

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 22, 2004
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, November 22, 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 Robyn Brown were present. Others present were 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 November 8, 2004 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Water Systems Improvements contract amendment #1
- C. Contract for purchase of a new bus for the Helena Area Transit service under the Section 5311 Capital Program
- D. Second passage of Ordinance 3005 amending Section 5-2-35 of the Helena City Code to provide for a single City Court hearing to appeal a dangerous dog designation
- E. Second passage of Ordinance 3006 amending City of Helena Ordinance 2359 and amending the Official Zoning Map; generally located northwest of Last Chance Gulch, between 15th Street and 16th Street
- F. Second passage of Ordinance 3007 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

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

Bid Award

BID AWARD

- A. Police Interceptor Vehicles

Staff Report

Fleet Manager Ed Robinson reported the State of Montana has received bids on their advertisements for Police Interceptor Vehicles for FY2005. Staff has reviewed the bids and recommends the City award the bid to Bison Ford, for four 2005 Crown Victoria's at a unit cost of \$23,699.04. The total cost of four units is \$94,796.16. This does not include required painting and additional equipment required to outfit

these units. The budget appropriation for these acquisitions and the necessary equipment is \$117612.00.

The four new units will replace existing patrol units, which will be sold at auction in the fall of 2005. Approval of the bid award will allow the Police Department to maintain its replacement schedule, continue its operations with a reliable fleet and keep repair costs down.

Mr. Robinson recommended approval of the award to Bison Ford for four (4) 2005 Crown Victoria's in an amount not to exceed \$94,796.16.

Commission comment Commissioner Parriman asked when the new units would be put into service.

Ed Robinson replied the units would be put into use immediately and the old units will be sold at the state surplus auction in the fall.

Commissioner Parriman stated he'd like to have a list of the bid tabulations included in the agenda packet in the future.

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

Motion **Commissioner Parriman moved approval of the bid award to Bison Ford for four (4) 2005 Crown Victoria's in an amount not to exceed \$94,796.16.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright spoke about the Patriot Act Resolution that was discussed at the November 17, 2004 Administrative Meeting and stated he would like to have the draft resolution posted on the City of Helena website.

He also spoke regarding Dennis McCahon's knowledge of Downtown Helena.

Commissioner Cartwright stated he had recently spoken with a citizen who wondered why the city would fund the Jackson Street Parking Garage because it was so expensive and unconnected to new development; certainly no bank would. Commissioner Cartwright explained the use of TIF funds in order to give the public a better understanding of how TIF funding works. The city is different than a bank.

Commissioner Oitzinger stated she would be delivering a proclamation on Tuesday, November 23, 2004 proclaiming November as Adoption Awareness Month.

Mayor Smith gave an update on the Consensus Council Meetings with Downtown Helena. After two productive meetings there is a general consensus that the prospective design for the mall is acceptable. Concurrently, he would like to bring forth dialogue on use and supports no changes to current use.

Commissioner Parriman stated he was pleased that the Friends of Downtown Helena and the City Commission are on the same page regarding the walking mall. It might be appropriate to leave the use the same as it is now.

Commissioner Pouliot stated he would not like to wait to decide on a change of use. He spoke of seasonal closure for vehicles from 6th to Broadway during the summer months, and maybe open it to traffic this January and February to test the level of business. He then listed By George, Sheila's as an example of a business who's sales increased after moving to an area of mall that allows traffic.

Commissioner Oitzinger stated that a more public dialogue is needed to discuss the use of the walking mall. She supports Commissioner Parriman's comments to leave the mall alone for a while.

Commissioner Cartwright stated the current infrastructure of the mall is not safe for pedestrian and vehicle travel. He hopes to be done planning the changes for downtown by the summer of 2006.

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 Burton reported that Sharon Haugen has been offered the position of Community Development Director. She will assume her duties January 2005.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC Representative George Hoff reported the HCC will be meeting with some westside citizens on November 23, 2004 to discuss annexation into the City of Helena. The HCC is not including city staff in the meeting so it does not seem as though it's the city's idea to annex the property.

Resolution

CONSIDER A RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO (\$62,901.00 TO PURCHASE A GOLF POND LINER).

Staff Report

City Controller Glenn Jorgenson reported the Commission approved the construction contract award for the golf pond liner with the related INTERCAP application on July 12 at a regular Commission meeting. The pond liner construction has been completed and paid for and the INTERCAP loan is scheduled to close on December 3, 2004.

Mr. Jorgenson recommended approval of the resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto (\$62,901.00 to purchase a golf pond liner).

