

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 8, 2004
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, November 8, 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 Cartwright, Oitzinger, Pouliot and Parriman were present. 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 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 October 25, 2004 were approved as submitted.

Appointments APPOINTMENTS
A. Business Improvement District
B. Helena International Affairs Council

Mayor Smith asked for Commission concurrence on the following appointments:

Business Improvement District- Appointment of Jennifer Peterson and Randall T. Green to the Business Improvement District.

Helena International Affairs Council- Appointment of Major Daniel Hash to the Helena International Affairs Council.

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

Motion **Commissioner Pouliot moved approval of the appointments to the Business Improvement District and Helena International Affairs Council as recommended by Mayor Smith.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Second passage of Ordinance 3004 pre-zoning approximately 18.58 acres as shown on the preliminary plat of the proposed Raven Rock Subdivision.
C. Utility bill insert- Montana Shares
D. Utility bill insert- Lewis & Clark Humane Society
E. Amendment to the Lewis and Clark Library Agreement
F. Consider providing funds from the Revolving Loan Fund in the amount of \$5,000.00 to Gateway Economic Development Corporation for costs associated as a match to leverage \$170,000.00 from the State's MBDC Program.

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

Public comment

Mayor Smith asked for public comment, none was received.

Motion

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

Bid Awards

A. THREE NEW 2004 OR 2005 TRUCK CHASSIS (SINGLE AXLE) WITH THREE NEW 5-CUBIC YARD DUMP BODIES- PUBLIC WORKS.

City Fleet Manager Ed Robinson reported that bids for three new 2004 or 2005 truck chassis (single axle) with three new 5-cubic yard dump bodies had been opened at 2:00pm on October 20, 2004. Numerous bids were received with the low bid coming from I-State Truck Center. I-State bid 2005 Freightliners with Heil boxes at a net price of \$53,139.00 each for the two five-yard units and \$54,004.00 for the six-yard unit. Total acquisition price for the three units is \$160,282.00. Budget appropriation for this unit was \$168,500.00.

Mr. Robinson stated the purchase of these new units will allow the City to upgrade its Street and Water Maintenance divisions' fleets, providing improved and more efficient services. Two of these units are additions to the fleet to provide for changes in operations and improve services, one will replace unit #309 a 1984 Ford F800.

Mr. Robinson recommended accepting the bid from I-State Truck Center for two 2005 five-yard Freightliner dump trucks and one 2005 six-yard Freightliner dump truck for a price not to exceed \$160,282.00.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved to accept the bid from I-State Truck Center for two 2005 five-yard Freightliner dump trucks and one 2005 six-yard Freightliner dump truck for a price not to exceed \$160,282.00. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

B. STATE BIDS FOR SERVICE FLEET VEHICLES.

City Fleet Manager Ed Robinson reported the State of Montana opened bids for service vehicles October 25, 2004. The City of Helena included a number of vehicles identified for fleet replacement from two divisions in the bid process. A summary of divisions with their vehicle requests, budgets and bid prices were included in the Commission meeting packet. All vehicles replaced will be declared surplus and sold at the State auction in September 2005.

Mr. Robinson recommended awarding the low bids to Bennett Motors for \$13,198.00 and Bison Ford for \$38,239.00.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved to award the bids to Bennett Motors \$13,198.00 and Bison Ford for \$38,239.00. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Commission comment Commissioner Parriman acknowledged the staff report stated that remaining funds were used to purchase and install a new dump box to complete the units. If we budgeted \$26,000.00 and the bid was \$15,900.00 was the remaining \$10,000.00 figured in originally for the dump boxes? Mr. Robinson responded that the dump boxes were not figured in to the cab and chassis acquisition as the bid did not include a dump box but the dump box was budgeted for.

Commission Parriman also asked for clarification on the first bid award; the amount to be spent is \$160,282.00 but the low bid was \$159,417.00. Mr. Robinson responded the lowest bid was the cost for three five-yard dump trucks. The City opted to buy two five-yard trucks and one six-yard truck.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commission Pouliot spoke regarding the City of Helena flag, which was recently rated very low among the other United States city flags. He then displayed the flag and stated he believes it is a beautiful flag.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

A. Introduction of Officer William Harrington

Police Chief Troy McGee introduced Officer William Harrington and stated that on October 25th Officer Harrington was recognized at a ceremony at the capitol for his efforts against Domestic Violence. Officer Harrington is a Carroll College graduate and has been with City Police Department for 2 years.

Holly Kaleczyk, The Friendship Center, commended Officer Harrington for his work.

Matthew Dale, Attorney General's office, thanked city and county law enforcement and explained the Domestic Violence Council is a group of social service agencies, law enforcement, St Peter's Hospital and key supporters of the battle against domestic violence and spoke about the Council operations.

Officer Harrington thanked the Commission for their support and recognition.

Mayor Smith stated how dangerous answering domestic violence calls are and commended Officer Harrington for his work. He also spoke regarding the zero tolerance policy against domestic violence.

Commissioner Pouliot thanked Officer Harrington.

Commissioner Oitzinger spoke about the history of domestic violence awareness and stated she was grateful for all progress made.

Police Chief McGee noted that Assistant City Prosecutor Bob Wood attended the meeting tonight and commended him on his work towards domestic violence type crime.

B. Labor Agreement

Human Resource Director Salty Payne reported there were successful negotiations between the City and the Laborer's International Union of North American Local #254. The labor agreement involves the park, street and solid waste departments. There were many language changes that were beneficial to both employees and the City of Helena.

The negotiation process started in mid-June and the agreement was ratified on October 22, 2004. It is a 3-year agreement through 2007.

HCC Communications HELENA CITIZENS COUNCIL COMMUNICATIONS

HCC Representative George Hoff reported that the HCC is keeping a close eye on the Last Chance Gulch street name change to see that it gets done. They would also like to weigh in on the proposed Last Chance Gulch name change planned for Cedar Street. The HCC contacted City Planning and they will make a presentation to the HCC. The Helena and County Transportation Department will also make a presentation to the HCC.

Also, the HCC is weighing in on the pet control Spay/Neuter program held at the Fairgrounds.

The HCC has had many requests from the Helena Westside in Helena Citizens Council District #3 regarding annexation into the City; they are planning a meeting after January 1, 2005 regarding this and will keep City staff informed.

Mayor Smith stated he and City Clerk Havens have worked on a letter to the HCC regarding the Spay/Neuter program and it will be mailed to them.

Resolution

CONSIDER A RESOLUTION FOR 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. **(Tabled from October 25, 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.

The Helena Zoning Commission recommended approval (2:1 vote) for a resolution granting this CUP on September 14, 2004. This approval was subject to the following conditions for site plan revisions:

Site Plan Revisions:

- 1) The site plan must be revised to accurately show the location and dimensions of all onsite parking, landscaping, signs, and utilities.
- 2) The revised site plan must show the location of the dumpster.
- 3) The revised site plan must be submitted prior to occupancy, and the landscaping must comply with the approved site plan.

A revised site plan was received on Friday, October 29, 2004 that shows the dimensions and square footages for the landscaped areas, location and sizes of water and sewer mains, dumpster location, typical parking stall dimensions, bicycle parking, building setbacks, water and sewer main locations and sizes and sign location. The City Engineer has stated a drainage plan would not be required because the existing impervious surface (building and parking areas) will not be increasing in size and the building predates the ordinance.

The square footage for the landscaping was incorrectly calculated in the October 14, 2004 staff report. The 3,784 square foot building, located on a 35,308 square foot lot, requires a minimum of 2,522 square feet of landscaped area (based upon 8%). The property has an approximate total of 2,125 square feet of onsite landscaping, including the new installation of 450 square feet of landscaping.

The applicant has stated an estimated 3,500 square feet of trees and grass shown on the site plan along the parking perimeter is located on the property. As a result, the revised site plan states 6,450 square feet of onsite landscaping has been provided. Therefore, according to the revised site plan, the amount of onsite landscaping exceeds the minimum requirement of the Helena Zoning Ordinance.

Ms. Macefield recommended approval for a resolution granting a Conditional Use Permit (CUP) to allow a casino with up to 20 gaming machines to be located in a B-2 (General Commercial) District as legally described in the staff report.

Commission comment Commissioner Cartwright asked if there was landscaping in front of the building and what kind? Ms. Macefield stated grass and new bushes had been planted.

Public comment Mike Casey, 25 Neill Avenue, representing the applicant, stated the landscaping also includes a decomposed granite walkway, which is useful for long term planning if the Montana Department of Transportation needs to widen the street. The improvements made to the site will improve the entryway to Helena.

Motion **Commissioner Oitzinger moved approval for a resolution granting a Conditional Use Permit (CUP) to allow a casino with up to 20 gaming machines to be located in a 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 Pouliot seconded the motion. All voted aye, motion carried. **Resolution 19174**

Ordinance CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 5-2-35 OF THE HELENA CITY CODE TO PROVIDE FOR A SINGLE CITY COURT HEARING TO APPEAL A DANGEROUS DOG DESIGNATION.

Staff Report Chief of Police Troy McGee spoke about amending City Ordinance 5-2-35, Restraint; Declaration; Determination: Section C to provide for a single Helena City Court hearing for appeal of a potentially dangerous or dangerous dog designation.

The first process outlined in the City code is an appeal heard by the City Manager or his designee. Others who attend this meeting include the Animal Control Officer, a representative of the Humane Society and either the City Attorney or Assistant City Attorney. If the citizen disagrees with the decision of this panel, they have the option of presenting their appeal to City Court. The first process has an appearance of being unfair and weighted in favor of the enforcement department, which in this case, is the Helena Police Department.

Chief McGee recommended abolishing the first process in the appeal and changing the ordinance to assign the appeal directly to City Court. He then recommended approval for first passage of an ordinance amending Section 5-2-35 of the Helena City Code.

Commission Comment Mayor Smith asked if it was typical in the current appeals process for the complainant to attend the hearing? Chief McGee stated they can be present but they usually rely on the report issued by the animal control officer, the current appeal process is not set up like a normal court would be where questions are asked with an attorney present, the appeals committee is not trained for that type of hearing.

Mayor Smith asked if sending these cases to Judge Pitch immediately would afford more opportunity for a proper hearing and exchange between the parties? Chief McGee concurred.

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

Motion Commissioner Cartwright moved approval of first passage of an ordinance amending Section 5-2-35 of the Helena City code to provide for a single City Court hearing to appeal a dangerous dog designation.

Commission Comment Commissioner Parriman asked if a public hearing date needs to be set? City Attorney Nielsen stated per the statutory requirements a public hearing wasn't necessary.

Vote Commissioner Parriman seconded the motion. All voted aye, motion carried. **Ordinance 3005**

Resolution CONSIDER A RESOLUTION OF INTENTION TO APPROVE THE BUSINESS INCUBATOR TAX EXEMPTION APPLICATION OF GATEWAY ECONOMIC DEVELOPMENT CORPORATION FOR PROPERTY LOCATED AT 1015 POPLAR STREET IN THE CITY OF HELENA, MONTANA.

Staff Report Administrative Services Director Tim Magee reported Sheldon Bartels, on behalf of the Gateway Economic Development Corporation, has requested tax exemption status under § 15-24-1802, MCA. This section allows a business incubator owned or operated by a local economic development organization to be exempt from city property taxes.

In order to qualify for this tax exemption, the City Commission shall approve the tax exemption by resolution, after due notice and a public hearing. The City Commission may not grant approval for the business incubator until all of the applicant's taxes have been paid in full. This tax exemption applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion.

Director Magee stated prior to holding the public hearing, the governing body shall determine that the local economic development organization:

- a) Is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(6) of the Internal Revenue Code

- b) Is engaged in economic development and business assistance work in the area; and
- c) Owns or leases and operates or will operate the business incubator.

The Gateway Economic Development Corporation has provided the City with documentation verifying that they have met the three above criteria.

Mr. Magee recommended approval of the resolution of intention to approve the business incubator tax exemption application of the Gateway Economic Development Corporation.

Commission comment Mayor Smith asked if Mr. Magee had seen the letter from the Internal Revenue Service granting Gateway's tax exempt status? City Manager Burton responded that he had seen the letter and their tax status is 501-C6.

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

Motion **Commissioner Pouliot moved approval of the resolution of intention to approve the business incubator tax exemption application of the Gateway Economic Development Corporation.** Commissioner Oitzinger seconded the motion. **Resolution 19173**

Commission Comment Commissioner Cartwright stated he finds it unsettling that Helena's business development operation needs a tax break in order to succeed; it sends the wrong message to the public. Commissioner Cartwright also stated he'd support increasing Gateway's budget if needed.

Commissioner Oitzinger stated that every cent that Gateway pays toward operating is another cent they can't loan out to businesses in the community.

Vote All voted aye, motion carried.

Public Hearings PUBLIC HEARINGS
A. CONSIDER A PRELIMINARY PLAT FOR THE CENTRAL ADDITION #2 SUBDIVISION CREATING TWO LOTS FROM 71,301 SQUARE FEET (1.64 ACRES); GENERALLY LOCATED NORTH OF LAST CHANCE GULCH, BETWEEN 15TH AND 16TH STREETS.

Staff Report City Planner Belinda Waters presented a power point presentation to the Mayor and Commission. Ms. Waters reported the structures that were located on the subject property have been demolished. Plans submitted by the applicant indicate that both lots will house newly constructed office-type buildings. Presently, Lot A-2 has received a building permit for construction of a new office building. Access to the two lots will be from Last chance Gulch and 15th and 16th Streets. Both lots proposed for the subdivision are currently zoned B-2 (General Commercial) District.

Ms. Waters stated the applicant proposes to aggregate Lots 1 through 13 and Tract B, thereby creating Lot A-1, consisting of 38,196 square feet, and Lot A-2, consisting of 33,105 square feet. Both lots in the proposed subdivision will meet lot area (2,500 square feet) and width requirements (25 feet) for the B-2 District.

The applicant also submitted an application for a zone change from B-2 (General Commercial) District to B-3 (Central Business) District for the entire area. On Tuesday, October 26, 2004, the Helena Zoning Commission unanimously recommended approval of the adoption of an Ordinance for the proposed zone change.

The 2001 Helena Growth Policy promotes more intense and efficient use of land and facilities. Streets, water and sanitary sewer are available to serve the proposed subdivision, which represents and efficient use of land, infrastructure, energy and other resources. The proposed subdivision appears to conform to the goals, objectives, and policies of the 2001 Growth Policy.

Ms. Waters recommended approval of a minor subdivision/preliminary plat creating 2 lots from Tract B COS#570152/B and lots 1 through 13, Block 43 of the Central Addition No. 2 and the vacated alley consisting of 71,301 square feet of lot area (1.64 acres) in a B-2 (General Commercial) District, and to adopt the Findings of fact and the conditions contained therein.

Commission comment

Commissioner Cartwright asked what the advantage was to aggregating two lots on the property. Ms. Waters replied the applicant felt it would clean up the lots.

Mayor Smith asked if there was going to be one or two buildings on the property? Ms. Waters stated there would be two separate buildings, one on each lot, with a driveway between them.

Mayor Smith inquired as to why planning staff didn't bring the B-3 zoning change to the Commission for more of the properties located adjacent to the subject property on Last Chance Gulch, was consideration given throughout the B-2 area? Ms. Waters responded staff has been in discussions with the Parking Commission and Business Improvement District about the need to change all the zoning along the street to B-3. The problem is that some of the businesses would not conform to the allowed uses; however discussions are still taking place.

Commissioner Parriman asked if the Commission doesn't change the zoning from B-2 to B-3 what would happen to the proposed building and the building under construction that we are discussing tonight, would they be non-conforming? Ms. Waters replied the building that is under construction would comply as it was given a building permit under B-2 zoning. The B-2 and B-3 zoning are very comparable, the main difference is that B-3 allows for more height to the building.

Public Testimony

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

Mike Gaffkey, Bozeman, Montana, representing the owner and developers, reiterated the site plans include the construction of two separate buildings. He stated the owner's intent with the rezoning request is for a natural progression of the B-3 district from the Federal Building. He indicated the reason for rearranging lots is that the current L shape lot serves no function; two lots would conform more to the development of the property.

There being no further persons wishing to address the Commission, the public portion of the hearing was closed.

Motion

Commissioner Pouliot moved approval of a minor subdivision/preliminary plat creating 2 lots from Tract B COS#570152/B and lots 1 through 13, Block 43 of the Central

Addition No. 2 and the vacated alley consisting of 71,301 square feet of lot area (1.64 acres) in a B-2 (General Commercial) District, and to adopt the Findings of fact and the conditions contained therein. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF FROM B-2 (GENERAL COMMERCIAL) DISTRICT TO B-3 (CENTRAL BUSINESS) DISTRICT IN REFERENCE TO PROPERTIES DESCRIBED AS TRACT B COS#570152/B AND LOTS 1 THROUGH 13, BLOCK 43 OF THE CENTRAL ADDITION NO. 2 AND THE VACATED ALLEY, HELENA, MONTANA; GENERALLY LOCATED NORTHWEST OF LAST CHANCE GULCH, BETWEEN 15TH STREET AND 16TH STREET.

Staff Report

City Planner Belinda Waters reported the property is generally located north of Last Chance Gulch, between 15th and 16th Streets. The structures that were located on the subject property, a motel and restaurant, have been demolished. Plans submitted by the applicant indicate that both lots will contain newly constructed office-type buildings. Presently, Lot A-2 has received a building permit for a new office building, which is now under construction.

On Tuesday, October 26, 2004 the Helena Zoning Commission unanimously recommended approval (3:0 vote) for adoption of an ordinance for a zone change, from B-2 (General Commercial) District to B-3 (Central Business) District for approximately 71,301 square feet.

Ms. Waters stated the proposed zone change represents in-fill development and appears to lend support to the existing uses in the area. The proposal represents an efficient use of land because the development will utilize existing City services such as water, sewer, police, and fire protection. The development must comply with the City regulations and codes. This project appears to conform to the various goals, objectives, and policies of the 2001 Growth Policy.

Ms. Waters recommended approval of first passage of an Ordinance amending City of Helena Ordinance No. 2359 and amending the Official Zoning Map thereof for a 1.64 –acre parcel from B-2 (General commercial) District to B-3 (Central Business) District, as legally described in the attached Ordinance.

Public testimony

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

There being no persons wishing to address the Commission, the public portion of the hearing was closed.

Motion

Commissioner Pouliot moved approval of first passage of an Ordinance amending City of Helena Ordinance No. 2359 and amending the Official Zoning Map thereof for a 1.64 –acre parcel from B-2 (General commercial) District to B-3 (Central Business) District, in reference to properties described as Tract B COS#570152/B and Lots 1 through 13, Block 43 of the Central Addition No. 2 and the vacated alley, Helena, Montana; generally located northwest of Last Chance Gulch, between 15th Street and

16th Street. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance 3006**

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 10 OF THE CITY OF HELENA ZONING ORDINANCE TO REVISE THE INTENT, LIMITATIONS ON USES, AND PERMITTED USES OF THE B-1 (NEIGHBORHOOD BUSINESS) DISTRICT.

Staff report

City Planner Kathy Macefield reported on October 12, 2004 the Helena Zoning Commission recommended Approval (4:1 vote) for the proposed adoption of an ordinance, amending Chapter 10 of the Helena Zoning Ordinance, for simultaneous proposals affecting the B-1 (Neighborhood Business) District. The proposed amendment would revise the intent, limitations on uses, and permitted uses (by right) of the B-1 District. This proposal would affect all B-1 zoning districts in the city (the Rodney Street area, Reeders Alley, railroad depot area, and Helena Avenue).

This proposal is consistent with the 2001 Helena Growth Policy, the Montana zoning criteria, and is compatible with the surrounding land uses.

Ms. Macefield recommended approval of first passage of an ordinance amending Chapter 10 of the Helena Zoning Ordinance, for simultaneous proposals affecting the B-1 (Neighborhood Business) District.

Commission comment

Commissioner Cartwright asked if these changes to the ordinance were the same revisions in the Unified Development Ordinance? Ms. Macefield stated some of the changes are the same as the changes listed in the draft Unified Development Ordinance.

Commissioner Cartwright stated the kinds of behavior permitted in an area, without necessarily specifying the uses, should be included when working on the Unified Development Ordinance in the future.

Commissioner Pouliot asked if Scott Peterson was in favor of ordinance at the Zoning Commission meeting? Ms. Macefield stated he was in favor of the ordinance and he attended the meeting representing Montana Marketing, which was the initial applicant on this request.

Mayor Smith referred to the storage units off of Colonial Drive, which was acted on in October, is this a similar situation meaning in back to back motions the Commission makes an explicit allowance for a certain type of business in a certain type of zone, then the next agenda item is a Conditional Use Permit (CUP) for the same type of business? Ms. Macefield concurred. The Zoning Commission considered this proposal for the B1 zone by right and also a CUP in the B1 zone. If this proposal for embroidery as a permitted use in the B1 district is approved the CUP is not required. The applicant has requested the CUP in case embroidery is not approved as a permitted use. Mayor Smith confirmed with Ms. Macefield that this was a comprehensive change, not a one-time exception to the ordinance.

Commissioner Pouliot asked for confirmation that the Zoning Commission recommended this be a permitted use and a CUP was not needed. Ms. Macefield concurred.

Commissioner Oitzinger asked if gross floor area limitation was being stricken from the ordinance? Ms. Macefield stated it had been listed twice and the revision was to correct the duplication.

Public testimony

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

Wayne O'Brien, owner of MT Marketing, stated he would like to use the subject property, which they own, for operating embroidery equipment only, there would be no retail service from the building.

Commission comment

Commissioner Cartwright asked how loud the embroidery machines are? Mr. O'Brien stated he didn't know decibel levels, but the noise is not deafening, you can speak with them running and it's unlikely any noise would be heard.

Commissioner Pouliot asked if you were standing on Rodney Street, could you hear the embroidery machines? Mr. O'Brien replied it was not likely that you would hear anything and they will be installing new windows in the building. There is an apartment upstairs and they will be installing extra sheetrock to muffle the noise for the tenants.

There being no further persons wishing to address the Commission, the public portion of the hearing was closed.

Motion

Commissioner Pouliot moved approval of first passage of an ordinance amending Chapter 10 of the Helena Zoning Ordinance, for simultaneous proposals affecting the B-1 (Neighborhood Business) District. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance 3007**

D. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW EMBROIDERY OF ADVERTISING ON WEARING APPAREL (I.E. SHIRTS, JACKETS, HATS, ETC) IN THE B-1 (NEIGHBORHOOD BUSINESS) DISTRICT AND THE COURTHOUSE SQUARE PORTION OF THE HELENA HISTORIC DISTRICT. LEGALLY DESCRIBED AS LOTS 2-3, BLOCK 45, HELENA TOWNSITE, HELENA, MONTANA; GENERALLY LOCATED ON THE EAST SIDE OF RODNEY STREET MID-BLOCK BETWEEN 6TH AND 5TH AVENUES, WITH A PROPERTY ADDRESS OF 203 NORTH RODNEY STREET.

THIS APPLICATION INCLUDES REQUESTS FOR THE FOLLOWING VARIANCES:

1. CONSIDER A VARIANCE FROM SECTION 11-22-12 OF THE HELENA ZONING ORDINANCE TO ALLOW A MINIMUM OF 6 PARKING SPACES FOR 203 NORTH RODNEY STREET.
2. CONSIDER A VARIANCE FROM SECTION 11-10-6 (B AND C) OF THE HELENA ZONING ORDINANCE FROM THE SCREENING REQUIREMENTS FOR THE REAR AND SIDE YARDS FOR 203 NORTH RODNEY STREET.

Staff report

City Planner Kathy Macefield reported on October 12, 2004 the Helena Zoning Commission unanimously (5:0 vote) recommended approval for a resolution for a Conditional Use Permit (CUP) to allow embroidery of advertising on wearing apparel in the B-1 (Neighborhood Business) District and the Courthouse Square portion of the Helena Historic District. Legally described as Lots 2-3, Block 45, Helena Townsite, Helena, Montana; generally located on the east side of Rodney Street mid-block between 6th and 5th Avenues, with a property address of 203 North Rodney Street. This approval was subject to two

requirements related to revising the site plan, and two variances. One recommended variance was from the required number of onsite parking to allow a minimum of 6 parking spaces (3 for the 2 apartments, and 3 for the embroidery shop). The second variance was from the screening requirements for the side and rear yards.

This proposal represents infill development, and efficient use of energy, infrastructure and resources. This proposal is consistent with the 2001 Helena Growth Policy, Zoning Ordinance, and is compatible with the surrounding land uses.

The Zoning Commission also recommended approval of the following variances:

1. A variance from Section 11-22-12 of the Helena Zoning Ordinance to allow a minimum of 6 parking spaces (3 for the 2 apartments, and 3 for the embroidery shop).
2. A variance from Section 11-10-6 (B and C) of the Helena Zoning Ordinance from the screening requirements for the rear and side yards.

Discussion

Ms. Macefield stated that by approving the changes to the permitted uses in the zoning ordinance for the B1 District, this CUP was not necessary.

City Attorney David Nielsen stated that the CUP goes into effect immediately but the ordinance wouldn't take effect for 45 days.

Ms. Macefield asked for clarification, is the CUP needed? Mr. Nielsen stated it was up to the applicant based on when they'd like to start operating from the property. The variances could be heard at another time, or at this meeting.

Mr. O'Brien stated they are not prepared to begin embroidering right away; setup will take about forty-five days.

Commissioner Oitzinger asked if the Commission does not go forward and hear the variances tonight, will Mr. O'Brien have to return for another Commission meeting? Ms. Macefield stated the variances would then be heard by the Board of Adjustment but the Commission can act on them tonight as part of the CUP application.

Commissioner Oitzinger stated it would be more time effective to act on them tonight. Mayor Smith concurred.

Motion

Commissioner Pouliot stated that we are not following procedure as the variances have not gone before the Board of Adjustments and moved to table item 14 D.

Discussion

Commissioner Parriman stated he is on the Board of Adjustments and understands the process but to be fair to Mr. O'Brien the Commission should act on it tonight.

Commissioner Parriman asked if there was a fee involved with applying for a CUP? Ms. Macefield responded there is a \$435.00 fee and includes the cost for variances. If the variances end up being heard by the Board of Adjustment the City Commission can waive the fee.

Motion 2nd

Commissioner Parriman seconded the motion to table item 14D.

Discussion

Commissioner Pouliot asked Mr. O'Brien if he paid the fee for the CUP already? Mr. O'Brien responded that he had. Commissioners Pouliot and Parriman withdrew their motions.

Ms. Macefield then presented a power point presentation for agenda item 14D.

Public Testimony

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

Wayne O'Brien, owner of MT Marketing and the property owner being considered. Mr. O'Brien stated he wants to improve the 200 block of N. Rodney and there have already been significant improvements to the area. He is in the process of retro fitting and cleaning the interior of the building and it has been commercially painted and repaired.

There being no further persons wishing to address the Commission, the public portion of the hearing was closed.

Commission comment

Commissioner Cartwright asked who provides the maintenance to the alley behind the subject property? City Manager Burton responded that it's the City's responsibility to maintain the alley.

Commissioner Cartwright asked if extra work to the alley would be needed to accommodate this business? City Manager Burton stated no additional work would be required.

Commissioner Cartwright asked that the alley upkeep be mentioned to Public Works Director John Rundquist. City Manager Burton stated that alley maintenance is not like street maintenance and the alley's level of maintenance is adequate.

Commissioner Parriman spoke about noise levels regarding the residence adjacent to the property. Mr. O'Brien stated that he owns the apartment next door to the subject property, therefore excessive noise is a concern for him also. The embroidery equipment will be against the wall that faces the pawn shop. There is significant distance, about seventy feet and two walls between anyone living next door. Mr. O'Brien stated any noise would be unreasonable and he can guarantee no noise for the adjacent apartment building.

Commissioner Parriman stated when dealing with permitted use in the B1 zoning district the City needs to be cautious regarding noise levels and asked if there was any recourse for trouble with decibel levels. Ms. Macefield replied there is a noise ordinance on the books.

David Neilsen stated the enforcement mechanism would be limited to the limits set by ordinance.

Commissioner Oitzinger requested information from staff on music recording levels and also inquired as to the letter that had been received opposing the CUP and the business' delivery schedule and the effect on the road and alley. Mr. O'Brien stated the additional use would not be extensive; their business can only embroider two to three boxes in one day, a maximum of 600 garments a week.

Commissioner Oitzinger asked if there would be additional truck traffic? Mr. O'Brien stated the additional truck traffic wouldn't be worrisome; his family lives in neighborhood and their intent is not to disturb the neighborhood or neighbors.

Motion

Commissioner Pouliot moved approval of a resolution granting a Conditional Use Permit (CUP) to allow embroidery of advertising on wearing apparel in the B-1 (Neighborhood Business) District and the Courthouse Square portion of the Helena Historic District. Legally described as Lots 2-3, Block 45, Helena Townsite,

Helena, Montana; generally located on the east side of Rodney Street mid-block between 6th and 5th Avenues, with a property address of 203 North Rodney Street. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution 19175**

Motion

Commissioner Pouliot moved approval of a variance from Section 11-22-12 of the Helena Zoning Ordinance to allow a minimum of 6 parking spaces and a variance from Section 11-10-6 (B and C) of the Helena Zoning Ordinance from the screening requirements for the rear and side yards. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Public Communications

PUBLIC COMMUNICATIONS

HCC member Jerry Hutch gave a report on the Spay/Neuter clinic that was held at the fairgrounds.

Commissioner Parriman announced that School Resource Officer Tim Coleman was honored at a luncheon today, November 8, 2004. City Manager Burton responded the appreciation luncheon was well attended.

Commissioner Parriman inquired as to the status of the Unified Development Ordinance. City Manager Burton responded he will be meeting with Carolyn Adams and former Mayor Morrison to discuss some way to approach the review of the Unified Development Ordinance. He will keep the Mayor and Commission informed and will engage the Commission in the future.

Commissioner Parriman asked Mayor Smith and Commissioner Oitzinger about the progress of the Consensus Council meetings. Mayor Smith responded they have met twice, with two representatives from Friends of Downtown Helena and two members of the Consensus Council; there is a written summary available through City Clerk Havens. There is interest from Friends of Downtown Helena in initiating another public dialogue over the use on the walking mall. They are planning to meet on November 18, 2004 and that time we've asked the Consensus Council to present what that dialogue might be.

Commissioner Oitzinger concurred with Mayor Smith and stated that the third meeting would be the final one.

Commissioner Parriman thanked them for the update.

Meetings of Interest

MEETINGS OF INTEREST – The next administrative meeting is November 17th and the next regular City Commission meeting is November 22nd.

Commissioner Pouliot stated November 11th is Veteran's Day and many important meetings will be held. Some places holding events are the American Legion, VFW in East Helena, Fort Harrison and Memorial Park. He asked that everyone honor and show respect to our soldiers.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:00 p.m.

Mayor James E. Smith

ATTEST:

Clerk of Commission