the City of Helena's Water System Improvements
- D. HDR Contract Amendment #6 for engineering services for the Missouri River Water Treatment Plant

City Manager Tim Burton recommended approval of the claims.

Discussion Commissioner Parriman asked for item D to be removed for further discussion.

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

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

Discussion Commissioner Parriman asked if the construction management could be done in-house? City Engineer Ryan Leland explained it could be done in-house; however, HDR is handling the construction inspection for the rest of the plant. The \$18,000 was a contingency in case it was needed.

Motion Commissioner Parriman moved approval of item D on the consent agenda. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot wished Helena a Merry Christmas and a Happy New Year. He thanked Commission Netschert for his service on the commission.

Commissioner Parriman mentioned tonight is Commissioner Netschert last city commission meeting and stated it has been a pleasure to work with him.

Mayor Smith thanked Commissioner Netschert for his service on the commission. He stated Commissioner Netschert has taught him not to take the commission's business personally.

Commissioner Oitzinger thanked Commissioner Netschert and gave an extended thanks to his family.

Commissioner Netschert thanked the commission for all the kind words and stated it has been great working for the city and the community. Commissioner Netschert mentioned the vandalism that occurred at the What Dreams May Come Park, shortly after it was opened. He invited John Flynn forward to discuss the process of juvenile justice council.

John Flynn, 403 ½ Madison, stated he is the Program Coordinator for the Community Juvenile Justice Council for the Montana Youth Homes. He explained after the project was complete there was an incident of vandalism. The vandals were apprehended and sent to Montana Youth Homes. Mr. Flynn explained the program process and what the individuals could do to repair their wrongdoings. One of the individuals who participated in the vandalism came before the Community Juvenile Justice Council and sent a letter to the editor apologizing for his actions.

Commissioner Netschert read the original letter from the individual and stated he wished the individual could have been here to read the letter himself; however, the letter was a huge step and hopefully lessons were learned.

Mayor Smith stated the commission would be tabling SID #392 until the January 5, 2004 commission meeting.

Commissioner Pouliot explained the commission felt it was unfair to hold an objection period over the holiday season, which led to the decision to table the issue until January.

Commissioner Parriman stated the neighborhood would be making the final decision on the SID and explained the SID process.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen thanked Commissioner Netschert for his service.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Tim Burton thanked Commissioner Netschert for his years of leadership.

Mr. Burton invited Geno Hicks forward to accept an appreciation award for his years of service and stated Mr. Hicks was a model employee and he appreciates the service that he gave to the city of Helena. Ed Robinson gave brief history on Mr. Hicks work history and thanked him for his service.

Mr. Hicks thanked the commission and the city manager and explained the city is like his family.

Mr. Burton explained the new route to the Heritage House has been approved.

Sleeping Giant Addition

CONSIDER A RESOLUTION ANNEXING 10.481 ACRES, BEING A 0.32-ACRE TRACT IDENTIFIED AS THE REMAINDER OF LOT 1 ON COS #617203-T, AND LOT 2, BLOCK 1, SLEEPING GIANT ADDITION (1.12 ACRES), AND THE TWO PARCELS ON COS #333827 (1.334 AND 7.07 ACRES) WHICH INCLUDE THE ALICE STREET RIGHT OF WAY AND THE EASTERN PORTION OF THE ELAINE STREET RIGHT OF WAY; AND THE WESTERN PORTION OF THE ADJACENT ELAINE STREET RIGHT OF WAY; ALL LOCATED IN LEWIS AND CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA. GENERALLY LOCATED SOUTH OF HIGHWAY 12 EAST AND EAST OF MDT COMPLEX

Staff Report

City Planner Kathy Macefield reported applicants Gene and Cherry Long have requested to annex 10.481 acres into the city of Helena.

On May 5, 2003, the Helena city commission approved Resolution No. 11863 establishing the conditions for annexation for approximately 10.481 acres. The conditions related to a development agreement for the installation of infrastructure; review of new construction; payment of taxes; and one year to complete the conditions. These conditions have been completed, including the signed development agreement that has been filed with the County Clerk and Recorder.

At that time the city commission also rezoned the portion of the property on both sides of Elaine Street that is south of Highway 12 East to B-2 (General Commercial) District. The property containing the mobile home park was rezoned R-O (Residential-Office) District. The property located east of Elaine Street is currently vacant and undeveloped; the property located west of Elaine Street contains a duplex and a 52-unit mobile home park (that currently contains 18 mobile homes).

Annexation is proposed under the petition method, which is detailed in state law (§7-2-4601, MCA). All affected property owners have requested annexation. Whenever more than 50 percent of property owners petition for annexation, the city commission may approve or

disapprove the petition upon its merits. A resolution providing for the annexation has been prepared for the commission's consideration.

The full width of adjacent road rights of way must be annexed with property, a new requirement passed by the 2003 Montana Legislature (§7-2-4211, MCA). Therefore, this annexation also includes the adjacent road rights of way for Alice Street and the east 26 feet of Elaine Street. The frontage road was previously annexed with the Highway 12 East right of way.

Ms. Macefield recommended approval of a resolution of annexation into the city of Helena.

Public Comment

Mayor Smith asked for public comment, none was received.

Discussion

Commissioner Netschert asked if the property is contiguous to the city limits and if it will create any wholly surrounded property? Ms. Macefield explained the property is contiguous and it will not create any wholly surrounded area.

Motion

Commissioner Netschert moved approval of a resolution annexing into the city of Helena for 10.481 acres, being a 0.32-acre tract identified as the remainder of Lot 1 on COS #617203-T, and Lot 2, Block 1, Sleeping Giant Addition (1.12 acres), and the two parcels of COS #333827 (1.334 and 7.707 acres) which include the east 26 feet of Elaine Street and the 30-foot wide right of way for Alice Street; and the adjacent right of way for the west 34 feet of Elaine Street from the south right of way of US Highway 12 East to the south line of Section 27, Township 10 North, Range 3 West; all in Lewis and Clark County, Montana. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12063**

SID #392

CONSIDER A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT DISTRICT #392 FOR SOUTHERN BROADWAY AVENUE IMPROVEMENTS; TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

Staff Report

Public Works Director John Rundquist extended his appreciation to Commissioner Netschert for his years of service on the commission. Mr. Rundquist reported staff is aware of a couple attempts to organize an SID over the years in this neighborhood in the past 25 to 30 years; however, the project was never completed. A year ago, property owners in the neighborhood, asked the city to assist in giving the SID another try. With some preliminary cost information from staff, the neighborhood organizers attempted to contact as many property owners as possible to attempt to gauge the probability of success for district formation. This was completed in March 2003 and provided a mostly favorably indicator of neighborhood interest. Since that time staff has been working to develop a package of preliminary engineering costs estimates and legal information necessary to implement the district formation. The legal process for district formation includes three steps; 1. Approval of a resolution of intention to create an SID; 2. Initiation of a 15-day protest period. At the start of a protest period, each property owner is notified by

mail of their proposed assessment and the petition requirements; 3. A public hearing and a commission action on the final resolution creating the SID. The threshold by law is that the SID may be formed, provided that no more than 50% of the property owners, by assessment, have given protest. Mr. Rundquist explained that it was staff's hope that the district formation could come together earlier this fall since there would be adequate time to design the improvements in winter and bid a project in the spring for construction next summer. The delay has tightened that window on staff and it will be difficult to achieve the summer of 2004 as a construction season for this project. Because of the neighborhood interest there will be a lot of details that need to be worked through, making 2005 a realistic construction season for this project.