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Oitzinger moved approval of a resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto (\$62,901.00 to purchase a golf pond liner). Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution 19177**

Resolution

CONSIDER A RESOLUTION OF INTENTION TO ANNEX 28.81 ACRES OF LAND, GENERALLY LOCATED EAST OF GREEN MEADOW DRIVE AND NORTH OF CUSTER AVENUE IN LEWIS & CLARK COUNTY, MONTANA, AND THE ADJACENT PORTION OF GREEN MEADOW DRIVE RIGHT-OF-WAY INTO THE CITY OF HELENA, MONTANA, AND ESTABLISH CONDITIONS FOR ANNEXATION (NORTHGATE MEADOWS SUBDIVISION). THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS PARCEL A AND PARCEL B LOCATED IN THE SE ¼ SE 1/4, SECTION 13, T10N, R4W, AS DESCRIBED IN WARRANTY DEED BOOK M30, PAGE 929, LEWIS AND CLARK COUNTY, MONTANA.

Staff Report

City Planner Belinda Waters reported when a proposed subdivision is also proposed to be annexed to a municipality, state subdivision laws (MCA 76-3-601, 605) direct the city government to coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible, including joint hearings on preliminary plat and annexation. The annexation process is initiated by a resolution of intention to annex. The function of the resolution is to establish any conditions that must be met before annexation can be completed, and to coordinate the completion of annexation with the subdivision to minimize the duplication of requirements.

Annexation is proposed to be completed under the petition method, which is detailed in state law under MCA 7-2-4601 et seq. In this case, all affected property owners have requested annexation. Whenever more than fifty percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

MCA 7-2-6410 specifies that city services may be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with MCA 7-2-4736, which concerns the extension of city garbage services to newly annexed areas. Annexation is linked to the subdivision process under City Codes (6-5-4), which require that properties be annexed before they can receive city utility services.

In compliance with MCA 7-2-11 the full width of the public street rights-of-way that is adjacent to the property being annexed will also be included in the subject annexation.

Ms. Waters stated the owner of this property has applied for annexation to the City of Helena for Parcel A and Parcel B containing approximately 28.81 acres. The property is located east of Green Meadow Drive and north of Custer Avenue. The property is contiguous with existing city limits. No public hearing is required for this annexation. Commission review will satisfy all legal and procedural requirements and enable the City Commission to establish conditions of annexation.

Under this proposal, the entire 28.81 acres and the Green Meadow Drive right-of-way would be annexed to the City of Helena when the final plat for the proposed subdivision is filed with the Clerk and Recorder. City services called for in MCA 7-2-4610 will be provided either by a development agreement to be reached between the city and property owners, or by a plan for extension of services to be prepared by city staff.

The main elements of the provision of services involve infrastructure requirements, which are embodied in the conditions of the subdivision preliminary plat, and would be incorporated by reference into

the service plan or development agreement. Other elements of services, such as police, fire, and garbage services would also be identified in the service plan or development agreement and presented to the City Commission for its approval prior to annexation.

The following conditions to annexation are proposed:

1. Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.
2. Review of new construction: For all construction commenced prior to annexation, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, and codes in effect for building and fire code requirements of the city, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the city.
3. Final Plat: Applicants must submit the final plat of the subdivision to the City Commission for approval prior to filing the Resolution of Annexation.
4. Completion of Conditions: The applicant must notify city planning in writing upon completion of the conditions for approval of annexation, which must be on or before the date of completion of conditions for subdivision of this property and is subject to the same time limitations. If the conditions are not completed within that time frame, the city is under no obligation to annex the property and may discontinue any city services, including water and sewer.

In cases of simultaneous subdivision and annexation, infrastructure requirements are ordinarily secured by the city through the subdivision process. Annexation is conditioned upon completion of requirements of the preliminary plat, and payment of any taxes owed at that time, and is subject to the time constraints specified in the preliminary plat.

Ms. Waters recommended approval of a resolution of intention to annex Parcel A and Parcel B as described in Deed Book M30, Page 929, to be known as the Northgate Meadows Subdivision, generally located east of Green Meadow Drive and north of Custer Avenue, and that portion of Green Meadow Drive right-of-way adjacent thereto, in Lewis and Clark County, Montana, into the City of Helena, Montana, and establish conditions for annexation per the attached resolution.

Commission comment

Commissioner Pouliot asked how much of Green Meadow Drive is being annexed?

Ms. Waters stated the entire width of the drive.

Commissioner Pouliot asked why the right-of-way needed to be annexed?

Ms. Waters replied that state law changed and the city is now required to include the right-of-way in annexation of property.

Commissioner Parriman asked when state law changed and referred to Crystal Springs subdivision, the right-of-way wasn't included in that annexation.

City Attorney Nielsen stated the law changed in October 2003.

City Manager Burton stated Crystal Springs was approved in 2002, before the law changed.

Mayor Smith asked if the Zoning Commission recommended the conditions of approval?

Ms. Waters replied that staff recommended the conditions of approval.

Mayor Smith inquired as to when the discussion of the extension of Benton Avenue would take place?

Ms. Waters replied the discussion would take place during the public hearing for the final plat.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Parriman moved approval of a resolution of intention to annex Parcel A and Parcel B as described in Deed Book M30, Page 929, to be known as the Northgate Meadows Subdivision, generally located east of Green Meadow Drive and north of Custer Avenue, and that portion of Green Meadow Drive right-of-way adjacent thereto, in Lewis and Clark County, Montana, into the City of Helena, Montana, and establish conditions for annexation per the attached resolution. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution 19176**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT FOR LOTS 16 THROUGH 34 AND LOTS 43 THROUGH 91, INCLUDING THE COMMON AREA AND PROPOSED JAYCEE PARK; AND TO R-4 (HIGH DENSITY RESIDENTIAL) DISTRICT FOR LOTS 1 THROUGH 15 AND LOTS 35 THROUGH 42 OF THE PROPOSED NORTHGATE MEADOWS SUBDIVISION PRIOR TO ANNEXATION INTO THE CITY OF HELENA, MONTANA. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS PARCEL A AND PARCEL B LOCATED IN THE SE ¼ SE 1/4, SECTION 13, T10N, R4W, AS DESCRIBED IN WARRANTY DEED BOOK M30, PAGE 929, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED EAST OF GREEN MEADOW DRIVE AND NORTH OF CUSTER AVENUE.

Staff Report

City Planner Belinda Waters reported the property is currently vacant and undeveloped. The applicant is requesting approval of the two pre-zoning designations, which are accompanied by two simultaneous requests for major subdivision/preliminary plat approval and annexation.

On Tuesday, October 26, 2004 the Helena Zoning Commission unanimously recommended approval for adoption of an ordinance for two pre-zoning designations of R-3 (Medium Density Residential) District for Lots 16 through 34 and Lots 43 through 91, including the common area and the proposed Jaycee Park and to R-4 (High Density Residential) District for Lots 1 through 15 and Lots 35 through 42 as indicated on the preliminary plat of the proposed Northgate Meadows Subdivision.

Annexation and development of this property with the various zoning districts would encourage utilizing city services and would facilitate compliance with city regulations with the accompanying major subdivision proposal.

The developer is proposing that approximately 1.26 acres of property will be donated as parkland, and the remaining balance due will be met with a cash donation. No figures have been submitted by the

developer on the amount of cash donation being proposed. The Montana Subdivision & Platting Act requires there be 2.22 acres of parkland. The developer will need to come into compliance with applicable requirements.

Ms. Waters recommended approval of first passage of an ordinance pre-zoning to R-3 (Medium Density Residential) District for Lots 16 through 34 and Lots 43 through 91, including the common area and proposed Jaycee Park; and to R-4 (High Density Residential) District for Lots 1 through 15 and Lots 35 through 42 of the proposed Northgate Meadows Subdivision prior to annexation into the City of Helena, Montana. The subject property is legally described as Parcel A and Parcel B located in the SE ¼ SE 1/4, Section 13, T10N, R4W, as described in Warranty Deed Book M30, Page 929, Lewis and Clark County, Montana; generally located east of Green Meadow Drive and north of Custer Avenue.

Commission comment

Commissioner Parriman inquired as to the property on Custer Avenue that is in between Custer and the proposed Northgate Subdivision.

City Manager Burton stated that is wholly surrounded area. The annexation process of the property was started 4 years ago and staff has been working with the property owners. Some property owners are already receiving city water services.

Commissioner Parriman stated he wanted to be sure that these property owners weren't going to be forced into annexation into the city. But, since some property owners are receiving city services they should be annexed in. City Manager Burton stated staff is following the annexation policy.

Commissioner Parriman stated bringing properties in whole is better than piecemeal. It is fiscally responsible to have properties be annexed into the city as a whole. He suggested it is time for discussion regarding this with the subject property owners.

City Manager Burton added there have been 38 incidences where people not in the city limits are using city services because of proximity. While using city services they adhere to city policies and ordinances.

Commissioner Parriman asked what the timeframe is for the Benton Avenue extension?

City Manager Burton replied the Benton Avenue extension is very important to the development of this area. He spoke of holding discussions with the private property owners affected by the extension and stated he would make it a priority with direction from the Commission.

Commissioner Parriman stated the extension of Benton Avenue is very important to Northgate Meadows Subdivision and gaining the right-of-way and discussions with property owners needs to be carried out.

Public Testimony

Mayor Smith declared the public portion of the hearing for the ordinance pre-zoning Northgate Meadows Subdivision to R-3 and R-4 and the preliminary plat for the subdivision open and called for any persons wishing to address the commission.

Elton Harstee, 220 W Custer Avenue, spoke regarding Barbeau Villa Sites, the property located in between Custer Avenue and the proposed subdivision. Mr. Harstee has contacted City Engineer Ryan Leland requesting to hook up to sewer services in Northgate Meadows Subdivision, but has never received a final answer. The developer, Mr.

Hamlin stated Mr. Harstee would be able to hook up to the subdivision services. Mr. Harstee owns a concrete sewage pit, which is pumped south across Custer Avenue and into the city sewer main. He would now like to be able to gravity feed into the main of Northgate Meadows Subdivision. He also stated he supports the extension of Benton Avenue.

Jerry Hamlin, 1625 University Street, developer of Northgate Meadows Subdivision stated the Engineering firm is also present at tonight's meeting. He's tried to produce quality housing at an affordable price and is keeping the lot prices to a minimum. He'd like to build duplexes and triplexes along with single-family dwellings. The majority of the housing will be single family and there will be no dwellings larger than triplexes. One of the concerns previously expressed to him is that the lots are very small. He believes that even when you build a small house the sales price will still be over \$130,000 and will not depreciate the value of the neighboring houses. Commercial enterprises will be excluded by covenant and concurrently there will be no access strips for commercial enterprises.

He then spoke regarding parkland dedication; there is a centrally located parkland in the subdivision. Mr. Hamlin wanted to be able to donate parkland that was small enough in size to sod and seed at the same time so it would be formed when the houses are ready to be sold. He would prefer to use a combination of parkland and cash in lieu of the total required amount of land. He believes the houses in the subdivision will sell better with an already formed park. Concerning conditions for approval, Mr. Hamlin met with city staff and staff was very helpful. He disagrees with condition 2J regarding the cost of obtaining the right of way to extend Benton Avenue and would like consideration from the Commission on that condition.

HCC member George Hoff commented there is an old cemetery north of Benton Avenue.

Linda Galloway, Dunlap Drive, stated she wasn't aware a public hearing would be held tonight and has not received any information regarding the proposed subdivision. She is concerned with the extension of Benton Avenue as it will be adjacent to her backyard. She asked that the Commission table the subdivision proposal.

Pete Johnson, 3312 Dunlap Drive, lives adjacent to proposed subdivision. He received a packet in the mail regarding the subdivision. He stated he supports the subdivision and combination of parkland and cash dedication because the proposed park will be adjacent to his property.

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

Commission Comment

Commissioner Pouliot asked what kind of notice was given to the adjacent property owners.

Ms. Waters stated certified letters were sent to the adjacent property owners plus property owners 300 feet past that, along with posted signs and legal notice published in the Independent Record.

Commissioner Pouliot addressed the concern over the parkland requirement but stated he agrees with the developer to add lots 16 and 17 to the parkland and to give cash in lieu for lot 18. He also agrees with the developer that he should not be wholly responsible for the cost of the extension of Benton Avenue and would like the condition stricken.

Commissioner Oitzinger asked Parks and Recreation Director Randy Lilje if the Commission left the parks requirement as proposed by

the developer would the park in the subdivision be developed more quickly?

Director Lilje stated no formal plans have been developed or submitted to the Parks Department yet. The reason why the Parks Board felt it necessary to recommend the total amount of parkland is that there will be 340 lots between all of the subdivisions in the area with 600 or more living units, which could amount to quite a few families. The Parks Board saw a need for more park space due to the number of inhabitants.

Motion

Commissioner Parriman moved approval of first passage of an ordinance pre-zoning to R-3 (Medium Density Residential) District for Lots 16 through 34 and Lots 43 through 91, including the common area and proposed Jaycee Park; and to R-4 (High Density Residential) District for Lots 1 through 15 and Lots 35 through 42 of the proposed Northgate Meadows Subdivision prior to annexation into the City of Helena, Montana; generally located east of Green Meadow Drive and north of Custer Avenue Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance 3008**

Commission comment

Commissioner Oitzinger asked for clarification that lots 16 and 17 are not included in the designated parkland.

City Attorney Neilsen stated whatever lots end up incorporated into the park do not affect the pre-zoning of the area.

