

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
January 24, 2005  
6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, January 24, 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 Deputy City Clerk Robyn Brown were present.

***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 January 10, 2005, were approved as amended.

***State of the City Address***

Mayor Smith presented the 2005 State of the City Address. A copy is included with these minutes as part of the official record.

***Appointments***

**APPOINTMENTS:**

- A. Commission Appointments 2005
- B. Lewis and Clark Library Board
- C. Public Art Committee
- D. Civic Center Board

Mayor Smith asked for Commission concurrence on the following appointments:

**2005 COMMISSION APPOINTMENTS TO BOARDS:**

**MAYOR PRO TEM**

Sandy Oitzinger

**BOARD OF ADJUSTMENT**

Three year term - expires December 31, 2007

Marc Parriman

**AMERICANS WITH DISABILITIES COMMISSION**

Will appoint a commission member when necessary

**AUDIT COMMITTEE**

One year term - expires December 31, 2005

Sandy Oitzinger

James E. Smith

Paul Cartwright

**BUSINESS IMPROVEMENT DISTRICT BOARD OF DIRECTORS/HELENA PARKING COMMISSION**

Marc Parriman

**CITY COUNTY ADMINISTRATION BUILDING BOARD OF DIRECTORS**

One year term - expires December 31, 2005  
Tom Pouliot  
City Manager Tim Burton - standing member

**CITY-COUNTY BOARD OF HEALTH**

No specific term  
Sandy Oitzinger

**CIVIC CENTER BOARD**

No specific term  
Tom Pouliot

**GATEWAY ECONOMIC DEVELOPMENT**

No specific term  
Sandy Oitzinger

**HELENA CHAMBER OF COMMERCE LIAISON**

No specific term

**LOCAL GOVERNMENT COMMITTEE**

James E. Smith

**INFORMATION TECHNOLOGY COMMITTEE**

No specific term  
Paul Cartwright

**INFRASTRUCTURE COMMITTEE**

No specific term  
Marc Parriman

**MONTANA LEAGUE OF CITIES AND TOWNS**

No specific term  
James E. Smith

**PRE-RELEASE SCREENING COMMITTEE**

No specific term  
Tom Pouliot

**PUBLIC ART COMMITTEE**

No specific term  
Sandy Oitzinger

**PEACE OFFICERS STANDARDS & TRAINING COUNCIL (P.O.S.T.)**

No specific term  
James E. Smith

**ROCKY MOUNTAIN DEVELOPMENT COUNCIL**

No specific term  
James E. Smith

**TRANSPORTATION COORDINATING COMMISSION**

One year term - expires December 31, 2005  
James E. Smith

Paul Cartwright

**TRANSPORTATION DEMAND MANAGEMENT**

No specific term

Will appoint a staff member to be the commission liaison

**YOUTH ADVISORY COUNCIL**

No specific term

Sandy Oitzinger

**Lewis & Clark Library Board-** Appointment of Tobi Liedes-Bell to the Lewis & Clark Library Board.

**Public Art Committee-** Re-appointment of Linda McCray to the Public Art Committee.

**Civic Center Board-** Re-appointment of Curt Chisholm, Brad Culver, Barb Flynn, Ellen Livers, Judy Kline, and Jeanne Schutt to the Civic Center Board.

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

**Motion** **Commissioner Pouliot moved approval of the appointments to the Lewis and Clark Library Board, Public Art Committee and Civic Center Board.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

***Introduction and Confirmation*** INTRODUCTION AND CONFIRMATION OF OFFICER DOUG "MARTY" GOOSEY

Police Chief Troy McGee introduced Doug "Marty" Goosey and gave a brief history of his employment, training and qualifications. Chief McGee then recommended confirmation of Officer Goosey as a Police Officer with the Helena Police Department.

**Motion** **Commissioner Cartwright moved approval of Douglas Goosey as a Police Officer with the Helena Police Department.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Officer Goosey thanked the Commission and Chief McGee for his confirmation. He then spoke of his life-long desire to work in law enforcement and introduced his family members present at the meeting.

***Consent Agenda*** CONSENT AGENDA:  
A. Claims  
B. Accept unanticipated DUI reimbursement funds of \$4,000  
C. FY 2006 Helena Area Transit Service budget and Section 5311 Transportation Assistance and Trans ADE Grant applications  
D. Consider second passage of Ordinance No. 3010 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.

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

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot thanked Mayor Smith for his State of the City Address and his generous comments toward Clark Pyfer. He commended Mayor Smith on his performance as Mayor.

Commissioner Cartwright concurred with Commissioner Pouliot.

Commissioner Oitzinger referred to reports regarding communications by the Commissioners during Administrative and Commission meetings. City Manger Burton explained the current process. She then requested that the Commissioners receive the tickler file periodically. City Manager Burton concurred.

Commissioner Parriman commended Mayor Smith on his work and discussed a "Letter to the Editor" on the same subject. He then discussed an email from Cedron Jones regarding snow removal. He proposed that the parking patrol be allowed to issue citations for sidewalk snow removal.

City Attorney Nielsen stated staff is studying the idea of parking patrol issued tickets to see if it would work.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen thanked Mayor Smith for his inspirational words in the State of the City Address.

**Report of the City Manager**

REPORT OF THE CITY MANAGER

City Manager Burton thanked Mayor Smith for his leadership and his comments in the State of the City Address.

Mayor Smith thanked Community Development Director Sharon Haugen and Ms. LaFontaine for their work on the State of the City Address.

**Report from the Helena Citizens Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

No report was given.

**Ordinance**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 8-1-2 AND CHAPTER 21 OF TITLE 8 OF THE HELENA CITY CODE TO CLARIFY IMPOUNDMENT OF VEHICLES.

Staff Report

City Attorney David Nielsen reported the Helena Parking Commission (HPC) tickets vehicles for violations of parking regulations. An immobilization device called a "boot" was used in the past by the HPC on vehicles that had accumulated several unpaid parking tickets. A

vehicle cannot be moved while a boot is in place. The vehicle owner would have to pay the accumulated tickets in order to get the boot removed. However, the Helena City Code and the HPC resolution authorizing immobilization did not contain the appropriate notification to and due process provisions for vehicle owners who had their vehicles booted. The federal and Montana constitutions prohibit taking of property without due process, which is notice and opportunity for hearing. Booting is considered taking of property so due process requirements apply. Without due process provisions, booting cannot be legally used.

If approved the Helena City Code will provide due process to individuals whose vehicles are booted, and the HPC will be better able to legally collect unpaid parking fines.

City Attorney Nielsen recommended approval of first passage of an ordinance amending section 8-1-2 and Chapter 21 of Title 8 of the Helena City Code to clarify impoundment of vehicles.

Commission comment                      Commissioner Oitzinger asked if the device would be applied by contract or would existing parking personnel install it? City Attorney Nielsen stated the parking commission personnel will install the device and it would not change their job classification.

Commissioner Parriman asked if the vehicles have to receive a ticket in order to apply the "boot" or can they be applied at the person's home address? City Attorney Nielsen stated repeat offenders who always park in the same place and accumulate tickets will be targeted. The boot will only be applied in the public right of way, not in private homes or driveways.

Public comment                              Mayor Smith called for public comment.  
Hal Fossum, Director of Business Improvement District and the Helena Parking Commission, spoke in support of the ordinance.

Discussion                                      Commissioner Oitzinger asked who will make the final decision on who gets "booted"?  
City Attorney Nielsen stated the staff of HPC will be making the decision.  
Mayor Smith asked for confirmation that the most egregious and outstanding offenders would be targeted. City Attorney Nielsen concurred.

**Motion**    **Commissioner Parriman moved approval for first passage of an ordinance amending section 8-1-2 and Chapter 21 of Title 8 of the Helena City Code to clarify impoundment of vehicles.**  
Commissioner Pouliot seconded the motion. Motion carried 4-1 with Commissioner Oitzinger voting no. **Ordinance #3011**

**Ordinance**    CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 7-4-2 A. OF THE HELENA CITY CODE TO CLARIFY SIDEWALK REQUIREMENTS.

Staff Report    The Helena City Code requires a sidewalk placement of public rights of way within one (1) foot from the property line with the rest of the right of way up to the curb line being developed as boulevard. However, in some instances, the right of way remaining for boulevard purposes is well in excess of the 7 feet required.

In order to provide uniformity in development of boulevards and sidewalks staff wishes to amend the Helena City Code to provide for a variance from the sidewalk placement requirement of Section 7-4-2 when right of way remaining for boulevard purposes exceeds the required 7 feet so that sidewalks may be placed more than 1 foot from the property line as long as the remaining boulevard area is no less than 7 feet wide and the sidewalk is aligned with adjacent sidewalks.

City Attorney Nielsen recommended approval of first passage of an ordinance amending section 7-4-2A of the Helena City Code to clarify sidewalk requirements.

## Public comment

Mayor Smith called for public comment, none was received.

## Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending section 7-4-2A of the Helena City Code to clarify sidewalk requirements.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3012**

## Ordinance

CONSIDER SECOND PASSAGE OF ORDINANCE NO. 3009 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 by right and by 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.

On Monday, January 10, 2005, the City Commission approved first passage of this Ordinance, No. 3009.

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 stated there are several ways to catch some of the new allowed uses that may not be compatible with the existing uses in CLM zones. They are:

1. When the applicant applies for a business license;
2. When the applicant visits the building division;
3. When the applicant wishes to remodel, they apply for a building permit and all applicable fire and building codes come into play and the structures are inspected by the city fire marshals; and

4. Make all of the uses in the CLM by conditional use permit (CUP) in which each use would be reviewed.

Ms. Waters recommended approval of second passage of Ordinance No. 3009 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 Oitzinger stated she is concerned with the need for the city to be on top of emerging hazards related to this Ordinance. She stated she cannot support the permitted uses before the Commission tonight. She asked if the City/County Health Department could be involved in the application process. She spoke of the importance of the Unified Development Ordinance and her wishes for a regulatory form.

Ms. Waters stated the Health Department is not regularly involved in the review process but they could be engaged to do so.

Commissioner Oitzinger stated this is a problem to be worked out in the future through the UDO or Master Zoning Ordinance.

Commissioner Pouliot concurred with Commissioner Oitzinger and stated he would not support the ordinance.

Public comment Mayor Smith called for public comment.  
City Manager Burton spoke of updating the Master Zoning Ordinance. Present day, public safety reviews are being conducted by the fire service as well as the zoning review activities that take place within our building divisions. He stated the historical relationship with the Board of Health has primarily been wastewater treatment and solid waste. He then suggested adding the Board of Health to the distribution list when soliciting comments of the various agencies.

Discussion Commissioner Pouliot stated if the Board of Health is added to the distribution list he would support the motion.

**Motion** Commissioner Pouliot moved approval for second passage of Ordinance No. 3009 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 Parriman seconded the motion.

Discussion Commissioner Oitzinger stated she would support the motion if the Board of Health could be included in the review process.

Commissioner Cartwright stated he is supporting the Ordinance because it will cover areas in the center of the city, which equals less driving. Less driving means fewer accidents. He believes there are some public safety benefits to the Ordinance.

Vote All voted aye, motion carried. **Ordinance #3009**

**Loan Restructure** CONSIDER A PROPOSED LOAN DEFERRAL AND SUBSTITUTION OF COLLATERAL FOR ARTISAN, INC.

## Staff Report

City Manager Tim Burton reported Artisan, LLP borrowed \$880,000 from the City in 1998. The loan was made from TIF monies generated in the urban renewal district. The loan was used to help purchase the Great Northern area and for redevelopment costs associated therewith. The loan balance as of August 1, 2002 was \$724,856.18. Pursuant to a Settlement Agreement between Artisan, LLP and the city, the loan balance was to be reduced by tax increment funds generated from July 1, 2002 to July 1, 2005, through the construction of the hotel. The estimated loan balance as of July 1, 2005, is \$586,493.24. The loan is secured by a first position trust indenture on 16 undeveloped lots located in the Great Northern area that are valued at \$1,497,000.

Artisan seeks to have the loan's payments deferred until April 1, 2020, with no accrual of interest from August 1, 2007 to April 1, 2020. Artisan also requests release of the trust indenture on the 16 lots in return for providing a mortgage in second position on a single lot in the Great Northern development. Artisan proposes that the first mortgage will not exceed a secured debt of \$300,000. Thus, the substitution of collateral would be a single lot in exchange for 16 undeveloped lots. The substitution of collateral constitutes legal consideration for an agreement for extension of the loan payments and the forbearance of the interest during the extension.

