

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
September 12, 2005
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, September 12, 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 Anne Pichette representing the Youth Advisory Council.

Pledge of Allegiance

Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.

Proclamation

Proclamation:

A. James H. Foley

Mayor Smith announced that former Commissioner James H. Foley passed away on September 9, 2005.

James Foley Jr. introduced members of the Foley family in attendance and thanked the Commission for honoring his father.

Mayor Smith read the proclamation designating September 12, 2005 as "James H. Foley Day".

Minutes

The minutes of the regular City Commission meeting of August 22, 2005 were approved as submitted.

Appointments

APPOINTMENTS:

- A. Airport Authority
- B. Board of Adjustment
- C. Helena Open Lands Management Committee
- D. City-County Parks Board
- E. Helena Zoning Commission

Mayor Smith asked for Commission concurrence on the following board appointments:

Airport Authority - Reappointment of Mitch Rygg to a second full term.

Board of Adjustment – Reappointment of Jeff Martin; also appointment of Mary Vandenbosch to a first term and Jason M. Davis to an unexpired term.

Helena Open Lands Management Committee – Reappointment of Jim Cancroft to a first full term.

City County Parks Board – Reappointment of Jerry Spencer to a second full term.

Helena Zoning Commission – Appointment of Dan Casey (currently the alternate member) and Ethan Stapp to a first term.

Motion Commissioner Pouliot moved approval of the above listed board appointments. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Consider an amended plat of Blocks 19 and 24 Grand Avenue Addition, to satisfy the Commission review requirements of Resolution No. 19192 which vacated rights-of-way.
- C. Consider an amended plat of Block 14 Grand Avenue Addition, to satisfy the Commission review requirements of Resolution No. 19190 which vacated alley rights-of-way.
- D. A resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the sale of that property to be included in the State of Montana surplus property auction (vehicles & equipment). **Resolution #19272**

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 D on the consent agenda. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

- A. Anne Pichette - Community Youth Advisory Council (CYAC) Coordinator

Community Youth Advisory Council Coordinator Anne Pichette reported the CYAC is currently recruiting for membership; applications are due by October 7, 2005. Ms. Pichette invited the community to attend the September 20, 2005 meeting to learn more about the council.

Commissioner Cartwright noted he spoke with a concerned citizen who will be organizing a petition to be submitted to the city, to request the development of a plan to deal with deer problems inside the city limits.

In addition, he has received some complaints about dead trees around the city. When the Commission reviews the capital plan this year he'd like to make sure the Parks Department is provided with adequate resources to ensure trees in the area can be maintained.

Commissioner Cartwright added the Lower Tenmile Watershed Group will be holding a meeting regarding the extension of city sewer services to the valley on September 15, 2005, at 6:30pm at Spring Meadow Resources.

Commissioner Parriman urged people to attend Carroll College's homecoming game this Saturday, September 17, 2005 and also the Helena Brewers upcoming playoff games.

Commissioner Oitzinger spoke of attending the reunion of the Constitutional Delegates from the State of Montana over the past weekend and expressed her admiration for the work the delegates

performed. She also congratulated the Capital High women's golf team on their recent win over Missoula.

Commissioner Pouliot noted the recent addition of artwork to the Commission Chambers looks very nice. City Manager Burton explained the paintings are on loan from Mr. Louis Archambault and depict the journey of Lewis and Clark.

**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. Marty Crennen, Medal of Honor Award from AIA

City Manager Burton invited Mike Dowling, of Dowling Architecture, to speak about the American Institute of Architects award given to retired Architect and current City Plans Examiner, Marty Crennen. Mr. Dowling explained the award and congratulated Mr. Crennen.

Mr. Crennen thanked the Commission for recognizing his accomplishment.

Commissioner Parriman read a letter from Joe Campeau praising Mr. Crennen for his achievement.

B. Conclusion of IBEW Local 233 labor negotiations

City Manager Burton introduced Salty Payne to speak of the successful negotiations between the City of Helena and IBEW local 233, representing the Water Treatment Plant Operators.

Human Resource Director Salty Payne reported negotiations began in April 2003, following the initial recognition of the bargaining unit by the city. Negotiations concluded with the ratification of the original agreement on August 4, 2005. The key items resolved were listed in the staff report included in the Commission packet. He welcomed the IBEW into the city family.

Keith Allen, representing IBEW local 233, thanked city staff for working through the contract to resolve issues between the two parties and spoke in support of the union employees.

Mayor Smith stated the city will have a productive, mutually beneficial relationship with the IBEW. Commissioner Oitzinger stated she is satisfied with the outcome of the bargaining.

C. Hurricane relief donation

City Manager Burton explained by charter, if the Commission concurs to spend contingency funds they can be made available. He asked for commission concurrence to donate \$30,000 to the Hurricane Katrina relief fund.

Commissioners Cartwright, Oitzinger and Pouliot stated they support the donation. Commissioner Pouliot noted the Rotary Club would be matching donated funds at 50%.

Commissioner Parriman stated he does support making a donation; however, \$30,000 seems very large. He will not oppose the donation.

City Manager Burton stated he will proceed with the donation and noted City Attorney Nielsen has written a legal opinion on the issue which will be distributed to the Commission.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL
No report was given.

**Resolutions of
Intention to annex-
Bradford Addition**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX .43 ACRES OF LAND AND ADJACENT RIGHTS OF WAY; LEGALLY DESCRIBED AS LOTS 1, 2 & 3 IN BLOCK 186 OF THE BRADFORD ADDITION, IN LEWIS & CLARK COUNTY, MONTANA; GENERALLY LOCATED EAST OF LAUREL STREET AND NORTH OF UNIVERSITY; AND TO ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

Community Development Project Manager Debra LaFountaine reported this property is currently undeveloped. The applicant seeks annexation to enable connections to City utilities at some future date when the applicant develops the lot. The property is contiguous to the City limits. The proposed annexation would create a wholly surrounded property.

A completed application for annexation has been received from Sue Hanson, owner of the property. The City Commission pre-zoned this property R-2 (Single Family Residential) District in Ordinance No. 2975 dated September 8, 2003.

Annexation by Petition is proposed (§ 7-2-4601 MCA). Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

§ 7-2-4610 MCA specifies that City Service must either be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with § 7-2-4736 MCA, which concerns the extension of City garbage services to newly annexed areas.

Water and sewer service is available in adjacent streets. Sanitary sewer is available and fronts University Street. A 4-inch water main is in Laurel Street and a 24-inch water main is in University Street. No extension is necessary.

These are undeveloped lots without any sidewalk, curb & gutter or paved streets.

In compliance with § 7-2-11 MCA the full width of the public rights of way, which are adjacent to the property being annexed, will also be included in the annexation.

Ms. LaFountaine stated the proposed annexation is subject to the following conditions:

Infrastructure: The applicant must install infrastructure improvements as required by the City and to City standards, including paved streets, curb, gutter, and sidewalks, or enter into a development agreement acceptable to the City of Helena that defines responsibility for installation or deferment of the improvements.

Review of new construction: For all construction commenced subsequent to the adoption of this resolution, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, and Uniform Fire Code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the Resolution of Annexation.

Completion of Conditions: The applicant shall notify City Planning in writing upon completion of the conditions for approval of annexation. If the conditions are not completed within one (1) year of the date of approval of this Resolution of Intention, the City is under no obligation to annex the property and may discontinue any City services being provided to the property.

Ms. LaFontaine recommended approval of the resolution of intention to annex and stated annexation of the private property is consistent with city policy, and consistent with the policy of annexing properties contiguous with city boundaries.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Parriman moved approval for a resolution of intention to annex .43 acres of land, legally described as Lots 1, 2 & 3 in Block 186 of the Bradford Addition, in Lewis & Clark County, Montana; generally located east of Laurel Street and North of University; generally located generally located east of Laurel Street and North of University; including full width of the adjacent rights-of-way and establish conditions for annexation per the resolution.
Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Resolution #19273**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX .376 ACRES OF LAND AND ADJACENT RIGHTS OF WAY; LEGALLY DESCRIBED AS LOT 1-B IN BLOCK 188 OF THE BRADFORD ADDITION, IN LEWIS & CLARK COUNTY, MONTANA; GENERALLY LOCATED EAST OF GLENDALE STREET AND NORTH OF LEGRANDE CANNON BOULEVARD AND TO ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

Community Development Project Manager Debra LaFontaine reported this property is currently undeveloped. The applicant owns property to the north of the subject property. The property to the north is inside the City Limits and is developed with two single-family homes. The applicant is in the process of requesting that the County abandon the alley that is directly north of the subject property. The applicant intends to do a plat amendment aggregating three lots creating two lots. The applicant will be incorporating the land area into the two existing developed lots north of the subject property. The property is contiguous to the City limits.