B. CONSIDER A MAJOR SUBDIVISION /PRELIMINARY PLAT FOR THE PROPOSED NORTHGATE MEADOWS SUBDIVISION CREATING 91 SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL LOTS FROM A 28.81-ACRE TRACT OF LAND. THIS PROPOSAL IS ACCOMPANIED BY A SIMULTANEOUS PROPOSAL TO PREZONE AND ANNEX THIS PROPERTY. THIS PROPERTY IS LEGALLY DESCRIBED AS PARCELS A AND B LOCATED IN THE SE ¼ SE ¼, SECTION 13, T10N, R4W, AS DESCRIBED IN WARRANTY DEED BOOK M30, PAGE 929, IN LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED EAST OF GREEN MEADOW DRIVE AND NORTH OF CUSTER AVENUE.

Staff Report

City Planner Belinda Waters stated the applicant is requesting approval of the preliminary plat for the proposed Northgate Meadows Subdivision, which is accompanied by simultaneous requests for pre-zoning designations and annexation.

On October 21, 2004, the Planning Board recommended approval of the proposed subdivision preliminary plat (6:1 vote) subject to the conditions as amended in the October 21, 2004 memo.

Preliminary plat approval would create 91 mixed residential use lots on 28.81 acres. The proposed subdivision appears to conform to the goal, objectives, and policies of the 2001 Growth Policy.

Ms. Waters recommended conditional approval of the preliminary plat for the Northgate Meadows major subdivision creating 91 single-family and multi-family residential lots from a 28.81-acre tract of land. This proposal is accompanied by a simultaneous proposal to prezone and annex this property. This property is legally described as Parcels A and B located in the SE1/4 SE1/4, Section 13, T10N, R4W, as described in Warranty Deed Book M30, Page 929, in Lewis and Clark County, Montana; generally located east of Green Meadow Drive and north of Custer Avenue.

Commission comment

Commissioner Cartwright asked for clarification of the cemetery location.

City Manager Burton stated the cemetery is located behind the old Cooney Home and is not included in the subject property. Mr. Hoff's intention was to inform the Commission of the cemetery for future development of the area.

Commissioner Cartwright inquired about Condition G, which refers to standards in the Non-Motorized Plan, which has not been approved yet. Ms. Waters stated Condition G conforms with the draft non-motorized plan.

City Manager Burton spoke of the Anderson Subdivision, which was approved with the concept of the Non-Motorized Plan although it has not been adopted in its final form.

Mr. Hamlin stated he is informed on the draft Non-Motorized Plan and intends to comply with Condition G as it is currently written.

Commissioner Cartwright referred to Condition J, the cost of the extension of Benton Avenue. He spoke about the Crystal Springs Subdivision and stated it doesn't seem right for Mr. Hamlin to be the sole participant in the extension. Commissioner Cartwright suggested that in future annexations, the developer should be asked for a waiver of protest for future SIDs to provide collector streets for the annexed property.

Mayor Smith referred to Mr. Harstee's comments regarding residences that are in the city but are not directly hooked up to city sewer.

Public Works Director John Rundquist replied there is property that is located outside of the city but connected to city sewer or water. In the past there have been policies relative to annexation covenants or agreements that haven't been followed through.

Mayor Smith asked about the discussion held between Mr. Harstee and Mr. Hamlin regarding hooking into Northgate Meadow's sewer system.

Director Rundquist stated the agreement seems reasonable and the cost would strictly be between Mr. Harstee and Mr. Hamlin. The city would require an easement for the connection; currently a proposal has not been submitted to the Public Works Department.

Commissioner Parriman asked for clarification of Mr. Harstee's property. Is it located in the city or just hooked to city services.

Mr. Harstee stated his property is not in the city limits but he'd like a direct connection to city services instead of the lift station he is currently using.

City Manager Burton spoke of the retrofit of the Woodlawn Subdivision near the Fairgrounds.

Mayor Smith asked Mr. Hamlin what the timeframe is for his subdivision to acquire city services.

Mr. Hamlin responded that he can't answer how long it will take to connect to services until he knows how long it will take to obtain the right of way. He believes it will take two to four years to develop the lots in the subdivision. He also stated that he has spoken with other residents of the area that are interested in connecting to the Northgate Meadow subdivision sewer system.

Mayor Smith asked when the extension of Benton Avenue is slated to occur. Mr. Hamlin stated fall 2005.

Mayor Smith asked if Mr. Hamlin has considered screening?

Mr. Hamlin stated he has not considered screening and the issue has not come up as a required condition.

Mayor Smith asked Ms. Waters if the parcel of land not included in the subdivision, in between Crystal Springs subdivision phase one and

two, had been designated as parkland or wetland? Director Lilje responded the subject land is designated as parkland and does contain natural wetland.

