

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
January 10, 2005
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, January 10, 2005 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 City Clerk Debbie Havens were present. Others present were Anne Pichette representing the Youth Advisory Council and Bill Roberts 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 December 20, 2004, were approved as amended.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Golf Professional Contract
- C. Utility bill insert – City of Helena Utility Maintenance Division
- D. State Hazardous Materials (HazMat) Response Plan MOU
- E. Acceptance of \$36,000 in grant money from the US Department of Homeland Security for EPA-recommended security items – Water Treatment Division

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 E on the consent agenda. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD

- A. 2005 roll-off container truck – Solid Waste Division

Staff Report

Fleet Manager Ed Robinson reported bids were let for a new Roll-off Container truck with cable operated roll-off hoist to replace unit #218 a 1996 Ford Roll-off truck on December 1, 2004. A summary of the bids was attached to the staff report. Northwest Peterbuilt bid a 2005 Sterling at a price of \$104,339.00. Budget appropriation for this unit is \$105,500.00.

The purchase of the unit will allow the city to upgrade its Solid Waste Divisions fleet providing a reliable unit and provide the Wastewater Treatment division a unit that will also reduce their operating costs. Unit #218 will be sold to the Wastewater Treatment Division for the purpose of hauling their wastewater sludge (this purchase is also currently budgeted).

Mr. Robinson recommended acceptance of the bid from Northwest Peterbuilt for the 2005 Sterling with a roll-off hoist for a price not to exceed \$104,399.00.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Parriman moved to accept the bid from Northwest Peterbuilt for the 2005 Sterling with a roll-off hoist for a price not to exceed \$104,399.00. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright thanked the citizens who shovel their sidewalks.

Mayor Smith stated there is a city ordinance that requires property owners to maintain their sidewalks. He also thanked those who have shoveled their walks.

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 Community Development Director

City Manager Tim Burton introduced Ms. Sharon Haugen, Community Development Director. He gave a history of Ms. Haugen's education, employment and qualifications and stated her first day was today, January 10, 2005.

Ms. Haugen thanked City Manager Burton and the Commission for the opportunity to work for the City of Helena. Mayor Smith, on behalf of the Commission, welcomed Ms. Haugen to the City of Helena.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Bill Roberts reported on the Westside neighborhood meeting the HCC held regarding city services and annexation. There will be future meetings the HCC will conduct.

The HCC has also submitted two recommendations; one regarding the public participation on the walking mall design and the other regarding the Sixth Ward Historic neighborhood. Mr. Roberts offered the HCC's assistance in any public participation, including a water bill insert.

Commissioner Parriman stated he continues to be under the impression that the public participation is in regards to the use issue. He then stated he is very interested in having the HCC do a water bill insert regarding the use issue on the walking mall.

Commissioner Cartwright referenced the second recommendation, regarding the Sixth Ward Historic neighborhood.

Mayor Smith asked Mr. Roberts to convey the Commission's appreciation for the HCC's involvement with the Westside neighborhood and the street name change of Last Chance Gulch.

Annexation

CONSIDER A RESOLUTION ANNEXING LOTS 1, 2, 3, 4, AND 5 OF THE RAVEN ROCK SUBDIVISION IN LEWIS AND CLARK COUNTY, MONTANA, INTO THE CITY OF HELENA, MONTANA; GENERALLY LOCATED SOUTH OF THE FRONTAGE ROAD AND WEST OF ELAINE STREET.

Final Plat

CONSIDER FINAL PLAT APPROVAL FOR LOTS 1 THROUGH 5 OF THE RAVEN ROCK SUBDIVISION; GENERALLY LOCATED SOUTH OF THE FRONTAGE ROAD AND WEST OF ELAINE STREET.

Staff Report

City Planner Belinda Waters reported Birk Exchange, LLC is proposing to complete the annexation for the Raven Rock Minor Subdivision. Completing this annexation is a prerequisite to enabling the city to approve the final plat of the Raven Rock Subdivision.

On August 18, 2003, the City Commission established conditions for annexation for the Raven Rock Subdivision (Res. #12024), and conditionally approved the Raven Rock minor subdivision preliminary plat creating five commercial lots. On October 18, 2004, the Commission established pre-zoning designation for the properties (Ord. #3004).

Conditions stated in the Resolution of Intention for annexation included the following:

1. Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.
2. Final Plat: The final plat must be submitted for Commission approval immediately after approval of the Resolution of Annexation.
3. Completion of Conditions: The applicant must notify City Planning in writing upon completion of the conditions for approval of annexation, which must occur within one (1) year of the date of approval of the Resolution of Intention. If the Conditions are not completed within that time, the City is under no obligation to annex the property and may discontinue any City services, including water and sewer service to the property.

Conditions one and two of annexation have been fulfilled. The city is not obligated to approve annexation because the conditions were not completed in one year. However, staff recommends approval of annexation.

Effective October 1, 2003, in all instances of annexation, the municipality must include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed. The city has already annexed the frontage road adjacent to this property.

Annexation of this private property is consistent with city policy, and consistent with the policy of annexing properties served by city infrastructure.

Ms. Waters also reported the applicant is requesting approval of the Raven Rock Minor Subdivision, which is accompanied by a simultaneous request for final annexation. On August 18, 2003, the City Commission gave preliminary plat approval subject to the conditions stated in the Findings of Fact and listed on pages two and three of the transmittal memo included in the Commission packet.