City Manager Burton explained the advantage to this loan restructure would provide Artisan with additional working capital for development of the lot upon which a movie theatre is being built. Any disadvantages would depend upon the market value for the one lot; there is a risk that the collateral value of that lot might decrease. Conversely, it might exceed the value of the other 16 undeveloped lots. If the loan goes into default, a mortgage in second position is difficult to foreclose on since the prior mortgage in first position would have to be paid in full prior to recovery against secured collateral. The mitigation to this risk is that the secured debt on the prior mortgage is capped at \$300,000. There is a risk to the City of Artisan should default on either the first or second mortgage. City Manager Burton stated the legal description of the lot is Lot 12, Block E of the Great Northern Town Center and is a 24,000 square foot lot just south of the Brew House.

He then stated there are three parts to the proposed loan restructure:

1. Whether or not to defer the loan
2. Whether or not to defer the interest on the loan through the deferral period
3. To release the securities and accept a second position on a piece of property

## Public comment

Mayor Smith called for public comment.

Alan Nicholson, 1 Quarry Lane, spoke in support of the loan deferral and substitution of collateral.

William Holmes, 29 Cloverview Court, spoke in opposition of the loan deferral and substitution of collateral.

Ed McHugh, 9 Cloverview Drive, spoke in opposition of the loan deferral and substitution of collateral and read a memo to the Commission from Jerry Hamlin.

Michael O'Neill, 601 Hillsdale, spoke in support of the loan deferral and substitution of collateral.

Marilyn Greeley, 2525 LeGrande Cannon Blvd, spoke in opposition of the deferral and substitution of collateral.

Todd Tillinger, 645 Dearborn, spoke in opposition of the loan deferral and substitution of collateral.

Hal Fossum, Director of BID and HPC, spoke in support of loan deferral and substitution of collateral.

Steve Netschert, 665 South Davis, spoke in opposition of the loan deferral and substitution of collateral.

Commission comment

Commissioner Parriman stated although he applauds Mr. Nicholson's development of the area, this is a private business deal and public funds do not belong in private business. He has a problem with the release of the security interest and wants to be assured that the loan is secured in some way or another. He also doesn't believe the lot Mr. Nicholson is offering as collateral will be worth one million dollars in ten years. He then stated he disagrees with waiving the interim interest; it seems like a gift or grant to a private investor. He referred to Mr. Nicholson's comments on the cost of property taxes for the area and believes they are greatly overstated. He then stated he does not have a problem with extending the loan, but he would not support the loan restructure as written. The city is showing good faith and working with Mr. Nicholson.

Commissioner Cartwright stated this seems like a theological debate, what happened when and what was the initial force behind it all. He referred to Commissioner Parriman's comments on taxes. He then asked Mr. McHugh to clarify Lynn Moon's quote "this proposal is a quantum leap from the usual TIF request". Mr. McHugh stated he could not speak for her but he thought she meant that TIF money was meant for infrastructure not meant to loan and the city is straying completely away from purpose of TIF money.

Commissioner Cartwright asked if the \$880,000 had initially been spent on infrastructure, would that have been an appropriate use and an appropriate use for future TIF funds? Mr. McHugh stated the \$5 million that went into the parking structure is also a problem. It was money that would've been put into sewer and water but it was put into the parking garage. The \$800,000 theoretically was a loan and theoretically the TIF money would be paid back.

Commissioner Cartwright asked what allowable uses for TIF money are? Mr. McHugh stated, in his opinion, the parking garage is an allowable use.

Commissioner Cartwright referred to when Mr. Netschert was on the City Commission and a \$200,000 reduction in the loan to help build the Great Northern Hotel passed unanimously. He asked Mr. Netschert what the difference is between the \$200,000 given for the hotel and the \$200,000 given for the theater? Mr. Netschert responded it was a housekeeping issue; there were a lot of irregularities and some issues that had to be cleaned up from a previous City Manager. The difference is if you look at the interest over 15 years, it's about \$240,000-\$250,000 that would be lost over the period of forgiveness. Commissioner Cartwright clarified the hotel funding was to clean up things that were done incorrectly in the past.

Commissioner Cartwright stated a loan for \$880,000 for infrastructure would've been appropriate and discussed the history of the loan to clean up past problems. The original recommendation from the

TIF committee was for an \$880,000 loan with the loan to go into the revolving fund with the understanding that if the monies paid into this loan can't be re-used it should be a grant. The City Commission considered that, they passed on the loan and put the revolving fund off to a future date and it kind of drifted away. Does the city have some implicit or explicit obligation to follow through with the \$880,000 for infrastructure? Whatever the case, the city is now getting back more money than they would have if it was done as a grant originally. The form of the proposal before the commission is very hard to understand and explain. It seems to him if this was originally done as a grant everyone would've been happy. If the city does it through the options they have now everyone will be unhappy even though it's less money than would've been granted.

Commissioner Pouliot stated in the past he would not support the loan deferral and still feels that way. The facts and figures presented vary greatly. He considers this a loan; it is an investment the city made and has paid off handsomely. He believes he has a fiduciary responsibility to the taxpayers of Helena. To release the collateral and take a second mortgage is not good business practice. To defer the interest for the next fourteen years is not good business either. In 2002, \$200,000 of this loan was forgiven. He believes the Commission has already been more than fair with this loan and the repayment plan, and will not support the loan deferral and substitution of collateral.

Commissioner Oitzinger stated giving the history of TIF would not be productive. She has heard from three people who were actively engaged in the beginning of the Great Northern project; all have encouraged the Commission to go forward with the loan deferral. She then stated she will not second-guess her predecessors; she will support the loan deferral. The Commission often hears about the \$5 million for the parking garage. Were it not for that garage, citizens of Helena would have their residential parking taken during Civic Center events; the Great Northern is not the only beneficiary of the garage. She believes its mistaken logic to say that the \$5 million should be on the Great Northern side of ledger; it was a win, win situation that is working well. The project is going to go forward, but that doesn't mean that if we don't partner in this project, that we're going to have the same outcomes. If the funding for Artisan gets used up on this project, it will be pinched in somewhere else. Regarding taxpayers, we're coming to the sunset period on the TIF and the tax revenues are going to be going across the matrix. What the Commission set out to do was bootstrap an area for TIF funds so that they could increase the benefit; that kind of tax relief will help every single citizen of this county. This money is doing exactly what it was intended to do. Commissioner Oitzinger stated this is a good, executable loan, the community will be better off and she will support the loan deferral.

Commissioner Cartwright asked what constitutes proper business and what constitutes subsidy? He agrees with Mr. Netschert that you shouldn't facilitate the demise of one business by supporting another, but referred to a previous Commission's decision to rezone property north of Custer Avenue to Commercial where a movie theatre could've been located. Recently, the Commission approved a subdivision on Green Meadow and Custer in which the developer was not required to pay for the necessary extension of Benton into the subdivision. In that case, it was proper for the city to spend about \$200,000 to support the subdivision. He stated it's not clear what makes

proper business unless you know the individuals involved, unless it's on a specific situation but that doesn't seem like proper logic. Extending the loan seems the most consistent with the original plan.

Mayor Smith stated he had met with Mr. Nicholson in June and indicated he was generally supportive of his proposal. He doesn't believe this is the time to pull the plug on a 30-year partnership. The city isn't a bank and does not operate as a business. He stated he was touched by Mr. Fossum's comments regarding the Touchstone Apartments and is pleased to see continued development north of downtown into the Great Northern District. He stated he will support the deferral of the loan and is pleased that Mr. Nicholson has given the city second position on the mortgage and believes it shows additional good faith on Mr. Nicholson's part.

City Manager Burton referred to the comment that "a mistake had been made". Basically, a Development Agreement was approved by the Commission and Artisan, LLC. Staff has worked through the agreement and various requirements for both the city and developer. One of the final issues in the agreement was, what would we do relative to building a hotel in downtown Helena if it was done prior to the sunsetting of the TIF district. The intent was, there was a desire to have a hotel downtown and if built by a certain period of time, those TIF monies that the hotel would generate would be invested back into the infrastructure of the construction of the hotel. That was the basis of the prior Commission's action. Regarding the Development Agreement, both parties met their requirements. This was a very complicated project that everyone agrees has produced positive results for the city. The Independent Record has conducted an investigation, and staff has reviewed files related to the project. One thing demonstrated in the review of the project was that each of those decisions was vetted legally and went through the appropriate public process.

City Attorney Nielsen stated the block in the motion should be Block E, not G.

## Motion

### **Commissioner Oitzinger moved approval of proposal of Artisan, LLP that the City:**

- 1. Release its security interest in lots in the great Northern Town Center and take a second position security interest in Lot 12, Block E, Great Northern Town Center, as long as the first position security interest does not exceed a secured debt value of \$300,000;**
- 2. Defer loan payments from August 1, 2007, until April 1, 2020, with no accrued interest during this period; and**
- 3. Accept loan payments starting April 1, 2020, being the amortization of the principal and accrued interest into equal monthly payments, with interest at three percent (3%) for 168 months.**

Commissioner Cartwright seconded the motion. Motion carried 3-2, with Commissioners Parriman and Pouliot voting no.

Commissioner Pouliot was excused from the meeting at this time.

## ***Resolutions of Intention***

CONSIDER A RESOLUTION OF INTENTION TO VACATE A PORTION OF POPLAR STREET RIGHT OF WAY BETWEEN NORTH LAST CHANCE GULCH AND THE ALLEY.

CONSIDER A RESOLUTION OF INTENTION TO CLOSE THE NORTH/SOUTH ALLEY BETWEEN POPLAR AND CHESTNUT STREETS, AND THE PORTION OF POPLAR STREET BETWEEN THE ALLEY AND NATIONAL AVENUE.

Staff Report

City Engineer Ryan Leland reported the Poplar Street access to North Last Chance Gulch was closed as a result of the reconstruction of North Last Chance Gulch. Since that time Helena Trailer Sales has been using a portion of the Poplar Street ROW to store and advertise trailers. The rest of the Poplar Street ROW is used as an access road for Helena Paint and P & E Plumbing Supply. The north/south alley south of Poplar Street is currently used as an alley for P & E Plumbing Supply and Helena Trailer Sales. There is an 8" water main in the Poplar Street ROW. He included a vicinity map in the staff report.

The applicant is proposing to vacate the portion of Poplar Street ROW between North Last Chance Gulch and the alley. Also the applicant is proposing to close the north/south alley south of North Last Chance Gulch and the portion of Poplar Street ROW between the alley and National Avenue. In order to accommodate objections from the water department and fire department, the applicant is proposing a 20-foot wide easement on the center line of the 8" water main in Poplar Street, a 20-foot wide fire lane on the east portion of Poplar Street, will provide the Fire Department with a key to the gate on the alley, and keep the alley free of debris. Helena Trailer Sales will be able to consolidate their property with the vacation. The portion of Poplar Street that is proposed to be closed will better reflect the current ROW use.

Public comment

Mayor Smith called for public comment.

John Schmeltzer, 2200 Columbia, owner of Helena Trailer Sales spoke in support of the resolution of intention.

Motion

**Commissioner Parriman moved approval of a resolution of intention to vacate portions of Poplar Street right of way between North Last Chance Gulch and the north/south alley south of North Last Chance Gulch right-of-way and set a public hearing date of February 14, 2005.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19188**

Motion

**Commissioner Parriman moved approval of a resolution of intention to close portion of Poplar Street between the alley and National Avenue, and the north/south alley between Poplar and Chestnut, and set a public hearing date of February 14, 2005.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19189**

Ordinance

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 7 OF THE HELENA CITY CODE (CHAPTER 2 - EXCAVATIONS).

Staff Report

Public Works Director John Rundquist reported currently, contractors are charged an additional fee for utility street openings to insure asphalt restoration by the Street Division. Contractors make necessary repairs to either a water or sewer service and backfill the street to the existing asphalt street surface. The Street Division follows

at a later date and re-excavates the street opening and restores the asphalt surface.

Staff is proposing to allow contractors to restore the street opening including the asphalt restoration and only charge for the issuance and inspection fee for a permit. This would be a \$70.00 charge as opposed to the current \$220.00-\$250.00 fee. This allows the contractor to complete the street opening including asphalt restoration at a reduced fee. This also gives local contractors additional work, restoration occurs sooner and it eliminates an inefficient operation for the Street Division, freeing up time and manpower to dedicate to regular maintenance activities.

Director Rundquist recommended approval of first passage of an ordinance amending Chapter 2 of Title 7 of the Helena City Code and setting a public hearing date of February 14, 2005.

Commission comment

Commissioner Oitzinger asked who the recipients of the letter included in the Commission packet would be? Street Superintendent Bill Michalson stated about 25 contractors would be sent the letter.

Commissioner Cartwright asked if there was concern that the two-year warranty would be defaulted on? Director Rundquist stated most of the contractors are very stable and there is little risk.

Mayor Smith asked about the economic impact of this change. Mr. Michalson reported the cost of asphalt and the cost of contractors. The cost seems even and all contractors seem very interested in the trade off.

Public comment

Mayor Smith called for public comment; none was received.

Motion

**Commissioner Cartwright moved approval for first passage of an ordinance amending Chapter 2 of Title 7 of the Helena City Code and setting a public hearing date of February 14, 2005.**

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3013**

**Public Hearings**

PUBLIC HEARINGS:

A. CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT CREATING TWO LOTS FROM LOT C OF THE DAHL-MARSHALL TRACTS LOCATED IN A CLM (COMMERCIAL LIGHT MANUFACTURING) DISTRICT; GENERALLY LOCATED NORTH OF MARSHALL LANE BETWEEN COOKE STREET AND ROBERTS STREET AT 1320 MARSHALL LANE.

Staff Report

City Planner Belinda Waters reported the applicant proposes that the existing 36,769 square foot lot be subdivided into two lots. Lot C-1 will be 18,381 square feet in size and houses an existing building. Lot C-2 will be 18,388 square feet and is currently vacant and undeveloped. Building plans have been submitted for construction of a new building on this lot. Both lots in the proposed subdivision will meet lot area (6,000 square feet) and with requirements (50 feet) for the CLM District.

Ms Waters then stated the 2001 Helena Growth Policy promotes more intense and efficient use of land and facilities. Streets, water and sanitary sewer are available to serve the proposed subdivision, which represents and efficient use of land, infrastructure, energy and other

resources. The proposed subdivision appears to conform to the goals, objectives, and policies of the 2001 Growth Policy.

Ms. Waters recommended approval of a minor subdivision/preliminary plat creating 2 lots from Lot C of the Dahl/Marshall Tracts, a 36, 769 square foot lot, in a CLM (Commercial Light Manufacturing) District, and to adopt the Findings of Fact and the conditions contained therein.

Commission comment                    Commissioner Oitzinger referred to a letter from Mr. Wall, that stated his concerns with stormwater drainage. Ms. Waters stated the subject property will have to submit a stormwater drainage plan that will address the concern.

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

Susan Bjerke, 545 S Harris, owner of subject property spoke of the stormwater drainage plan and asked the Commission to support the preliminary plat. She asked for clarification on the street improvement condition.

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

Discussion                                 Ms. Waters stated staff will prepare a development agreement which outlines street improvements, which doesn't normally include the cost.

City Manager Burton stated typically the waiver right to protest an SID occurs when people have to hook up to services for health and safety issues. As the road is not paved, future improvements will have to be made, hence the condition.

Commissioner Cartwright stated all improvements like streets, sidewalks and curbs would be staggered.

Commissioner Oitzinger asked Director Rundquist to explain the stormwater problems in that area. Director Rundquist concurred and explained when the freeway was built the Davis Gulch drainage was blocked by Interstate 15. Some of that drainage has split and the drainage from the KMART ponds flows north of Custer, underneath the freeway and during extreme events, finds it's way over Custer and into the irrigation canal. Similarly, the drainage near the subject property, which is Davis Gulch drainage, flows across Custer, just east of Power Townsend and then flows in the natural drainage to where it's blocked by the freeway, then flows down the freeway to the irrigation canal. During extreme events it jumps the irrigation canal and causes problems. Part of the problem in dealing with these needed improvements is the development of the area. He then stated the stormwater drainage program is included in the Capital Improvement Plan.

Motion                                        **Commissioner Parriman moved approval of a minor subdivision/preliminary plat creating 2 lots from Lot C of the Dahl/Marshall Tracts, a 36, 769 square foot lot, in a CLM (Commercial Light Manufacturing) District, and to adopt the Findings of Fact and the conditions contained therein.**

Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**B. CONSIDER A RESOLUTION VACATING THE NORTH/SOUTH AND EAST/WEST ALLEY RIGHTS-OF-WAY 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 to vacate north/south and east/west alley ROW in block 14 of the grand addition.

**Public Testimony**

Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission. There being no persons wishing to address the commission, Mayor Smith closed the public hearing.

**Motion**

**Commissioner Parriman moved approval of a resolution to vacate north/south and east/west alley ROW in block 14 of the grand addition.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19190**

***Public Communications***

PUBLIC COMMUNICATIONS

***Meetings of Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is February 9, 2005 and the next Commission Meeting is February 14, 2005.

***Adjournment***

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

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Mayor Smith

ATTEST:

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Clerk of the Commission