Commissioner Pouliot asked if Mr. Hamlin had spoken with Mr. Kosena and heard his concerns?

Mr. Hamlin stated he has met with Mr. Kosena who is interested in water and sewer hookups from Northgate Meadows to his property and is also concerned with lot size in the subdivision.

Commissioner Pouliot, asked what the common area shown on the site plan will be used for? Mr. Hamlin stated it is a drainage easement for the proposed subdivision and it will be dugout and sodded in the future.

Commissioner Parriman commented on Condition J, the Benton Avenue extension. This requirement should be satisfied with construction of the full width of Benton Avenue with sidewalks, curbs and gutters adjacent to his subdivision. He stated he was surprised the Crystal Springs subdivision requirements did not include the same condition. He believes the designated parkland should include lots 16 and 17; cash in lieu of the other acreage is acceptable and the parkland needs to be developed as soon as possible.

City Manager Burton referred to Crystal Springs subdivision and stated the city did not have the right-of-way on the eastside of Benton Avenue, Lewis and Clark County owned it and was not willing to sell it to the developer, otherwise the condition for approval regarding the Benton Avenue extension would've applied identically in these two proposals.

Mayor Smith stated he concurs with Commissioners Parriman, Pouliot and Cartwright regarding Condition J and he supports lots 16, 17 and 18 not being part of the designated parkland.

Motion

Commissioner Parriman moved conditional approval of the preliminary plat for the Northgate Meadows major subdivision creating 91 single-family and multi-family residential lots from a 28.81-acre tract of land and to adopt the Findings of Fact and the conditions contained therein; generally located north of Custer Avenue and east of Green Meadow Drive, omitting item J from the conditions of approval and amend condition 7 to include lots 16 and 17 in the park and for the amount of the balance less than 2.22 acres, to negotiate with the developer the amount of cash in lieu for the remaining necessary parkland acres. Commissioner Oitzinger seconded the motion.

Amendatory motion

Commissioner Cartwright moved conditional approval to amend item J to make the developers participation be proportional to the amount of traffic the subdivision will create.

Discussion

Commissioner Parriman stated he would not support Commissioner Cartwright's amendatory motion.

Commissioner Oitzinger stated she wouldn't withdraw her second of Commissioner Parriman's motion but doesn't want that to be an indication of how she would vote on a subsequent motion.

Amendatory 2nd and Vote

Commissioner Oitzinger seconded the motion. Motion failed 2-3 with Commissioners Parriman, Pouliot and Mayor Smith voting no.

Vote

All voted aye, motion carried.

C. CONSIDER A RESOLUTION INCREASING WATER RATES FOR CUSTOMERS OF THE CITY OF HELENA WATER SYSTEM TO HELP COVER THE COSTS OF IMPROVEMENTS TO THE SYSTEM.

Staff Report

Utility Customer Service Supervisor Liz Hirst reported water rates have remained the same since July 1997. The proposed increases are necessary to:

- replace failing city water meters,
- provide for better customer service (monthly meter reads),
- keep up with inflation,
- provide for necessary capital improvements, and
- continue to meet bonded debt coverage.

Over the past two years a comprehensive review of water system operational and capital needs has been made. The proposed water rate increase was included and extensively discussed in the FY 2005 Annual Budget development process.

The most current Comprehensive Capital Improvement Program (CCIP) review shows a need for 3.7% rate increases in both FY 2005 and FY 2006. By addressing rate considerations over two years we will be able to further refine the revenue projections, and adjust the FY 2006 rate more precisely.

Ms. Hirst recommended approval of a resolution to increase water rates 3.7%.

Commission comment

Commissioner Parriman expressed his concern with raising water rates in both fiscal years 2005 and 2006 and discussed raising the rates once by 7.4%.

Administrative Services Director Tim Magee stated there will be many changes over the next year to the meter reading program; the reads will be more accurate and staff expects extra revenue due to new equipment that will measure all of the water that runs through the system. Until staff is able to evaluate the new data, it is hard to estimate if the increase over two years will need to be 7.4% or even 3.7% again next year. Staff chose 3.7% to establish the minimum increase needed at this time. If the commission would like to change the rate of increase staff would need to re-advertise the increase and the public hearing date.

Mayor Smith asked since this rate increase was advertised at 3.7% could you pass it for an amount below 3.7%? City Manager Burton concurred.

Commissioner Cartwright stated he supports the rate increase as is.

Commissioner Parriman stated he didn't realize it had been advertised and he didn't want to make any more work for staff. He discussed that increases year after year are hard to justify to constituents.

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 further persons wishing to address the commission, Mayor Smith closed the public hearing.

Motion

Commissioner Pouliot moved approval of a resolution to increase water rates for customers of the City of Helena water system to help cover the costs of improvements to the system.

Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution 19178**

Discussion

Commissioner Pouliot spoke about the timeline for the extension of Benton Avenue and asked for concurrence from the Commission to direct the City Manager to proceed post haste with the street extension. City Manager Burton concurred.

D. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW SIX DWELLING UNITS IN A STRUCTURE CONSTRUCTED PRIOR TO 1935, AND WHICH CONTAINS AT LEAST THREE THOUSAND FIVE HUNDRED (3,500) SQUARE FEET OF GROSS FLOOR AREA, LOCATED IN AN R- 2 (SINGLE- FAMILY RESIDENTIAL) DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS THE WEST 6 FEET OF LOT 7 AND ALL OF LOTS 8 AND 9, BLOCK 541 OF THE ORIGINAL HELENA TOWNSITE, HELENA, MONTANA; GENERALLY LOCATED ON THE SOUTH SIDE OF BRECKENRIDGE STREET BETWEEN DAVIS AND GEM STREETS WITH A PROPERTY ADDRESS OF 515 BRECKENRIDGE STREET.

THIS APPLICATION INCLUDES REQUESTS FOR THE FOLLOWING VARIANCES.

1. CONSIDER A VARIANCE FROM SECTION 11-5-4 OF THE ZONING ORDINANCE TO ALLOW DWELLING UNITS LESS THAN 1,000 SQUARE FEET ON THIS SAME PROPERTY; AND
2. CONSIDER A VARIANCE FROM SECTION 11-22-5 (BB) OF THE ZONING ORDINANCE TO ALLOW A MINIMUM OF 9 ON-SITE PARKING SPACES AND ONE ACCESSIBLE SPACE.

Staff Report

City Planner Lucy Morell-Gengler reported the applicant is requesting a Conditional Use Permit (CUP) to allow two additional dwelling units in a structure currently containing four apartments. The building was constructed prior to 1935, contains at least three thousand five hundred (3,500) square feet of gross floor area, and is located in an R-2 (Single Family Residential) District.

According to the Polk Directories, the existing building has been a multifamily use prior to and after 1969, with the number of units varying from two to five and was vacant intermittently for some of those years. The inconsistencies make establishing the existing four apartments as permitted nonconforming uses difficult. Therefore, the CUP encompasses the entire 6 units proposed for the subject building.

Each of the units would be less than 1,000 square feet requiring a variance from Section 11-5-4 of the Zoning Ordinance. The site plan indicates two spaces per unit (four located in the garage and driveway and eight in the rear). An accessible space must also be provided in addition to the 12 spaces. The Zoning Commission recommended a variance from the total parking required which may allow the conservation of some of the existing trees.

On October 26, 2004 the Zoning Commission recommended approval (2:1 vote) of the proposed CUP for the apartment units subject to the conditions listed in the staff report. The Zoning Commission also recommended granting a variance from Section 11-5-4 of the zoning ordinance to allow dwelling units less than 1,000 square feet; and a variance from Section 11-22-5 (BB) of the Zoning Ordinance to allow a

Motion

Commissioner Pouliot moved approval of a resolution granting a Conditional Use Permit to allow six dwelling units in a structure constructed prior to 1935, and which contains at least three thousand five hundred (3,500) square feet of gross floor area, located in an R-2 (Single Family Residential) District; subject to the conditions for parking and timeframe. Commissioner Cartwright seconded the motion.

Discussion

Commissioner Pouliot asked what kind of notice was given to adjacent property owners?

Ms. Morrell-Gengler stated a sign was posted at the subject property, letters were sent to property owners within 200 feet of the proposed CUP and the proposal was published in the Independent Record.

Vote

All voted aye, motion carried. **Resolution 19179**

E. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW OFFICES TO BE LOCATED IN AN EXISTING 12,200-SQUARE FOOT BUILDING IN THE CLM (COMMERCIAL-LIGHT MANUFACTURING) DISTRICT FOR PROPERTY LEGALLY DESCRIBED AS LOTS 4-6, 8-9, AND ½ OF THE CLOSED ALLEY, BLOCK 20, GRAND AVENUE ADDITION, HELENA, MONTANA; GENERALLY LOCATED SOUTH OF POPLAR AND WEST OF DODGE STREET WITH A PROPERTY ADDRESS OF 1015 POPLAR STREET.

Staff report

City Planner Kathy Macefield stated on October 26, 2004 the Helena Zoning Commission held a public hearing but made no recommendation for a resolution for a Conditional Use Permit (CUP) to allow general, government or medical and dental offices to be located in an existing 12,200-square foot building in the CLM (Commercial-Light Manufacturing) District.

The site plan for this proposal was revised to include all of the required information after the staff report was written and after the Zoning commission public hearing. As a result, the number of recommended conditions have been reduced from the staff report. Additionally, the site plan has verified that more than the required amount of onsite landscaping has been provided.

According to the submitted site plan, 11 parking spaces (including one space for persons with disabilities) are located onsite. Access is provided to the site by a single curb cut onto Poplar Street. Sign information has not been provided. Two vacant lots located to the west of the existing buildings are included in this proposal.

Ms. Macefield recommended approval of a resolution granting a Conditional Use Permit (CUP) to allow general offices to be located in an existing 12,200-square foot building in the CLM District subject to the following conditions:

Parking

- A. Paved onsite parking and related landscaping must be installed in accordance with Chapter 22 of the Helena Zoning Ordinance prior to converting any more of the building for office.
- B. If the additional parking is obtained through a cross-parking agreement, this agreement must be submitted to the City for review and approval and filed with the Clerk and Recorder.

- Commission comment Commissioner Pouliot asked for clarification of the Zoning Commission recommendation.
- Ms. Macefield replied t the recommendation for approval in the staff report is the same recommendation that staff transmitted to the Zoning Commission. The Zoning Commission made no recommendation due to a tie vote.
- Public Testimony Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.
- Dean Randash, 1941 Virginia Dale, owner of property directly across the street from Gateway Economic Development Corp stated he has always complied with city building standards, sometimes at great cost. He is concerned with parking problems at Gateway overflowing to his parking lots. He does support Gateway, but not at the expense of the parking issue. Currently, there are three business located in the subject property. The church and public television station have been located in the building for many years. The medical facility located within the building operated for many months without a business license. These buildings should not be considered incubator businesses. Also, the City of Helena gave the subject property to Gateway along with 11 paved parking spaces and a 15,000 square foot vacant lot adjacent to the property. He then referred to the zoning regulations regarding the number of parking spaces required for different types of businesses and discussed his concern with a new owner inhabiting the building in the future and not having to adhere to parking regulations.
- Mr. Randash questioned why should a conditional use request supercede and negate any and all parking regulations while new construction must absolutely comply? He then spoke about Gateway's mission to economic growth and stated they are a shining example to all businesses and should be expected to comply with the same building standards every other business does. Mr. Randash asked the commission to restrict the CUP to the extent of the owners' compliance with parking requirements.
- Sheldon Bartel, 2612 Gold Rush Ave, representative of Gateway Economic Group stated Gateway is grateful to the City of Helena for the property they gave to them. Gateway would like to use the subject property as a building incubator but it takes funds. Due to loans and grants, there are no funds to pay for the required parking. Gateway would like to use the building to make money so that they can make the required improvements and continue to support economic growth in the community.
- There being no further persons wishing to address the commission, Mayor Smith closed the public hearing.
- Commission comment Commissioner Cartwright asked for confirmation regarding the amount of proposed office space versus the proposed parking spaces.
- Commissioner Cartwright asked if there have been parking problems in the area in the past?
- Ms. Macefield replied there has been one instance but it was a funeral held at the church and was out of the ordinary.

Commissioner Cartwright asked Mr. Randash if it would be acceptable if office space is increased in the future then parking space would also be increased. Mr. Randash concurred.

Commissioner Oitzinger asked for clarification on the parking requirements in the zoning regulations. Ms. Macefiled verified what Mr. Randash had reported.

Motion

Commissioner Cartwright moved approval of a resolution granting a Conditional Use Permit (CUP) to allow general offices to be located in an existing 12,200-square foot building in the CLM District subject to the following conditions:

Parking

- A. Paved onsite parking and related landscaping must be installed in accordance with Chapter 22 of the Helena Zoning Ordinance prior to converting any more of the building for office.**
- B. If the additional parking is obtained through a cross-parking agreement, this agreement must be submitted to the City for review and approval and filed with the Clerk and Recorder.**

Commissioner Oitzinger seconded the motion.

Commissioner Pouliot stated he is concerned about the length of time a business can be a business incubator.

Mayor Smith agreed with Commissioner Pouliot and stated he would not support the motion.

Vote

Motion carried 3-2 with Commissioner Pouliot and Mayor Smith voting no. **Resolution 19180**

Public Communications

PUBLIC COMMUNICATIONS

Meetings of Interest

MEETINGS OF INTEREST

Adjournment

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

Mayor James E. Smith

ATTEST:

Clerk of the Commission