

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
July 25, 2005
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, July 11, 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 Cartwright, Oitzinger, Parriman, and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Bill Roberts representing the Helena Citizens Council and Anne Pichette representing the Helena Youth Advisory 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, July 11, 2005 were approved as submitted.

Appointments

APPOINTMENTS

- A. Historic Preservation Commission

Mayor Smith noted action on the appointment to the Historic Preservation Commission would be taken at the August 8, 2005 Commission Meeting.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Consider second passage of Ordinance No. 3034 amending City of Helena Ordinance No. 2359 and amending the official zoning map thereof for lot 27 and lots 16-20 of Block 541, Helena Townsite, located north of Broadway between Gem and Davis Streets, from R-2 (Single-Family Residential) to R-3 (Medium Density Residential) District. **Ordinance #3034**
- C. Consider second passage of Ordinance No. 3035 amending Sections 11-20-4 and 11-20-10 of the Helena Zoning Ordinance that regulates standards for townhouse development. **Ordinance #3035**

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

Commissioner Pouliot asked Item B be removed from the consent agenda.

Motion

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

Item B

Commissioner Pouliot noted he did not support first passage of this ordinance at the July 11, 2005 Commission Meeting, and he would not support second passage tonight.

Motion

Commissioner Pouliot moved denial of item B on the consent agenda. Commissioner Oitzinger seconded the motion. Motion failed 2-3 with Commissioners Cartwright, Parriman and Mayor Smith voting no.

Motion

Commissioner Parriman moved approval of item B on the consent agenda. Commissioner Cartwright seconded the motion. Motion carried 3-2 with Commissioners Oitzinger and Pouliot voting no.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot spoke of attending the Summer Symphony held at Carroll College on Saturday, July 23rd and commended the symphony on their performance and the fireworks display.

Commissioner Oitzinger spoke of the July 4th fireworks display in Washington DC on the national mall and noted it made her think of the Commission and City of Helena.

Commissioner Parriman spoke of lack of attendance at the Board of Adjustment meetings; it has been difficult to have enough members present to have a quorum. He asked City Attorney Nielsen to discuss the state statute regarding the possibility of changing the number of votes needed for a quorum.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen stated the Board of Adjustment is regulated by state law and he would look at the statute to see what options are available to alleviate the issue of a lack of a quorum at the meetings.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Burton stated the MT Conservation Corps has requested the Commission change the location of the August 17, 2005 Administrative Meeting from room 326 to the Commission Chambers. There are 15 members of the Corps that want to meet their civic engagement requirements in August; attending the meeting would allow them to fulfill that requirement. The Executive Director of the Corps would also like to give a presentation to the Commission.

City Manager Burton also reported Senator Baucus' Office notified his office Friday afternoon that they are securing \$10 million to help fund improvements to the Helena I-15 corridor. The tiered EIS Highway Study approved multiple projects with a total cost estimated at \$125 million and Senator Baucus called the funding "a significant down payment on the projects". The \$10 million in assistance is significant and is a great tool to get the projects started.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Bill Roberts reported the next regular HCC meeting would be held on Wednesday June 27, 2005. The meeting will be taped to air on HCTV with the intent that all of the future meetings will be shown on the channel. He then gave an overview of the agenda.

Mr. Roberts stated the HCC does support the proposed fee increases for the Building Division although no formal vote has been taken.

Right-of-Way Use Agreement

CONSIDER A RIGHT-OF-WAY USE AGREEMENT WITH CHISHOLM ENTERPRISES, LLC FOR A SIDEWALK CAFE AT THE MEDITERRANEAN GRILL AND THE PARK AVENUE BAKERY.

Staff Report

City Engineer Ryan Leland reported Chisholm Enterprises LLC leases space to the Mediterranean Grill and the Park Avenue Bakery located at 42 and 44 South Park Avenue. The right-of-way (ROW) for Park Avenue is on the Montana Department of Transportation (MDT) Urban System. Chisholm Enterprises LLC would like to use a portion of the Park Avenue ROW in front of the Mediterranean Grill and the Park Avenue Bakery for placement of an outdoor, sidewalk café.

The applicant proposes to construct a bulb-out into the Park Avenue ROW for this purpose and relocate the public sidewalk within the bulb-out. It would pay the city's established annual fee for use of the property. Staff supports the proposal providing an acceptable design is approved by the Public Works Department and MDT. MDT approval is necessary as Park Avenue is a State Urban Route.

The use agreement includes language that will require the property owner pay for the removal of the bulb out if the need occurs.

Approval of the proposed ROW Use Agreement will promote the vitality of downtown Helena business because of uniqueness of open-air sidewalk cafes, which are presently exclusive to the downtown area. Mr. Leland recommended approval of the Use Agreement.

Commission comment

Mayor Smith asked if the handicap access ramp would remain as is? Mr. Leland concurred. Mayor Smith asked how many parking spots would be lost by constructing the bulb-out? Mr. Leland stated approximately seven spots would be eliminated.

Commissioner Parriman asked if the city receives the money gained by the use agreement? City Attorney Nielsen concurred.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Cartwright moved to approve a Right-of-Way Use Agreement with Chisholm Enterprises LLC, Mediterranean Grill and Park Avenue Bakery to use a portion of right-of-way for a sidewalk café with the condition of engineered plan approval by the City Public Works Department and the Montana Department of Transportation. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Buy-Sell Agreement

CONSIDER A BUY-SELL AGREEMENT FOR THE SALE OF LOT 1 IN BLOCK 4 AND LOT 6 IN BLOCK 2 OF THE INTERCITY COMMERCIAL SUBDIVISION TO BOYD ANDREW COMMUNITY SERVICES.

Staff Report

Administrative Services Director Tim Magee reported Mike Rupert on behalf of Boyd Andrew Community Services (Prerelease

Center) has inquired about purchasing two of the four remaining tax deed properties located in the Intercity Commercial Subdivision from the City of Helena. The properties are located adjacent and west of the Pre-Release Center. These parcels are legally described as Inter-City Commercial Subdivision, Lot 6 in Block 2 and Lot 1 in Block 4.

The properties were initially acquired in October 1989 through the tax deed process and have been held in trust for the SID revolving fund. These properties have been offered for sale in the past through the auction process to achieve the highest selling price (market value). Through this process, these properties have previously been listed for sale in 1990, 1994, and 1998 and have received no interest.

Since previous attempts to sell these parcels at market value have been unsuccessful, staff is recommending setting the prices at the amount equal to the costs incurred by the city. The chart below shows the amount of money the City of Helena has spent for these two parcels and the current market values as determined by the Montana Department of Revenue. Overall, the city would be receiving only \$2,781.00 less than current market value.

	<u>Total Costs</u>	<u>Market Value</u>
Block 2, Lot 6	\$61,921	\$61,323
Block 4, Lot 1	\$49,526	\$52,905
	<u>\$111,447</u>	<u>\$114,228</u>

City Attorney Nielsen has advised staff that the city can sell tax deed property through a private sale if the city has made at least two previous attempts to sell by auction. The city has met this requirement by offering it for sale three times in the past. In addition, through a private sale, the minimum price cannot be lower than 70% of the market value. For Lot 6, the city will actually be receiving 100.98% of market value and 93.61% of market value for Lot 1.

These parcels have large natural drainages on the. As a result, easements are required to preserve the existing natural drainages. Mr. Mike Rupert has been made aware of these drainage easements and the easements will be reservations in the deed and contained within the sales agreement.

Real property acquired by the city by tax deed from the county may be sold, leased or disposed of according to law without regard to the City Code pertaining to the sale, disposal or lease of real property.

Director Magee recommended the sale of the parcels to Boyd Andrew Community Services, as the property is surplus to the city's needs.

Commission comment

Commissioner Parriman asked if the proceeds from the sale would go into the SID Revolving Fund? Mr. Magee concurred but noted the fund is at a surplus; the money will be transferred to the general fund and be spent at Commission discretion.

Commissioner Pouliot stated the Prerelease Screening Committee is pleased with the proposed buy-sell agreement with the city.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Pouliot moved approval to sell parcels legally described as Inter-City Commercial Subdivision, Lot 6 in Block 2 and Lot 1 in Block 4 to Boyd Andrew Community Services.

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

**Special Improvement
District No. 418-
Anderson Business
Park**

CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 19121 RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 418 FOR MCHUGH DRIVE TO RESPREAD THE ASSESSMENTS AGAINST ALL THE PROPERTIES IN THE ANDERSON BUSINESS PARK.

Staff Report

Administrative Services Director Tim Magee reported when the resolution creating the district was adopted, Anderson Development LLC owned two lots of real property in the district. Since the adoption of the resolution, the original lots have been subdivided into 44 legal lots. As a result, the assessments for the costs of the improvements and incidental costs as described in the resolution of intention need to be re-spread across the subsequently created lots in a fair and equitable manner.

It was determined that a fair and equitable manner of re-spreading the lineal front footage assessment across the lots was by the area methodology based on the total square footage that each newly created lot bears to the total square footage of all newly created lots. If only a portion of a subsequently created lot was located within the boundaries of the original lots, only the square footage of the portion of the newly created lot that was within the original lots will be assessed.

On June 21, 2004, the City Commission adopted Resolution No. 19121, relating to Special Improvement District (SID) No. 418 for McHugh Drive; Re-spreading Assessments Against Certain Properties. The intent of this resolution was to re-spread the assessments for the properties within the Anderson Business Park only. However, on the exhibit attached to this resolution, the square footage for parcels located within the Skelton Addition Phase II, Sequence III was inadvertently included. The effect of the inclusion of these parcels on the exhibit resulted in an incorrect square footage rate within the resolution.

Mr. Magee recommended approval of the proposed resolution, as it will ensure all property located in the Anderson Business Park within SID No. 418, will be assessed based upon a fair and equitable method.

**Special Improvement
District No. 418 –
Skelton Addition**

CONSIDER A RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 418 FOR MCHUGH DRIVE TO RESPREAD THE ASSESSMENTS AGAINST ALL PROPERTIES IN THE SKELTON ADDITION PHASE II, SEQUENCE III.

Staff Report

Administrative Services Director Tim Magee reported on July 21, 2003 the City Commission adopted the Resolution of Intention and on September 22, 2003, the Resolution Creating Special Improvement District No. 418. Pursuant to the Resolution of Intention, the properties in the district are to be assessed based upon lineal front footage.

When the resolution creating the district was adopted, Skelton Addition, LLP owned one lot of real property in the district. Following the date of adoption of the resolution creating the district, the original lot was subdivided into 43 legal lots. As a result, the assessments for the costs of the improvements and incidental costs as described in the Resolution of Intention need to be re-spread across the subsequently created lots in a fair and equitable manner.

It was determined that a fair and equitable manner of re-spreading the lineal front footage assessment across the subsequently

created lots was by the area methodology based on the total square footage that each subsequently created lot bears to the total square footage of all subsequently created lots. If only a portion of a subsequently created lot was located within the boundaries of the original lots, only the square footage of the portion of the subsequently created lot that was within the original lots will be assessed.

Mr. Magee recommended approval of the proposed resolution, as it will ensure all property located in the Skelton Addition Phase II, Sequence III within SID No. 418, will be assessed based upon a fair and equitable method.

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

Motion Commissioner Cartwright moved approval for a resolution amending Resolution No. 19121 relating to Special Improvement District No. 418 for McHugh Drive; re-spreading assessments against certain properties. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19258**

Motion Commissioner Cartwright moved approval for a resolution relating to Special Improvement District No. 418 for McHugh Drive; re-spreading assessments against certain properties in Skelton Addition Phase II, Sequence III. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19259**

Special Improvement District Assessments CONSIDER A RESOLUTION OF INTENTION AMENDING RESOLUTION NO. 19242 THAT LEVIED AND ASSESSED A TAX UPON ALL PROPERTY LOCATED IN A SPECIAL IMPROVEMENT DISTRICT.

Staff Report City Controller Glenn Jorgenson reported each year the Commission must levy and assess annual charges on special water, sewer, and paving improvement districts in order for them to be placed on the upcoming tax bills.

On June 13, 2005, the City Commission adopted Resolution of Intention No. 19224 and on June 27, 2005 adopted Resolution No. 19242 that levied and assessed a tax upon all property in special water, sewer, and paving improvement districts.

The Special Improvement District (SID) assessments are for outstanding debt. On Resolution of Intention No. 19224 and Resolution No. 19242, the assessments for SID #413 and SID #418 were incorrectly stated. The intent of this proposed resolution of intention is to correctly state those assessments. The fiscal year 2006 annual charges listed in the resolution of intention, upon approval by the City Commission and after a public hearing is held, will be placed on the tax year 2005 property tax bills.

Mr. Jorgenson recommended approval of the proposed resolution of intention, as passage will ensure that all property located within a special improvement water, sewer, and paving improvement district will be assessed correctly.

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

Motion Commissioner Oitzinger moved approval of a resolution of intention, amending Resolution No. 19242 and set a public hearing

date of August 8, 2005. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Resolution #19260**

**Water Meter
Replacement Bonds**

CONSIDER A RESOLUTION RELATING TO \$3,100,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF.

Staff Report

City Controller Glenn Jorgenson reported the City Commission approved the replacement of all city water meters with radio read meters. City staff originally projected needing to borrow \$3.8 million as part of the fiscal year 2005 budget. Staff is now requesting to borrow \$3.1 million due to favorable bids for the purchase of the meters and installation. If approved, staff will issue 3.1 million in bonds to the State of Montana, Department of Natural Resources, Drinking Water Bond Program at a rate of 3.75% for a term of twenty (20) years.

Mr. Jorgenson stated this program offers the best interest rates available at this time and best meets the cash flow needs of the water fund.