This 18.58-acre parcel is being subdivided into five lots that are designated for commercial/light manufacturing uses with lots varying in size from 1.78 acres to 6.64 acres. The property is generally located south of the Frontage Road and west of Elaine Street.

The proposed subdivision would encourage the development of property in this area as well as facilitate in-fill development and compliance with city regulations. The city's subdivision and zoning regulations provide the means to implement goals, policies and objectives of the 2001 Growth Policy as well as assure compliance with regulatory operations. The proposed minor subdivision is generally consistent with the goals, objectives, and policies as outlined in the 2001 Growth Policy. The conditions of preliminary plat approval have been satisfied.

Ms. Waters recommended approval of a resolution annexing the Raven Rock Minor Subdivision, in Lewis and Clark County, Montana, into the City of Helena, Montana, as legally described in the resolution of intention.

Ms. Waters also recommended final plat approval for the Raven Rock Minor Subdivision, creating Lots 1 through 5, from 18.58 acres.

Public comment

Mayor Smith called for public comment. Mr. Tim Birk, applicant, Kalispell, Montana, spoke in support of the resolution annexing the Raven Rock Minor Subdivision and the final plat.

Motion

Commissioner Pouliot moved approval of a resolution annexing the Raven Rock Minor Subdivision, in Lewis and Clark County, Montana, into the City of Helena, Montana, as legally described in the resolution of intention. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19185**

Motion

Commissioner Pouliot moved final plat approval for the Raven Rock Minor Subdivision, creating Lots 1 through 5, from 18.58 acres; generally located south of the Frontage Road and west of Elaine Street. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Right-of-Ways

CONSIDER A RESOLUTION OF INTENTION TO VACATE THE NORTH/SOUTH AND EAST/WEST ALLEY RIGHT OF WAY (ROW) IN BLOCK 14 OF THE GRAND AVENUE ADDITION.

Staff Report

City Engineer Ryan Leland reported the adjacent landowners are currently using the undeveloped Right-Of-Way (ROW) for storage. He referred to a site map attached to the staff report.

The adjacent landowners would like to clean up the ownership of the property that is currently used as storage. There are no city owned utilities or objection from the utility companies. This vacation will allow the ROW to be sold to the adjacent landowners, which are currently using the ROW for storage.

Mr. Leland recommended approval of the resolution of intention to vacate north/south and east/west alley ROW in block 14 of the grand addition and set a public hearing date.

Commission comment

Commissioner Cartwright stated this property would be sold after it is vacated. City Engineer Leland concurred.

Public Comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Pouliot moved approval of the resolution of intention to vacate north/south and east/west alley right-of-way in block 14 of the Grand Addition and set a public hearing date.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19186**

Walking Mall Design

CONSIDER FINAL DESIGN FOR THE BROADWAY TO 6TH AVENUE AREA OF THE TIF WALKING MALL PROJECT. (TABLED FROM 12/20/04)

Community Facilities Director Gery Carpenter showed the Commission several options for the sidewalk finishes including "broomed" textured finish, colored "broomed" textured finish, and colored "stamped" textured finish.

In addition to the sidewalk he presented options for the center access way – exposed aggregate textured finish, stamped textured finish, colored and stamped textured finish, or brick pavers.

City Manager Burton stated in regards to the tour train, City Attorney Nielsen has contacted legal counsel for Mr. Bird's family.

City Attorney Nielsen reported on December 23, 2004, he talked to Jim Hunt, the attorney who represented Mr. Bird in the claim against the Last Chance Tour Train, which arose from the death of Mr. Bird's brother. The gist of the settlement agreement was that the Tour Train could not drive in the walking mall until certain safety modifications to the train were made. None of the required safety modifications were related to the design or use of the walking mall; they had to do with the design of the train creating an obstruction of the operator's vision. However, Mr. Hunt stated that if the safety changes are made to the train, Mr. Bird may be agreeable to amending the settlement agreement to allow the train on the walking mall again.

City Manager Burton then referred the Commission to a memo from the Historic Preservation Commission. He asked Mr. Wil Greiner and Mr. Rehman from the Historic Preservation Commission (HPC) to address the Commission.

Mr. Greiner, Chair of the HPC, stated their concerns cover three points- Street Lighting, Surface Treatments, and Historic Interpretations.

Mr. Rehman, 613 Hollins Avenue, showed a series of slides that included brick pavers, historic street lamps, and integrated downtown historical interpretation signs with markers placed on individual signs.

Mayor Smith asked Mr. Greiner if he felt like the design elements that the HPC recommended have been included in the proposed bid documents? Mr. Greiner concurred.

Commissioner Cartwright stated that he believed at the Administrative Meeting on January 5th there was Commission consensus to remove the medallions and incorporate the interpretation signs as recommended by the HPC. Director Carpenter concurred.

Commission comment

Mayor Smith suggested that the Commission discuss the options for the final design of the Broadway to 6th Avenue area of the walking mall.

Commissioner Cartwright stated he sees the discussion falling into three categories; the first being the use issue.

Commissioner Cartwright stated he would like the Commission to speak to when the use issue would be addressed. The other two categories are the design of the mall and what action will be taken.

Commissioner Oitzinger stated for better or worse, use and design has been co-mingled. One way to stabilize the use issue is to not approve the design. Commissioner Oitzinger stated she is prepared to offer several motions.

Commissioner Pouliot stated he concurs to deal with the use issue and then the Commission could address the design of the mall. He asked that Commissioner Oitzinger offer her motions at this time.

Mayor Smith stated the terms of use and design have been co-mingled. However, had the commission's decision of July 12th been supported by the community, the use issue would not have surfaced. He believes the two issues need to be addressed separately. Mayor Smith concurred with Commissioner Cartwright's recommendation to address the use issue.

Commissioner Oitzinger stated she would like to stabilize these two issues; if the Commission does not vote to disallow any future non-permitted traffic on the mall, the public will do it. She would like to postpone action on the design until all community consideration is accepted. She believes this particular project needs additional time to gel and the Commission needs to be responsive to the community.

Commissioner Parriman stated he disagrees with the comment that the Commission is rushing to make a judgment. He believes the Commission has been working on this for a long time, the design team has developed a design that is acceptable and he personally would rather not address the use issue. The action tonight is for the final design and not the use issue. The Commission has already concurred to leave the use issue alone until 2006 and he would like to move forward.

Commissioner Cartwright stated he had brought up postponing the project as an idea; however, he would like to discuss the design. The use issue is not on the agenda tonight; however, the public may understand the Commission's debate if the use issue is addressed. In addition, the visioning process for the downtown area that has been addressed by Mayor Smith will have time to occur. Commissioner Cartwright recommended the Commission commit to put the use issue on the ballot in November 2006.

Mayor Smith stated the use issue is important; however the final design of the mall needs to take place. Mayor Smith stated he does not feel the use issue has had adequate Commission and public comment. He believes an extended discussion should happen that would include zoning and building codes of the area, residential housing and parking requirements. Mayor Smith stated the Commission committed to having these discussions at the meeting with the Montana Consensus Council, where representatives from the Friends of Downtown Helena also concurred. If a proposed change to the use ordinance is not brought forward, then unpermitted traffic will not be allowed on the mall.

Commissioner Cartwright asked if all the areas should be discussed before any motions are offered. Mayor Smith concurred.

Commissioner Pouliot stated he continues to support traffic on the mall during the winter months. He then gave a specific example of how a business had a 20% increase in business when they moved from the walking mall down just one block where traffic is permitted. He reiterated his support of seasonal traffic being allowed on the mall.

Mayor Smith stated he shares many of Commissioner Pouliot's views and beliefs. He too believes there has been a dramatic decline of public support of the businesses on the walking mall. He then stated he would support moving forward with the design options that are being

considered and with the construction of the parking garage, there will be a revitalization of the downtown area.

Commissioner Oitzinger stated it bothers her to engage in dueling anecdotes; she does not believe traffic will bring businesses downtown. There are empty stores in the Capital Hill mall. She again reiterated she believes it would be a mistake to use the TIF funds for the improvements to the mall.

Commissioner Cartwright stated there were comments at the last Commission meeting that the Commission has not explained what they were doing. Commissioner Cartwright stated he continues to get emails regarding the trolley block. If the Commission completely forgets about the traffic issue, he explained the design being considered would be very similar to what the commission is considering currently. Commissioner Cartwright presented slides on the following items:

1. The walking mall needs major repairs, including electrical and irrigation, sidewalks and the traffic lane.
2. Lewis & Clark Population by age, 1970 through 2000
3. Slide on world oil discoveries, which have been declining for years;

Commissioner Cartwright stated there already is permitted traffic, he then asked for a show of hands of how many people support absolutely no traffic on the mall; four people raised their hands. He stated the mall was built in 1975 and it is time to make improvements because there are major repairs needed. Any construction project will have to comply with the current building codes.

He then presented a slide of Red River Mall in Fargo North Dakota, showing a serpentine road.

Commissioner Cartwright stated there needs to be a 20-foot wide pathway to meet fire regulations. The proposal is a 22-foot wide straight pathway and not serpentine. He then discussed the reasons why he supports the straight pathway. He noted of all the recommendations the Commission has received not one person has brought forward a proposal that explained why serpentine design would be good for pedestrians and street life.

Commissioner Cartwright stated he does have some concerns with the proposal to remove the current trees. He concurs with some of the plan; however he does not totally support removing the mature trees. But, if the sidewalk vaults are repaired, then the mature trees would probably be damaged and have to be removed anyway.

He then presented a slide listing the reasons for the proposed design of the mall:

1. The mall needs extensive repairs
2. Just repairing the mall would be ugly
3. Emergency access road must be built
4. Liability for permitted traffic means curbs
5. Space for street life argues for straight road

Commissioner Pouliot stated he concurs that the Commission has spent well over a year talking about the design. He likes what he sees in the proposed design and he is ready to move forward.

Commissioner Oitzinger stated because of recommendations from the HPC to use brick pavers, and if the Commission could assure the public that the other shoe isn't going to drop concerning use; she believes there is still a number of Westside brick sidewalks in Helena and other options that would allow for

donations for bricks. If all of the community energy is being spent on the use issue, she would like to address the use and then move forward. The best combination for the Commission would be to lay the issue of use to rest and fund the walking mall design at a later date.

Mayor Smith stated he originally supported the one-way serpentine trickle traffic and was taken aback by Commissioner Cartwright's recommendation to approve the 22-foot wide straight pathway. Now, however, he believes it is the correct design. Mayor Smith recognized and thanked Commissioner Cartwright for the work he has done on this project. Mayor Smith then addressed Commissioner Oitzinger's comments on healing the community regarding the design.

Commissioner Parriman stated he supported the straight design from the beginning and with the recommendations submitted by the HPC, he is ready to support the brick pavers, broomed concrete, and the historic lighting fixtures. He spoke on the vitality of the area and how the improvements may help it. He stated the Commission has concurred not to address the use issue and he supports moving forward with the design.

Mayor Smith asked Commissioner Oitzinger to address the motions that she has prepared for Commission consideration. Commissioner Oitzinger then reviewed the following motions.

- 1. To disapprove proceeding with the walking mall design and to instruct the City Manager to bring forward a reallocation amendment to the TIF allocation ordinance re-directing the funds for the 6th through Broadway portion of the downtown to the Jackson street parking garage;**

Rationale: Reallocating the 6th thru Broadway funding to the parking garage does the following positive things:

It meets the expressed concerns of the Helena Citizen's Council, i.e., it will allow full participation of the citizens of Helena in the design process; it will reduce the possibility of litigation; it will assist in achieving consensus between all parties.

It reduces our cost of money for the Jackson Street Garage.

It provides more flexibility for budgeting for TIF projects that have not yet been completed.

Supporting facts: Other funds available at the Commission's discretion are less time sensitive than TIF;

Opponents of the design make a good point that better decisions will be made with more time.

Several Commissioners have recognized that the Parking Commission/BID budget is strained.

- 2. Move to direct the City Manager to bring forward the "Use Ordinance" TITLE 7, CHAPTER 9 OF HELENA, MONTANA, CITY CODE for purposes of consideration of an amendment prohibiting non-permitted vehicular traffic on the walking mall.**

Rationale: The time and energy of the Friends of Downtown Helena and others interested in the Walking Mall would be better directed toward improving the economic viability of the downtown than collecting signatures for a ballot issue.

Supporting Facts: One way or another, non-permitted vehicular traffic will be banned from the Walking Mall as demonstrated by the number of signatures

collected in response to the Commission 07/12/2004 action. All concerned should direct their energies to optimizing other improvements such as the Jackson Street garage to improve downtown vitality. The Helena City Commission has already agreed not to add non-permitted vehicular traffic until sometime in 2006. Approving an amendment to the "Use Ordinance" requiring a popular vote for a change would not be harmful. That's where we'll end up anyway.

3. Move to direct the City Manager to bring forward a Resolution putting to a vote of the Helena electorate at the {next city election or November, 2006 depending upon passage or failure of previous motions}, ballot language prohibiting the additional use by non-permitted vehicular traffic on the walking mall unless such additional use is first approved by a majority of voters voting in a primary or general election of the City of Helena.

Rationale: The time of the Friends of Downtown Helena and others interested in the Walking Mall would be better directed toward improving the economic viability of the downtown than collecting signatures for a ballot issue.

Supporting Facts: Every Commissioner has made a decision regarding the Walking Mall with an honest purpose and in accordance with his or her best judgment. It's clear, however, that significant numbers of Helena citizens disagree with opinions that adding traffic would improve 6th through Broadway commercially or otherwise. Ballot language authority among Commissioners exists for a reason, and in unique circumstances such as the Walking Mall debate, it is a tool that we should embrace. It recognizes that we don't as a commission put our judgments ahead of those expressed by the citizenry. Directing the City Manager to bring forward a Resolution for a popular vote on ballot language prohibiting traffic absent voter approval would not be harmful. That's where we'll end up anyway.

4. Move the City Commission's agreement NOT to change the existing "Use Ordinance" TITLE 7, CHAPTER 9 OF HELENA, MONTANA, CITY CODE that currently prohibits non-permitted vehicular traffic on the Walking Mall until the completion of the Public Dialogue on use of the downtown walking mall as conceived in the consensus process with Friends of Downtown Helena and announced by the Mayor on November 22nd.

Rationale: This motion formalizes our announced position and reaffirms this sitting Commission's support for further input on use of the Walking Mall as well as other strategies for supporting a vital downtown.

Supporting Facts: The public may not be aware of the important decision that the Commission made in agreeing to hold off on use changes until further work is done. Formalizing our position in this regard will be somewhat reassuring that despite design action on the mall, use will not change without further public involvement.

Mayor Smith thanked Commissioner Oitzinger for reviewing the proposed motions and the work she has done on this project.

Commissioner Cartwright stated he didn't initially like the idea of a public vote he's decided that in some circumstances it makes sense. He doesn't like the idea of voting this year because if we go ahead, the mall will be done, the garage won't, he doubts the mall will be completely done before summer. He

expects there will still be some work going on in September. His first concern is that people won't know what it is they have. If the garage is finished and the mall is finished and we go through the summer it's quite possible that with this rejuvenation the mall will spring back. If it's working fine as a pedestrian area, then why change it? His other concern, and it does disappoint him, that one of the reasons that have been given for having a vote in 2005 even though the construction would be over, is it would be a good issue to run on, that it'd be a good way to get elected. He doesn't feel that is the spirit we started this in. He stated he'd feel much more comfortable with 2006 but he does like the idea of a vote.

Commissioner Cartwright paraphrased a Churchill quote "we shape our houses and then they shape us". This whole process has seemed very weird to him and he's sure it seems weird to people in the community. He feels some people are under the notion that the Commission has ulterior motives for considering a design that includes a street, which is not true. He then spoke of the petitions regarding the mall and boycotts of downtown businesses. He was most perturbed by the boycott. This is a town that prides itself on free speech and human rights and yet he recalls only one letter questioning the boycott.

Commissioner Cartwright then presented a slide show of the Friends of Downtown Helena's design proposals. They included a serpentine roadbed, minimum width required for emergency access (20 feet), no curbs and brick cobblestone or pressed concrete. Commissioner Cartwright stated all of these elements equal a street. The difference is serpentine versus straight. The difference between the width of the street the Commission approved and what the Friends of Downtown Helena recommended is 2-feet. He then stated if the Commission moves forward with approval of the design they would be doing the right thing, technically. However if the project is postponed and they work thru it for a year, he believes the structure of the design would be very much the same. In the interest of the community, he does not believe the Commission should fund the design this year.

City Manager Burton stated the visioning process for the Downtown area would probably take two years. The process could begin at the direction of the Commission; there would be some financial situations that would have to be addressed.

Mayor Smith summarized that he hopes the Commission discussion tonight has helped the community understand the project. He stated that in his last two State of the City Addresses he has noted there are other cities that wish they had the kinds of problems the City of Helena has to address. He believes it is the duty of this Commission to act.

Mayor Smith continued and stated if the design is approved, there are several options the community could pursue; pursue an injunction or petition an initiative. Another option is the ballot box, vote out Commission members that you believe aren't doing what ought to be done. The final option would be to take the Commission up on their offer to work with the city regarding the use issue.

Mayor Smith acknowledged that the common goal of the community is to revitalize the downtown area. It is somewhat attractive to put this issue aside, however, he does not believe there are any other available funds to complete this project. Mayor Smith stated this issue has been difficult and emotions have run high. He spoke on the integrity of the Commission and stated the spirit of intent of the Commission has been good.

The following persons appeared before the commission: Shatara, 420 N. Last Chance Gulch; Lila Martinsen, 703 S. Rodney; Bill McCausland, 14 N. Jackson; Shalon Hastings, Taco Del Sol; Jennifer, 21 N. Last Chance Gulch; Lynn Boone, 638 1st Street; Walter Knight; 553 State Street; Theresa Hastings,

923 Missoula Avenue; Renee' Cahn, 503 ½ S. Rodney; and Mia, 929 N. Cooke Street.

The comments included – the public hasn't been involved in the visioning process of this project; economic viability is a must; support of the recommendation to reallocate the TIF money to the parking garage; concerns with construction interfering with the Vigilante Parade; support of revitalizing the downtown area; Friends of Downtown Helena would support a future bond issue to pay for the improvements at a later date; discussion of the \$2,000 grant for incoming new business downtown and that it was almost impossible to get; support of Commissioner Oitzinger's proposed motions; businesses should invest in short-term parking behind their businesses; use of the Medical Arts Parking garage for short-term parking; how can the Commission vote on a design when the use issue has not been decided upon; big box stores have had a significant impact on all small businesses; after the design was presented there was not for enough time the community to be involved; good opportunity for the city of Helena and there is investment within the city; the downtown needs to be pro-active; the current state of the downtown mall is down ridden; this decision needs to be made from the heart.

Motion Commissioner Oitzinger moved to disapprove proceeding with the walking mall design and to instruct the City Manager to bring forward a reallocation amendment to the TIF allocation ordinance re-directing the funds for the 6th through Broadway portion of the downtown to the Jackson street parking garage. Commissioner Cartwright seconded the motion.

Discussion Commissioner Cartwright stated the Commission has explained the reasons why the mall would be designed for permitted traffic many times and he can't understand why people continued to say they hadn't.

Commissioner Oitzinger thanked Commissioner Cartwright for bringing the idea of reallocating the funds to the parking garage forward.

Vote Motion failed 2-3 with Commissioners Parriman, Pouliot and Mayor Smith voting no.

Motion Commissioner Oitzinger moved to direct the City Manager to bring forward the "Use Ordinance" TITLE 7, CHAPTER 9 OF HELENA, MONTANA, CITY CODE for purposes of consideration of an amendment prohibiting non-permitted vehicular traffic on the walking mall. Commissioner Cartwright seconded the motion.

Discussion Commissioner Parriman asked for clarification on the motion. Commissioner Oitzinger explained her intention is to have the preservation of the existing ordinance, unless there is a vote of the people.

Vote Motion failed 4-1 with Commissioner Cartwright, Parriman, Pouliot and Mayor Smith voting no.

Motion Commissioner Oitzinger moved to direct the City Manager to bring forward a resolution putting to a vote of the Helena electorate, at the next city election, ballot language prohibiting the additional use by non-permitted vehicular traffic on the walking mall unless such additional use is first approved by a majority of voters voting in a primary or general election of the City of Helena. Commissioner Cartwright seconded the motion.

Discussion Commissioner Oitzinger explained why she would recommend this resolution. Commissioner Cartwright stated he would like to postpone the vote until after all the TIF projects are completed; in addition the visioning process would be interrupted by the election. He encouraged Commissioner Oitzinger to amend the motion to November 2006. Commissioner Oitzinger stated she would not amend the motion.

Vote Motion failed 4-1 with Commissioner Cartwright, Parriman, Pouliot and Mayor Smith voting no.

Motion Commissioner Oitzinger moved that the City Commission's agreement NOT to change the existing "Use Ordinance" TITLE 7, CHAPTER 9 OF HELENA, MONTANA, CITY CODE that currently prohibits non-permitted vehicular traffic on the Walking Mall until the completion of the Public Dialogue on use of the downtown walking mall as conceived in the consensus process with Friends of Downtown Helena and announced by the Mayor on November 22nd. Commissioner Pouliot seconded the motion.

Commissioner Oitzinger withdrew her motion and moved the following:

Motion Commissioner Oitzinger moved to direct the City Manager to bring forward a Resolution putting to a vote of the Helena electorate at the November 2006 election, ballot language prohibiting the additional use by non-permitted vehicular traffic on the walking mall unless such additional use is first approved by a majority of voters voting in a primary or general election of the City of Helena. Commissioner Pouliot withdrew his second on the first motion. Commissioner Cartwright seconded the motion. Motion failed 3-2 with Commissioners Pouliot, Parriman and Mayor Smith voting no.

Motion Commissioner Oitzinger moved that the City Commission's agreement NOT to change the existing "Use Ordinance" TITLE 7, CHAPTER 9 OF HELENA, MONTANA, CITY CODE that currently prohibits non-permitted vehicular traffic on the Walking Mall until the completion of the Public Dialogue on use of the downtown walking mall as conceived in the consensus process with Friends of Downtown Helena and announced by the Mayor on November 22nd. Commissioner Cartwright seconded the motion.

Discussion Commissioner Parriman asked how this motion would formalize the Commission's commitment not to change the existing use ordinance.
Commissioner Pouliot stated he had not agreed to this and would not at this time.

City Manager Burton asked for clarification on the motion- as conceived in the consensus process with the Friends of Downtown Helena. Mayor Smith referred City Manager Burton to the November 17th letter from the Friends of Downtown Helena. Manager Burton stated if that is the reference he has a full understanding.

Vote Motion carried 4-1 with Commissioner Pouliot voting no.

Motion Commissioner Pouliot moved approval of the final design for the Broadway to 6th Avenue area of the TIF Walking Mall Project and authorized the City Manager to let the project to bid. Commissioner Parriman seconded

the motion. Motion carried 3-2, with Commissioners Cartwright and Oitzinger voting no.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTIONS 11-11-2, 11-12-2, 11-13-2, AND 11-21-5 OF THE HELENA CITY CODE TO ALLOW NEW AMUSEMENT AND RECREATION USES IN THE B-2, B-3 AND CLM ZONING DISTRICTS.

Staff Report

City Planner Belinda Waters reported there appears to be a trend to locate a variety of commercial/service-type uses in large structures located in CLM zoning districts, especially those structures located in the middle of the city. By keeping these large buildings fully utilized, property owners are able to not only maintain and/or rehabilitate the building but also keep it economically viable. Many of the uses that are proposed to be permitted by right and by CUP in the CLM District are already permitted and conditional uses in the B-2 and B-3 zoning districts. Therefore, this proposed Zoning Ordinance amendment appears to meet the needs of allowing more commercial uses in the CLM.

On Tuesday, December 14, 2004, the Helena Zoning Commission unanimously recommended approval (4:0 vote) for adoption of an ordinance amending Sections 11-11-2, 11-12-2, 11-13-2, and 11-21-5 of the Helena Zoning Ordinance to allow new permitted and conditional uses in Major Group 79- Amusement and Recreation Services.

The amendment improves consistency throughout the ordinance and provides an option to help property owners to improve the economic viability of larger vacant buildings.

Ms. Waters recommended approval of first passage of an ordinance amending Sections 11-11-2, 11-12-2, 11-13-2, and 11-21-5 of the Helena City Code to allow new amusement and recreation uses in the B-2, B-3 and CLM Zoning Districts as described in the ordinance included in the staff report.

Commission comment

Commissioner Pouliot asked why this wasn't on an Administrative Meeting agenda prior to bringing it forward to a Commission meeting?

City Manager Burton stated most issues do go to an Administrative Meeting; however this is a land use issue.

Public Testimony

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

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

Discussion

Commissioner Pouliot asked what is the process if the first passage of this ordinance is approved tonight? Ms. Waters explained 2nd passage would be on the January 24th agenda and it would be effective 30-days after 2nd passage.

Commissioner Parriman asked if this zone change was driven by one use or a combination of uses. Ms. Waters explained it originated because two people had applied for a business license and couldn't get one because they were not zoned correctly. Staff then recognized the

need for changes and brought this forward. Commissioner Parriman stated this ordinance makes sense to him and asked if this could be put on the agenda for the next Administrative Meeting? City Manager Burton concurred.

Commissioner Oitzinger asked that the discussion include health and safety compatibilities.

Motion

Commissioner Pouliot moved to table first passage of an ordinance amending Sections 11-11-2, 11-12-2, 11-13-2, and 11-21-5 of the Helena City Code to allow new amusement and recreation uses in the B-2, B-3 and CLM Zoning Districts as described in the ordinance included in the staff report. Motion died for a lack of a second.

Motion

Commissioner Parriman moved approval for first passage of an ordinance amending Sections 11-11-2, 11-12-2, 11-13-2, and 11-21-5 of the Helena City Code to allow new amusement and recreation uses in the B-2, B-3 and CLM Zoning Districts as described in the ordinance included in the staff report.

Commissioner Oitzinger seconded the motion. Motion carried 3-2 with Commissioner Pouliot and Mayor Smith voting no. **Ordinance #3009**

- B. CONSIDER A MAJOR SUBDIVISION /PRELIMINARY PLAT FOR THE PROPOSED SKELTON ADDITION SEQUENCE V CREATING 23 LOTS FROM PROPERTY GENERALLY LOCATED WEST OF BLACKHAWK STREET, NORTH OF ROADRUNNER DRIVE, AND EAST OF MCHUGH LANE.
- C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP FOR A ZONE CHANGE FROM R-O (RESIDENTIAL OFFICE) TO R-3 (MEDIUM DENSITY RESIDENTIAL); AND A ZONE CHANGE FROM R-3 (MEDIUM DENSITY RESIDENTIAL) TO R-O (RESIDENTIAL OFFICE); ALL PROPERTY IS GENERALLY LOCATED WEST OF BLACKHAWK STREET, NORTH OF ROADRUNNER DRIVE, AND EAST OF MCHUGH LANE.

Staff Report

City Planner Lucy Morrell-Gengler reported on December 15, 2004, the Planning Board unanimously (9:0 vote) recommended conditional preliminary plat approval for the Skelton Addition Sequence V major subdivision of 9.25 acres to create 21 lots proposed to be located in a R-3 (Medium Density Residential) District and two lots to be located in an R-O (Residential Office) District for property legally described as Tract 1 of COS 495360/E and Lots 1 and 2, Block 8 of the Skelton Addition, Phase II Sequence III, Helena Montana; generally located west of Blackhawk Street, north of Road Runner Drive, and east of McHugh Lane and subject to the conditions in the staff report.

The subject preliminary plat is described as Skelton Addition Sequence V, which would imply it is a phase of the original Skelton Addition. This subdivision is a new subdivision with an independent preliminary plat separate from the Skelton Addition and the final plat should more clearly identify this subdivision as an independent plat. The applicant has recommended changing the name of the subdivision to

Skelton Second Addition. This name change will identify this subdivision as an independent subdivision that is associated with the original Skelton Addition and not a phase of the original Skelton Addition. This has been added to the conditions for preliminary plat approval but was not reviewed by the Planning Board.

In addition to the applicant's request for approval of a major subdivision/preliminary plat for proposed Skelton Addition Sequence V Subdivision, the applicant is requesting simultaneous adoption of an ordinance for a zone change from R-O (Residential Office) to R-3 (Medium Density Residential) for proposed Lots 1-4 and 18-21 and portion of Lots 5 and 17, Block 1 (8 lots and two partial lots); and a zone change from R-3 (Medium Density Residential) to R-O (Residential Office) for proposed Lot 2, Block 2. The proposed zone change would extend R-O zoning along McHugh Lane, a collector, and R-3 zoning would be located along proposed Curlew Street, a local street.

The subdivision would allow development of property in close proximity to City services, provide for more efficient development, and allow a variety of housing types in the city.

City Planner Lucy Morell-Gengler also reported the proposed zone change would extend R-O zoning along McHugh Lane, a collector, and R-3 zoning would be located along proposed Curlew Street, a local street. Lots 5 and 17, as proposed in the subdivision plat, would be zoned with a portion of the lot zoned R-3 and a portion zoned R-O. The proposed zoning would designate all of Lots 5 and 17 as R-3.

On December 14, 2004, the Zoning Commission unanimously recommended (4:0 vote) approval for the adoption of an ordinance amending City of Helena Ordinance no. 2359 and amending the official zoning map for a zone change from R-O (Residential Office) to R-3 (Medium Density Residential) for Lots 1-5 and 17-21, Block 1 of the proposed Skelton Addition Sequence V subdivision. All of the property is legally described as Tract 1 of COS 495360/E and Lots 1 and 2, Block 8 of the Skelton Addition, Phase II, Sequence III subdivision; generally located west of Blackhawk Street, north of Road Runner Drive, and east of McHugh Lane, Helena, Montana.

The applicant is requesting simultaneous approval of a major subdivision/preliminary plat for proposed Skelton Addition Sequence V Subdivision creating 23 lots. It is anticipated the name of this subdivision will be changed to Skelton Second Addition to clarify that it is an independent subdivision and not a phase of the Skelton Addition.

The zone change would allow development consistent with the adjacent R-O zoning along McHugh Lane, which is anticipated to be a higher traffic volume street. It would allow R-3 development similar to adjacent residential development in the Skelton Addition. Current zoning boundaries are not in line with the proposed lot lines. The proposed zoning areas would designate R-3 zoning for all of proposed Lots 5 and 17 instead of a portion of those lots designated as R-O and R-3.

Ms. Morell-Gengler recommended to conditionally approve the preliminary plat for the Skelton Addition Sequence V major subdivision of 9.25 acres to create 21 residential lots proposed to be located in a R-3 (Medium Density Residential) District and two lots to be located in an R-O (Residential Office) District, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Facts.

Ms. Morell-Gengler also recommended approval of first passage of an ordinance amending City of Helena Ordinance no. 2359 and

amending the official zoning map for a zone change from R-O (Residential Office) to R-3 (Medium Density Residential), and a zone change from R-3 (Residential Office) to R-O (Residential Office), as legally described in the ordinance included in the staff report.

Public testimony

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

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

Motion

Commissioner Parriman moved to conditionally approve the preliminary plat for the Skelton Addition Sequence V major subdivision of 9.25 acres to create 21 residential lots proposed to be located in a R-3 (Medium Density Residential) District and two lots to be located in an R-O (Residential Office) District, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Facts. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Motion

Commissioner Parriman moved approval of first passage of an ordinance amending City of Helena Ordinance no. 2359 and amending the official zoning map for a zone change from R-O (Residential Office) to R-3 (Medium Density Residential), and a zone change from R-3 (Residential Office) to R-O (Residential Office), as legally described in the ordinance included in the staff report. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Ordinance #3010**

- D. CONSIDER A RESOLUTION FOR A CONDITIONAL USE PERMIT (CUP) TO ALLOW A SINGLE-FAMILY RESIDENCE TO BE LOCATED ON THE TOP FLOOR OF AN EXISTING COMMERCIAL BUILDING LOCATED IN THE B-3 (CENTRAL BUSINESS) DISTRICT AND IN THE DOWNTOWN PORTION OF THE HELENA HISTORIC DISTRICT AT 337 LAST CHANCE GULCH.

Staff Report

City Planner Kathy Macefield reported on December 14, 2004 the Helena Zoning Commission unanimously (4:0 vote) recommended approval for a resolution granting a Conditional Use Permit (CUP) to allow a single-family residence to be located at 337 North Last Chance Gulch. This approval is subject to one condition.

The resolution granting the CUP would allow a single-family residence to be located on the top floor of an existing commercial building located in the B-3 (Central Business) District and in the Downtown portion of the Helena Historic District.

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

Ms. Macefield stated the Zoning Commission recommends approval for a resolution granting a CUP to allow a single-family residence to be located on the top floor of an existing commercial building located in the B-3 (Central Business) District for property legally described in the staff report with a property address of 337 North Last

Chance Gulch, subject to the following condition: A building permit must be obtained within one year.

Commission comment

Commissioner Cartwright stated the proposed stairs and entryway would encroach on the sidewalk and asked if there had been any consideration to install a bulb-out to allow for the minimum sidewalk area. He then stated he is concerned with a three-foot sidewalk; Ms. Macefield clarified that the sidewalk would be five-foot.

Commissioner Pouliot stated he likes the design including the landscaping.

Commissioner Parriman stated the applicant does not believe an outside fire escape would be necessary and asked for clarification. Ms. Macefield asked that the architect address this issue.

Public testimony

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

Linda Reed, 706 Touchstone Drive, spoke in support of the proposal for the single-family residence.

Architect Susan Bjerke, 545 S. Harris, explained the entrance off of Jackson Street and egress windows for the sleeping area meet the requirements and conforms to the building codes of a single-family unit. Ms. Bjerke stated this is an exciting project for the downtown area.

Mike Casey, also spoke in support of the proposal. He noted there has been a lot of support from the adjacent property owners. Mr. Casey suggested that an amendment to the ordinance that would allow single-family residents in the downtown area may be prudent for the Commission to consider.

Hal Fossum, Director of the Business Improvement District, stated the BID supports this application. Mr. Fossum stated if this were a multi-family unit, it would be allowed by right. He also supported amending the ordinance per Mr. Casey's suggestion.

Norm Mullen, 7 Harrison, asked what type of businesses would be attracted if floor space is being used for housing?

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

Commissioner Cartwright addressed Mr. Mullen's concerns and believes this application may enhance the subject property.

Motion

Commissioner Cartwright moved approval for a resolution granting a CUP to allow a single-family residence to be located on the top floor of an existing commercial building located in the B-3 (Central Business) District for property legally described in the staff report with a property address of 337 North Last Chance Gulch, subject to the following condition: A building permit must be obtained within one year. Commissioner Oitzinger seconded the motion.

Discussion

Commissioner Pouliot asked if the lower level would still be used for retail? Ms. Macefield concurred; however, the space is currently vacant. Commissioner Pouliot stated he'd like to make sure the applicant is aware that a business could move into the lower level and might create additional noise.

Vote

All voted aye, motion carried. **Resolution #19187**

**Public
Communications**

PUBLIC COMMUNICATIONS

Mr. Mullen stated he rides his bike and walks in the community during the winter and the residents do not always clean their sidewalks. He then addressed the condition of the bridge on Lyndale Avenue after the snowplows have plowed. He asked the city to step up the enforcement of the snow removal on sidewalks.

Mayor Smith stated he shares the same concerns, except the comment that the city does not do a good job in plowing the streets. Mayor Smith asked that snow removal on city sidewalks be on the next Administrative Meeting agenda.

City Manger Burton noted the ordinance is enforced; however, it is complaint driven. City Attorney Nielsen asked Mr. Mullen to contact his office with addresses of concern.

**Meetings of
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is January 19, 2005 and the next Commission Meeting is January 24, 2005.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:40 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission