

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

Time & Place A regular City Commission meeting was held on Monday, April 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 Pitchette representing the Youth Advisory Council and Justin Trafton 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, March 22, 2004 were approved as submitted.

Presentation PRESENTATION:
A. Certificate of Appreciation - Chaplain Bob Holmes

Chief of Police Troy McGee reported Chaplain Bob Homes is to be acknowledged for 22 years and over 5,000 hours of volunteer service to the Helena Police Department and the Lewis and Clark County Sheriff's Department.

Sheriff Liedle stated the Lewis and Clark County and the City of Helena are so fortunate to have a harmonious working relationship among the law enforcement agencies and the first responders due primarily to the efforts of Chaplain Homes.

Chaplain Homes stated the City of Helena and the Lewis and Clark County have reasons to be very proud and confident, not only in the leadership or the law enforcement agencies, but in the quality of the officers. He stated he has offered to continue to be a counselor for the officers and their families.

Discussion Mayor Smith stated Chaplain Homes has been more than a cornerstone for the police and sheriff departments but for the entire city and thanked him for his continued volunteer services.

Appointment APPOINTMENT:
A. Helena Open Lands Management Committee

Mayor Smith asked for commission concurrence for the following appointment:
HOLMAC
Ken Knudson – Unexpired term expires June 30, 2007.

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

Motion **Commissioner Pouliot moved approval of the HOLMAC appointment for Ken Knudson.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Highway Traffic Safety Contract 2004-13-04-38
- C. Provide funds from the Revolving Loan Fund in the amount of \$5,000 to Gateway Economic Development Corporation for costs associated with preparing and implementing the "Helena Retail Shopping" survey
- D. First passage of an ordinance amending Section 1-4-10 of the Helena City Code to correctly show new boundaries of the Helena Citizens Council Districts. **Ord. #2990**
- E. Utility Bill Insert - Montana Chapter of the Komen Foundation
- F. Second Passage of Ordinance 2989 – amending Sections 2-7-19 and 2-7-25 of the Helena City Code and clarifying that probationary employees and certain union employees may not appeal discharge to the Civil Service Board

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright mentioned Dr. Sargent and Dr. Shepard will have an article published in the British Medical Journal and they should be congratulated.

Commissioner Oitzinger added her congratulations to Dr. Sargent and Dr. Shepard.

Mayor Smith mentioned he attended Gus Beaver's funeral today.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Tim Burton invited Fire Chief Steve Larson forward to brief the commission on the renewal of the Ambulance District Contract.

Chief Larson explained the contract has been renewed for an additional five years with St. Peters Ambulance Service and Hospital.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

Justin Trafton stated the last HCC meeting was held on March 24th at 7:00 p.m. He reviewed the agenda and stated it was discussed how the HCC, the city commission and staff could work and communicate better.

Commissioner Parriman asked regarding the renaming of Last Chance Gulch and if it will reach down to I-15? Mr. Trafton stated he is unsure if the project has reached I-15 but business owners have been contacted between North Montana Avenue to Euclid Avenue. Commissioner Parriman explained HCC member George Hoff stated all the business owners he spoke with are unanimous in wanting to see that street renamed as Last Chance Gulch. Commissioner Parriman mentioned the expense of the businesses and the city to make all the

necessary corrections regarding store signage, business licenses and street signage.

Mr. Burton explained most recently the Administrative Services Division preformed a comprehensive audit of the cities business licenses. He stated he would visit with Mr. Hoff regarding any information that he has that would be of value to that audit.

Interlocal Agree.

CONSIDER A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT FOR THE CREATION, ESTABLISHMENT AND GOVERNANCE OF THE MONTANA PUBLIC POWER AUTHORITY BY AND AMONG THE CITY OF HELENA, THE CITY OF BILLINGS, THE CITY OF BOZEMAN, THE CITY OF GREAT FALLS, THE CITY OF MISSOULA AND THE CONSOLIDATED CITY/COUNTY OF BUTTE-SILVER BOW; APPROVING AND AUTHORIZING THE EXECUTION OF SUCH AGREEMENT BY CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

Staff Report

City Manager Tim Burton reported sometime back the city commission allocated \$4,475 to review the feasibility of purchasing the Montana portion of Northwestern Energy. The information from the previous bid has been updated. Several legal, financial and business experts were retained for that purpose.

If approved, the Interlocal Agreement will become effective when four of six cities have approved it. The Interlocal Agreement sets up a board that would review the data and continue to refine the data over a period of time. Ultimately, they will make the decision to submit a bid to the Creditors Committee in the U.S. Bankruptcy Court.

Alic Hanson, Executive Director of the Montana League of Cities and Towns, urged the commission to approve the Interlocal Agreement and stated he believes it is a vital issue within the State of Montana. He noted that Billings did not approve the agreement but may be voting on it again and hopefully will be better informed on the issue. Mr. Hanson explained this is the first phase of three agreements and the business plan is simple, keep jobs in Montana and keep prices where they are or lower them.

Discussion

Commissioner Parriman asked if Helena is the first city taking this step? Mr. Burton explained Billings was the first and all the rest will follow suit. Commissioner Parriman asked if 4 of the 6 cities need to approve the agreement in order to move forward? Mr. Hanson concurred. Commissioner Parriman asked regarding the rural areas participation? Mr. Hanson explained the initial participants would organize the authority and it is intended in the future to try to get every city, town and county, that is served by this utility system, to execute the Interlocal Agreement and to join this effort. Commissioner Parriman asked what Billings concern were? Mr. Hanson explained lack of information was a key to their decision. Commissioner Parriman stated he would be supporting the agreement.

Commissioner Cartwright explained he has come to the conclusion, reluctantly, that it is a good idea to pursue taking over the utility; however, he has some concerns with the agreement. He is concerned the Interlocal Agreement doesn't spell out the kinds of things that have been discussed. Such as, there is no mention of the governance for people in rural areas, the Board controls the payment in lieu of taxes, the agreement lacks a termination date and if the agreement is accepted is their room to change certain items. Mr. Hanson

explained this is the first of two agreements; the subsequent agreement would clearly spell out that it replaces the first agreement. This initial agreement is intended to get us to the point where the cities can submit a term sheet to the creditors committee. The second agreement will spell out specifically how the board can be expanded; the idea from the beginning is that the original participants will maintain majority representation. Mr. Hanson explained the agreement would have to be adjusted along the way. Commissioner Cartwright asked if the agreement was accepted, could the cities choose to amend the agreement? Mr. Nielsen explained it could be amended with a majority of $\frac{3}{4}$. Mr. Burton explained the contract states that amendments can be made; however, a lot of those issues would be dealt with further down the road.

Commissioner Oitzinger stated this agreement would require issuance of revenue bonds by the authority that is created; however, she feels there is a Montana statewide cap on bonding and asked if this would fall under such a cap? Mr. Hanson explained it is his understanding that the cap applies to General Obligation bonds. Commissioner Oitzinger asked for a follow up. Mr. Burton explained the finance advisors have looked at that issue, the question would be further defined. Commissioner Oitzinger stated she supports this proposal.

Public Comment

Mayor Smith asked for public comment.

Randy Kaiser, 1007 Cherry Avenue, HCC Chairman reported the HCC discussed and voted to support the Interlocal Agreement.

Justin Trafton, 1505 East Lyndale Avenue stated he is in support of the proposal.

Motion

Commissioner Pouliot moved approval of a resolution approving and authorizing the execution of the Interlocal Agreement for the Creation, Establishment and Governance of the Montana Public Power Authority by and among the City of Helena, the City of Billings, the city of Bozeman, the City of Great Falls, the City of Missoula and the Consolidated City/County of Butte-Silver Bow; approving the authorizing the execution of such agreement by City; and providing for other matters property relating thereto.

Commissioner Oitzinger seconded the motion.

Discussion

Mayor Smith explained he is in support of this proposal and he is interested in the deferred maintenance and in keeping the jobs in Montana.

Commissioner Pouliot stated he would be in support of this proposal and he is disappointed in all of our legislative leaders for not stepping forward and doing the same thing for everybody in Montana.

Commissioner Cartwright stated he wanted to clear up any misunderstanding that the public might have that should it go through, it is unlikely to lower the cost of power. He is still worried that the Interlocal Agreement is inadequate for a billion dollar offering.

Vote

Motion carried 4:1 with Commissioner Cartwright voting no. **Res. #12091**

**Public Hearings
CUP**

PUBLIC HEARINGS:

- A. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW THE RETAIL SALE OF SPORTING GOODS, SIC #5941 (INCLUDING SCUBA EQUIPMENT WITH ACCESSORY SCUBA INSTRUCTION), IN A CLM

(COMMERCIAL LIGHT MANUFACTURING) DISTRICT.
LEGALLY DESCRIBED AS LOTS 21 THROUGH 27, BLOCK 20

OF THE NORTHERN PACIFIC ADDITION, HELENA,
MONTANA; GENERALLY LOCATED SOUTH OF BOULDER
AVENUE BETWEEN ROBERTS AND COOKE STREETS WITH
A PROPERTY ADDRESS OF 1310 BOULDER

Staff Report

City Planner Belinda Waters reported the total property area is 19,000 square feet in size with a building size of 10,000 square feet. There are currently four other uses located in the subject building. These include the Mid-Mountain Wholesale Fabric Store, located on the main floor; five artist studios, one located on the main floor, and four located on the second floor; and a marital art academy located on the second floor of the building.

On March 9, 2004 the Helena Zoning Commission unanimously recommended approval of a Conditional Use Permit (CUP) to allow the retail sale of sporting goods, SIC#5941, (including scuba equipment with accessory scuba instruction) in a CLM (Commercial Light Manufacturing) District with two conditions and three variances: (1) a variance from Section 11-22-5 to reduce the number of required parking spaces from 25 to 23 parking spaces; (2) a variance from Section 11-22-9 (A) of the Helena Zoning Ordinance that states 15% of the parking area shall be landscaped; and (3) a variance from Section 11-24-6 of the Helena Zoning Ordinance that requires areas up to 22,000 square feet in size provides a minimum of 10% landscaping.

Ms. Waters recommended approval of the CUP subject to the following conditions and variances:

Conditions

1. **Fire Code:** A second exit, approved by the City, must be provided off the main floor where the retail sales of scuba equipment and the classes will be located.
2. **Permit:** An occupancy permit must be obtained within one year.

Variances

1. A variance from Section 11-22-5 to reduce the number of required parking spaces from 25 to 23 parking spaces.
2. A variance from Section 11-22-9 (A) of the Helena Zoning Ordinance that states 15% of the parking area shall be landscaped.
3. A variance from Section 11-24-6 of the Helena Zoning Ordinance that requires areas up to 22,000 square feet in size provides a minimum of 10% landscaping.

Discussion

Mayor Smith asked if the other businesses were required to get a CUP? Ms. Waters explained two other businesses were required to have CUP's and the other is allowed by right.

Commissioner Parriman asked regarding tenants verses business owner? Ms. Waters explained the tenant is the business owner.

Public Testimony

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

Justin Trafton, 1505 East Lyndale Avenue stated he is in support of the business.

Steven Blomquist stated he is the business owner and is in support of the proposal.

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

Motion

Commissioner Cartwright moved approval of a resolution for a Conditional Use Permit (CUP) to allow the retail sale of sporting goods, SIC #5941, (including scuba equipment with accessory scuba instruction) in CLM (Commercial Light Manufacturing) District and the 2 conditions and the 3 variances outlined above. The proposal is legally described as Lots 21 through 27, Block 20 of the Northern Pacific Addition, Helena, Montana. The property is generally located south of Boulder Avenue between Roberts and Cooke Streets with a street address of 1310 Boulder. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Res. #12092**

CUP

B. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW CONSTRUCTION OF 187 STORAGE UNITS IN THE B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS LOTS 2A AND 4, BLOCK 4, EAST PARK ADDITION, HELENA, MONTANA; GENERALLY LOCATED BETWEEN I-15 AND COLONIAL DRIVE, SOUTH OF BROADWAY

Staff Report

City Planner Kathy Macefield reported the property is currently vacant and undeveloped and is surrounded by vacant property on the east and west, I-15 on the north and Shodair Hospital on the southeast. The proposed storage units have received written opposition from adjacent property owners. On March 9, 2004 the Helena Zoning Commission was not able to provide a recommendation on this proposal due to a tie vote and one abstention. The conditions recommended by the Zoning Commission have been modified to clarify the design requirements, and to not allow outside storage.

According to the submitted site plan, 4 of the 5 buildings would be one story and one building would be two-story; 13,100 square feet of landscaping would be installed around the perimeter of the property. The applicant proposed installing an 8-foot tall chain-link fence and two security gates; a single curb cut would be located at the southwest corner of the property to provide access to Colonial Drive. Three stormwater detention ponds would be located on the northeast side of the property.

Ms. Macefield recommended approval subject to the following conditions:

1. **Design Concepts:**
 - A. Screening must be installed along the south property boundary adjacent to Colonial Drive; chain link fence is not permitted along this southern boundary.
 - B. Perimeter landscaping; the landscaping area must be a minimum of 20 feet wide along the property frontage adjacent to the Colonial Drive right of way in addition to the remaining perimeter landscaping shown on the submitted site plan.
2. **Outside Storage**

No outside storage will be permitted.
3. **Building Permit**

A building permit must be obtained within one year.

Discussion

Mayor Smith asked in regards to the commission's prior action to require a CUP for this particular use in a B-2? Ms. Macefield explained up until 2 months ago storage units were a permitted use in the CLM zone, the proposal, approved by the commission, was to require a conditional use permit prior to allowing them in the B-2 District.

Public Testimony

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

Mike Munk, 1450 Charlie Russell Drive, stated he is employed as Executive Vice President of St. Peters Hospital Foundation. The concept of zoning is to promote light types of development in common specified areas for three reasons; it protects the property values and rights of the current owners, it enhances the use of the current owners by insuring similar clientele in that setting and then it creates a stable environment within which future growth can be planned. St. Peter's Hospital believes that the capacity for future growth of professional character would be diminished should the commission begin allowing such conditional uses, as requested. Mr. Munk stated St. Peter's Hospital respectfully requests the denial of the conditional use permit.

Joe Nistler, 7415 Clausen Road, stated he is the owner of the property and has tried several times during the years to sell the property and ultimately decided to build storage units. Mr. Nistler stated staff has given their approval and that shouldn't be taken lightly. He asked the commission for their approval.

Ron Zieler, 5025 Darcy Court, explained the layout of the storage units and discussed the needs for them in that area of the city. Mr. Zieler mentioned the approval of this project would bring an increased tax base for that lot. Mr. Zieler stated this would be a first class storage unit business and asked the commission for their approval.

Susan Zieler, 5025 Darcy Court, stated she and a friend visited the neighborhood and received 21 signatures in support of the CUP.

Bob McKenna, 516 South California, stated he is the project engineer for this project and believes it is a first class storage unit business. He urged the commission to approve the project.

John Sullivan, 1400 Charlie Russell Drive, stated he is representing Shodair Children's Hospital, which owns 21-acres immediately across the street from the proposed development and they are not in favor of granting the CUP. In that regard they have numerous letters of opposition. Mr. Sullivan explained there is a good abundance of CLM land in the area and it should be used instead of changing the theme of the area, which is a residential and medical offices. Shodair is deeply concerned regarding the sale of their land and the value of their property dropping because of the proposed development. He urged the commission to deny the proposal.

Tom Brooke, 1008 Woodbridge, stated he is employed by Anderson Zurmuehlen & Company and is a certified general real estate appraiser. One of the conditions of the Helena Zoning Ordinance is to test if the proposed use would not adversely affect the nearby neighboring properties. He feels the storage units would not measurably or substantially reduce the values of the properties in the neighborhood.

Bob McHugh 4101 Highway 93 South, Missoula, stated he owns two storage units in Missoula and explained how well storage units can become part of a neighborhood. This type of storage facility won't produce much traffic but will produce taxes. He is in support of the proposal.

Jack Casey, 1497 Mustang Road, stated he is the Administrator of Shodair Children's Hospital. He explained Shodair

plans to develop that area located across the street and he feels the land will lose significant value because of the storage unit proposal. He urged denial of the proposal.

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

Discussion

Commissioner Pouliot asked regarding the crime and vandalism that can occur with storage units? Mr. McHugh stated crime and vandalism can be found anywhere; however, installing a security gate and appropriate fencing can cut it down significantly.

Commissioner Parriman explained he is mostly concerned about the property values; however, he feels the proposal is a quality product and he generally supports the proposal. Commissioner Parriman disclosed to the commission that he had spoke with Ron Zieler regarding the project. During a conversation with City Attorney David Nielsen about the CUP, he mentioned he talked with Ron Zieler and advised him to talk with the neighborhood in order to alleviate some of their fears.

Commissioner Cartwright asked if boats and RV would be visible? Ms. Macefield stated there would be no outside storage available. Commissioner Cartwright asked if the car wash is a permitted use or did it need a CUP? Ms. Macefield explained the car wash is a permitted use in the B-2 Zone. Commissioner Cartwright stated Colonial Drive is going to be the main connection to the new Interstate Interchange and stated the predicted volume of traffic will influence the value and the kind of operations that might want to be located there. He asked the developers how long would they be recouping their investment? Mr. Zieler explained because of the cost of the project they are looking at a 25-year term loan. Commissioner Cartwright asked regarding the rows of doors and if there would be a way to decorate them in order to make them less obvious? Mr. Zieler stated he wants to make it compatible as possible with the area but do not want to hide them because it will be a nice facility. Commissioner Cartwright asked if off-site storage would be considered? Mr. Zieler explained the first thing they researched was the need for storage facilities up in that area.

Mayor Smith disclosed to the commission that he received a call from one of the applicants and agreed to drive by the location to look at it. He explained this is a difficult decision to make but he is most persuaded by Mr. Brooke's testimony and will vote in support of the proposal.

Commissioner Oitzinger explained the commission needs to be attentive to the harmony in the neighborhood and stated she would be voting to deny the proposal.

Motion

Commissioner Pouliot moved approval for a resolution for a Conditional Use Permit (CUP) to allow construction for a maximum of 187 storage units in the B-2 (General Commercial) District; legally described as Lots 2A and 4, Block 4, East Park Addition, Helena, Montana; generally located south of Broadway between and adjacent to I-15 and Colonial Drive and subject to the conditions listed above. Commissioner Parriman seconded the motion. Motion carried 4:1 with Commissioner Oitzinger voting no. **Res. #12093**

Signs

CONSIDER FIRST PASSAGE OF AN ORDINANCE REGULATING SIGNS IN RESIDENTIAL ZONING DISTRICTS; DEFINING TEMPORARY SIGNS; AND AMENDING SECTIONS 11-23-2, 11-23-9 AND 11-23-10, HELENA CITY CODE

Staff Report

City Planner Belinda Waters reported the existing sign ordinance needs to be amended to represent principles that: (1) do not distinguish between commercial signs and noncommercial signs; (2) must show a compelling government interest such as safety; (3) must be content neutral; and (4) can't regulate speech because noncommercial speech is protected.

On Tuesday, March 9, 2004, the Helena Zoning Commission recommended approval, as amended, (the vote was 2 to 1 vote with one abstention) for adoption of an ordinance regulating signs in residential zoning districts; defining temporary signs; and amending Section 11-23-2, 11-23-9 and 11-23-10, Helena City Code.

Ms. Waters recommended approval for the adoption of the ordinance.

Discussion

Commissioner Cartwright asked if the amendments are defensible in court? Mr. Nielsen stated he believes the amendments give them a defensible case. Commissioner Cartwright stated by the time the ordinance is effective, it will be right around the time of the primary elections and asked the commission if they would want to time the ordinance so it takes effect after the elections or just let it sort itself out? Mr. Nielsen explained if the ordinance goes into effect before the primary an option might be to make it effective after the elections are held.

Mayor Smith asked when the ordinance would it become effective if it were passed this evening? Mr. Nielsen explained 30 days after the second passage.

Mr. Burton noted the ordinance could be postponed with the commission's direction.

Commissioner Oitzinger stated the primary elections signs would typically be reused for the general election and postponing the enforcement date might clear up any problems that would be related. Commissioner Cartwright stated there would be pressure to bring real estate signs into compliance as well.

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 Pouliot moved first passage of an ordinance, as amended, regulating signs in residential zoning districts; defining temporary signs; and amending Sections 11-23-2, 11-23-9 and 1-23-10 of the Helena City Code. Commissioner Cartwright seconded the motion.

Amendment

Commissioner Pouliot moved to delay the effective date for the ordinance to November 5th 2004. Commissioner Oitzinger seconded the motion. Motion failed 2:3 with Commissioner Cartwright, Commissioner Parriman and Mayor Smith voting no.

Original Motion

All voted aye, motion carried. **Ord. #2991**

Public Communications

PUBLIC COMMUNICATIONS
No report given.

***Meetings of
Interest***

MEETINGS OF INTEREST

Mayor Smith reported the next Administrative Meeting is Wednesday, April 14 – 4:00 to 6:00 p.m. and the next regular City Commission Meeting is Monday, April 19 – 6:00 p.m. at the Montana State Capital, Old Supreme Court Chambers due to the Commission Chambers being under remodeling.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:15 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission