

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
January 5, 2004
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, January 5, 2004, 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, Cartwright, Parriman, and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Jacki Pierson were present. Others present were Anne Pichette representing the Youth Advisory Council and Jerry Hutch representing the Helena Citizens Council.

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 15, 2003, were approved as submitted.

Oath of Office

OATH OF OFFICE:

A. Helena Citizens Council

All members of the Helena Citizens Council that were present were given the oath of office and sworn-in by Mayor Smith.

Mayor Smith explained he would be adding Communications and Proposals from the Helena Citizens Council to the standing agenda.

Certificate of Recognition

CERTIFICATE OF RECOGNITION:

A. Zack Wheeler

Mayor Smith postponed the certificate of recognition until January 26, 2004.

Bid Award

BID AWARD:

A. Class A Fire Engine

Staff Report

Fire Chief Steve Larson reported the 1980 1250 gpm Engine has served for 24 years. It is showing wear and tear along with wide spread rusting. The maintenance is increasing requiring additional funds to keep it operational.

Chief Larson recommended replacing the 1980 Hahn with a new Class A Fire Engine with today's operational improvements including Firefighter safety, scene lighting and Class A foam operation.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved approval to award the bid to Becker Fire Equipment for a Class A Custom Triple Rescue Style Combination Pumper with CAFS for \$385,332.00 and to authorize the city manager to sign a contract for the above purchase.

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

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Waiver of 30-day comment period and approval of the Montana Veterans and Pioneers Memorial Building (Montana Historical Society Museum) nomination to the National Register of Historic Places.
- C. Second passage of Ordinance #2985 – amending City of Helena Ord. #2359 and amending the official zoning map thereof in reference to that property described as Lots 1-8 in Block 32 of the City Park Addition in Helena, Montana.

City Manager Tim Burton recommended approval of the claims.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Parriman asked regarding the public comment sections of the agenda and stated he feels they create unnecessary public hearings when one is all that is required. City Attorney David Nielsen explained he would comment during the Report of the City Attorney.

Commissioner Oitzinger welcomed Commissioner Pouliot and Commissioner Cartwright to the commission and thanked both of them for their hard work and dedication. She also thanked the hard work of the Helena Citizens Council.

Mayor Smith welcomed back Commissioner Pouliot.

Commissioner Pouliot welcomed Commissioner Cartwright to the commission.

Commissioner Cartwright thanked everybody involved in the election and stated he is excited to begin his term. He said he had been pleased to learn that, later this month, the Zoning Commission will receive a revised draft of the unified development ordinance. He, and many people he talked to during the campaign, were interested in updating and improving Helena's zoning ordinances.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen responded to Commissioner Parriman's question regarding the public comment section during the meetings. He explained the new law requires the opportunity for public participation before the city commission takes a formal action. Mr. Nielsen stated public comment held after public hearings could be diminished. Commissioner Parriman explained the public comments held before the public hearing is where duplicate information is shared and meetings are elongated. Commissioner Parriman mentioned if a public hearing was on an upcoming agenda, staff could inform the commission and public comment could be postponed until the official public hearing

portion of the proposal. Mr. Nielsen stated he would research the options and get back to the commission.

Public Comment

Mayor Smith asked for public comment; none was received.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

A. Helena Housing Authority – Wilder Project

City Manager Tim Burton invited Matt Schrowe forward to give a presentation on the Helena Housing Authority's new Wilder Project.

Matt Schrowe stated he represents the Helena Housing Authority and explained the project. He invited architect Ben Tintinger forward to explain the design. Mr. Schrowe thanked the commission for their support of the project.

Commissioner Pouliot congratulated the Helena Housing Authority for being so well prepared for the commission.

Commissioner Parriman stated he feels this is a worthwhile project.

Commissioner Cartwright asked if the per square foot cost of the construction would be available? Mr. Tintinger stated an estimated build cost would be \$80 a square foot.