A completed application for annexation has been received from Jerry Hamlin, owner of the property. The City Commission pre-zoned this property R-2 (Single Family Residential) District in Ordinance No. 2975 dated September 8, 2003.

Annexation by Petition is proposed (§7-2-4601 MCA). Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

§7-2-4610 MCA specifies that City service must either be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with §7-2-4736 MCA, which concerns the extension of City garbage services to newly annexed areas.

Water and sewer service is available in adjacent streets. Sanitary sewer is available and fronts Glendale Street. Water service is available in Glendale Street. No extension is necessary. The applicant intends to combine this lot into two existing lots 8A and 6A (located inside the City limits). These two lots have single-family residences on them and are connected to City services.

These are undeveloped lots without any sidewalk, curb & gutter or paved streets. In compliance with § 7-2-11 MCA the full width of the public rights of way, which are adjacent to the property being annexed will also be included in the annexation. This includes part of Glendale Street to the west, Le Grande Cannon to the south, and the alley to the north.

The following conditions are required for annexation:

Infrastructure: The applicant must install infrastructure improvements as required by the City and to City standards, including paved street, curb, gutter, and sidewalks, or enter into a development agreement acceptable to the City of Helena that defines responsibility for installation or deferment of the improvements.

Review of new construction: For all construction commenced subsequent to the adoption of this resolution, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, and fire code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Taxes and Assessments: Taxes and assessments shall be paid and current at the time of filing the Resolution of Annexation.

Completion of Conditions: The applicant shall notify City Planning in writing upon completion of the conditions for approval of annexation. If the conditions are not completed within one (1) year of the date of approval of this Resolution of Intention, the City is under no obligation to annex the property and may discontinue any City services being provided to the property.

Ms. LaFontaine recommended approval of the resolution of intention to annex and stated annexation of the subject private property is consistent with city policy, and consistent with the policy of annexing properties contiguous with city boundaries.

Commission comment

Commissioner Parriman asked if the applicant would be developing the lots in the future? Ms. LaFontaine stated the applicant has indicated the property would remain as open space.

Public comment

Mayor Smith called for public comment.

Jerry Hamlin, applicant, spoke in support of the resolution of intention to annex.

Motion

Commissioner Oitzinger moved approval for a resolution of intention to annex .376 acres of land, legally described as Lots 1-B in Block 188 of the Bradford Addition, in Lewis & Clark County, Montana; generally located east of Glendale Street and North of LeGrande Cannon Blvd. and to establish conditions for annexation per the resolution. Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution #19274**

***Annexation-
Northgate Meadows
Subdivision
Phase I and II***

CONSIDER A RESOLUTION ANNEXING PHASE I AND II OF THE NORTHGATE MEADOWS MAJOR SUBDIVISION AND THAT PORTION OF GREEN MEADOW DRIVE ADJACENT THERETO; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF GREEN MEADOW DRIVE.

Staff Report

City Planner Belinda Waters reported Hamlin Construction Co., Inc. is proposing to complete the annexation for the Northgate Meadows Major Subdivision. Completing this annexation is a prerequisite to enabling the City to approve the Northgate Meadows subdivision final plat.

On November 22, 2004, the City Commission established conditions to annexation of the Northgate Meadows Subdivision (Res. #19176), and established pre-zoning designations for the properties (Ord. #3008). On that same date, the Commission conditionally approved the Northgate Meadows major subdivision preliminary plat creating 89 residential lots.

Conditions for annexation include the following:

Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the resolution of annexation.

Review of new construction: For all construction commenced prior to annexation, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, and codes in effect for building and fire code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Final Plat: Applicants must submit the final plat of the subdivision to the City Commission for approval prior to filing the Resolution of Annexation.

Completion of Conditions: The applicant must notify City Planning in writing upon completion of the conditions for approval of annexation, which must be on or before the date of completion of conditions for subdivision of this property and is subject to the same time limitations. If the conditions are not completed within that time frame, the City is under no obligation to annex the property and may discontinue any City services, including water and sewer.

The conditions of annexation have been fulfilled and all procedural and due process requirements have been completed.

Annexation has been requested by the applicant and is recommended by staff.

For annexation, 7-2-4211, MCA, requires that 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. Therefore, this annexation includes that portion of Green Meadow Drive adjacent to the subdivision to the west.

Ms. Waters recommended approval of the annexation of Phase I and II of the Northgate Meadows Major Subdivision and stated the proposed annexation of private property is consistent with city policy, and consistent with the policy of annexing properties served by city infrastructure.

Commission comment Commissioner Parriman asked if the developer is responsible for improvements to Green Meadow Drive? City Manager Burton explained Green Meadow Drive is a state secondary road; although it's being annexed it is still under state jurisdiction.

Commissioner Parriman asked for clarification of the amount of parkland included in the subdivision. Ms. Waters explained the applicant met the requirement with a combination of parkland and cash donation. The cash will be earmarked for development of the subject parkland.

Commissioner Cartwright asked for an update of the extension of Benton Avenue. Ms. Waters replied the city is still working towards obtaining the needed right-of-way. City Manager Burton added staff has encountered some difficulty obtaining an appraisal due to the busy housing market. Once that occurs, further discussion can be held with the affected property owners.

Commissioner Pouliot stated he believes Crystal Springs Subdivision should not have been annexed into the city until the funding for the extension of Benton was worked through.

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

Motion **Commissioner Pouliot moved approval for a resolution annexing Phase I and II of the Northgate Meadows Major Subdivision and that portion of Green Meadow Drive adjacent thereof into the City of Helena, for property legally described in the attached resolution of annexation.** Commissioner Parriman seconded the motion. Motion carried 4-1, with Commissioner Cartwright voting no. **Resolution #19275**

***Final Plat-
Northgate Meadows
Subdivision
Phase I & II*** CONSIDER THE FINAL PLAT FOR PHASE I AND II OF THE NORTHGATE MEADOWS MAJOR SUBDIVISION; FOR PROPERTY GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF GREEN MEADOW DRIVE.

Staff Report City Planner Belinda Waters reported the applicant is requesting approval of the final plat for the Northgate Meadows major subdivision creating 89 residential lots from 28.81 acres. On November 22, 2004, the City Commission gave preliminary plat approval subject to the conditions stated in the Findings of Fact and listed on pages two and four of this transmittal memo. All the conditions of the preliminary plat have been met or are financially guaranteed.

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 an 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 the final plat.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Pouliot moved final plat approval for Phase I and II of the Northgate Meadows Major Subdivision; generally located north of Custer Avenue and east of Green Meadow Drive. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Resolutions of Intention to annex-Nistler Property

CONSIDER A RESOLUTION OF INTENTION TO ANNEX A PORTION OF TRACT B-1 OF COS #535417/B; GENERALLY LOCATED NORTH OF SONOMA DRIVE AND SOUTH OF COLONIAL DRIVE AND INTERSTATE 15, AND ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

City Planner Belinda Waters reported on September 12, 2005, the City Commission is scheduled to consider pre-zoning and preliminary plat approval for the proposed amended plat of the Nob Hill Subdivision Phase II and III and Tract B-1 of COS #535417/B. The applicants have also applied for annexation to the City of Helena. This staff report covers the annexation portion of the proposal, and proposes conditions for annexation. The subject property is adjacent to existing City limits and the proposed annexation would not create any additional wholly surrounded areas.

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

Annexation is proposed to be completed under the petition method, which is detailed in state law under MCA §7-2-4601 et seq. In this case, all affected property owners have requested annexation. Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits. After the governing body approves the petition, staff will prepare a resolution providing for the annexation for the Commission's consideration.

MCA §7-2-4610 specifies that City services may be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with MCA §7-2-4736, which concerns the extension of City garbage services to newly annexed areas. Annexation is linked to the subdivision process under City Codes (6-5-4), which require that properties be annexed before they can receive City utility services.

On Tuesday, August 9, 2005, the Helena Zoning Commission unanimously recommended approval of the adoption of an ordinance for a pre-zoning designation prior to annexation to R-O (Residential-Office) District for this property.

The following conditions to annexation are proposed:

Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.

Review of new construction: For all construction commenced prior to annexation, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, currently adopted edition of the building code and fire code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Any residential construction work following passage of this resolution would be undertaken in anticipation of annexation. Therefore, any construction prior to annexation should be completed in conformance with city requirements, including zoning, building, public works, and fire codes. A condition is included to ensure that any further building prior to annexation would be reviewed by the City for conformance with its zoning and infrastructure requirements.

Final Plat: The conditions of the preliminary plat approval must be met prior to annexation. Annexation of the subject property is not effective until the filing the final plat for the proposed subdivision with the Clerk and Recorder.

Completion of Conditions: The applicant must notify City Planning in writing upon completion of the conditions for approval of annexation, which must be on or before the date of completion of conditions for subdivision of this property and is subject to the same time limitations. If the conditions are not completed within that time frame, the City is under no obligation to annex the property and may discontinue any City services, including water and sewer.

Ms. Waters recommended approval of the annexation and noted annexation of the private property is consistent with city policy, and consistent with the policy of annexing properties served by city infrastructure.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Pouliot moved approval for a resolution of intention to annex .44 acres of land generally located north of Sonoma Drive and south of Colonial Drive and Interstate 15; legally described as two portions of Tract B-1 of COS #535417/B, Lewis and Clark County, Montana, and establish conditions for annexation per the resolution. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19276**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX A PORTION OF TRACT B-1 OF COS #535417/B; GENERALLY LOCATED NORTH OF SADDLE DRIVE, SOUTH OF TRACY DRIVE, AND EAST OF BELT VIEW DRIVE, AND ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

City Planner Belinda Waters reported the applicant has applied for annexation to the City of Helena. On September 12, 2005, the City Commission is scheduled to consider pre-zoning of this property as well. This staff report covers the annexation portion of the proposal and proposed conditions for annexation. The subject property is adjacent to existing City limits and the proposed annexation would not create any additional wholly surrounded areas. When a proposed subdivision is also proposed to be annexed to a municipality, state subdivision laws (MCA §76-3-601, 605) direct the city government to coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible, including joint hearings on preliminary plat and annexation. The annexation process is initiated by a resolution of intention to annex. The function of the resolution is to establish any conditions that must be met before annexation can be completed, and to coordinate the completion of annexation with the subdivision to minimize the duplication of requirements.

Annexation is proposed to be completed under the petition method, which is detailed in state law under MCA §7-2-4601 et seq. In this case, all affected property owners have requested annexation. Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits. After the governing body approves the petition, staff will prepare a resolution providing for the annexation for the Commission's consideration.

MCA §7-2-4610 specifies that City services may be provided (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with MCA §7-2-4736, which concerns the extension of City garbage services to newly annexed areas. Annexation is linked to the subdivision process under City Codes (6-5-4), which require that properties be annexed before they can receive City utility services.

On Tuesday, August 9, 2005, the Helena Zoning Commission unanimously recommended approval of the adoption of an ordinance for a pre-zoning designation prior to annexation to R-O (Residential-Office) District for this property.

The following conditions for annexation are proposed:

Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.

Review of new construction: For all construction commenced prior to annexation, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, currently adopted edition of the building code and fire code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Any residential construction work following passage of this resolution would be undertaken in anticipation of annexation. Therefore, any construction prior to annexation should be completed in conformance with city requirements, including zoning, building, public works, and fire codes. A condition is included to ensure that any further building prior to annexation would be reviewed by the City for conformance with its zoning and infrastructure requirements.

Final Plat: The conditions of the preliminary plat approval must be met prior to annexation. Annexation of the subject property is not effective until the filing of the final plat for the proposed subdivision with the Clerk and Recorder.

Completion of Conditions: The applicant must notify City Planning in writing upon completion of the conditions for approval of annexation, which must be on or before the date of completion of conditions for subdivision of this property and is subject to the same time limitations. If the conditions are not completed within that time frame, the City is under no obligation to annex the property and may discontinue any City services, including water and sewer.

Ms. Waters recommended approval of the annexation and stated annexation of the private property is consistent with city policy, and consistent with the policy of annexing properties served by city infrastructure.

Commission comment

Mayor Smith asked if there would be a new trail access to parkland located south of the subject property? Ms. Waters replied no, but the property owners might be willing to work with staff to provide a trail easement to Nob Hill. Mayor Smith asked what the current access is? Ms. Waters indicated access can be obtained off Saddle Drive and through the east side of Nob Hill Subdivision.

Commissioner Cartwright expressed his concern over future connectivity of the area. City Manager Burton added the property is currently private and will remain private with approval of the resolution of intention.

Public comment

Mayor Smith called for public comment.

Jeff Larson, 3530 Centennial Drive, representing the applicant; spoke in support of the annexation and indicated the applicant would be willing to negotiate regarding trail access.

Discussion

Mayor Smith asked Mr. Larson if Beltview Drive would be extended into the proposed development? Mr. Larson concurred and stated Beltview Drive would be a private street just like the rest of the streets in the development area.

Motion

Commissioner Parriman moved approval for a resolution of intention to annex 19.84 acres of land generally located north of Saddle Drive, south of Tracy Drive, and east of Belt View Drive; legally described as a portion of Tract B-1 of COS #535417/B, Lewis and Clark County, Montana, and establish conditions for annexation per the resolution. Commissioner Pouliot seconded the motion.

Commissioner Cartwright reiterated he would like staff to still be able to negotiate trail access for the property if the resolution of intention to annex is approved tonight.

Amendment

Commissioner Cartwright moved to include the condition that the property owner would provide appropriate connectivity to the adjacent parkland.

Commissioner Parriman stated he is reluctant to support the proposed amendment. He trusts that staff can work with the applicant, without needing a formal amendment, to produce connectivity in the area.

Commissioner Cartwright withdrew the amendment, and urged staff to keep connectivity in mind when working with developers.

Vote

Motion carried 4-1, with Mayor Smith voting no. **Resolution #19277**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE 3039, AMENDING SECTION 7-4-2 OF THE HELENA CITY CODE TO CHANGE THE PENALTY FOR NON-COMPLIANCE FROM A MISDEMEANOR TO A MUNICIPAL INFRACTION.

Staff Report

City Attorney David Nielsen reported section 7-4-2 of the Helena City Code sets forth the standards for construction of sidewalks and boulevards on rights-of-way by persons owning adjacent property. A violation of this section is punishable under §1-3-1 of the Helena City Code as a misdemeanor with a maximum fine of \$500 and/or incarceration in the Lewis & Clark Detention Center for a period not to exceed six months. Thus, a property owner who does not install a boulevard in compliance with the standards of §7-4-2 of the Helena city code, which is grass and trees unless a variance is granted, is subject to prosecution as a misdemeanor and is liable for the expenses of restoration of the boulevard to grass and trees.

The proposal is to amend §7-4-2 of the Helena City Code to make a violation of that section a municipal infraction and retain the liability of property owners to restore noncompliant boulevards.

In order to de-criminalize violations of the sidewalk and boulevard standards, the offense would be subject to sanctions as a municipal infraction, which is a civil offense, not criminal. The liability on the owner for restoration of the boulevard would be retained.

With the offense a civil offense rather than criminal there is less reluctance to enforce the sidewalk and boulevard standards. By using a municipal infraction as the enforcement remedy the owner is not made a criminal and the procedure for enforcement is simpler for the City.

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 Cartwright moved approval for final passage of Ordinance No. 3039 amending Section 7-4-2 of the Helena City

Code to make the penalty for violation a municipal infraction.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3039**

B. CONSIDER THE PRELIMINARY PLAT FOR THE AMENDED PLAT OF THE NOB HILL MAJOR SUBDIVISION, PHASE II AND III, AND TRACT B-1 OF COS #535417/B AGGREGATING 9 LOTS FROM 62.23 ACRES FOR PROPERTY GENERALLY LOCATED NORTH OF SONOMA DRIVE, SOUTH OF COLONIAL DRIVE AND I-15.

Staff Report

City Planner Belinda Waters reported the applicant is requesting review of a major subdivision/preliminary plat for the proposed Amended Plat of the Nob Hill Major Subdivision, Phase II and III, and a portion of Tract B-1 of COS#535417/B to aggregate eight existing lots located in the Nob Hill Subdivision (Lots 20 through 27, Block 13 of the Nob Hill Subdivision Phase II and III) with a portion of Tract B-1 of COS #535417/B located in the county, that were created by an amended plat. This results in the creation of Lots 20-A through 26-A, Block 13 of the Amended Nob Hill Subdivision and an alley dedication. No increase in lots will occur, the existing lots will be marginally increased in size.

On August 23, 2005, the Planning Board recommended approval of the proposed subdivision preliminary plat (5:0 vote) subject to the conditions listed in the staff report.

The proposed subdivision appears to conform to the goals, objectives, and policies of the 2001 Growth Policy. Ms. Waters recommended approval of the preliminary plat.

Commission comment

Commissioner Parriman referred to Lot 8, which will remain in the county, and asked what the future of the property is? Ms. Waters explained the applicant would probably request annexation in the future, once development is determined.

Public Testimony

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

Jeff Larson, 3530 Centennial Drive, representing the applicant; spoke in support of preliminary plat approval.

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

Motion

Commissioner Pouliot moved conditional approval of the preliminary plat for the Amended Plat of the Nob Hill Major Subdivision, Phase II and III, and Tract B-1 of COS #535417/B aggregating 9 lots from 62.23 acres. Property is legally described as Lots 20 – 27, Block 13, Nob Hill Major Subdivision, Phase II and III, and Tract B-1 of COS #535417/B, located in Section 33, T10N, R3W, Lewis and Clark County, Montana, and is generally located north of Sonoma Drive and southwest of Colonial Drive and Interstate I-15. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR PRE-ZONING PRIOR TO ANNEXATION TO R-O (RESIDENTIAL-OFFICE) FOR .44 ACRES OF LAND, BEING TWO PORTIONS OF TRACT B-1 OF COS #535417/B, LEWIS & CLARK COUNTY; GENERALLY LOCATED NORTH OF SONOMA DRIVE AND SOUTH OF COLONIAL DRIVE AND INTERSTATE 15.

Staff Report

City Planner Belinda Waters reported the proposal is for a pre-zoning designation for property currently located in the county. The applicant proposes to pre-zone to R-O (Residential-Office) Density .44acres. The applicant is also proposing to annex this property in to the City. An amended plat of the subject property is being proposed.

On Tuesday, August 9, 2005, the Helena Zoning Commission unanimously recommended approval (3:0) vote for the adoption of an Ordinance for pre-zoning to R-O (Residential-Office) District for .44 acres for property legally described as two portions of Tract B-1 of COS #535417/B, Section 33, T10N, R3W, Lewis and Clark County, Montana.

Ms. Waters recommended approval and stated this property is located adjacent to the City limits. The Growth Policy promotes more intense and efficient use of land and facilities. Infrastructure (water, sewer, storm water drainage and streets) to serve the area is already addressed in the Nob Hill subdivision, which represents an efficient use of land, infrastructure, energy and other resources in the future and the utilization of City services that would facilitate compliance with City regulations.

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 for first passage of an Ordinance for a pre-zoning designation prior to annexation to R-O (Residential-Office) District for .44 acres; generally located north of Sonoma Drive and south of Colonial Drive and Interstate I-15 and as legally described in the Ordinance. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance #3040**

D. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A PRE-ZONING DESIGNATION PRIOR TO ANNEXATION TO R-O (RESIDENTIAL-OFFICE) FOR 19.84 ACRES FOR PROPERTY LEGALLY DESCRIBED AS A PORTION OF TRACT B-1 OF COS #535417/B, LEWIS & CLARK COUNTY; GENERALLY LOCATED NORTH OF SADDLE DRIVE, SOUTH OF TRACY DRIVE, AND EAST OF BELT VIEW DRIVE.

Staff Report

City Planner Belinda Waters reported the proposal is for a pre-zoning designation for property currently located in the county. The applicants propose to pre-zone to R-O (Residential-Office) District 19.84 acres. The applicant is also proposing to annex this property in to the City.

On Tuesday, August 9, 2005, the Helena Zoning Commission unanimously recommended approval (3:0) vote for the adoption of an Ordinance for pre-zoning to R-O (Residential-Office) District for 19.84

acres being a portion of Tract B-1 of COS #535417/B, Section 33, T10N, R3W, Lewis & Clark County, Montana.

Ms. Waters recommended approval and stated this property is located adjacent to the City limits. The Growth Policy promotes more intense and efficient use of land and facilities. Infrastructure (water, sewer, storm water drainage and streets) to serve the area is already addressed in the Nob Hill subdivision, which represents an efficient use of land, infrastructure, energy and other resources in the future and the utilization of City services that would facilitate compliance with City regulations.

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

Discussion was held regarding ex-parte communications involving land use issues.

Motion

Commissioner Parriman moved approval for first passage of an Ordinance for a pre-zoning designation prior to annexation to R-O (Residential-Office) District for 19.84 acres; generally located north of Saddle Drive, south of Tracy Drive, and east of Belt View Drive as legally described in the Ordinance. Commissioner Cartwright seconded the motion. All voted aye, motion carried.
Ordinance #3041

E. CONSIDER PRELIMINARY PLAT FOR THE LOWES HIW SUBDIVISION CREATING TWO LOTS FROM A 32.12-ACRE TRACT FOR COMMERCIAL DEVELOPMENT; GENERALLY LOCATED NORTH OF CUSTER AVENUE, WEST OF I-15, AND EAST OF THE PROPOSED SANDERS STREET.

Staff Report

City Planner Belinda Waters reported the applicant proposes that the existing 32.12-acre tract be subdivided into two lots. The Lowe's Home Improvement Warehouse will be located on proposed Lot 1 consisting of 14.32 acres; the proposed building would contain 134,563 square feet plus a 31,659 square foot garden center. Proposed Lot 2 will consist of 17.80 acres, and it is anticipated that a portion of this lot will be needed for the future construction of an interchange at Custer Avenue.

Ms. Waters noted a change in the Findings of Fact:

Effects on Local Services

F. ~~The applicant must enter into a development agreement~~ No development can occur on Lot 2 of the Lowe's HIW Minor Subdivision until the property owner enters into a development agreement with the Montana Department of Transportation regarding the Custer Avenue interchange right-of-way.

The reason for the proposed amendment is because Lowe's is not nor will be the property owner of Lot 2.

Ms. Waters recommended the preliminary plat and stated the 2001 Helena Growth Policy promotes more intense and efficient use of land and facilities. The proposed commercial business will provide

efficient use of the property by utilizing a vacant tract in the City with in-fill development. Infrastructure (water, sewer, stormwater drainage, and streets) to serve the proposed use is adjacent to the site along Custer Avenue.

Commission comment Commissioner Cartwright reiterated the need for connectivity in new developments.

Commissioner Oitzinger asked how the Lowe's subdivision would impact stormwater problems in the area? City Engineer Ryan Leland stated no final plans have been submitted yet, but staff is working with the developer to ensure this development won't increase problems in the area. The applicant is proposing to install a 42-inch stormwater drainpipe under Sanders Street that would bring any excess water to the designated drainfield.

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

Anthony Farmand, Lowe's Site Development Manager, gave the history of Lowe's and spoke in support of the preliminary plat. He stated there would be connectivity between the two lots.

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

Motion Commissioner Cartwright moved conditional preliminary plat approval for the Lowe's HIW Minor Subdivision creating two lots from 32.12 acres located in a B-2 (General Commercial) District, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact.

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

F. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF IN REFERENCE TO THAT PROPERTY KNOWN AS 13, 15, AND 21 NORTH RODNEY STREET IN HELENA MONTANA, FOR A ZONE CHANGE FROM R-3 (MEDIUM-DENSITY RESIDENTIAL) TO B-1 (NEIGHBORHOOD BUSINESS) DISTRICT.

Staff Report City Planner Kathy Macefield reported on Tuesday, August 9, 2005, the Helena Zoning Commission recommended approval (2:1 vote) for the adoption of an ordinance for a zone change from R-3 (Medium-Density Residential) to B-1 (Neighborhood Business) District. The properties include garages (21 North Rodney), a former single-family residence that is proposed to be used for personal services (15 North Rodney), and a single-family residence (13 North Rodney). The Helena Zoning Ordinance specifically identifies offices as a separate use from personal services. Single-family residences are a permitted use in both the R-3 and B-1 Districts. No public comment has been received about this proposal.

The Rodney Street area located between 6th Avenue and Broadway currently contains some mixed uses. The proposed zone change would allow a greater diversity in land uses for these three properties to improve the opportunity for encouraging a mixed use neighborhood. Ms. Macefield reiterated the Zoning Commission recommended approval for the zone change.

Public Testimony

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

Toni Pierson, 5745 Glass Drive, property owner, spoke in support of the zone change.

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

Motion

Commissioner Pouliot moved approval for first passage of an ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to those multiple properties, for a zone change from R-3 (Medium-Density Residential) to B-1 (Neighborhood Business) District as legally described in the ordinance. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance #3042**

**Public
Communications**

PUBLIC COMMUNICATIONS

**Meetings of
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is September 21, 2005 and the next Commission Meeting is September 26, 2005. Commissioner Oitzinger announced there would be a film shown about a box store employer at the Labor Temple, Tuesday, September 13, 2005.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:30 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission