

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
July 12, 2004
6:00 P.M.

- Time & Place* A regular City Commission meeting was held on Monday, July 12, 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 George Hoff 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 June 21, 2004 were postponed for approval until July 26, 2004.
- Appointments* APPOINTMENTS:
A. Historic Preservation Commission

Mayor Smith recommended the following appointments:

Historic Preservation Commission
William L. Greiner – 2nd Term – will expire on June 30, 2007
Rockey L. Whipkey – 1st Term – will expire on June 30, 2007
- Motion* **Commissioner Pouliot moved approval for the Historic Preservation Commission appointments of William L. Greiner and Rocky L. Whipkey.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Consent Agenda* CONSENT AGENDA:
A. Claims
B. Traffic signal system maintenance agreement
C. Resolution declaring tangible personal property owned by the City of Helena to be surplus property (vehicles) **Res. #19139**

City Manager Tim Burton recommended approval of the claims.
- Public Comment* Mayor Smith asked for public comment, none was received.
- Motion* **Commissioner Pouliot moved approval of items A through C on the consent agenda.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Bid Award* BID AWARD:
A. Bill Roberts Golf Course Hole #2 Pond Lining Project

Staff Report

Director of Parks and Recreation Randy Lilje reported bids were opened on April 21, 2004 in Room 326 of the City/County Building. Bids were as follows:

1. Helena Sand & Gravel
2. Valley Excavating

There was a slight irregularity in the bid from Valley Excavating in that it was brought in approximately 3 minutes after the deadline. However, the other bidder agreed to waive the irregularity.

The bid award was tabled a few times since it was initially brought to the commission. Valley Excavating had some concerns that the city's estimate on the bid sheet was lower than the pond liner supplier's estimate.

Valley Excavating, with the city's concurrence, has had a local engineering firm figure an estimate on the amount of liner required. The result was an estimated increase in 10,535 square feet of pond liner fabric. This adds \$7,901.00 to the cost for a total bid of \$62,901.00. There should be no other increases in cost.

Mr. Lilje recommended awarding the project to Valley Excavating.

Discussion

Mayor Jim Smith asked if the other bidder concurred to the addition of \$7,901.00 to the cost? Mr. Lilje explained they were not contacted since the winning bidder was so much lower than their bid.

Commissioner Parriman asked if there would be a legal problem concerning the cost difference? Mr. Lilje explained since speaking with the city attorney there should not be a problem and staff is recommending proceeding with the contract. Commissioner Parriman asked Mr. Nielsen to check the legality of the contract. Mr. Nielsen concurred.

Commissioner Cartwright asked if both bidders used the same square footage? Mr. Lilje explained they both used the same bid sheet.

City Manager Tim Burton explained the commission could accept the bid this evening contingent upon approval from the city attorney.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval to award the contract for the Bill Roberts Golf Course Pond #2 Lining Project to Valley Excavating in the amount of \$62,901.00 pending approval from the city attorney. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Note:

As per above motion, City Attorney David Nielsen's opinion as follows:

I reviewed the request for bids and bid specs on the Pond Lining project at the Golf Course. The request clearly states that the quantities are only estimated for purposes of reviewing the bids and that the bid is for the unit price. Therefore, on the bid for \$55,000 for lining, the final total contract will be the amount of actual quantity times the unit price. Article 5 of the contract states that the contract price is an amount equal to the sum of the established unit price for each separately identified item multiplied by the quantity. This section further states that the estimated quantities use for bidding are not guaranteed. The result may be more

or less in most cases but here the estimated quantity was less than the actual.

Since the contract and the bid are based on unit price, the change in estimated quantities is not significant and a change order is not necessary since the contract will be revised to show the actual quantities.

I did, however, recommend to Randy that he compare the math on the bids. The bid is the sum of all unit prices times the respective estimated quantities. If there is a mathematical error made in the bid on the product or summation of these numbers, we disregard the error and recalculate the bid.

The acceptance of the bid by the Commission is appropriate and the contract can vary from the bid to reflect actual quantities and correction for mathematical errors.

- B. New 2004/2005 combination broom and vacuum sidewalk/mall s sweeper

Staff Report

Fleet Manager Ed Robinson reported bids were received for a new combination broom and vacuum for replacement and of unit #509. The low bid was from Western Plains Machinery. Western Plains bid a 2004 Applied 525 HS at price of \$60,875.00. Staff also recommended the optional bid for a reversing camera of \$900.00. The total cost of this unit would be \$61,775.00. The FY04 Budget appropriation for this unit is \$110,000.00.

Mr. Robinson recommended awarding the bid to Western Plains Machinery.

Discussion

Mayor Jim Smith asked why the low bidder was not chosen? Mr. Robinson stated the lowest bidder did not meet specifications.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Parriman moved to accept the bid from Western Plains Machinery for a new combination broom and vacuum sidewalk/mall Sweeper at a cost not to exceed \$61,875.00. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

- C. Construction of west secondary digester improvements - City Project #04-13

Staff Report

City Engineer Ryan Leland reported approximately eight years ago the cover to west secondary digester became covered in ice and as a result of the ice the cover tilted and became unusable. During the recent upgrade to the wastewater treatment plant the existing cover was proposed to be fixed and reused. However, because of the cost of using the existing cover the decision was made to not fix the west secondary digester cover at that time. The existing cover was then subsequently removed and disposed. With only having one operation digester there is a potential to experience an emergency if the second secondary digester fails. With the two operational secondary digesters, the wastewater treatment plant will have more operational flexibility and the ability to operate the plant at the design capacity. Two digesters will also provide redundancy in case of an emergency.

The improvements to the west secondary digester will include

the rehabilitation of the interior concrete surface, the installation of new internal gas piping, and a new floating cover. The improvements were advertised in two schedules and a deductive alternate to schedule one. Schedule one is for the rehabilitation of the interior of the tank with a cementitious and a PVC coating; and the deductive alternate for schedule one is for the rehabilitation with just a cementitious coating. Schedule two is for the internal gas piping and the floating digester cover. Because of budgetary limitations, staff is recommending awarding the BID for schedule one with the deductive alternate and schedule two.

The project was advertised and bids were opened on June 22, 2004. Five contractors submitted bids. Dick Anderson Construction Inc. of Helena, Montana submitted the low bid of \$416,410 for Schedule I with the Deductive Alternate and Schedule II.

Mr. Leland recommended awarding the work to Dick Anderson Construction Inc.

Discussion

Mayor Jim Smith asked if staff has taken any preventative action to prevent this from happening again? Mr. Leland explained the manufactures were at fault and he feels confident the new cover won't have a problem.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Cartwright moved to award Schedule I with the deductive alternate and Schedule II of city project #04-16, construction of the west secondary digester improvements, to the lowest, responsible bidder, Dick Anderson Construction, Inc. of Helena, Montana in the amount of \$416,410. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright asked regarding the use of sidewalk café's on the walking mall? Mr. Nielsen concurred and explained under the existing ordinances they could be accommodated.

Commissioner Pouliot mentioned his liking of the newly remodeled commission chambers.

Commissioner Oitzinger mentioned she reviewed the tape of the June 28, 2004 Special City Commission Meeting.

Mayor Jim Smith echoed Commissioner Pouliot's comments on the remodeled chambers.

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 informed the commission that negotiations were concluded with the firefighters union. Human Resource Director Salty Payne explained the process used in negotiations in order to reach an agreement.

Mr. Burton explained everybody did an excellent job and created an agreement that serves everybody involved.

HCC Communications HELENA CITIZENS COUNCIL COMMUNICATIONS

No report was given.

Walking Mall

CITY COMMISSION DISCUSSION AND DIRECTION TO CITY MANAGER ON PROJECT DESIGN AND USE OF WALKING MALL

Discussion

Mayor Jim Smith listed four items that had little controversy;

1. Renaming Last Chance Gulch from the Old Federal Building to the Cedar Street Interchange.
2. Design an integrated sign program for the downtown area.
3. Redesign and implement changes on Neill/Fuller Avenue intersection.
4. Streetscape to include lighting, landscaping and signage
 - A. 300 Block of N. Last Chance Gulch
 - B. 100 Block of S. Last Chance Gulch
 - C. Fuller Avenue from Neill Avenue to 6th Avenue.
 - D. Jackson Street

Commissioner Cartwright asked the mayor to ask for public comment; none was received.

Mr. Burton explained after staff has received direction from the commission, staff would prepare a final design and report back to the commission for approval of the design.

Commissioner Parriman asked if the commission would have an estimate of cost? Mr. Burton concurred.

Commissioner Pouliot stated he would like to add the Walking Tour as number 5 on Mayor Smith list. Commissioner Parriman stated he has never seen a scope on the project and would need a more defined project. Commissioner Pouliot withdrew the proposal.

Motion

Commissioner Cartwright moved approval of the Renaming Last Chance Gulch from the Old Federal Building to the Cedar Street Interchange; Design an integrated sign program for the downtown area; Redesign and implement changes on Neill/Fuller Avenue intersection; Streetscape to include lighting, landscaping and signage: 300 Block of N. Last Chance Gulch; 100 Block of S. Last Chance Gulch, Fuller Avenue from Neill Avenue to 6th Avenue, Jackson Street and the conception design from HKM. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Discussion

Commissioner Parriman stated he is concerned about opening the floor to public comment and feels it would be unnecessary because of the thorough testimony received during the June 28, 2004 Special City Commission Meeting. Mr. Nielsen explained the public hearing was closed on June 28th and no additional comments are legally needed. Commissioner Cartwright asked if the public could be called upon to for questioning? Mayor Smith stated that would be appropriate.

Darrel James from HKM Engineering gave a short presentation showing the four walking mall project design options.

Commissioner Cartwright stated he was shocked at the amount of construction that is needed and the number of trees that would be taken out considering Option #1 – Status Quo and asked for further discussion. Mr. James explained the city developed preliminary plans for an upgrade to the mall between 6th Avenue and Wong Street. The estimate came in over \$400,000 for those improvements that included replacement of the landscaping, irrigation system as well as pavement rehab. In his estimation this won't be a cheap fix and as far as how many trees that need to be replaced, he could not say at this time. Commissioner Cartwright asked if most of the sidewalks would be replaced and if there would be a fair amount of cutting into the concrete

in order to install the new electrical and irrigation under Option #1 - Status Quo option? Mr. James concurred.

Commissioner Parriman mentioned the outcome of the rating system helped him decided that two lanes of traffic would be his preference and he would be supporting that option. Mr. James explained the process of the rating system.

Commissioner Oitzinger asked if TIF funds could be used for maintenance? Mr. Nielsen explained it is a possibility; however, TIF funds will sunset in 2005. Commissioner Oitzinger asked if a contractual agreement would be possible and explained, it is her understanding, if the funds are obligated by a certain date they could be used even after the sunset? Mr. Nielsen concurred and explained once they are contractually committed the actual expenditure could go past the sun setting and stated he would look into the option. Mr. Burton stated the one thing that can't be done is set up an endowment fund that is perpetually available for ongoing maintenance and he doesn't think that meets the intent of the tax increment law.

Commissioner Cartwright stated he would like to respond to Commissioner Parriman's earlier comments and stated it is his understanding that the commission is discussing investments in construction and not specifically about the traffic issue. He's not certain he wants the commission to go on record saying that this is a decision on traffic and would like to keep it focused on the decision on construction. Mayor Smith stated the decision tonight is a matter of deciding on which, out of the four options or a combination of options, to proceed with. He explained the debate in this community has been about auto traffic or not auto traffic on the walking mall. The people who have engaged themselves in this debate deserve to get a sense of where the commission is coming from and the commission has to give clear and specific direction to the city manager. Commissioner Cartwright stated it is not that the issue doesn't exist but several times during the Special City Commission Meeting, people pointed out the malls in Europe as something enviable and his impression is that most of those are closed off streets and closed off plazas; designed for traffic but not used for traffic. He feels the project shouldn't be prejudged regarding what the walking mall is going to be and as a point of procedure the commission would have to amend an ordinance, which would require a public hearing so the decision cannot be made tonight. Commissioner Cartwright explained the commission could specify a design that would be compatible with or not compatible with. Mayor Smith stated the commission's obligation is to give some direction to the city manager.

Commissioner Pouliot stated he agrees with Commissioner Cartwright in that one of the suggestions made by Alan Nicholson, at the public hearing, was build the streets, build two lanes but close it off during the summer tourist season. Commissioner Pouliot asked Commissioner Parriman to indicate which option he is recommending and suggesting. Commissioner Parriman explained his preference is Option #4 - Reconstructed Two Lane and the details of that street is another discussion. He stated he consistently heard comments regarding the return of the tour train on the walking mall and mentioned the loss several businesses experienced when the tour train was no longer allowed on the walking mall. Commissioner Parriman explained he feels the tour train is an important asset to the walking mall and should return; however it cannot return unless there is a designated street with separation between pedestrians and traffic and while the city has the TIF funds available, it makes sense to him, to get that done. He explained

Option #4 - Reconstructed Two Lane had the highest rating and support from the public attending the numerous meetings.

Commissioner Cartwright stated the tour train brings up a larger issue he is concerned with and explained the city is making this investment in the hopes of spurring investment and while he has seen stirrings in many more recent weeks, he's not sure there are partners on board to do the kind of investment that is required. He explained he spoke with Jim Hunt, an attorney working on the tour train case, and their main concern is for the safety of the tour train itself, which hasn't been changed and the walking mall is secondary concern. Commissioner Cartwright stated he came into the meeting wondering if the commission shouldn't wait another two to six weeks in order to let these things gel. He is concerned Option #1 - Status Quo option is not as status quo as he thought and he is concerned that the investment partners are still on the sidelines. The maintenance issue is something that would have to be privately dealt with and has yet to be resolved, some of the buildings may be retrofitted but nothing is definite yet. Mr. James stated he spoke with Lee Holmes, the operator of the tour train, and he explained that it is not a condition of his insurance but of the settlement of the lawsuit that he was not to be back on the mall if it was not open to traffic.

Commissioner Cartwright stated he wished the issues would have been explored more fully and explained, as the stipulation stands now, as he understands it, there is no traffic on the mall. Commissioner Cartwright stated if the downtown feels it needs the tour train, he is surprised that wasn't explored as much as it could have been. Mayor Jim Smith stated the case was in litigation and was unable to be explored. Commissioner Cartwright stated his larger question has to do with the partners involved with the investment that the city is making.

Commissioner Oitzinger asked if the trolley is running on the walking mall? Mr. Burton concurred.

Commissioner Pouliot explained he would be voting with Option #4 - Reconstructed Two Lane with a stipulation that it would be a closed street in the summer for all activities.

Commissioner Cartwright stated there is an ordinance that governs the use of the walking mall and asked what could be done with that ordinance in the context of this evening's discussion. Mayor Jim Smith explained the commission's direction to the city manager would determine any amendments to the ordinance that might be necessary, it will determine the pace at which bids and contracts are entered into. Mr. Burton explained if he receives direction from the commission on a certain design, staff would proceed on that and report back to the commission. If in terms of use of the walking mall, the commission directs him to change some portion of the ordinance then staff would carry it through the normal process.

Commissioner Cartwright stated if the commissioner were to chose Option #4 - Reconstructed Two Lane, he would like to specify that the pathway be less serpentine, be designed to handled big loads, be concrete that is somehow altered to look less street like and design the curb to look more historic; and asked if those specifications could be added into the direction to the city manager. Mayor Jim Smith reiterated if the commission could give the city manager some direction tonight with regard to one of the four options, the commission would have the opportunity to see the final design and make amendments as need be. Mr. Burton stated with direction for the commission, staff would move from a conceptual design to a preliminary design and work toward a final design.

Commissioner Oitzinger stated she would try not to be apoplectic regarding this issue but she cannot see how a person serving this community could consider any option but Option #1 - Status Quo plan view. There has been wide spread testimony demonstrating that Helena is a community with an ethic of health, in terms of energy use Helena is a community that is conservative. It's been said that a space that is not driven by the rule of the car is desired in this community. She explained she doesn't understand the logic in doing something that is very profound and is very invasive that may not work for what the commission is hoping to have happen which is a vibrant downtown. The public testimony revealed a desire for an incremental approach. Commissioner Oitzinger stated she has firmly believes that the activities that are happening with the Great Northern Town Center and the knitting together of the downtown will float all boats. She explained from day one of the discussions she felt the options available through HKM left the commission boxed; she stated there are resources out there that show many more ideas and solutions. She submitted that the commission could make a decision regarding the walking mall without introducing unpermitted automobile traffic to it.

Commissioner Cartwright reemphasized why he thought a few more weeks to think about this might be appropriate. He stated, in response to Commissioner Oitzinger's discussion, cities that have added traffic to their walking malls had strong Downtown Associations and Helena is slowly working on building that association up. Secondly, he stated, regarding energy and health, he helped organize the first SmartGrowth Conference in Montana and had worked on these issues for a long time. He said explained the walking mall could actually increase a town's energy use because it deprives a neighborhood of a retail area that could serve a broader area than a walking mall can. Commissioner Cartwright was afraid that highway engineers could think of a mall as a "pedestrian ghetto" and not plan for pedestrians elsewhere. Commissioner Cartwright also thought the health claim for walking malls was overstated. He said there are a lot of reasons given for keeping a walking mall but we needed to pick out which ones were true. He hopes the commission can address these issues because the community feels strongly about this issue and he would be tempted to table the motion.

Commissioner Parriman explained Helena gives people a sense of place and he shares that feeling but by approving two lanes he doesn't feel the sense of place would be lost and Helena could gain the best of both worlds.

Commissioner Oitzinger stated, in response to Commissioner Cartwright's discussion, there were a lot of people, when the Real Food Store was located there, who were just meeting all of their day to day needs in the downtown area and doing it on foot. She explained maybe in some places all the data about pedestrian malls and pedestrian ghetto's are correct but she doesn't feel that is the case in Helena, Montana and she sticks by her thought that Helena's walking mall, status quo, is appropriate for Helena's energy, conservative and health ethic people.

Mayor Jim Smith thanked everybody who talked with him or the other commissioners regarding this issue and stated every one of those discussions were valuable. Mayor Smith explained his fundamental stance is "What is the role of government?" and explained it is to provide services that are essential and necessary and to resolve conflicts. Mayor Smith stated the commission won't be well served by tabling this

item and stated he is willing to move forward with this proposal. He explained transportation is essential and necessary but it is being withheld from citizens and stated he would support one lane auto traffic on the mall.

Commissioner Cartwright stated this is a substantial investment and just in the commission's interaction tonight he has spotted many loose ends.

Motion **Commissioner Cartwright moved to table until August 30, 2004.** Commissioner Oitzinger seconded the motion. Motion failed 3:2 with Commissioner Pouliot, Commissioner Parriman and Mayor Smith voting no.

Motion **Commissioner Parriman moved to direct the City Manager to proceed on project design for Option #3 - Reconstructed One Lane as discussed and direct the City Attorney to look into the ordinance in regards to use of the walking mall.** Commissioner Pouliot seconded the motion.

Discussion Commissioner Cartwright stated the difference between Option #3 - Reconstructed One Lane and Option #4 - Reconstructed Two Lane is 3 feet and if he has to choose between the two, Option #4 - Reconstructed Two Lane allows more room for bikes or a variety of traffic possibilities. Commissioner Cartwright used a visual aid to show the commission the difference in street width.

Amended Motion **Commissioner Parriman amended the motion to Option #4 - Reconstructed Two Lane in lieu of Option #3 - Reconstructed One Lane.**

Discussion Commissioner Pouliot asked Commissioner Cartwright if he would be willing to support the motion considering the street width? Commissioner Cartwright explained he feels it is important for the commission to move forward as unified as it can be and if he had to choose between Option #3 - Reconstructed One Lane and Option #4 - Reconstructed Two Lane, he would choose Option #4 - Reconstructed Two Lane.

Second to the Amended Motion Commissioner Pouliot seconded the amended motion.

Discussion Commissioner Cartwright stated it is his understanding that the name two-lane is a handy reference point but the traffic that's either there or not there is to some extent separate from the design and the design is flexible. Commissioner Cartwright stated if the commission were to go with Option #4 - Reconstructed Two Lane he would like to direct city staff to come up with a design that puts people first and cars second.

Commissioner Parriman stated the one lane of traffic works but the reason he supported the two lanes was because it rated so well during the public hearings. He would be willing to compromise regarding one lane or two lanes. Mr. Nielsen stated procedurally, he would recommend treating this as a substitute motion rather than an amendment so that way it would not have to be voted on twice.

Substitute Motion

Commissioner Parriman moved approval of Option #4 - Reconstructed Two Lane in lieu of Option #3 - Reconstructed One Lane. Commissioner Pouliot seconded the motion. Motion carried 4:1 with Commissioner Oitzinger voting no.

Discussion

Commissioner Cartwright stated he has concerns regarding the partnership; the commission still has to vote on which option. It would cost money to tear up plans and go for the status quo but if the city doesn't have the partnerships he doesn't know why the city should spend the large amount. He explained everybody in the downtown, whatever their view is in regards to this issue, should be on notice that this is an investment by the city hoping to bring forth private investment and he would like to see something done before the commission has to decide on contracts.

Final Plat

CONSIDER A FINAL PLAT CREATING COMMERCIAL LOTS 10-A1 AND 10-A2, BLOCK 1, SKELTON ADDITION LOCATED IN A B-2 DISTRICT; GENERALLY LOCATED BETWEEN ROAD RUNNER AND DREDGE DRIVES AND SOUTH OF PTARMIGAN LANE

Staff Report

City Planner Kathy Macefield reported the city commission approved the preliminary plat for a two lot minor subdivision on June 7, 2004 creating Lots 10-A1 and 10-A2, Block 1 of the Skelton Addition located in a B-2 (General Commercial) District. This property is generally located between Road Runner and Dredge Drives and south of Ptarmigan Lane in a B-2 (General Commercial) District.

One condition was required when the preliminary plat was approved: *The developer must provide a copy of the final plat in the acceptable electronic format.* All infrastructure is in place and no financial guarantee is required. An abstract of title has been submitted and taxes are paid and current. Both lots are currently vacant and undeveloped.

Ms. Macefield recommended approval of the final plat to create Lots 10-A1 and 10-A2, Block 1 of the Skelton Addition located in a B-2 (General Commercial) District.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of a final plat for Lots 10-A1 and 10-A2, Block 1 of the Skelton Addition, generally located between Road Runner Drive and Dredge Drive and south of Ptarmigan Lane. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Wheeled Devices

CONSIDER FIRST PASSAGE OF AN ORDINANCE ALLOWING WHEELED DEVICES ON A PORTION OF THE PEDESTRIAN MALL

Staff Report

City Attorney David Nielsen reported bicycles, skateboards, sleds and other wheeled devices and devices with runners are prohibited on all parts of the Last Chance Gulch Pedestrian Mall. The mall is Last Chance Gulch from 6th Avenue to Broadway and from Broadway to the terminus of the mall to the south, and includes closed Grand Street from Jackson Street to Last Chance Gulch.

Mr. Nielsen stated this is a policy decision for the commission and he gave no recommendation. At the commission's direction he

drafted an ordinance that allows all the devices the city would allow on other streets and sidewalks.

Discussion

Commissioner Parriman asked if the commission wouldn't be better served to table this item since it could be handled during the time the walking mall ordinance is amended? Mr. Nielsen explained the proposed ordinance does amend that part of the city's title and chapter which deals with the walking mall, so it is related to that portion of it. Commissioner Parriman asked if it is both south of Wong Street and the existing walking mall? Mr. Nielsen concurred.

Mayor Smith asked if the existing ordinance encompasses the entire walking mall from 6th Avenue to the library? Mr. Nielsen explained the current code defines the walking mall as everything from 6th Avenue to the old federal building.

Mr. Burton explained the commission's consideration with some of the decisions that were made this evening and certainly how the commission has approached that in the time frame is a policy consideration for the commission.

Commissioner Cartwright explained his reasoning for bringing forth this ordinance. He stated the commission's previous walking mall motions would not change the portion south of Wong Street. He explained wheeled devices are allowed under Anchor Bridge onto Cruse Avenue, down Wong Street until the walking mall, on the deck of the library plaza and on the east/west sidewalk that runs from Park Avenue to the neighborhood center. He stated he is unsure how much right-of-way the city gave up but this ordinance only extends a few feet into the grassy area and it is much more understandable to say this is a park and like any of the other park, wheeled devices should be allowed.

Public Comment

Mayor Smith asked for public comment

Jerry Hutch, 1111 State Street, stated he would like to offer for the record a correction to an article on July 11, 2004, Sunday addition of the Independent Record. He stated the impression might have been taken that he had been speaking as a spokesman for the Helena Citizens Council, although he is an elected member of that council; he was speaking as a private citizen and as a vice president of the Capital City Chapter of the Montana Association for the Blind. Mr. Hutch explained what people go through when they lose their vision and explained the issue has to do with an area of the walking mall that has sidewalks and borders the Neighborhood Center that is used by senior citizens and low vision and legally blind people. Putting wheeled devices on this portion of the walking mall is not a safe condition. The state legislature has put forth in Montana Codes Antedated a provision, Title 61-8-506 – Pedestrians on a Roadway, states the right of the public to use public places and accommodations, the blind, the visually impaired and the deaf have the right as the able bodied to the full and free access of streets, highways, sidewalks, walkways, public buildings, public facilities and other public places. Mr. Hutch stated if the commission allows wheeled devices in this area it becomes unsafe. He explained the previous walking mall action made the pedestrian walking mall two blocks smaller and asked why the commission would need to make this portion open for wheeled devices; it serves no purpose other than wheeled devices having that access to the walking mall. Mr. Hutch urged the commission to deny the ordinance.

Elizabeth Goldies, 704 Stuart Street, stated she is the chair for the Lewis & Clark County Library Board of Trustees. She explained the

board has not had a meeting regarding this issue and would be unable to offer the library's position; however she stated the library's primary concern is for the safety of the patrons and the staff of the library. Ms. Goldies mentioned the bike rack was moved to accommodate the bikes.

George Hoff, 1409 Cannon, HCC member, stated the HCC is opposed to the amended ordinance.

Discussion Commissioner Parriman asked if bikes and skateboards are allowable uses on any city sidewalk. Mr. Nielsen concurred.

Motion **Commissioner Cartwright moved approval of an ordinance allowing wheeled devices and devices with runners to use the portion of Last Chance Gulch Mall from closed Wong Street south to the end of the mall.** Commissioner Oitzinger seconded the motion.

Discussion Commissioner Cartwright stated his concern is that biking is legal all around the area except the sidewalk portion.
Commissioner Pouliot stated he would not be supporting it.
Mayor Jim Smith stated he would not be supporting the motion and felt that area should be left pedestrian only.
Commissioner Parriman stated he won't be supporting the motion and would like it to run comprehensively with the other downtown proposals.

Vote Motion failed 3:2 with Commissioner Pouliot, Commissioner Parriman and Mayor Smith voting no.

North St. CONSIDER A RESOLUTION TO VACATE UNDEVELOPED NORTH STREET RIGHT-OF-WAY, LYING SOUTH OF LOTS 1-8 IN BLOCK 31 AND NORTH OF LOTS 4-8 IN BLOCK 32, IN THE CITY PARK ADDITION, HELENA, LEWIS AND CLARK COUNTY, MONTANA
(TABLED FROM 6/21/04)

Staff Report Public Works Director John Rundquist reported the intersection of the Frontage Road on the south side of US 12 and 18th Street is problematic as the intersection is so near to the traffic signal at US 12 and 18th Street. Traffic movement from the Frontage Road through the signal to westbound US 12 is nearly impossible during peak traffic hours and creates a safety issue.
MDT proposes to realign the frontage road to move the intersection south to where Cannon Street currently intersect. Concurrently, Community First Bank is proposing to construct a new branch building in the area of the proposed realignment.
North Street is currently vacant land between the MDT frontage road and the adjacent land. The traffic currently uses the Frontage Road ROW instead of the North Street ROW.
Mr. Rundquist recommended vacation of the North Street ROW in cooperation with obtaining new ROW associated with the frontage road realignment.

Discussion Commissioner Cartwright asked if the city commission held public hearings on these items? Mr. Rundquist explained MDT held the public hearing meetings regarding this proposal.

Public Comment Mayor Smith asked for public comment.

Jon Schontz, stated he is representing the adjacent property owner. He stated his client found out about the redesign a day prior to the commission meeting. Mr. Schontz explained there are a number of concerns; however, with no objections to changing the street name or the building of the bank.

Andy Skinner, 1325 Marshall Lane, stated he spoke during the previous commission meeting and stated nothing has been done to correct the ongoing problem. Mr. Skinner asked if the gas station had been bought? He further explained why this issue should be discussed further and alternative solutions should be looked at.

Chuck Hanson, 2105 N. Montana, Suite 201, stated he was representing First Community Bank of Glendive and explained they have not bought the gas station.

Jere Stoner, 7077 Kansas, representing MDT, explained notices were hand delivered to the tenants at the mobile home park, who responded with no objection. The proposed sidewalk for the bank they would like to get a variance to back up curb

Steven Skinner, 805 N. Lamborn, asked why Cannon Street's name would need to be changed? He believes installing a signal on 18th Street would help the flow of traffic. He further explained his concerns regarding the proposal and safety issues and mentioned tabling the item.

Police Chief Troy McGee, 1900 Winnie, explained the confusion regarding the Cannon Street name and recommended the change.

Discussion

Commissioner Pouliot asked what time frame the bank had for this project? Mr. Hanson explained any long delays would affect the banks progress.

Commissioner Parriman asked regarding access for the adjacent property? Mr. Leland explained this has been taken into consideration and will be compensated.

Motion

Commissioner Pouliot moved to table agenda items:

14. Resolution to vacate North Street Right-of-Way;

15. Memorandum of agreement and resolution for the US 12 Frontage Road realignment;

16. Construction agreement and the resolution for the US 12 Frontage Road realignment; and

17. Resolution changing the name of Cannon Street on the east side of Helena to North Street until July 26, 2004. Commissioner

Oitzinger seconded the motion.

Discussion

Mayor Jim Smith asked how this issue came to be. Mr. Rundquist explained the change in that area has been complemented by the increase in traffic and the current issue regarding the development of a bank. MDT initiated the project and stated they would be using their maintenance funds to build it. Commissioner Parriman asked if those funds would be unavailable in the near future. Mr. Rundquist concurred.

Commissioner Oitzinger asked regarding the public notices that were sent out. Mr. Stoner stated the adjacent property might not have received a hand delivered letter and they are sorry they missed some people. Commissioner Oitzinger asked if there were public notices in the Independent Record? Mr. Stoner concurred and explained that is the normal process.

Commissioner Pouliot asked if the funds would be available in two weeks. Mr. Stoner stated he was unsure on that issue but explained the delay could hamper the start date on the project.

Commissioner Parriman stated he wouldn't be supporting the tabling motion.

Commissioner Oitzinger stated she was disappointed the commercial businesses interests were taken so lightly.

Mayor Jim Smith stated he would be supporting the motion.

Vote

Motion carried 4:1 with Commissioner Parriman voting no.

**Public Hearings
Zoning Change**

PUBLIC HEARINGS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF FROM R-O-T-13 (RESIDENTIAL-OFFICE) DISTRICT TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR APPROXIMATELY 1,800 SQUARE FEET FOR PROPERTY LEGALLY DESCRIBED AS THE SOUTH 9 FEET OF LOTS 9 THROUGH 16, BLOCK 150, OF THE MING ADDITION, HELENA, MONTANA; GENERALLY LOCATED BETWEEN WILDER AND EUCLID AVENUES, AND GLENDALE AND GARRISON STREETS, WITH A PROPERTY ADDRESS OF 1600 EUCLID AVENUE

Staff Report

City Planner Belinda Waters reported in March 1982, the alley between the proposed Lots 9A through 16A and Lots 17A through 24A was vacated by Resolution #9396. This vacation put half of the alley with the northern lots, Lot 9A through Lot 16A, with a R-O-T-13 zoning designation, and the other half of the alley went with the southern lots, Lots 17A through Lot 24A with a B-2 zoning designation. Presently, the carwash equipment to vacuum cars is located on the north half of the vacated alley. The property owners of all the lots proposes to sell Lot 9A through Lot 16A to the Helena Housing Authority for a housing project, but needs to retain the north half of the alley for his business. An amended plat boundary line adjustment is anticipated that will incorporate this area into Lots 17A through 24A which are currently zoned B-2.

On Tuesday, June 8, 2004, the Helena Zoning Commission unanimously recommended approval (4:0 vote) for adoption of an ordinance for a zone change, from R-O-T-13 (Residential-Office) District to B-2 (General Commercial) for approximately 1,800 square feet.

Mr. Waters recommended approval for first passage of an ordinance amending city of Helena Ordinance #2359 and amending the Office Zoning Map.

Public Testimony

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

Colleen McCarthy, 812 Abbey, stated she was the Executive Director of the Helena Housing Authority and thanked city staff for all their help. She explained the problem and urged the commission to approve the proposal.

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

Motion

Commissioner Pouliot moved approval for first passage of an ordinance amending city of Helena Ordinance #2359 and

amending the Official Zoning Map there of from R-O-T-13 (Residential-Office) District to B-2 (General Commercial) District for approximately 1,800 square feet, in reference to that property described as the south 9 feet of Lots 9 through 16, Block 150, of the Ming Addition, Helena, Montana; generally located between Wilder and Euclid Avenues and Glendale and Garrison Streets, with a property address of 1600 Euclid Avenue. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ord. #2998**

Street Maint. Dis. #1

- B. CONSIDER A RESOLUTION LEVYING AN ASSESSMENT UPON ALL PROPERTY IN STREET MAINTENANCE DISTRICT #1 TO DEFRAID THE COST OF PROVIDING STREET MAINTENANCE FOR FISCAL YEAR 2005

Staff Report

Administrative Services Director Tim Magee reported each year the city commission must levy and assess the street maintenance charges in order for them to be placed on the upcoming tax bills. For FY2005:

1. Changes are proposed in both the rates and assessment methodology for Street Maintenance.
2. The Street Maintenance Districts #1 boundary has been changed to encompass the entire city. All of the previous area in Street Maintenance District #2 will now be part of Street Maintenance District #1, and SMD #2 will no longer be assessed.
3. The resolution of intent has been passed and the public hearing notices published.
4. The resolution of intent and notice were modified to allow capacity for the unique Mobile Home assessment method proposed by the Helena Property Owners Association. No commitment has been made by the Commission on the HPOA proposal.

Mr. Magee recommended approval of a resolution, as amended, to levy an assessment upon all property in Street Maintenance District #1.

Discussion

Commissioner Pouliot asked if the public notice that was issued for this consideration was Option #1? Mr. McGee concurred. Commissioner Pouliot asked if the public notice would allow the commission to also find either Option #2 or Option #3 if the commission so chose? Mr. McGee stated it would allow the commission to go to Option #2 and Option #3 according to the notice. The attorney's letter also addresses Option #3.

Public Testimony

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

Ed McHugh, 9 Cloverview Drive, stated he spent time with the city's financial director and the city attorney in the attempts to make the proposal legal. Mr. McHugh further explained how mobile home parks differ from condos and big box stores. Mr. McHugh recommended tabling this motion.

Andy Skinner, 1325 Marshall Lane, stated he has engaged counsel to meet with the city manager to try and work out the wording on this proposal. Mr. Skinner recommended tabling this motion until the proposal is ready for consideration.

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

Discussion

Commissioner Cartwright stated mobile home parks do provide services that other property owners do not; however, he thinks the 70% reduction is possibly overly generous. It seems to him that street maintenance pays for maintenance of the road, access to the system, and there should be a waiting factor to allow for public or private mobile home parks.

Motion

Commissioner Oitzinger moved to table of a resolution, as amended, to levy an assessment upon all property in Street Maintenance District #1 to defray the cost of providing street maintenance for fiscal year 2005 until July 26, 2004. Commissioner Cartwright seconded the motion.

Discussion

Commissioner Cartwright stated there is a number of properties in town that have things that might be construed as private roads that are publicly available and he wanted to be careful about setting a precedence that it's not just mobile homes that might claim this. He would like the city staff to work on getting the proposal right regarding mobile home parks and to understand what kind of precedence the city is setting for other properties.

Commissioner Pouliot stated he would be supporting the motion because the applicants have indicated they would engage in counsel.

Mr. Burton stated the proposal presents some structural problems relative to the process. It is his understanding, with the way the proposal is written; a complete readvertising with different parameters relative to the financial considerations of the commission would be necessary.

City Attorney David Nielsen stated he did meet with Mr. Skinner and Mr. McHugh but did not have a hand in drafting the proposal. The advertising that was done was for a qualified mobile home park classification, so if the commission chooses to look at another formula, it would have to be completely readvertised.

Mayor Smith stated he would be voting against the tabling motion because the commission spent last year attempting to arrive at something that was more equitable and more understandable regarding street maintenance districts.

Commissioner Oitzinger stated she thought the notice that was given to the public primarily hinged on whether or not any change to this would cost them money. Mr. Nielsen explained the notice states that rates would be raised. That puts the notice on alert that the public could come and protest if they feel that's too high. Commissioner Oitzinger stated it was always her intention that the other fee payers not bear the brunt of the forgiveness to the mobile home parks but that the city simply eat the \$20,000. She stated she is confused about the boundary and overlay and is very difficult for her to believe that there is not some sort of methodology that could be used to hold mobile home parks to where they were previously. She stated she would like to see the motion tabled.

Vote

Motion failed 3:2 with Commissioner Cartwright, Commissioner Parriman and Mayor Smith voting no.

Motion

Commissioner Cartwright moved approval of a resolution, as amended, to return to the original motion to levy assessment of all property in Street Maintenance District #1 to defray the cost of providing street maintenance for fiscal year 2005. Commissioner

Parriman seconded the motion. Motion carried 3:2 with Commissioner Oitzinger and Commissioner Pouliot voting no. **Res. #19140**

SID Bonds

C. CONSIDER A RESOLUTION RELATING TO \$645,825 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2004 (SPECIAL IMPROVEMENT DISTRICT NOS. 413 – TAMARACK STREET AND 418 – MCHUGH LANE); AWARDING THE SALE THEREOF AND APPROVING CERTAIN MATTERS WITH RESPECT THERETO

Staff Report

Administrative Services Director Tim McGee reported on June 21, 2004, the city commission passed a resolution authorizing the issuance and calling for the public sale of \$645,825 Pooled Special Improvement District Bonds, Series 2004 (Special Improvement District Nos. 413 and 418).

The Competitive Sale will be held on July 12, 2004 at noon. At this time, the bids will be opened, read, considered, and the purchase price, interest rates, and true interest cost under the terms of each bid will be determined.

Since the bids will not be opened until noon on the day of the commission meeting, the bid amount and purchaser will not be provided to the commission until the evening commission meeting. At the meeting, the commission will be provided with a bid summary sheet, a winning bid form, and a finalized resolution awarding the sale of the bonds.

Mr. McGee recommended approval for the public sale of \$645,825 Pooled Special Improvement District Bonds, Series 2004 (Special Improvement District Nos. 413 and 418).

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 approval awarding the sale of \$645,825 Pooled Special Improvement District Bonds, Series 2004 (Special Improvement District Nos. 413 and 418) and approving certain matters with respect thereto. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res. #19141**

Res. Parking Fees

D. CONSIDER RESOLUTION SETTING FEES FOR THE ESTABLISHMENT OF RESIDENTIAL PARKING DISTRICTS IN THE CITY OF HELENA

Staff Report

City Engineer Ryan Leland reported the city commission asked staff to calculate the costs incurred to create residential parking districts. These costs were discussed at the June 2, 2004 administrative meeting. This resolution sets a \$100.00 non-refundable fee to process the petition and a \$2.25 per lineal foot charge to install needed signage. Both fees are payable upon submission of a petition with the \$2.25 charge refundable if the district is ultimately not approved. This resolution does not attempt to recover the on-going costs associated with operating these districts (i.e. sign replacement, Police costs, costs of permits, etc.) These services and their related costs would still be provided by the city of Helena.

Mr. Leland recommended approval of a resolution setting fees for the establishment of residential parking district.

Discussion Commissioner Parriman asked if it was \$100 per resident or per district. Mr. Leland stated per district.

Commissioner Cartwright asked about how a corner house would be charged? Mr. Leland explained if the district continues around the corner they would be calculated with two front lineal footage.

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

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

Motion Commissioner Parriman moved approval of a resolution setting fees for the establishment of residential parking districts in the city of Helena. Commissioner Cartwright seconded the motion.

Discussion Commissioner Pouliot asked how the fee would be distributed among the neighborhood? City Attorney David Nielsen explained the city has left that up to the neighborhood to decide.

Vote Motion carried. 3:2 with Commissioner Oitzinger and Commissioner Pouliot voting no. **Res. #19142**

Type B Res. Parking E. CONSIDER A RESOLUTION TO ESTABLISH A TYPE B RESIDENTIAL PARKING DISTRICT FOR A PORTION OF LESLIE AVENUE IN THE CITY OF HELENA

Staff Report City Engineer Ryan Leland reported residents have requested a Residential Parking District (residents only) for Leslie Avenue from Benton Avenue to Madison Avenue between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday.

Mr. Leland recommended approval of a resolution to establish a Type B Residential Parking District for a portion of Leslie Avenue.

Discussion Commissioner Cartwright stated presumably the city would have the \$100.00 in hand before this resolution is addressed and asked what the city has done in terms of passing this? Mr. Burton explained the city would treat this application as if it were in prior to the passage of the previous resolution and the \$100.00 would not be required but the \$2.25 per lineal foot would be.

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

Vivian Carter, 415 Leslie Avenue, stated the neighborhood is in full support of the parking district and explained if the fees help to establish parking, she is for it. Ms. Carter further urged the commission for approval o

Anita Carter, 4430 Helberg Drive, stated since it is up to the neighborhood to pay the fees, her family would be willing to pay the fees for her mother's block.

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

- Motion** Commissioner Pouliot moved approval of a resolution to establish a Type B Residential Parking District for a portion of Leslie Avenue. Commissioner Oitzinger seconded the motion.
- Discussion** Commissioner Oitzinger stated her opposition to the fees has nothing to do with this neighborhood. She believes the city has a proliferation of these districts and feels this proposed district is meritorious because of its location and stated she would be supporting this motion.
Commissioner Parriman stated he understands Commissioner Pouliot's concern earlier and stated there should be a set policy the city follows regarding the procedure.
- Vote** All voted aye, motion carried. **Res. #19143**
- Donaldson Street** F. CONSIDER A RESOLUTION TO VACATE A PORTION OF DONALDSON STREET RIGHT OF WAY
- Staff Report** City Engineer Ryan Leland reported applicants are proposing the closure of a triangular portion of undeveloped Donaldson Street totaling 352 square feet. Concurrent with the vacation, applicants will dedicate to the public sufficient right-of-way to accommodate the relocation of the portion of Donaldson Street. The ultimate goal of the applicants is to develop undeveloped platted lots located adjacent to Harrison Avenue.
Mr. Leland recommended approval of the resolution.
- Discussion** Commissioner Parriman asked if the city has a 10% grade limit? Mr. Nielsen stated the 10% standard is only in subdivisions.
- Public Testimony** Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.
Lyle Pratt, 7 Reeders Village Drive, stated he doesn't have a problem with vacating a portion of Donaldson Street. However, they are concerned with the overall plan. Mr. Pratt explained the vacation would compound the grade problem and cause a safety issue.
Meg Lewis, 3 Readers Village Drive, explained the dangers of the grade and stated by adding another access safety is a concern.
Danny Desrosier, 19 Reeders Village Drive, stated the one way section of Howie Street is constantly used by people going the wrong way and explained something has got to be done to control the traffic.
Doug Krebs, 69 Hill Brothers Road, Clancy, Montana, stated he is representing the owners and explained this original proposal was submitted to city staff on January 29, 2002 and originally showed both parcels. After discussion with city staff, the parties decided to eliminate the vacation to avoid the public process of addressing everything having to do with the right-of-way. The plat was revised and resubmitted. He urged the commission for approval of the proposal.
There being no further persons wishing to address the commission, Mayor Smith closed the public hearing.
- Discussion** Mr. Leland stated he received a letter from a citizen during the public notification and handed it out to the commission.
Commissioner Cartwright asked regarding street grades? Mr. Nielsen stated where there exists platted right-of-way that street could be developed by property owners who want access to their property.

Commissioner Cartwright asked if this proposal implies that city staff has already determined the proposed entrance at the intersection of Harrison onto Reeders Drive is acceptable? Mr. Nielsen stated it does not.

Mayor Smith asked regarding Donaldson Street grades? Mr. Leland explained Donaldson Street would be a 10% grade.

Commissioner Pouliot asked if the city vacates this property the developer has gained additional square footage? Mr. Leland stated no and explained land would be exchanged because the developer is dedicating right-of-way to the city.

Motion

Commissioner Parriman moved approval of the resolution to vacate a portion of Donaldson Street right-of-way. Commissioner Cartwright seconded the motion.

Discussion

Commissioner Cartwright reiterated to the developers and the property owners that there are serious issues involved that need to be resolved. Mayor Smith echoed Commissioner Cartwright's comments.

Commissioner Oitzinger stated she would be resisting the motion.

Vote

Motion carried 3:2 with Commissioner Pouliot and Commissioner Oitzinger voting no. **Res. #19144**

Public Communications

PUBLIC COMMUNICATIONS

Vicky Desrosier, 19 Reeders Village Drive, mentioned the number of cars using Reeders Village Drive is growing.

Meg Lewis, 3 Reeders Village Drive, mentioned the Reeders Village gate is locked and asked for it to be removed.

Meetings of Interest

MEETINGS OF INTEREST

Mayor Smith stated the next administrative meeting would be held on Wednesday, July 21, 2004 and the next city commission meeting would be held on Monday, July 26, 2004.

Commissioner Pouliot mentioned the Open House for the City/County Commission Chambers would be held on Monday, July 19, 2004 at 3:00 p.m.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 10:35 p.m.

Mayor James E. Smith

ATTEST:

Clerk of Commission