SID #392

RECONSIDER A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT DISTRICT NO. 392 AND SET A PUBLIC HEARING DATE **[TABLED FROM DECEMBER 15, 2003]**

Staff Report

Public Works Director John Rundquist reported the unpaved city streets south of Broadway Avenue have been unpaved since the original townsite of Helena was platted. There have been two prior efforts to create a Special Improvement District for these streets in the last 30 years. Through canvassing of fronting property owners by neighborhood organizers, there now appears to be majority support for the creation of a SID to reconstruct and pave the streets indicated above.

This SID would construct new roadway, curb and sidewalks at a total estimated cost not to exceed \$687,856. The method of assessment will be cost proportionate to lot area as allowed by the Montana codes relating to SID creation. Helena has historically used this method of assessment when local streets are constructed in establishing neighborhoods. The average assessment per property owner will be about \$10,500 which, at the property owners option, may be paid off lump sum or through annual payments over 15-years.

This resolution of intention, if approved by the city commission, will initiate a 15 day petition period whereby those affected property owners not in favor of SID formation may petition the city. If a majority of property owners (by assessment value) petition against the creation, then by Montana Code, the SID cannot be created. If protesting petitions are not the majority, then a final resolution for the SID creation will be presented to the city commission for their consideration and a public hearing.

The Public Works/Utilities Maintenance Division is currently reviewing the status of water distribution mains and the sewer and stormwater collection systems in this neighborhood. Substandard underground infrastructure will be proposed for replacement in coordination with this project through the city's mainline replacement programs. City utility replacements would be performed with utility funds and will not add cost to the property owner's SID obligation.

Mr. Rundquist recommended tabling the resolution in order to allow staff more time to configure the cost.

Discussion

Mayor Smith asked when this project would be ready to be reviewed by the commission. Mr. Rundquist explained staff would be hard pressed to accomplish this project by summer and explained it would be ready to begin in the summer of 2005.

Mr. Burton explained this gives an opportunity to work with the individual property owners and salvage this project at a more affordable price. If the commission chooses to table the proposal to the call of the city manager, the project would go through the formal advertising process as well.

Commissioner Parriman asked if by approving the resolution of intention the only action taken would be to set a public hearing date and engage the community for support? Mr. Rundquist concurred and explained the resolution of intention would trigger a 15-day protest period, if at the end of that period more than 50 percent of the property owners, by assessment, protest against the SID it effectively kills it. State statute states the SID cannot be raised for another 6 months. Mr. Rundquist explained when this project began there was over 50 percent of property owners that were in support of the SID; however, because of the cost that support percent has dropped considerably.

Mr. Burton explained a tabling motion would allow staff to look into in-house financing for the engineering and consider bringing CTEP funds into the project to help out with the sidewalk portion of the project. Commissioner Parriman stated he would like this project to be more affordable and is in support of the tabling project.

Commissioner Cartwright asked if financing options have been looked at? Mr. Rundquist explained he researched with the bond council other financing options and it could be stretched out to 20 years; however, the longer financing runs the more the property owner pays in terms of interest. Mr. Rundquist explained the loan could be paid off all at once to avoid the interest payments. Commissioner Cartwright stated in addition to bonding there are other options, such as treating it as a Special Street Maintenance District, there by keeping the annual costs down. Mr. Rundquist explained the property owner only gets assessed for what is actually spent to build the project.

Commissioner Pouliot stated he is in support of tabling this project in order to find a reduced cost.

Public Comment

Mayor Smith asked for public comment.

Fred Sargeson, 727 Hillsdale, explained he and other property owners in the neighborhood collected signatures of those opposed to SID #392 and found it to be over half were opposed of the project. Mr. Sargeson explained there are problems in the neighborhood and property owners realize that those problems need to be addressed; however, SID #392 should be denied, allowing a new SID to be formed.

Ken Phillips, 725 Hillsdale, explained the initial cost projections of the projects were supported; however, that changed when the new cost projections were released.

Stewart Kirkpatrick, 15 Shiland, explained he supports the Public Works Director's idea of starting over and urged the commission to deny the existing proposal because the vast majority of the neighborhood does not support it.

Jim Reynolds, 29 S. Alta, spoke on behalf of property owners Bill Keller and Margo Brace. Mr. Reynolds summarized an email received from Mr. Keller and urged the commission to deny the proposal. Mr. Reynolds also mentioned he and his wife had been misrepresented to the neighborhood by city staff stating they were in support of the SID when they were not.

Bill Eicker, 708 Hillsdale, explained the process he was involved in to form SID #392. However, the cost of the project was raised and the support from the neighborhood decreased. He explained there are property owners that would like to see this project go through; however, the costs have to go down. Mr. Eicker offered his time to staff and the commission in order to accomplish the necessary neighborhood improvements.

Kevin Rauch, 900 Highland, explained this is not city money that is being discussed, it is the property owners and he asked that the city keep that in mind. He urged the commission to deny the proposal.

Mark Kurr, 16 Shiland, stated they are opposed to the current project; however they are willing to start with a new project.

Discussion

Commissioner Oitzinger asked what the real effects would be in denying the proposal? Mr. Burton explained by tabling the SID staff would be directed to search out additional resources and it is healthy to stay engaged in order to find a more suitable situation.

Commissioner Parriman stated he would support the tabling motion.

Commissioner Cartwright explained the property owners living on north Broadway are concerned with the runoff from Raleigh Street to Alta Street. He stated he would voting for denial but does support creating a new SID.

Commissioner Parriman asked for an explanation regarding assessment value and if it effects individual property owners input on the SID? Mr. Rundquist explained the vote is by assessment methodologies. In the case of this SID, staff was moving toward the square footage of the property as being the assessment methodology. The vote by assessment would be weighed in proportion to the square footage of the property.

Commissioner Pouliot explained the commission is not happy with the cost of the SID and he supports a tabling motion in order to get the cost down and improve the neighborhood.

Motion

Commissioner Pouliot moved to table of a resolution of intention to create Special Improvement District Number 392 for the reconstruction and paving of Alta, Hoback, Shiland, Raleigh, Hillsdale, and Highland Streets south of Broadway Avenue, and schedule a public hearing for February 9, 2004. Commissioner Parriman seconded the motion.

Discussion

Mayor Smith stated he intends to support the tabling motion. Commissioner Oitzinger mentioned CTEP funds could be used to help the neighborhood save money and stated she would be supporting the tabling motion.

Vote

Motion carried 4:1 with Commissioner Cartwright voting no.

Amend Res. #11857 CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 11857 TO CORRECT THE LEGAL DESCRIPTION OF LOT 1 OF THE PADBURY MINOR SUBDIVISION NUMBER 1

Staff Report City Attorney David Nielsen reported the Padbury Minor Subdivision Number 1 was annexed into the city in April of 2003. The legal description contained in the resolution annexing the property was erroneous and should be corrected to show the actual description. Mr. Nielsen recommended correcting the legal description of the Padbury Minor Subdivision Number 1.

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

Motion Commissioner Pouliot moved approval of a resolution amending Resolution No. 11857 to correct the legal description of Lot 1 of the Padbury Minor Subdivision Number 1 which was annexed into the City of Helena. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12068**

Annexation of Right-of-Way CONSIDER A RESOLUTION ANNEXING PROPERTY TO BE UTILIZED AS RIGHT-OF-WAY FOR LOLA STREET AND ALICE STREET, ADJACENT TO LOT 1 OF THE PADBURY MINOR SUBDIVISION NUMBER 1, PREVIOUSLY ANNEXED INTO THE CITY OF HELENA, MONTANA

Staff Report City Attorney David Nielsen reported Lot 1 of the Padbury Minor Subdivision Number 1 was annexed into the city in April of 2003. The applicant desires to annex and dedicate to the city right-of-way on the north and east of Lot 1. The applicant has applied for annexation of sufficient property for these rights-of-way. Mr. Nielsen recommended annexing the property to be dedicated as rights-of-way for extension of Lola and Alice Streets next to Lot 1 of the Padbury Minor Subdivision Number 1.

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

Motion Commissioner Pouliot moved approval of a resolution annexing property to be dedicated as right-of-way for the extension of Lola and Alice Streets north and east of Lot 1 of the Padbury Minor Subdivision Number 1. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12069**

Water/Sewer Enlargement CONSIDER AN APPLICATION TO ENLARGE THE WATER AND SEWER SERVICE AREA TO SERVE 37.5 FEET OF LOT 7 AND LOT 8 IN BLOCK 5 OF THE CHRIS KENCK ADDITION

Staff Report City Engineer Ryan Leland reported the property is located on State Street between Stabern and Hoback streets and was recently purchased by Cherche Prezeau and Brian Morris. The property is currently vacant. The property is located within the city limits but outside the water and sewer service areas. Mr. Leland recommended approval for the water and sewer boundary extension.

- Public Comment Mayor Smith asked for public comment, none was received.
- Discussion Commissioner Parriman asked if the applicants are responsible for paying the water extension? Mr. Leland concurred. Commissioner Parriman asked if the rebate policy program would be available to the property owners if an adjacent lot were to connect with that water main? Mr. Leland concurred.
- Motion** Commissioner Parriman moved approval for the application to enlarge the water and sewer service area to serve a portion of Lot 7 and Lot 8 in Block 9 of the Chris Kenck Addition upon approval of the utility extension plan by the city engineer. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
- Annexation (Mow)** CONSIDER A RESOLUTION ANNEXING LOT D IN BLOCK 159 IN THE SYNDICATE ADDITION, LEWIS & CLARK COUNTY, MONTANA, GENERALLY LOCATED AT 1730 CHOTEAU STREET, AND THE PUBLIC ALLEYWAY ADJACENT TO THE PROPERTY, INTO THE CITY OF HELENA
- Staff Report Project Manager Hal Fossum reported on January 13, 2003, the city commission duly established conditions to annexation of this residential property to the city of Helena (Res. #11839) and the property was rezoned in the R-2 District (Ord. #2949). The application for annexation was precipitated by the owners' desire to build an additional residence on part of the property, and this infill development required annexation to secure city utilities. The existing residence was already connected to city utilities and will be annexed by this action.
- The subject property is located on Choteau Street adjacent to current city limits. This proposal includes the annexation of the adjacent segment of alleyway. (The other adjacent streets, including the segments of Choteau and Joslyn Streets, are already in the city.)
- Mr. Fossum recommended approval of a resolution annexing the property, subject to the following conditions and public right-of-way:
- Right-of-Way**
The 18 foot wide alleyway from the northerly extension of the east boundary of Lot D to the northerly extension of the west boundary of Lot D.
- Conditions**
- A. **Infrastructure**: The applicant has installed infrastructure and entered into a development agreement petitioning the city for garbage service, and deferring street and other infrastructure improvements.
 - B. **Review of new construction**: A new residence was permitted by the city.
 - C. **Taxes and Assessments**: Taxes and assessments are paid and current.
 - D. **Completion of Conditions**: The applicant did timely complete these conditions and notify staff of their readiness to annex. The final steps are a resolution of annexation, and administrative transfer of responsibilities from county to city providers.
- Public Comment Mayor Smith asked for public comment, none was received.

Discussion

Commissioner Cartwright asked how the city and future owners of the property would know and remember about the deferred improvements? Mr. Fossum explained all four of the properties signed a development agreement and if the annexation is approved the documents would be taken to the Clerk and Recorder for filing.

Mr. Burton explained all annexation issues have been centralized in the care of Mr. Fossum and they are all placed on the GIS system.

Motion

Commissioner Pouliot moved approval for a resolution annexing Lot D in Block 159 in the Syndicate Addition, Lewis & Clark County, Montana, generally located at 1730 Choteau Street, and the public alleyway adjacent to the property, into the city of Helena and the conditions outlined above. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12070**

Annexation (Wegner)

CONSIDER A RESOLUTION ANNEXING LOTS 7 AND 8 IN BLOCK 9 OF THE TOWNSITE OF WEST HELENA, LEWIS & CLARK COUNTY, MONTANA, GENERALLY LOCATED AT 2440 COUNTRY CLUB AVENUE, AND THE ADJACENT PUBLIC RIGHT OF WAY OF CUTTING AVENUE AND THE ALLEY RIGHT OF WAY, INTO THE CITY OF HELENA

Staff Report

Project Manager Hal Fossum reported on August 18, 2003, the city commission established conditions to annexation of this residential property to the city of Helena (Res. 12007), and the property was rezoned in the R-2 District (Ord. 2965). The application for annexation was precipitated by a septic system failure, which was duly resolved by connecting to the city's sewer main.

The subject property is located on Country Club Avenue, adjacent to another property already in the city. The annexation of the adjacent segments of platted, undeveloped street rights-of-way of Cutting Avenue and the alleyway north of the property are also proposed for annexation by this action. The adjacent portion of Country Club Avenue is already in the city.

Mr. Fossum recommended approval of the annexation subject to the following conditions:

- A. **Infrastructure**: The applicant has installed infrastructure and entered into a development agreement petitioning the city for garbage service, and deferring street, water, and other infrastructure improvements.
- B. **Review of new construction**: No new construction has been noted.
- C. **Taxes and Assessments**: Taxes and assessments are paid and current.
- D. **Completion of Conditions**: The applicant did timely complete these conditions and notify staff of their readiness to annex.

Staff has noted that a portion of the structures on the property encroach onto the undeveloped Cutting Avenue right-of-way. Under the development agreement, the property owners will seek an encroachment agreement with the city following annexation.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of a resolution annexing Lots 7 and 8 in Block 9 of the West Helena Townsite,

Lewis & Clark County, Montana, generally located at 2440 Country Club Avenue, and the adjacent public rights of Cutting Avenue and the alleyway, into the city of Helena. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Res. #12071**

**Annexation
(Zimmerman)**

CONSIDER A RESOLUTION ANNEXING LOTS 9-10, BLOCK 9, TOWNSITE OF WEST HELENA, LEWIS & CLARK COUNTY, MONTANA, GENERALLY LOCATED AT 2460 COUNTRY CLUB AVENUE, AND THE ADJACENT PLATTED ALLEYWAY, INTO THE CITY OF HELENA

Staff Report

Project Manager Hal Follum reported on June 4, 2001, the city commission duly established conditions to annexation of this residential property to the city of Helena (Res. 11637), and the property was rezoned in the R-2 District (Ord. 2916). The application for annexation was precipitated by a septic system failure, which was duly resolved by connecting to the city's sewer main.

The subject property is located on Country Club Avenue, adjacent to another property already in the city. The annexation of the adjacent segment of a platted, undeveloped alleyway north of the property is also proposed for annexation by this action.

Mr. Fossum recommended approval of the annexation subject to the following public right-of-way adjacent to Block 9:

1. The 14-foot wide alleyway from the northerly extension of the east boundary of Lot 9 west to the east line of Lea Avenue;

and the following conditions:

- A. **Infrastructure**: The applicant has installed infrastructure and entered into a development agreement petitioning the city for garbage service, and deferring transportation, water, and other infrastructure improvements.
- B. **Sewer annexation fee**: The sewer annexation fee has been paid.
- C. **Taxes and Assessments**: Taxes and assessments are paid and current.
- D. **Completion of Conditions**: the applicant was required to timely complete these conditions and notify staff of readiness to annex. Staff is satisfied that this condition has been met.

It is notable that more than one year has elapsed since conditions to annexation were established. The main rationale for the time limit is to enable the city to reconsider in the event that significant changes in policy or infrastructure capacity result in different requirements of annexation. Staff review suggests that nothing has significantly changed that would deter the city's ability to serve the property.

Staff has noted that the structures on the property encroach onto the undeveloped alleyway. Under the development agreement, the property owners will seek an encroachments agreement with the city following annexation. The final steps are a resolution of annexation, and administrative transfer of responsibilities from county to city providers.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval for a resolution annexing Lots 9-10, Block 9, West Helena Townsite, Lewis & Clark County, Montana, generally located at 2460 Country Club Avenue, and the adjacent platted alleyway, into the city of Helena.

Commissioner Parriman seconded the motion. All voted aye, motion carried. **Res. #12072**

**Annexation
(Chisholm)**

CONSIDER A RESOLUTION ANNEXING LOTS 21-23, BLOCK 165, SYNDICATE ADDITION, LEWIS & CLARK COUNTY, MONTANA, GENERALLY LOCATED AT 1810 CHOTEAU STREET, INTO THE CITY OF HELENA

Staff Report

Project Manager Hal Fossum reported on June 4, 2001, the city commission duly established conditions to annexation of this residential property to the city of Helena (Res. #11638), and the property was rezoned in the R-2 District (Ord. #2912). The application for annexation was precipitated by the building of a new residence connected to city water and sewer utilities. When the connections were discovered by the city, staff requested that property owner's petition for annexation or disconnect the utility service.

The subject property is located on Choteau Street, one lot removed from the nearest in city parcel. The annexation of related street rights-of-way, including the segments of Choteau Street and the adjacent alleyway, has already been completed. Annexation of this property would have the effect of surrounding the residence 1800 Choteau Street; that property, which is served by city water and sewer, has previously waived protest to annexation.

Mr. Fossum recommended adopting a resolution of annexation subject to the following conditions:

- A. **Infrastructure:** The applicant has installed infrastructure and entered into a development agreement petitioning the city for garbage service, and deferring street and other infrastructure improvements.
- B. **Sewer annexation fee:** The sewer annexation fee has been paid.
- C. **Taxes and Assessments:** Taxes and assessments are delinquent.
- D. **Completion of Conditions:** The applicant was required to timely complete these conditions and notify staff of readiness to annex. Staff is satisfied that this condition has been met.

It is notable that more than one year has elapsed since conditions to annexation were established. The main rationale for the time limit is to enable the city to reconsider in the event that significant changes in policy or infrastructure capacity result in different requirements of annexation. Staff review suggests that nothing has significantly changed that would deter the city's ability to serve the property.

The final steps are a resolution of annexation, and administrative transfer of responsibilities from county to city providers.

Public Comment

Mayor Smith asked for public comment, none was received.

Discussion

Mayor Smith asked regarding the delinquent taxes? Mr. Fossum explained the mechanisms for collecting back taxes are strong and staff is comfortable with the recommendation. Mr. Nielsen explained the annexation neither enhances nor diminishes the ability to collect the delinquent taxes. After the annexation, the taxing jurisdiction will change and the next taxes would include the city mills.

Mayor Smith stated any time the city annexes a property in, there will be a change in the taxing jurisdiction and asked why taxes and assessment is a condition of annexation?

Mr. Burton explained he shares the same concern and explained the property is receiving city services, whether taxes are paid or not is another issue.

Commissioner Pouliot stated he would be voting no.

Motion

Commissioner Oitzinger moved approval of a resolution annexing Lots 21-23, Block 165, Syndicate Addition, Lewis & Clark County, Montana, generally located at 1810 Choteau Street, into the city of Helena. Commissioner Parriman seconded the motion.
Res. #12073

Discussion

Mayor Smith stated he would be voting no with Commissioner Pouliot and explained it troubles him to deviate from conditions that were recently established.

Vote

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

Public Hearings

PUBLIC HEARINGS:

Bresnan Contribution

A. CONSIDER A REQUEST TO BRESNAN COMMUNICATIONS TO PROVIDE A CAPITAL CONTRIBUTION IN THE AMOUNT OF \$25,000 FOR THE PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNEL (PEG)

Staff Report

Community Facilities Director Gery Carpenter reported in accordance with section 4.2 of the Franchise Agreement between the city of Helena and TCI Cablevision of Montana, Inc., now Bresnan Communications, the city of Helena may "commence proceedings, which afford public participation and open meetings for the purpose of determining if the Franchising Authority should request the Grantee to provide additional public, educational and governmental access capital support up to \$25,000," HCTV has an agreement with the city of Helena for the administration and management of a cable television public access channel. They have expended the initial \$100,000.00 capital contribution also the second contribution of \$25,000.00 and third capital contribution of \$25,000.00 has been expended and/or encumbered on the acquisition of equipment. HCTV's equipment acquisitions and facility remodel needs for the next year is \$30,000.00.

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 Oitzinger moved to request that Bresnan Communications provide the fourth capital contribution for public, educational and governmental access of \$25,000.00. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Real Estate Signs

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR AN

AMENDMENT TO SECTION 11-23-9: (C)(1) OF THE HELENA
ZONING ORDINANCE TO INCREASE THE CURRENT
PERMITTED SIZE OF REAL ESTATE SIGNS

Staff Report

City Planner Belinda Waters reported the applicants proposed an amendment that would increase the current permitted size of real estate signs from 4 square feet to 6.25 square feet. The applicant's state the number one generator of calls to real estate firms is from yard signs placed on property for sale or rent, which means agents derive their living from sign calls. The applicants also noted that the public is best served by getting information about the property directly from the agent who has the listing. Therefore, it is a standard practice to place a rider (approximate size is 540 square inches) noting whom the agent is. Another rider that is normally seen states if the property is "for rent" or "for sale." This practice ensures that the public is not responding to all signs if they are only looking for a place to buy or a place to rent or vice versa.

However, on Tuesday, December 9, 2003 the Helena Zoning Commission recommended approval (3:1 vote) for adoption of an ordinance amending Section 11-23-9 of the Helena Zoning Ordinance for real estate signs that would allow the size to be increased to only 5 square feet (the same size as noncommercial signs).

Ms. Waters recommended adoption of an ordinance amending Section 11-23-9.

Discussion

Commissioner Parriman asked if the frame of the sign were added into square footage? Ms. Waters stated no it is limited to just the sign itself.

Commissioner Oitzinger asked if under the zoning commission recommendation of 5 square feet could there be one regular real estate sign plus one rider? Ms. Waters concurred and explained it would allow realtors to have the main sign and one rider would be allowed.

Mayor Smith asked if the rider is detachable? Ms. Waters concurred.

Commissioner Cartwright asked if there are real estate signs that meet the current standard while having all the necessary information? Ms. Waters explained these are the standard sizes that are manufactured by the industry.

Public Testimony

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

Rick Ahmann, 527 Dearborn Avenue, explained real estate signs are a non-confrontational way for consumers to gather information regarding the property. He stated real estate signs can be reused for years and allow realtors with a lot of flexibility. Mr. Ahumann stated unlike political signs, which can crowd one lawn, realtors only place one sign in a yard.

Gary Frederick, 1005 Partridge Place, stated he has been using these signs for 12 years and explained they have been working just fine. He urged the commission to approve the proposal.

Rick Alton, 65 Cloverview Drive, explained the real estate businesses is not asking to increase from their original size; however, it has recently come to their attention that the signs are not in compliance. He urged the commission to approve the proposal.

Teresa Lightbody, 704 North Rodney, stated she and the real estate business would like to continue doing business as always.

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

Discussion

Mr. Burton explained one complaint was received regarding real estate signs and stated the sign ordinance is driven on a complaint basis.

Commissioner Parriman stated he would be supporting the 828 square inch proposal.

Commissioner Pouliot explained he would be supporting the recommendation from staff.

Commissioner Oitzinger explained she would have an issue regarding comparability with non-commercial speech and commercial speech and stated they should be equal.

Commissioner Cartwright asked if more than one real estate sign could be placed in one yard? Mr. Nielsen explained the city code states "Real estate signs advertising property for sale or lease, shall be limited to 4 square feet in an area not to exceed 6 feet in height for any individual residential lot". Mr. Nielsen stated multiple signs would be permitted but they could not exceed 4 square feet in total. Commissioner Cartwright asked if commercial signs are permitted to be 6 square feet then non-commercial signs should be as well? Mr. Nielsen stated it would be his recommendation if the commission chooses in favor for the excess of 5 square feet, to table the proposal in order for him to redraft the non-commercial section to bring them into parity. Commissioner Cartwright stated he would be supporting the tabling motion.

Commissioner Oitzinger asked regarding language in the non-commercial sign ordinance encouraging non-commercial signs to remain as they always been, 4 square feet? Mr. Nielsen explained after the commission passed the non-commercial amendments, the commission did pass a policy encouraging political candidates to keep their signs within certain sizes and durations.

Mayor Smith stated the existing ordinance was violated at some point in time and responsibility should be taken by the real estate business and the city. He explained he is interested in maximum amount uniformity between commercial and non-commercial signage.

Commissioner Parriman stated he would be interested in exploring the possibility of a special designation in the ordinance for real estate signs.

Commissioner Cartwright explained instead of designating specifically for real estate signs it could relate to having an unlimited number of 4 square foot signs or one 6 square foot sign.

Motion

Commissioner Oitzinger moved to table first passage of an ordinance amending the Helena Zoning Ordinance Section 11-23-9: (C)(1) that regulates real estate signs: "Section 11-23-9; (C)(1) Real estate signs advertising property for sale or lease shall be limited to five (5) square feet in area not to exceed six feet (6') in height for any individual, residential lot. One sign to identify a major subdivision development with multiple lots for sale shall be permitted provided said sign does not exceed thirty two (32) square feet and eight feet (8') in height." Commissioner Parriman seconded the motion.

Substitute Motion

Commissioner Pouliot moved approval for first passage of an ordinance amending the Helena Zoning Ordinance Section 11-23-9: (C)(1) that regulates real estate signs: "Section 11-23-9: (C)(1) Real estate signs advertising property for sale or lease shall be limited to five (5) square feet in area not to exceed six feet (6') in height for any individual, residential lot. One sign to identify a major subdivision development with multiple lots for sale shall be permitted provided said sign does not exceed thirty two (32) square feet and eight feet (8') in height." Motion dies for a lack of second.

Vote on Original Motion

All voted aye, motion carried.

Discussion

Commissioner Oitzinger asked regarding inflatable signs? Mr. Nielsen explained they are prohibited.

CUP

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR AN AMENDMENT TO SECTION 11-21-5 (I-1) OF THE HELENA ZONING ORDINANCE TO ALLOW STORAGE UNITS IN THE B-2 (GENERAL COMMERCIAL) DISTRICT WITH A CONDITIONAL USE PERMIT (CUP) OR AN ORDINANCE AMENDMENT TO SECTION 11-11-2 TO ALLOW STORAGE UNITS AS A PERMITTED USE IN THE B-2 (GENERAL COMMERCIAL) DISTRICT

Staff Report

City Planner Kathy Macefield reported on December 9, 2003 the Helena Zoning Commission unanimously (4:0 vote) recommended approval for the adoption of an ordinance to amend Section 11-21-5 (I)(1) of the Helena Zoning Ordinance to allow storage units, with no storage of goods located outside the storage units, as a conditional use in the B-2 (General Commercial) District. The Zoning Commission considered allowing storage units as a permitted use and as a conditional use in the B-2 district and determined it was better to require a CUP, which allows each location and proposal to be individually evaluated.

The original staff recommendation had been to allow the storage units as a permitted use in the B-2 District (without a CUP) but added the requirement that there would be no outside storage of goods. Since these units would be a conditional use instead, these same restrictions could be placed on an individual application if necessary and was not needed for the ordinance amendment.

Storage units (SIC#4224, Household Goods and Storage and SIC#4225, General Warehousing and Storage) are currently not allowed in the B-2 District but are a permitted use in the CLM (Commercial-Light Manufacturing) and M-I (Manufacturing-Industrial) Districts. Underground storage units are presently a conditional use in the B-3 (Central Business) District.

Ms. Macefield recommended amending Section 11-21-5 (I)(1) of the Helena Zoning Ordinance to allow storage units with a conditional use permit (CUP) in the B-2 (General Commercial) District.

Public Testimony

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

Joe Nistler, 7415 Clausen Road, explained they have owned that land for about 7 or 8 years and decided storage units would be the best usage for the space.

Steve Nistler, 7691 Highway 12 West, explained he owns the Waterford with residents who come from a larger residence to a smaller dwelling and often need a location to store things; there are no storage units for them on that side of town.

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

Motion

Commissioner Parriman moved approval for first passage of an ordinance to allow storage units and as a conditional use permit.

Commissioner Oitzinger seconded the motion. Motioned carried 4:1 with Commissioner Cartwright voting no. **Ord. #2986**

Public Communications

PUBLIC COMMUNICATIONS

No report was given.

Meetings of Interest

MEETINGS OF INTEREST

Mayor Smith stated the Commissioner Orientation would be held on January 6, 2004 at 12:00 noon in room 326. The Administrative Meeting will be held on January 14, 2004 at 4:00 p.m. to 6:00 p.m. The next City Commission Meeting will be held on January 26, 2004 at 6:00 p.m. in room 330.

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