City Attorney Nielsen noted the loan agreement contains indemnity language that increases the liability risk to the city. The language requires the city to indemnify the state and a private bank for their negligence. City Attorney Nielsen attempted to get the state to change the language but was unsuccessful. Unfortunately, the city would incur estimated additional costs of \$125,000 to borrow the funds in the public bond market based on current interest rates received on similar bond sales. Staff feels the risk is adequately low that incurring the additional costs in the public bond market is not warranted.

City Manager Burton added the City Attorney's due diligence on this issue was appropriate. Staff has spoken with DNRC to encourage them to change their language for future contracts.

Commission comment

Commissioner Oitzinger stated the indemnification language is peculiar and needs to be altered for future contracts with DNRC. Mr. Nielsen stated this language is unique to the DNRC and other state agencies do not include the same language.

Commissioner Cartwright asked what the difference is between negligence and gross negligence? City Attorney Nielsen explained gross negligence is similar to misconduct, almost an intentional act.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Oitzinger moved to approve a resolution relating to \$3,100,000 Water System Revenue Bonds (DNRC Drinking Water Revolving Loan Program), Series 2005; authorizing the issuance and fixing the terms and conditions thereof. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19261**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER A RESOLUTION TO INCREASE THE FEES CHARGED BY THE HELENA CIVIC CENTER.

Staff Report

Civic Center Manager Diane Stavnes reported the current fee schedule was adopted prior to the 2004-2005 season. This spring a survey of other state facilities was conducted showing some rental rates below other facilities in the surrounding area. The Civic Center Board's Fee Committee in conjunction with the Civic Center staff reviewed the policy and recommended changes. The Civic Center Board approved the proposed schedule at their May 4, 2005 meeting. The proposed rates are at or below the rates charged by similar facilities in the state.

An increase of \$50.00/day/room is proposed for set-up/load-out rates charged for weekdays (Monday-Thursday) from the current rate of \$200.00 to \$250.00 and weekend set-up rates (Friday-Sunday) from the current rate of \$250.00 to \$300.00. Rates for police services will increase as their charges for services have increased. Rental of the Yamaha grand piano owned by Live! At the Civic Center will increase, due to an increase in their rental fees for use of the piano. In addition, a new front projection screen has been purchased and is available for rental.

Ms. Stavnes recommended the fee increase and noted a yearly review of the schedule allows smaller, more regular changes to the fee schedule, while allowing us to keep at market value with other area facilities. Clients have indicated they prefer this to larger, less frequent changes.

Public Testimony

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

Elaine Marcel-Marsonick, Helena Building Industry Association (HBIA), stated the HBIA would no longer participate in home shows at the Civic Center because it does not provide 24-hour security services.

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

Motion

Commissioner Pouliot moved approval for a resolution to increase the fees charged by the Helena Civic Center and that the new fee schedule be effective September 1, 2005. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Resolution #19262

B. CONSIDER A RESOLUTION TO INCREASE THE FEES CHARGED BY THE BUILDING AND SAFETY DIVISION FOR RESIDENTIAL AND COMMERCIAL BUILDING PERMITS, MECHANICAL AND PLUMBING PERMITS, AND ELECTRICAL PERMITS.

Staff Report

Chief Building Official Brandt Salo reported the existing fee schedules were adopted in 1996 and reflects those that were published in the 1994 Uniform Building Code and companion codes. They were adjusted downward under a City Commission directive that the fees calculated from the new schedule were to remain revenue neutral with the prior fees in use by the division at that time. The net effect was and is that while the valuation of construction projects are determined on a 'per square foot' basis according to the most current Building Valuation Data Table as prescribed in city code, the fees being charged by the Building Division on those valuations are charged out at the same rate as under the 1985 code(s).

The adoption of the proposed fee schedules for the Building Division are intended to generally raise permit generated revenues across the board by 34% to more accurately reflect the division's cost of doing business. The increase recognizes the need for the Building Division, as a public safety entity, to maintain its self-sufficiency and independence from the general fund; assuring that those parties making use of the various services the division offers are also paying for them and not placing an undo burden upon the general taxpayer, while continuing to provide quality services to clientele. Mr. Salo recommended approval of a resolution the fee schedules for Building Division permits.

Public Testimony

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

Elaine Marcel-Marsonick, Executive Officer of Helena Building Industry Association (HBIA), stated the HBIA supports the fee increase.

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

Motion

Commissioner Cartwright moved approval for a resolution to increase the fees charged by the building division for residential and commercial building permits, mechanical and plumbing permits, and electrical permits. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution #19263**

Public Communications

PUBLIC COMMUNICATIONS

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is Wednesday, August 3, 2005 at 3:00pm, and will be a bus tour; the next Joint Work Session is Thursday, August 4, 2005, and the next Commission Meeting is Monday, August 8, 2005.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:15p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission