

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**October 25, 2004**  
**6:00 P.M.**

**Time & Place**

A regular City Commission meeting was held on Monday, October 25, 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, Pouliot and Parriman were present. Commissioner Cartwright was excused. City Manager Tim Burton, City Attorney David Nielsen, and Deputy City Clerk Robyn Brown were present. Others present were Anne Pitchette 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 October 18, 2004 were approved as submitted.

**Appointments**

APPOINTMENTS

A. Board of Adjustment

Mayor Smith asked for commission concurrence on the following appointment:

**Board of Adjustment** Appointment of Harriet Styler to the Board of Adjustment.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Pouliot moved approval of the appointment to the Board of Adjustment.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Introduction**

INTRODUCTION

A. Ihor Yakushev, Educator from Konotop, Ukraine.

Mayor Smith introduced Ihor Yakushev, one of two Ukrainian teacher coordinators for the East Meets West Program.

Mr. Yakushev expressed his gratitude in being involved in the program and spoke regarding the significance of the program. He also read a letter from the Mayor of Konotop and presented it to Mayor Jim Smith along with gifts for the City of Helena.

Mayor Smith commended Mr. Yakushev for his leadership in promoting international understanding through student cultural exchanges.

Commissioner Oitzinger stated that she visited Helena High School today for a workshop involving student councils from around the state. She spoke of her appreciation for educators.

**Consent Agenda**

CONSENT AGENDA:

A. Claims

- B. Release of the City's interest in a 20-foot wide interior easement located between Lots 7 and 8 of the Airport Road Business Park Subdivision, Helena, Montana; generally located on the north side of Bozeman Avenue and East of Blaine Street.
- C. Purchase agreement- Elgin Eagle F street sweeper.
- D. HCTV Agreement

City Manager Tim Burton recommended approval of the claims and the consent agenda.

**Public comment**

**Linda Stohl- Chairperson of HCTV Board, 426 S Montana.**

Ms. Stohl stated she attended the meeting this evening to answer any questions regarding HCTV programs and the renewal of the HCTV contract.

**Motion**

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

**Communications**

**COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS**

Commissioner Pouliot stated that the Commission does not usually meet every week and hoped that by meeting four times in the past two weeks things are caught up.

Mayor Smith agreed with Commissioner Pouliot and thanked the Commissioners and city staff for their hard work the past couple of weeks.

Commissioner Oitzinger thanked HCTV for the Cool Fire Quarterly Newsletter and stated that it is helpful to have the HCTV schedule published in the Queen City News. She also stated how much she enjoyed participating in the student council workshop at Helena High School. In addition, she delivered a proclamation today recognizing Domestic Violence Awareness month and commended Officer William Harrington for being recognized as Officer of the Year by the Domestic Violence Council.

**Report of the City Attorney**

**REPORT OF THE CITY ATTORNEY**  
No report was given.

**Report of the City Manager**

**REPORT OF THE CITY MANAGER**  
No report was given.

**HCC Communications** HELENA CITIZENS COUNCIL COMMUNICATIONS

HCC Representative Jerry Hutch reported that the HCC will meet Wednesday, October 27, 2004 at 7:00pm in room 326 of the City/County Building and invited the Commission and citizens of Helena to attend.

He also thanked the Mayor and Commission for the proclamation for White Cane Safety Day on October 15th.

Mayor Smith asked Mr. Hutch to work with City Clerk Havens to recruit new HCC members.

**Resolution**

**CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) FOR A CASINO WITH UP TO 20 GAMING MACHINGS TO BE LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT. LEGALLY DESCRIBED AS THE WEST 52.2 FEET OF LOT 15, AND ALL OF LOTS 16-19, BLOCK 26, FLOWER GARDEN ADDITION,**

HELENA, MONTANA; GENERALLY LOCATED WEST OF OAKES STREET AND NORHT OF CEDAR STREET AT 1730 CEDAR.  
**(TABLED FROM OCTOBER 18, 2004)**

Staff Report

City Planner Kathy Macefield reported that the Commission tabled action on a resolution for a Conditional Use Permit (CUP) to allow a casino with up to 20 gaming machines to be located in the B-2 (General Commercial) District to allow additional information to be obtained for the submitted site plan.

Ms. Macefield stated that the one-week timeframe was found to be too short to obtain all of the necessary information.

Ms. Macefield recommended tabling a resolution granting a Conditional Use Permit to allow a casino with up to 20 gaming machines to be located in a B-2 (General Commercial) District until November 8<sup>th</sup> or the call of the City Manager.

Commission Comment

Commissioner Parriman asked what additional information was needed? Ms. Macefield stated that there were several different site plans submitted along with the original site plan and staff has been working to combine all of the information into one document, which is almost finished. Also, today staff ran into some final questions regarding the landscaping amount and whether or not a variance would need to be obtained.

Commissioner Parriman inquired as to why the Zoning Commission recommended approval, and at the October 18<sup>th</sup> Commission meeting staff recommended approval, but now there is no recommendation?

Ms. Macefield stated the applicant is the person to complete the site plan and submit it and a lot of times there is missing information so staff ends up collecting the missing information. At the last Commission meeting it became evident that staff did not have all of the information needed. In the past the completed site plan was allowed to be submitted after approval. Staff has approached current applicants with incomplete applications to ensure that all site plans will be complete before they go to the Commission in the future.

Public Testimony

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Pouliot moved to table a resolution granting a Conditional Use Permit (CUP) for a casino with up to 20 gaming machines to be located in the B-2 (General Commercial) District; Legally described as the west 52.2 feet of Lot 15, and all of Lots 16-19, Block 26, Flower Garden Addition, Helena, Montana; generally located west of Oakes Street and north of Cedar Street at 1730 Cedar to November 8, 2004.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

***Water Right Cases & Settlement Agreement*** CONSIDER RIMINI WATER RIGHT CASES 411-67 AND 411-599 SETTLEMENT AGREEMENT.

Staff Report

City Attorney David Nielsen reported the unincorporated community of Rimini filed a claim with the Water Court for water rights on Ten Mile Creek. The priority date claimed preceded the two water rights that the City has on Ten Mile Creek. The City filed an objection to this

claim. The City had filed with the Water Court on its two water rights and Rimini filed objections to those. The Water Court ordered the parties to mediation to resolve the claims and objections. The City and Rimini have been negotiating the details of that agreement.

When the City constructed its head gate on Ten Mile Creek just upstream from Rimini in the early 1920's, it allowed Rimini to run a 4" non-pressurized pipe from that head gate into Rimini. No one knows where the 4" line goes for certain or where it ends. The water is non-potable and is used primarily for lawn irrigation. Some residents may use it for domestic purposes such as washing but that is not advisable. Since Rimini has been using Ten Mile Creek water for over 80 years, the agreement reached between the City and Rimini provides:

1. Rimini can continue using water from the 4" line to defined properties, and that water right would be part of the City's first two rights;
2. The water is limited to 70 acre-feet per year and is not considered to be municipal quality;
3. Rimini is responsible for maintenance of the head gate, valve and water line;
4. The property owners are prohibited from expanding the water use to subdivide parcels that might be created; and
5. Rimini will dismiss its water right claim and its objections to the City's water rights.

City Manager Dennis Taylor was authorized by the City Commission in 1998 to negotiate this settlement and did sign the conceptual draft.

City Attorney Neilsen stated that approving this Settlement Agreement resolves the water right disputes between Rimini and the City. It affirms the settlement negotiated by City Manager Taylor and Rimini. The Agreement quantifies for the first time who is entitled to use water from the 4" pipe, the type of use, the maximum quantity, and maintenance responsibility for the diversion.

City Attorney Neilsen recommended approval of the Settlement Agreement between the City of Helena and residents of Rimini.

Public Comment

Mayor Smith asked for public comment; none was received.

**Motion**

**Commissioner Parriman moved approval of Rimini Water Right Cases 411-67 and 411-599 Settlement Agreement** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

***Development and Maintenance Agreement***

CONSIDER A DEVELOPMENT AND MAINTENANCE AGREEMENT FOR THE CONSTRUCTION AND OPERATION OF THE EXPLORATION WORKS BUILDING.

Staff Report

Community Facilities Director Gery Carpenter reported that Mosaic Architecture is currently under contract with the City of Helena for schematic design of the Exploration Works Building. That contract is now complete. Before additional funding can be released for the completion of the architectural plans and specifications one of the conditions of Resolution No. 11987, establishing funding for this project, is "showing of a binding commitment by the Property Owners' Association or other responsible entity for the financial responsibility of

the ongoing operation and maintenance of the completed improvements". To provide for this long-term financial responsibility and to set forth the responsibilities of the two parties during construction an agreement needs to be drawn up and agreed to by both parties.

Director Carpenter recommended approval of the Development and Maintenance Agreement between the City of Helena and Community Works for the construction and operation of the Exploration Works Building and authorize the City Manager to sign the agreement.

Public comment

**Ellen Feaver- Chairman of the Board for Community Works, 901 Floweree.** Ms. Feaver expressed her gratitude to the Mayor, Commission and staff for their work on the Exploration Works project.

Motion

**Commissioner Oitzinger moved approval of the Development and Maintenance Agreement between the City of Helena and Community Works for the construction and operation of the Exploration Works Building and authorized the City Manager to sign the agreement.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

**Development Contract**

CONSIDER A CONTRACT TO PROVIDE THE DESIGN, SPECIFICATIONS AND CONSTRUCTION PLANS FOR THE CONSTRUCTION OF THE EXPLORATION WORKS BUILDING.

Staff Report

Community Facilities Director Gery Carpenter reported that Mosaic Architecture has completed the schematic design contract for the Exploration Works Building. The next step toward the construction of the Exploration Works Building is the development of plans and specifications in preparation for bidding. The attached contract and scope of services outlines the architectural work necessary to prepare for this project to go to bid. This project includes donated material and labor. The attached contract includes the cost for the procurement of the donated materials and labor. This project is under tight time lines, as the architectural work will take 10 to 14 weeks to complete. The bidding and awarding of the contract must be completed in early spring to stay on schedule with TIF funding.

Director Carpenter recommended approval of the contract for \$139,923.00 with Mosaic Architecture P.C. to provide the design, specifications and construction plans for the Exploration Works Building and authorize the City Manager to sign the contract.

Commission comment

Commissioner Parriman asked why the amount of funding is less than what he remembered from previous discussion? Mr. Carpenter stated this is the 2<sup>nd</sup> phase of the contract, about \$54,000.00 has already been authorized.

Public comment

Mayor Smith asked for public comments; none was received.

Motion

**Commissioner Oitzinger moved approval of the contract for \$139,923.00 with Mosaic Architecture P.C. to provide the design, specifications and construction plans for the Exploration Works Building and authorize the City Manager to sign the contract.** Commissioner Parriman seconded the motion.

Commission comment                    Commissioner Parriman stated that he will support the project but is tentative about approving monies while the grant matching funding is not yet in place.

Commissioner Pouliot agreed with Commissioner Parriman that the funding is out of step but believes that it is necessary to ensure that the funding can be sought and believes it will assist with the project coming to fruition.

Mayor Smith stated that there is an element of risk but projects like these seem like plate tectonics- the pieces need to come together for success. He listed the Frontier Fun Park and Old Glory Landmark as other successes the City has financially assisted.

**Motion**                                    All voted aye, motion carried.

**Right-of-Way Agreement**            CONSIDER A RIGHT-OF-WAY AGREEMENT FOR A PORTION OF 10<sup>TH</sup> AVENUE BETWEEN MONTANA AND DAKOTA STREETS.

City Engineer Ryan Leland reported that the alley between 9<sup>th</sup> and 11<sup>th</sup> Avenues, which is the platted 10<sup>th</sup> Avenue, is not located in the platted right-of-way (ROW). The alley is located on private property and some property owners occupy the right-of-way. Back in the 1990's the city began to correct this error by either buying or trading the right-of-way for the property occupied by the alley.

Montana Eye Care has proposed to allow the alley to stay where it is currently located and allow them to pave, and landscape the existing right-of-way for use as parking for their business. Montana Eye Care has received one letter from a property owner who would like to see a large mature tree in the right of way kept in place. An agreement has been made to keep the tree in place until it dies according to Parks and Recreation Director Randy Lilje.

City Engineer Leland recommended approval of this right of way use agreement for portions of 10<sup>th</sup> Avenue between Montana and Dakota.

Commission comment                    Commissioner Pouliot asked what kind of notice was given to the neighbors on 9<sup>th</sup> and 10<sup>th</sup> Avenues? Mr. Leland stated that Montana Eyecare personally contacted the adjacent property owners on 9th Ave. Commissioner Pouliot stated that he was pleased with the notice given.

Mayor Smith asked if there was a landscaping plan in place? Mr. Leland responded that a rough landscaping design was submitted however Montana Eyecare is not willing to enlist a professional landscaper unless the right-of-way agreement is passed; then all landscaping will be approved by Parks and Recreation Director Randy Lilje.

Public comment                         Mayor Smith asked for public comments; none was received.

Commission comment                    Commissioner Parriman asked if this was a street or alley as the staff memo calls it 10<sup>th</sup> Avenue? Mr. Leland responded that it is platted as 10<sup>th</sup> avenue but is functionally used as an alley.

Commissioner Parriman asked if this right-of-way was to remain an alley or would it be a Street Improvement District or be in need of curbs and sidewalks later? Mr. Leland responded it would be kept as an alley.

Commissioner Pouliot asked if the city needed to do anything to change it to an alley instead of calling it 10<sup>th</sup> Avenue? Mr. Leland responded that it was just how it was named when originally platted and it will be still be named 10<sup>th</sup> Avenue and will be functionally used as an alley.

Mayor Smith stated that it should be referred to as 10<sup>th</sup> Avenue although this section is used as an alley.

**Motion** **Commissioner Parriman moved approval of the right of way use agreement for portions of 10<sup>th</sup> Avenue between Montana and Dakota.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Variance** CONSIDER A VARIANCE FOR CURBSIDE SIDEWALKS AT 1015 POPLAR.

**Staff Report** City Engineer Ryan Leland reported that the property at 1015 Poplar Avenue is the Gateway Development property that currently has no sidewalks along the property frontage. There are very limited amounts of sidewalks installed in the vicinity.  
The variance request is based on the cost of installing boulevard sidewalks and low pedestrian utilization. The length is approximately 300 lineal feet, 150 lineal feet on both Dodge Avenue and Poplar Street. This variance will add approximately 300 lineal feet of new sidewalk to the City's sidewalks system at no cost to the City, the property owner will pay 100% of the cost of construction.

City Engineer Leland noted staff has no recommendation.

**Commission comment** Mayor Smith commended Sheldon Bartels, Director of Gateway Economic Development on their Four County Economic Development Report.

**Public comment** Mayor Smith asked for public comments; none was received.

**Motion** **Commissioner Parriman moved approval of the variance for curbside sidewalks at 1015 Poplar.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Public Communications** PUBLIC COMMUNICATIONS – **Bruce Messinger, 1020 Strawberry Dr.** Dr. Messinger expressed appreciation to the Mayor, Commissioners and staff for their support of Exploration Works.

**Meetings of Interest** MEETINGS OF INTEREST – The next Administrative Meeting is November 3rd and the next regular City Commission Meeting is November 8<sup>th</sup>.  
Commissioner Oitzinger stated that the Joint Work Session between the City and County is on November 4, 2004 and will include the non-motorized transportation plan.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 7:05p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of Commission