There are strict boundaries on the method of assessment for streets and SID by state code. Within these boundaries assessments are proposed as follows; for streets, curb and gutter, assessments are based proportionally on the property square footage. For sidewalks, cost would be per lineal foot. Driveway approaches would be the actual cost per each residence. Part of launching this district formation with the commission, staff felt it was important to communicate intents, the process, the project and the most current cost data with the neighborhood, as the mailings and the legal process of district formation can be intimidating and confusing. Mr. Rundquist explained a letter was sent to each property owner with maps, cost information and a public meeting was held December 9, 2003 to discuss the process, the project and to answer any questions. The public meeting was well attended and as expected it was mostly represented by property owners that were not in favor of the SID. The predominate issue for those not in favor was cost and affordability of the proposal. Other issues with the SID included fears that the streets would be less safe in the winter, that property values may adversely be impacted, traffic speeds would increase and that the 15 day petition period would occur during the holidays creating inadequate time to respond.

Mr. Rundquist stated he gave some erroneous information having to do with the annual payments of SID's. It has always been his understanding that when an SID assessment is on a property and owner is paying the annual payment on their taxes, if the property is sold then the SID obligation is paid off at that time; however, through conversations with the city attorney, it was found that the SID obligation would pass on to the buyer.

As a result of the public meeting, one property owner was discovered with an erroneous assessment, which will be taken care of.

Staff is working on right-a-way dedication issues with a few of the property owners so that there is some risk, if the commission approves the resolution of intention, that the district boundaries would have to be adjusted during the process between now and the final resolution.

Mr. Rundquist recommended a tabling motion on the proposal to allow more time for staff to work through the neighborhoods details.

Discussion

Commissioner Parriman commented on the commission and city staff's actions as being open and supportive toward the public interests.

Commissioner Netschert expressed his feelings on the commission's decision to table the proposal and urged the public to concentrate on the issues and not the personalities.

Commissioner Oitzinger asked what happened to sources of funding for dust abatement and grant availability that can help neighborhoods such as Brady Street? Mr. Rundquist explained the Brady Street SID had a window of opportunity to receive an Air Quality Grant for roads with dust problems. However, that source of funding is unavailable and in some cases the city has used CTEP funds for sidewalks, which would be available if the commission chooses.

Motion

Commissioner Pouliot moved to table a resolution of intention to create Special Improvement District # 392 for the reconstruction and paving of Alta, Hoback, Shiland, Raleigh, Hillsdale, and Highland Streets south of Broadway Avenue, and reschedule for January 5, 2004. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Public Comment

Mayor Smith asked for public comment.

Fred Sargeson, 727 Hillsdale, explained it has been stated there is a majority of people who support this proposal and that is untrue. Mr. Sargeson stated this proposal has threatened people's ability to live in their homes. He urged the commission to deny the proposal.

Mark McClung, 21 Alta Street, expressed his concern regarding the lack of public hearings for the people in opposition. He urged the commission to deny the proposal.

Irvin Bastian, 38 Alta Street, stated the SID would be a hardship on the majority of the neighbors in that area and urged the commission to deny the proposal.

Roxann Lincoln, 725 Hillsdale, explained her husband and she were supportive of the street-paving project; however, with the latest figures provided by the city the project is outrageously expensive and stated they would no longer be able to afford it. Ms. Lincoln stated it is unfortunate that cost is going to kill the project.

Phyllis Dagenais, 20 Alta Street, explained the hazards of the road in winter and stated she likes the street just the way it is. She urged the commission to deny the proposal.

Kevin Rauch, 900 Highland, explained the SID would likely put them out of their home as well as others in the neighborhood. He asked for clarification regarding the lien on the property and how the SID affects it.

Bill Eicker, 708 Hillsdale, explained he contacted the city regarding cost estimates and stated the most recent cost estimates were extremely high. He supports the SID and hopes it moves forward.

Stewart Kirkpatrick, 15 Shiland, stated he and his wife are in strong opposition to this proposal. Mr. Kirkpatrick explained he believes this proposal has been misrepresented and stated it would not make the neighborhood safer and would be a huge hardship. He urged the commission to deny the proposal.

Jim Reynolds, 29 Alta Street, explained other avenues should be explored to address the neighborhood concerns and other options should be available, possibly a dust control district. He urged the commission to deny the proposal.

Joe Furshong, 938 Highland, stated the cost is prohibitive, the benefit is minimal and he is in opposition of this proposal.

Chris Clearman, 22 S. Hoback, explained he and his wife would like to do the best thing for their neighbors and friends and there are many of them who cannot afford it.

Heidi Youmans, 21 S. Raleigh, explained she would like to work with the city on this SID; however, the cost is too high. She proposed an option for the city to make a one-way in the alley to cut down on dust.

Sandy Cory explained her objection to the proposal has to do with the danger involved in paving the streets in that area. She urged the commission to deny the proposal.

Nancy Matheson, 36 S. Alta Street, stated under state statute homeowners whose homes border two sidewalks, have to pay an average on both sidewalks. Ms. Matheson asked why her property assessment for sidewalks was not taken as an average of the two sidewalks. She asked if there are cheaper alternatives to control the dust problems?

**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 FROM CLM (COMMERCIAL LIGHT MANUFACTURING) TO B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS LOTS 1-8, BLOCK 32, CITY PARK ADDITION, HELENA, MONTANA; GENERALLY LOCATED SOUTH OF FRONTAGE ROAD, NORTH OF CANNON STREET BETWEEN 18TH AND DOUGLAS STREETS

Staff Report

City Planner Belinda Waters reported Lots 1 through 3, consisting of 18,000 square feet, currently house a structure formally operated as a convenience store with gas pumps but is now abandoned; no plans for the redevelopment of these lots has been submitted to the city. Plans have been submitted for the construction of a new 3,020 square foot banking facility to be located on Lots 4 through 8, consisting of 30,000 square feet. Access to the property can be accomplished by utilizing several existing streets: 18th Street (which connects directly to Highway 12 East), Douglas and Cannon Streets. A platted, but undeveloped High Street, and an existing Frontage Road also have the potential to provide access to the property.

On November 12, 2003, the Helena Zoning Commission unanimously recommended approval for adoption of an ordinance for a zone change, from CLM (Commercial Light Manufacturing) to B-2 (General Commercial) District for approximately 1.1 acres or 48,000 square feet.

Ms. Waters recommended approval for the adoption of an ordinance for a zone change.

Public Hearing

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

Rick Wiedeman, stated they are interested in this property and thanked Ms. Waters for all her help.

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

Motion

Commissioner Pouliot moved approval of first passage an ordinance for a zone change, from CLM (Commercial Light Manufacturing) to B-2 (General Commercial) District for approximately 1.1 acres (48,000 square feet). Said property is legally described as Lots 1 through 8, Block 32, City Park Addition,

Helena, Montana; generally located south of the Frontage Road, north of Cannon Street between 18th and Douglas Streets.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ord. #2985**

Auto Glass/CUP

B. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A SHOP FOR THE REPAIR AND REPLACEMENT OF AUTO GLASS ONLY IN A B-2 (GENERAL COMMERCIAL) DISTRICT; LEGALLY DESCRIBED AS A 0.51-ACRE TRACT OF LAND LOCATED IN THE SE ¼ OF THE SE ¼ OF SECTION 18, T10N, R3W, HELENA, MONTANA, AS SHOWN AND DESCRIBED AS TRACT "B" ON THE SURVEY PLAT OF WATTERS TRACT RECORDED IN BOOK 238, PAGE 636 OF DEEDS IN THE OFFICE OF THE CLERK AND RECORDER, LEWIS & CLARK COUNTY, MONTANA AND IS GENERALLY LOCATED NORTH OF CUSTER AVENUE AND WEST OF DREDGE DRIVE WITH A STREET ADDRESS OF 1016 CUSTER AVENUE

Staff Report

City Planner Belinda Waters reported the property currently contains a residence and two garages with a total square footage lot area of 22,500. The business will be operated out of the 832 square foot garage (32'x26'), and the applicant will live in the house and use the 676 square foot garage (26'x26') for residential uses only. The "Custer Avenue Business Park" easement that connects to Custer Avenue and is 30-feet wide provides access to the site.

On November 12, 2003, the Helena Zoning Commission unanimously recommended approval of a Conditional Use Permit (CUP) to allow a shop for the repair and replacement of auto glass only in a B-2 (General Commercial) District.

Ms. Waters recommended approval of a resolution granting a CUP to allow a shop for the repair and replacement of auto glass subject to the following condition:

1. **Site:** No wrecked, non-drivable vehicles, junk cars, or parts may be stored outside.

Discussion

Mayor Smith asked what the SIC manual is? Ms. Waters explained it is the Standard Industrial Classification manual. If there is a use that doesn't fit into a current zone, staff would refer to the SIC manual which lists all the different uses classified under that heading. Mayor Smith asked if B-2 is located in the area? Ms. Waters concurred.

Commissioner Oitzinger asked regarding stormwater impacts? Ms. Waters explained there have been stormwater problems in that area and stated the applicant would be explaining that issue.

Public Hearing

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

Allan Bock, Brokers First Real estate, explained this is a real good way to move this property closer to business usage. He explained limestone has been added to the drain to detour the buildup of stormwater.

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

Discussion

Commissioner Netschert asked if the applicant is comfortable with the conditions set forth by the zoning commission? Mr. concurred.

Motion

Commissioner Netschert moved approval of a resolution granting a Conditional Use Permit (CUP) to allow a shop for the repair and replacement of auto glass only in a B-2 (General Commercial) District. The proposal is legally described as a 0.51-acre tract of land shown and described as Tract "B" on the Survey Plat of Watters Tract recorded in Book 238, page 636 of Deeds in the office of the clerk and Recorder, Lewis and Clark County, Montana and is generally located north of Custer Avenue and west of Dredge Drive with a street address of 1016 Custer Avenue.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12064**

Soccer Fields

C. CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 11072 TO ALLOW THE EXPANSION OF THE EXISTING FIELD AREA TO ADD 5 MICRO SOCCER FIELDS AND 4 STANDARD SIZE SOCCER FIELDS IN THE AIRPORT ZONING DISTRICT. LEGALLY DESCRIBED AS A TRACT OF LAND SHOWN ON COS #528939/B AND LOCATED IN THE NW ¼ OF SECTION 21, T10N, R3W; GENERALLY LOCATED EAST OF KELLEHER DRIVE AND SOUTH OF CUSTER AVENUE

Staff Report

City Planner Kathy Macefield explained there would be change to the resolution to include 5 full-size soccer fields and 4 micro soccer fields. She reported the original CUP in 1996 (Resolution #11072) allowed 3-5 soccer fields to be located on the property. Resolution #11733 revised the conditions related to the time frame to install paved parking and extended that completion date to December 31, 2004. This CUP proposal would amend the previously approved CUPs and would not supercede them; therefore, the original CUP conditions would still be in effect.

On November 12, 2003 the Helena Zoning Commission recommended APPROVAL (2:1 vote) for a resolution for a Conditional Use Permit (CUP), amending Resolution #11733 approved in 2002, which amended Resolution #11072 originally approved in 1996, to allow expansion of the existing field area to add four 80x45-foot micro soccer fields and four 110x70-foot standard size soccer fields in the Airport Zoning District. This approval was subject to 4 conditions related to traffic, parking, site plan revisions and original CUP conditions.

Ms. Macefield recommended approval for a resolution for a CUP for the expansion of 14 soccer playing fields subject to the following conditions:

1. **Traffic Impact:** the traffic impact stuffy must be updated and a new traffic management plan must be provided to the city for review and approval.
2. **Parking:** A paved parking lot shall be provided by December 2004, in accordance with Section 11-22-4 (H) of the Helena Zoning Ordinance, and must include a minimum number of parking spaces, equivalent to 75% of the number of players when all fields are in use, so as to provide adequate parking when the fields change for games. City dust control measures apply to the present gravel parking lot until paving is complete.

plan indicating the location of the onsite parking must also be submitted to the city for review and approval;

2. A building permit for the proposed assisted living facility must be obtained within one year.

Ms. Morell-Gengler recommended approval for the adoption of a resolution granting a CUP and approval for a variance to allow more than 2 but not more than 4 parking spaces to be located in the front yard property.

Public Hearing

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

David McLaren, stated he was available for questions.

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

Motion

Commissioner Parriman moved approval of a resolution granting a Conditional Use Permit (CUP) to allow a licensed Adult Personal Care/Assisted Living Home serving up to 17 persons to be located in an R-O (Residential-Office) District for property legally described as Lots 4 and 5, Block 33, Bull Run Addition #1, Helena, Montana; generally located on the east side of Saddle Drive between Belt View Drive and Tracy Drive; subject to the conditions listed above. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12066**

Motion

Commissioner Parriman moved approval for a variance from Section: 11-22-4 (E) of the Helena Zoning ordinance to allow more than 2 but not more than 4 parking spaces to be located in the front yard for property located in a residential zone and legally described as Lots 4 and 5, Block 33, Bull Run Addition #1, Helena, Montana; generally located on the east side of Saddle Drive between Belt View Drive and Tracy Drive. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

CUP Request

E. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW 8 RESIDENTIAL CONDOMINIUMS TO BE LOCATED IN A B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS LOT 8-A1, BLOCK 5 OF THE SLEEPING GIANT ADDITION, HELENA, MONTANA; GENERALLY LOCATED ON THE WEST SIDE OF JANET STREET BETWEEN STARBUCK COURT AND TRICIA STREET

Staff Report

City Planner Lucy Morell-Gengler reported on November 12, 2003, the Zoning Commission unanimously recommended APPROVAL (3:0 vote) of the proposed CUP for the condominium units subject to the following conditions:

1. Unit Ownership Act
Condominiums must be established on the subject property in compliance with the Montana "Unit Ownership Act."
2. Screening
Setbacks consistent with R-4 zoning must be provided or screening must be installed along the west and north sides of the subject property.
3. Timeframe

A building permit for the proposed condominiums must be obtained within one year.

The property is currently vacant and undeveloped and is on the border of the B-2 and R-4 Districts.

Ms. Morell-Gengler recommended approval for a CUP allowing 8 residential condominiums to be located in a B-2 District.

Public Hearing

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

Gabe Nistler, 4332 Foxview Ln, stated he represents Nistler and Wood Homes. Mr. Nistler explained they would be constructing the condominiums on this lot and is in support of the proposal.

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

Discussion

Mayor Smith asked Mr. Nistler if the applicant is comfortable with the conditions? Mr. Nistler concurred.

Motion

Commissioner Oitzinger moved approval of a resolution granting a Conditional Use Permit (CUP) to allow 8 residential condominiums to be located in a B-2 (General Commercial) District on property legally described as Lots 8-A1, Block 5 of the Sleeping Giant Addition, Helena, Montana; generally located on the west side of Janet Street between Starbuck Court and Tricia Street; subject to conditions listed above. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12067**

Boyce Addition

F1. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT OF BLOCK 4 OF THE BOYCE ADDITION, CREATING FIVE COMMERCIAL LOTS FROM 46,581 SQUARE FEET LOCATED IN A CLM (COMMERCIAL-LIGHT MANUFACTURING) DISTRICT; AND

F2. CONSIDER A REQUEST FOR A VARIANCE FROM SECTION 12-4-2 SUBSECTION A.7.B TO ELIMINATE THE REQUIREMENT FOR SIDEWALKS. LEGALLY DESCRIBED AS BLOCK 4 OF THE BOYCE ADDITION, HELENA, MONTANA; GENERALLY LOCATED ON THE NORTH SIDE OF BILLINGS AVENUE BETWEEN BLAINE AND GIBBON STREETS, WITH PROPERTY ADDRESSES OF 2600, 2602, 2604, 2606, AND 2608 BILLINGS AVENUE

Staff Report

City Planner Lucy Morell-Gengler reported the city commission annexed the subject property on December 17, 2001 (Resolution #11716). At the time of annexation, the property had already been developed with 5 non-residential buildings on a single lot with shared parking, access, stormwater, and wastewater. None of the street rights-of-way adjacent to the subject property have been annexed into the city.

The applicant is currently requesting approval of a minor subdivision/preliminary plat creating 5 non-residential lots from 46, 581 square feet located in the CLM (Commercial-Light Manufacturing) District. Each lot would contain one of the existing commercial buildings (Perry's Auto repair, Big Spring Water, Mr. Green Lawn Care, and two buildings are unoccupied).

Individual water service lines have been installed to serve each of the existing buildings and the proposed lots from the 8-inch water main located in Billings Avenue. The 5 buildings on the existing single lot connected to the existing wastewater main in Billings Avenue via a

shared 6-inch wastewater service line located on the property under the parking lot/access area. Subdividing the property as proposed would create 5 new lots that could be under separate ownership; thus, no single entity would be responsible for the existing common wastewater service line which would not be in compliance with city codes. Thus, if the property is subdivided, wastewater connections consistent with city codes must be established.

Because the access, parking, and stormwater are shared, easements and maintenance agreements must be established to accommodate the proposed lots.

Ms. Morell-Gengler recommended approval for a minor subdivision/preliminary plat, variance to eliminate the required sidewalk on Blaine Street and to allow installation of a curb-type sidewalk instead of a boulevard sidewalk on Billings Avenue. She recommended denial of a variance to eliminate the required sidewalks on Billings Avenue and Gibbon Street.

Discussion

Commissioner Pouliot asked if five existing buildings are currently in use? Ms. Morell-Gengler explained three are occupied and two are vacant. Commissioner Pouliot asked if the three in use are commercial businesses? Ms. Morell-Gengler concurred.

Commissioner Netschert asked regarding the types of sidewalks on the adjacent and subject properties? Ms. Morell-Gengler explained to the south there are curb type sidewalks and on the Walmart property there is a curb type sidewalk and a boulevard sidewalk. She explained most of the property was developed while located within the county's jurisdiction and they did not meet city standards at that time. Commissioner Netschert asked if a 5-foot sidewalk were to be installed would the transformer get in the way? Ms. Morell-Gengler explained there should be adequate space; however it would have to be measured to be sure.

Mayor Smith asked regarding the changes in wastewater? Ms. Morell-Gengler explained she misinterpreted correspondence and explained she reevaluated the situation and it was determined that other options besides conveyance may address the concerns of staff for the shared wastewater service line. This condition would leave it open and would still be reviewed by the Public Works Director who has the jurisdiction over approval of how it will be dealt with.

Public Hearing

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

Doug Forest, 3000 Lower River Road, Great Falls, MT, explained he has complied with all of the cities requests and asked for approval on the proposal.

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

Motion

Commissioner Netschert moved approval for a minor subdivision/preliminary plat creating 5 lots and to adopt the revised Findings of Fact and the conditions listed above for property legally described as Block 4 of the Boyce Addition, Helena, Montana; generally located on the north side of Billings Avenue between Gibbon and Blaine Streets. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Discussion

Commissioner Netschert stated it doesn't make much sense to have a sidewalk there because there is no other sidewalk to connect with. He would be willing to allow the curb style sidewalk and delay the installation until the adjacent properties could provide connectivity to those sidewalks.

Commissioner Pouliot asked if there are any sidewalks on any side of Billings Avenue? Ms. Morell-Gengler stated many of the properties are still in the county, which do not require sidewalks; this process is to identify the location of the sidewalks at this time. Commissioner Pouliot explained the commission has attempted to have uniformity throughout the city; however, in this situation, where there are no sidewalks, he agreed sidewalks shouldn't be required at this time. He agreed with Commissioner Netschert's suggestion that if and when there are connecting sidewalks; a previously set provision from the commission could then be carried out to install sidewalks.

Mr. Burton stated normally in subdivision review, the ability to file a final plat and meet all conditions placed on that subdivision is the leverage that the city uses to make sure that the improvements are made. He explained this is a unusual situation, in that it's in a transitional area where both the city and county jurisdictions control different parts of the road. In terms of the sidewalks, the commission has the authority to order the sidewalks in if and when sidewalks are installed in that area. He recommended having the right-of-way and all other issues resolved before that occurs.

Commissioner Oitzinger asked if the variance is denied then all the commission will be doing is identifying the location of the sidewalks? Ms. Morell-Gengler concurred. Commissioner Oitzinger asked if that installation would not happen until it came before the commission or would there be a time certain? Ms. Morell-Gengler explained she doesn't believe there's a time certain. The next opportunity for the commission to require the sidewalks would be when the right-of-way is annexed into the city.

Commissioner Netschert stated his intent is to follow the staff recommendations all the way through with the provision on the last motion to allow installation consistent with other sidewalks being installed and providing a financial guarantee for that. He suggested moving denial from the variance to eliminate the required sidewalks on Billings Avenue and Gibbon Street and moving approval for the variance on Boyce Street and allow the installation for the curb sidewalks but delay them until such time as other sidewalks in the neighborhood can provide connectivity to it.

Mayor Smith reiterated Commissioner Netschert's proposal as denying the variance on Gibbon and Blaine Street and requiring the installation of curb sidewalks on Billings Street at an indeterminate point in the future. Commissioner Netschert concurred.

Commissioner Parriman stated he is in support of Commissioner Netschert proposal; however, he asked how it would be determined when or if the sidewalks would be installed? Mr. Nielsen explained a building permit triggers the installation of a sidewalk. The commission could develop a written agreement between the property owner and the city, which would be recorded in order to secure the installation of the sidewalk.

Mayor Smith explained he is in support of the variance on Blaine and Gibbon Street; however, he feels a curbside sidewalk should be installed on Billings Street.

Motion Commissioner Pouliot moved denial of a variance from Section 12-4-2(A) of the Helena Subdivision regulations to eliminate the required sidewalks on Billings avenue and Gibbon Street adjacent to property legally described as Block 4 of the Boyce Addition, Helena, Montana. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion Commissioner Pouliot moved approval of variance from Section 12-4-2(A) of the Helena Subdivision Regulations to eliminate the required sidewalk on Blaine Street for property legally described as Block 4 of the Boyce Addition, Helena, Montana. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion Commissioner Netschert moved to allow installation of a curb-type sidewalk instead of a boulevard sidewalk on Billings Avenue for property legally described as Block 4 of the Boyce Addition, Helena, Montana and allow delaying installation until such time as properties on the east or west, adjacent to the subject property and can provide connectivity and provide a financial guarantee. Commissioner Parriman seconded the motion. Motion carried 3:2 with Commissioner Oitzinger and Mayor Smith voting no.

Discussion Mr. Burton asked for more direction from the commission regarding implementation of the sidewalks in the future? Commissioner Netschert explained when the right-of-ways are installed, the commission, at any such time can order sidewalks on the subject property.

Public Communications PUBLIC COMMUNICATIONS
No report was given.

Meetings of Interest MEETINGS OF INTEREST
Mayor Smith stated there is a public meeting on December 18, 2003 at 7:00 p.m. in the Civic Center Ball Room to discuss the Helena Open Lands Management Advisory Committee's draft plan and recommendations.
On December 16, 2003 at 5:30 p.m. in the Civic Center Ball Room the team organized to present recommendations to the commission on the Downtown Walking Mall improvements will be holding a public meeting and discussion.
Commissioner Netschert explained he would be unable to attend the town meeting on December 18, 2003 and invited Commissioner Elect Cartwright be in attendance.

Adjournment There being no further business to come before the Commission, the meeting was adjourned at 9:00 p.m.

Mayor Smith

ATTEST:

CLERK OF THE COMMISSION

