

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
October 17, 2005  
6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, October 17, 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, Parriman, and Pouliot were present. Commissioner Cartwright was excused. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Teresa Klotz representing the Helena Citizens Council and 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.

***Minutes***

The minutes of the regular City Commission meeting of September 26, 2005, were approved as submitted.

***Appointments***

APPOINTMENTS:

- A. Business Improvement District/Helena Parking Commission
- B. Golf Course Advisory Board
- C. City-County Planning Board

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

**Business Improvement District/Helena Parking Commission** – Reappointment of David Duensing – 2<sup>nd</sup> term expires October 31, 2009

**Golf Course Advisory Board** –Reappointment of Mike Mundt – 2<sup>nd</sup> term expires October 30, 2008

**City-County Planning Board** –Appointment of Joel E. Cleary - 1<sup>st</sup> term expires September 1, 2008

***Public comment***

Mayor Smith called for public comment, none was received.

***Motion***

**Commissioner Oitzinger moved approval of the appointments of David Duensing to the BID/HPC; Mike Mundt to the Golf Course Advisory Board, and Joel E. Cleary to the City-County Planning Board.** Commissioner Pouliot seconded the motion. All voted aye, motion carried.

***Consent Agenda***

CONSENT AGENDA:

- A. Claims
- B. Utility bill insert - Montana Shares
- C. Utility bill insert - Holter Museum of Art
- D. Acceptance of a \$7,000 planning grant on behalf of the Montana Youth Homes from the Community Development Block Grant Program, Montana Department of Commerce, amending the budget to expend the grant funds, entering into a contract with

the Department of Commerce, and authorizing the City Manager to sign the contracts

- E. A one year extension for final plat approval for the Overlook Estates Subdivision; generally located south of Highway 12 and west of Granite Street

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

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

- A. U.S.S. Helena Convention – former Mayor Russ Ritter

Mayor Smith asked former Mayor Russ Ritter to report on the recent U.S.S. Helena Convention in Las Vegas, NV. Mayor Ritter gave the history of the U.S.S. Helena and an overview of the convention. The Commission thanked Mayor Ritter for attending the conference.

Commissioner Oitzinger spoke of attending the Helena Fire Department open house and expressed how important fire safety is.

**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. Wireless Network project

City Manager Burton asked Information Technology & Services Director Art Pembroke to present the City of Helena's Wireless Network Project. Director Pembroke gave a power point presentation detailing the history and progress of the project. Director Pembroke recognized Steve Utick and Chris Sinrud for initiating and completing this project.

Commissioner Parriman commended the joint effort between the City and County that led to the success of the project.

- B. Acceptance of revised and updated employee Personnel Policy Handbook dated October 2005

City Manager Burton asked Human Resources Director Salty Payne to report on recent revisions to City Personnel Policies. Mr. Payne reported certain language in the policies required updating to meet requirements to meet continuing coverage of Montana Municipal Insurance Authority's Employment Practices Liability Coverage. Mr. Payne stated staff has revised the language to in order to insure the city is eligible for continues coverage and referred the Commission to the updated policy handbook.

**Motion**

**Commissioner Pouliot moved to accept the revised and updated language contained in the city of Helena's personnel policy**

**handbook dated October 2005, as recommended by the City**

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

C. Certificate of Achievement for Excellence in Financial Reporting (CAFR) for Fiscal Year Ended June 20, 2004

City Manager Burton asked Administrative Services Director Tim Magee to explain the CAFR Award for Fiscal Year Ended June 20, 2004. Director Magee explained the award and commended accounting staff City Controller Glenn Jorgenson and Accounting Supervisor Brandi Pierson for their work. Mayor Smith noted this is the 17<sup>th</sup> consecutive year the city has received the award and praised city staff on their performance. Mr. Jorgenson recognized management and the entire accounting department for their hard work.

City Manager Burton spoke of discussion at the September 26, 2005 Commission meeting regarding timeliness of permit issuance in the City Building Department. He reported a meeting on the issues had been held and it was very productive, remedies to the identified problems were formed. He then outlined the new procedures that came out of the discussions. Commissioner Parriman concurred it was a productive meeting. Manager Burton noted the recommendation to hire a new an additional inspector will move forward.

***Report from the  
Helena Citizens  
Council***

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Teresa Klotz reported the HCC will be holding a town hall meeting regarding methamphetamine use in the community on Tuesday, October 18, 2005 at the Civic Center. She also gave an overview of the HCC's recent media campaign designed to increase awareness of the council in the community.

***Real Estate Donation***

CONSIDER A REAL ESTATE DONATION CONTRACT WITH BNSF RAILWAY COMPANY.

Staff Report

Parks and Recreation Director Randy Lilje reported in February 2000 the City of Helena became a partner to a Memorandum of Understanding (MOU) with Montana Rail Link, Montana Department of Transportation (MDOT), Montana Power Company, and a number of private property owners along the railroad spur line running from Benton Avenue east to Montana Avenue. Burlington Northern/Santa Fe Railway Company (BNSF) later concurred with the MOU.

The MOU outlined a plan where BNSF would donate the spur line property to the city so that the spur line could be used for parks and trail purposes. In exchange, BNSF would be duly recognized for its donation in the development of Centennial Park. In addition, MDOT would be relieved of the burden to install another bridge over the spur line and instead construct a bicycle/pedestrian tunnel under Last Chance Gulch. Because the private property owners would be giving up rail access to the spur line, it was agreed that they would receive one-half of the spur line right-of-way along their properties.

In 2003 the city further requested consideration by BNSF to donate to the city two other parcels of land for trail and street right-of-way

purposes. One parcel is just east of Joslyn Street and the other is west of Joslyn Street in Section 23.

Mr. Lilje noted the proposed contract will accomplish the goals of the MOU referred to above and recommended approval of the real estate donation.

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

**Motion** Commissioner Parriman moved approval of the Real Estate Donation Contract with BNSF Railway Company. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Discussion Discussion was held regarding moving agenda item 20 H to position A under Public Hearings.

**Motion** Commissioner Oitzinger moved to move agenda item 20 H to position A. Commissioner Pouliot seconded the motion.

Public comment Leonard Walsh, 1229 Hollins Ave, spoke in support of rearranging the agenda.

**Vote** Motion failed 2-2 with Mayor Smith and Commissioner Parriman voting no.

***Parking Garage Lease*** CONSIDER A LEASE AGREEMENT BETWEEN THE CITY OF HELENA AND THE HELENA PARKING COMMISSION FOR THE JACKSON STREET PARKING STRUCTURE.

Staff Report Administrative Services Director Tim Magee reported on June 13, 2005 the City entered into a 20 year, \$100,000 per year, Jackson Street Parking Garage Lease with the Helena Parking Commission (HPC). On August 8, 2005 the City issued \$1.14 million dollars in General Fund Bonds for street, parking ramp, signage, and walking mall construction and/or improvements. Subsequently, the existing Jackson Street Parking Garage Lease revenue was earmarked as the General Fund revenue source, which will be used to repay the General Fund Bonds. The bond payment schedule does not require the full amount of the lease revenue.

Director Magee explained the HPC is a City agency. It is in the best interest of the City to restructure and reduce the lease payments in order to enhance the funding available for major maintenance and capital programs for city parking. He recommended approval of the Jackson Street Parking Garage Lease.

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

**Motion** Commissioner Parriman moved approval of the Jackson Street Parking Garage Lease. Commissioner Pouliot seconded the motion. All voted aye, motion carried.

**Annexation**

CONSIDER A RESOLUTION ANNEXING .44 ACRES OF LAND FROM TWO PORTIONS OF TRACT B-1 AS SHOWN ON COS #535417/B; GENERALLY LOCATED NORTH OF SONOMA DRIVE AND SOUTH OF COLONIAL DRIVE AND INTERSTATE 15.

**Final Plat**

CONSIDER FINAL PLAT APPROVAL FOR THE AMENDED PLAT OF THE NOB HILL SUBDIVISION, LOTS 20-A THROUGH 26-A, BLOCK 13, PHASE II AND III, AND LOT B-1A FOR PROPERTY GENERALLY LOCATED NORTH OF SONOMA DRIVE AND SOUTH OF COLONIAL DRIVE AND INTERSTATE 15.

**Staff Report**

City Planner Belinda Waters reported regarding the proposed annexation, Touchmark Living Centers, Inc. is proposing to complete the annexation for two portions of Tract B-1 of COS #535417/B. Completing this annexation is a prerequisite to enabling the City to approve the amended Nob Hill Subdivision, Lots 20-A through 26-A, Block 13, Phase II and III, and Lot B-1A final plat.

On September 12, 2005, the City Commission established conditions to annexation of this property (Res. #19276), and established a pre-zoning designation for the property (Ord. #3040). Conditions for annexation included 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, 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.

Regarding final plat approval, Ms. Waters reported the applicant is requesting approval of the final plat for the amended subdivision aggregating eight City lots located in the Nob Hill Major Subdivision (Lots 20 through 27, Block 13 of the Nob Hill Subdivision, Phase II and III) with two portions of Tract B-1 of COS #535417/B, located in the county. The eight new lots created will be designated as Lots 20-A through 26-A, Block 13 of the Amended Nob Hill Subdivision and Lot B-1A.

On September 12, 2005, the City Commission gave preliminary plat approval subject to the conditions stated in the Findings of Fact and listed on page three of this transmittal memo. All the conditions of preliminary plat have been met or are financially guaranteed.

Ms. Waters stated the 2001 Helena Growth Policy promotes more intense and efficient use of land and facilities. Streets, water and sanitary sewer are or will be 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.

Public comment

Mayor Smith called for public comment, none was received.

Motion

**Commissioner Pouliot moved approval for a resolution annexing .44 acres of land into the City of Helena for property legally described in the resolution of annexation.** Commissioner Parriman seconded the motion. All voted aye, motion carried.  
**Resolution #19279**

Motion

**Commissioner Pouliot moved final plat approval for the amended plat of the Nob Hill Major Subdivision creating Lots 20-A through 26-A, Block 13, Phase II and III, and Lot B-1A.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

***Preliminary Plat***

CONSIDER A MINOR SUBDIVISION/PRELIMINARY PLAT FOR THE IRVING MINOR SUBDIVISION CREATING 2 LOTS FROM A .49-ACRE TRACT IN A R-2 (SINGLE FAMILY RESIDENTIAL) DISTRICT; GENERALLY LOCATED SOUTH OF CLARKE STREET AND WEST OF HARRISON AVENUE.

Staff Report

City Planner Belinda Waters reported the applicant is requesting approval of a preliminary plat to subdivide a tract of land into two lots that are zoned R-2 (Single Family Residential) District. According to Section 76-3-609, MCA, the requirement to hold a public hearing does not apply for the first minor subdivision from a tract of record.

The applicant proposes that the existing .49-acre tract (21,350 square feet) be subdivided into two lots. Lot 1 will consist of 8,430 square feet and Lot 2 will consist of 12,926 square feet. The property is legally described as Bargain and Sale Deed Book 174, Page 233 in the SE ¼, Section 25, T10N, R4W, Helena, Montana.

Ms. Waters recommended the preliminary plat and added the 2001 Helena Growth Policy promotes more intense and efficient use of land and facilities. The proposed residential use will provide efficient use of the property by utilizing a vacant tract in the City with in-fill

development. Infrastructure (water, sewer, storm water drainage, and streets) to serve the proposed use is adjacent to the site.

**Commission comment** Mayor Smith referred to the steep grade of the property and asked if the applicant would face challenges developing this property to City subdivision standards? Ms. Waters concurred and stated the applicant has been made aware of the conditions for development. Commissioner Parriman spoke of infrastructure problems in the area. Ms. Waters concurred and noted with preliminary plat approval the applicant will be required to bring the infrastructure up to City standards.

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

**Discussion** Commissioner Oitzinger stated she is discouraged by the lack of public interest in this proposed subdivision and doesn't feel comfortable supporting the proposal. Commissioner Pouliot stated he'd like to see the applicant develop the lots to City standards. Commissioner Parriman noted he believes the lack of public comment shows the neighborhood is aware and supportive of the proposed subdivision. Mayor Smith concurred with Commissioner Parriman and also agreed the property was contentious the last time it was under Commission consideration.

**Motion** **Commissioner Oitzinger moved to table the conditional preliminary plat for the Irving Minor Subdivision creating two lots from .49 acres located in a R-2 (Single Family Residential) District, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact.**  
Motion died for lack of a second.

**Motion** **Commissioner Pouliot moved conditional preliminary plat approval for the Irving Minor Subdivision creating two lots from .49 acres located in a R-2 (Single Family Residential) 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. Motion carried 3-1, with Commissioner Oitzinger voting no.

***Resolution of Intention to annex*** CONSIDER A RESOLUTION OF INTENTION TO ANNEX 13.55 ACRES, GENERALLY LOCATED NORTH OF CUSTER AVENUE BETWEEN WASHINGTON STREET AND THE I-15 FRONTAGE ROAD, WITH A CURRENT PROPERTY ADDRESS OF 1822 EAST CUSTER AVENUE.

**Staff Report** City Planner Kathy Macefield reported the applicant has requested rezoning and annexation for the entire 13.55-acre tract as B-2 (General Commercial) District. A summary of development considerations is stated below:

Traffic

The applicant is donating a 100-foot right-of-way (ROW) for the 317-foot long northward extension of Washington Street to the City. This street must be constructed to City minor arterial street standards to the northern end of the development area (approximately 317 feet). The alignment of the northern extension of Washington Street and the Custer Avenue intersection must coincide I-15 Corridor Study, and includes

upgrading the traffic light. The northward extension of Washington Street and the upgraded stoplight may be financially guaranteed. Access onto Custer Avenue must be appropriately designed and constructed to be safe and to minimize vehicular and pedestrian conflicts.

Additionally, the northward extension of Washington Street was originally identified in the 1993 Helena Area Transportation Plan and in the I-15 Transportation Corridor environmental assessment (EA). The EA states, "The east side Frontage Road would be relocated to tie in directly to the North Washington Street/Custer Avenue intersection. ...The wider section of Custer Avenue east of North Montana Avenue to North Washington Street is planned to have curb, gutter and sidewalks." (page 2-50) (See attached illustration) The I-15 corridor EA will be incorporated in the update of the Helena Area Transportation Plan. These plans are an integral part of the development of this property.

#### Water and Sewer

Water and sewer mains are already in place in Custer Avenue to serve the property; a new fire hydrant must be installed with this project prior to issuance of a building permit. An engineered plan for utility extensions, all pretreatment requirements and storm drainage to serve the development must be submitted for review and approval by Public Works Department. The City's water and wastewater service area boundaries will be automatically extended when the property is annexed.

The applicant also plans to extend a water main in the new portion of Washington Street that will serve the proposed development, and will provide a connection for the future development of the rest of the applicant's property.

#### Miscellaneous Requirements

Construction work associated with property requesting annexation is reviewed by the City and must comply with City Code requirements including zoning, building, fire and infrastructure. The property must be annexed prior to issuance of a building permit and no new construction may begin on the property prior to annexation. The recommended condition for timely notification and completion of conditions is intended to provide a reasonable time frame (i.e., one year) for completion of the annexation process.

Annexation would allow the applicant to construct a convenience store and casino in a single 6320 square foot building with six gas pumps and a drive-through carwash for property generally located north of Custer Avenue between Washington Street and the I-15 frontage road with a current address of 1822 East Custer Avenue.

Ms. Macefield stated the property is currently served by City water and sewer, is located adjacent to the City limits, will not create wholly surrounded property, and the taxes are paid and current. The proposed conditions for annexation provide for traffic improvements that are consistent with the City's transportation plans for this area. She recommended approval of the resolution of intention to annex.

Public comment

Mayor Smith called for public comment.

Tom Richardson, attorney for the applicant, spoke in support of the resolution of intention.

- Motion** Commissioner Parriman moved approval for a resolution of intention to annex 13.55 acres for property located at the current address of 1822 East Custer Avenue, as legally described in the resolution and subject to the six conditions stated in that resolution. Commissioner Pouliot seconded the motion.
- Discussion** Commissioner Oitzinger noted the Zoning Commission recommended denial of an additional proposal by the applicant for pre-zoning and a sign variance and stated she would not support the resolution of intention.  
Commissioner Pouliot asked if the proposed casino/gas station would look like the one located in East Helena. Mr. Richardson responded it would include the gas pumps and casino but would have a different style; it would blend into the area very well.
- Vote** Motion carried 3-1, with Commissioner Oitzinger voting no.  
**Resolution #19280**
- Sidewalk variances*** CONSIDER A BOULEVARD VARIANCE FOR HELENA HOUSING AUTHORITY APARTMENTS ON WILDER STREET.
- Staff Report** City Engineer Ryan Leland reported the boulevard grades on the Helena Housing Authority apartments on Wilder Street exceed the 2% city standard. The site was constructed with boulevard grades as steep as 10% in some locations.  
In order to maintain the internal ADA requirements for the apartments and mitigate the safety concerns, the applicant is proposing to add two access stairways and a railing along the sidewalk adjacent to the steepest portion of the boulevard.  
Mr. Leland noted the proposal would improve safety for the existing situation and recommended approval of the variance.
- Commission comment** City Manager Burton explained the situation is unique as the construction is already completed and to return the sidewalks to curbside would be cost prohibitive for the Helena Housing Authority.  
Commissioner Parriman referred to the proposed stairs and stated they would be unusable if a vehicle was parked on the street. Mr. Leland explained there would be no parking in front of the stairs.  
Mayor Smith asked if the sidewalks would be in ADA compliance with the proposed revisions? Mr. Leland concurred.
- Public comment** Mayor Smith called for public comment.  
Ben Tintinger, Mosiac Architecture, explained he was the architect on the subject project and asked the Commission to approve the variance request.  
Vernon Jones, 1300 Hollins, spoke of problems with boulevard sidewalks.
- Motion** Commissioner Parriman moved approval for the boulevard variance for the Helena Housing Authority apartments on Wilder Street. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

CONSIDER A VARIANCE FOR CURBSIDE SIDEWALKS IN THE NOB HILL SUBDIVISION.

Staff Report

City Engineer Ryan Leland reported the Nob Hill Subdivision phase II and III final plat and annexation was approved in May 2005. The developer is currently installing the approved infrastructure.

The developer is requesting a variance for curbside sidewalks along Sonoma Street in the Nob Hill Subdivision because of the terrain along Sonoma Street. Curbside sidewalks would lessen the grades across the lots and reduce the height of the retaining walls or in some cases eliminate the need for retaining walls.

Commission comment

Mayor Smith asked if any similar requests for the interior streets of the subdivision would be coming forward in the future? Mr. Leland replied no.

Public comment

Mayor Smith called for public comment. Bob Peccia, Nob Hill Development, spoke in support of the requested variance.

Motion

**Commissioner Parriman moved approval for a variance for curbside sidewalks for lots 4 through 27 of block 13 and lots 1 through 17 of block 12 of the Nob Hill Subdivision.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

***Water Facilities Plan***

CONSIDER APPROVAL OF THE 2005 WATER FACILITIES PLAN UPDATE.

Staff Report

Public Works Director John Rundquist reported over the course of the last year, staff, with the assistance of HDR Engineering, Inc, have been analyzing Helena's municipal water supply and developing improvement alternatives for anticipated growth and regulatory compliance. Of particular interest with this plan is the appropriate phased upgrade and expansion of the City's Missouri River Water Treatment Plant (MRTP) using federal grant appropriations, and the potential for "reversing the roles" of the MRTP and Tenmile Creek supply to allow future release of maintenance flows for environmental remediation and restoration of aquatic habitat in Tenmile Creek.

The projections for future water demand in the is study were also the basis for the City's water contract renewal with the US Bureau of Reclamation for raw water supply from the Missouri River. The contract renewal was approved in January of this year and assures Helena of an adequate water supply for 40 years and beyond.

The final draft of the plan was delivered to the City Commission at the regular administrative meeting on September 21<sup>st</sup>. Staff is recommending formal approval and acceptance of the Water Facilities Plan Update. Although there is no regulatory requirement in this regard, approval by the City Commission will assist in future grant funding applications and will provide direction for staff in appropriate expenditure of funds. Approval of the plan does not commit the City to funding any particular project. Individual projects will be brought forward for approval through the regular budget process.

Commission comment                    Commissioner Oitzinger stated she trusts staff will continue to be proactive to the emerging challenges of water quality.

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

**Motion**                                    **Commissioner Pouliot moved approval of the 2005 Water Facilities Plan update.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

***Golf Course Fees***                    CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR THE BILL ROBERTS GOLF COURSE FOR THE 2006 SEASON.

Staff Report                              Parks & Recreation Director Randy Lilje reported the Golf Advisory Board has analyzed in detail the operations and capital needs of the golf course and developed a long-term plan for continued improvement. Based on its review, the Golf Advisory Board is recommending the fee structure for the 2006 season. The changes recommended will help continue the high level of maintenance and operation that the golfers have come to expect at Bill Roberts Golf Course and fund the debt service for capital repairs, replacements, and improvements that have been done.

Finally, the Board always considers the golfing market in the Helena area, as well as the region, so that golf at Bill Roberts Golf Course remains affordable to the golfing public while maintaining its high standards.

Director Lilje referred the Commission to the fee schedule and recommended approval of the resolution of intention to establish fees to be charged for the Bill Roberts Golf course for the 2006 Season.

Commission comment                    Commissioner Pouliot asked if visitation to the golf course was anticipated to rise next summer? Director Lilje stated staff is hopeful and will be increasing marketing for the course next year.

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

**Motion**                                    **Commissioner Pouliot moved approval for a resolution of intention to establish fees to be charged for the Bill Roberts Golf Course for the 2006 season and set a public hearing date for October 31, 2005.** Commissioner Parriman seconded the motion. All voted aye, motion carried. **Resolution #19284**

***Public Hearings***                    PUBLIC HEARINGS:

A.            CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 19240 THAT LEVIED AN ASSESSMENT UPON ALL PROPERTY IN THE STORM WATER UTILITY DISTRICT TO DEFRAY THE COST OF MAINTAINING SERVICES IN THE DISTRICT FOR FISCAL YEAR 2006.

Staff Report                              Administrative Services Director Tim Magee reported on June 13, 2005, the City Commission adopted Resolution of Intention No. 19222 and on June 27, 2005 adopted Resolution No. 19240 that levied and assessed a tax upon all property located within the storm water

utility district to help defray the cost of maintaining the services in the district.

Each lot or parcel in the district is assessed based upon the square foot area of the impervious surface. The intent of the resolution is to exempt right-of-ways, publicly owned streets, runways, and taxiways from the storm water utility assessment. The right-of-ways, publicly owned streets, runways, and taxiways have never been included for calculation purposes of the assessment. However, the resolution that annually sets the stormwater utility rates has never excluded these parcels.

The City of Helena has extended a credit to the Helena Regional Airport for tax years 1991-2004. This credit for past improvements implemented by the airport totaled \$205,640.40 and expired after tax year 2004. The square footage of impervious area used for the calculation of the credit was 1,958,480. This impervious area did not include all right-of-ways (ROW), publicly owned streets, runways and taxiways. It is the intent of the proposed resolution to exempt from the stormwater assessment calculations the impervious area that has been exempted from the past assessments and credit calculations.

The City Engineer's office has computed the current impervious area of the Helena Regional Airport. The total impervious area is 5,947,995 sf. With the exclusion of the right-of-ways (ROW), publicly owned streets, runways, and taxiways, the assessable impervious area for the airport is 2,091,667 sf for an assessment of \$18,825. The Montana National Guard buildings adjacent to the airport are exempt from the storm water assessment because they are located on USDA Forest Service property. However, the runways utilized by the Montana National Guard are located on the Helena Regional Airport property and are included in the airport's impervious area.

Director Magee recommended approval of the resolution amending Resolution No. 19240 as the amendment will exclude right-of-ways, publicly owned streets, runways, and taxiways from the Storm Water Utility assessment calculation and resolution for fiscal year 2006.

Public Testimony

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

Ed McHugh, 9 Cloverview Drive, spoke of working with Finance Department staff to clarify the stormwater assessment of McHugh Mobile Home Park. Mr. McHugh asked for confirmation that staff will continue to work with him on this issue.

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

Discussion

City Attorney Nielsen confirmed this resolution would not prohibit staff from working with Mr. McHugh. City Manager Burton stated the Capital Improvement Plan will be discussed at the October 26, 2005 Administrative Meeting.

Motion

**Commissioner Parriman moved approval for a resolution amending Resolution No. 19240.** Commissioner Oitzinger seconded the motion. All vote aye, motion carried. **Resolution #19281**

B. CONSIDER A REQUEST FOR A DEMOLITION PERMIT FOR A CONTRIBUTING STRUCTURE IN THE HELENA HISTORIC DISTRICT; GENERALLY LOCATED ON THE NORTHWEST CORNER OF EWING

AND 5TH AVENUE WITH A STREET ADDRESS OF 200 NORTH  
EWING STREET.

Staff Report

Historic Preservation Officer Paul Putz reported City Zoning Ordinance 11-39 outlines the procedure for issuance of demolition permits for properties located within and contributing to an official Historic District within the City. The ordinance requires that any property owner wishing to demolish a qualifying structure make application to do so in accordance with the process outlined in the ordinance. This process requires a pre-application meeting with the Historic Preservation Commission (HPC) staff and a public hearing. At the end of the public hearing the HPC makes a recommendation for approval or denial for the demolition permit to the City Commission. The City Commission then holds their own public hearing and based on the information submitted to the HPC, the HPC recommendation and other relevant information makes a decision to approve or deny the permit.

On July 12<sup>th</sup>, 2005. George and Virginia Holton, 1219 11<sup>th</sup> Ave, Helena, represented by John Quigley, of Quigley Construction, applied to the Historic Preservation Commission to demolish the property at 200 N. Ewing (Lots E 10' of Lot 8, Lot 9, E58' of Lot 10 Block 43 of the Helena Townsite), generally located on the corner of Ewing and 5<sup>th</sup>. The subject property is a single story, single family dwelling of brick veneer and frame construction with a rubble stone foundation and partial basement. The Applicant wishes to then construct a new residential / office building on the lot, a use allowed in that zoning district.

The house at 200 N. Ewing was built in 1879 and underwent major reconstruction in 1925. Its present condition largely dates from 1925 and represents the Craftsman architectural style. The period of significance of the Helena Historic District in which the subject property is located is 1864 to 1948. The house therefore contributes to the historic district and is subject to the provisions of Ordinance 11-39.

A pre-application meeting was held on July 13, 2005 between the applicant and the Historic Preservation Commission. Alternatives to demolition were discussed with the applicant. Other pre-application conversations and meetings were held between the applicant's agent and the City-County Historic Preservation Officer on June 15, July 7 & August 5, 2005. In addition, the Applicant provided the HPC with a copy of a Request for Support of Project in Historic District, a statement as to the intent of the applicant circulated among the owners of property adjacent to the proposed project. The signatures given in support of the applicant's project as described represent fifteen (15) properties in the immediate area. The Historic Preservation Commission requested additional rehabilitation budgets for the existing house, design information on the proposed new building and continued the hearing until September 14<sup>th</sup>, 2005.

On Friday September 2, 2005 the applicant submitted an updated application. The Public Hearing was continued to September 14, 2005 at which time the Historic Preservation Commission acted on the application.

The Helena Preservation Commission recommends the City Commission approve the demolition application made by George and Virginia Holton of the subject property at 200 N. Ewing as it was determined by the Helena Preservation Commission that the demolition application met the conditions of Ordinance 11-39. Specifically the applicants demonstrated:

- 1 – their intent to maintain the historic integrity of the neighborhood;
- 2 – a willingness to consider removal of the existing structure in lieu of demolition;
- 3 – the proposed design would maintain an architectural style complementary to the neighborhood; and,
- 4 – the cost to rehabilitate is not economically feasible.

Commission comment

Commissioner Pouliot referred to the statement of support included in the Commission packet and asked if there was any opposition to the proposed demolition? Mr. Putz replied no.

Public Testimony

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

John Quigley, Quigley Construction, 1417 Orange, spoke in support of the demolition.

Wendy Holton, 209 and 211 5<sup>th</sup> Avenue, spoke in support of the demolition.

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

Motion

**Commissioner Pouliot moved approval of the application for the demolition of the house and outbuildings at 200 N. Ewing (Lots E 10' of Lot 8, Lot 9, E58' of Lot 10 Block 43 of the Helena Townsite) as submitted.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359, AND AMENDING THE OFFICIAL ZONING MAP THEREOF, FOR A ZONE CHANGE FROM R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR PROPERTY GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LAST CHANCE GULCH AND COLUMBIA STREET.

Staff Report

City Planner Lucy Morell-Gengler reported the applicant is requesting a zone change from R-3 (Medium Density Residential) District to B-2 (General Commercial) District for Lots 1-4, Block 25 of the Grand Avenue Addition which would permit the current use, trailer storage for resale and sale, by right. The current use is not permitted in the R-3 District.

The Commission denied a request for a zone change from R-3 to B-2 in November of 1997; since that time adjacent North Last Chance Gulch has been widened and improved. The widening of this road extended the street closer to the subject property and resulted in eliminating Poplar Street access onto North Last Chance Gulch. These actions reduced some of the traffic conflicts adjacent to the subject property.

Ms. Morell-Gengler noted on May 12, 2005, the Zoning Commission recommended (4:1 vote) DENIAL for the adoption of an Ordinance for a zone change from R-3 (Medium Density Residential) District to B-2 (General Commercial) District for Lots 1-4, Block 25 of the Grand Avenue Addition except that portion of Lot 1 deeded to the

Montana Department of Transportation recorded in M Book 23 of Records page 2709; Helena, Montana and generally located on the northwest corner of the intersection of North Last Chance Gulch and Columbia Avenue.

Public Testimony

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

Bob Denherder, representing property owners John and Beth Schmeltzer, spoke in support of the proposed zone change.

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

Discussion

Commissioner Oitzinger asked for clarification of access to the property. Ms. Morell-Gengler explained Poplar Street would not provide access to the lot; the primary access would be Columbia Avenue.

Commissioner Pouliot asked for clarification of staff recommendation versus zoning commission recommendation. Ms. Morell-Gengler stated there has been some concern about encroachment into a residential neighborhood but it is an area of mixed use and the adjacent neighbors seem open to the change.

Mayor Smith asked why the use was not grandfathered in? Ms. Morell-Gengler explained the business was not located in the area when the grandfathering clause became effective.

Commissioner Parriman referred to the closure of Poplar Street due to an unsafe condition and stated he did not think it was right to close it as an access point. Ms. Morell-Gengler explained it is MDT right-of-way and they closed the access. At the point of closure, Poplar Street Columbia Avenue and Last Chance Gulch used to all converge; the new access through the parking lot does not have that same unsafe condition.

Commissioner Oitzinger stated she would not support staff's recommendation for approval because the change in allowable building height could encroach on the residential neighborhood.

Mayor Smith disclosed that he is a friend of the resident that submitted written opposition to the zone change.

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, for a zone change from R-3 (Medium Density Residential) District to B-2 (General Commercial) District for property legally described in the ordinance.**

Commissioner Parriman seconded the motion. Motion carried 3-1, with Commissioner Oitzinger voting no. **Ordinance 3043**

D. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A ROOMING HOUSE AND PROFESSIONAL AND BUSINESS OFFICES IN A R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT; GENERALLY LOCATED WEST OF SANDERS STREET BETWEEN GALLATIN AVENUE AND LEWIS STREET WITH A PROPERTY ADDRESS OF 1430 SANDERS.

Staff Report

City Planner Belinda Waters reported the existing structure is being removed from the site to allow for the construction of a new 7,051 square foot shelter for the Friendship Center to be located in a R-3 (Medium-Density Residential) District. The shelter provides emergency

services 24 hours a day with regular business offices operating from 8:00 a.m. to 5:00 p.m. The applicant is requesting a variance to reduce the required number of on-site spaces by one space.

On Tuesday, September 13, 2005, the Helena Zoning Commission unanimously recommended approval (5:0) for the adoption of a Resolution granting a Conditional Use Permit (CUP) to allow a rooming house and professional and business offices in a R-3 (Medium Density Residential) District for property legally described as Lots 13-16, Block 28, Northern Pacific Addition, Helena, Montana with a property address of 1430 Sanders. Said approval is subject to the following conditions:

1. Permit:

A. Building permit must be obtained within one year.

2. Access:

A. The existing drive approaches and curb cuts along Gallatin Avenue and Sanders Street must be removed per City Code or utilized with the future construction of the new facility.

B. The existing curb along Sanders Street will need to be repaired or replaced.

C. The mid-block handicap ramp located on Sanders Street must be removed per City Code or utilized with any future construction.

D. New sidewalks and drive approaches must be constructed to City standards including installing handicapped-access corners at the intersection of Lewis Avenue and Sanders Street, and Gallatin Avenue and Sanders Street.

3. Utilities:

Engineered plans for infrastructure improvements, including streets, water, sanitary sewer, storm drainage, and sidewalks must be submitted for review and approval in accordance with the Public Works Department Engineering Review Process to assure compliance with City standards. City water and sewer currently serve the building.

The Zoning Commission also recommended approval of the variance request to reduce the number of required on-site parking spaces from 22 to 21 spaces.

Ms. Waters noted the proposed use appears to lend support to the existing uses in the area, which consists of office, retail and service uses to the north, mixed residential uses to the south and east and educational uses to the west. The proposed service/residential business will provide efficient use of the property by utilizing existing lots with infrastructure (water, sewer, streets and storm water drainage) to serve the proposed use already in place.

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 Oitzinger moved approval for a resolution granting a Conditional Use Permit (CUP) to allow a rooming house and professional and business offices in a R-3 (Medium Density Residential) District for property legally described in the staff**

**report and subject to the conditions listed on pages two and three of the staff report.** Commissioner Parriman seconded the motion.

Discussion Commissioner Parriman expressed his concern with the parking conditions.

Vote All voted aye, motion carried. **Resolution #19282**

Motion **Commissioner Pouliot moved approval of the variance request to reduce the number of required on-site parking spaces from 22 to 21 spaces.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

E. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW PROFESSIONAL AND BUSINESS OFFICES IN A R-3 (MEDIUM DENSITY RESIDENTIAL) DISTRICT; GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF 11TH AVENUE AND RODNEY STREET WITH A PROPERTY ADDRESS OF 330 11TH AVENUE.

Staff Report City Planner Belinda Waters reported the subject property currently contains a structure that formerly housed a medical clinic and a grocery store known as Java Bob's. The total property area is 14,120 square feet and the existing building is 1,959 square feet in size.

On Tuesday, September 13, 2005, the Helena Zoning Commission unanimously recommended approval (5:0 vote) for the adoption of a Resolution granting a Conditional Use Permit (CUP) to allow professional and business offices in a R-3 (Medium Density Residential) District for property legally described as Rodney Street Tracts, Block PM 2 and 2A, Tract 2, Helena, Montana with a property address of 330 11<sup>th</sup> Avenue.

Said approval is subject to the following conditions:

1. License:

A business license must be obtained within one year.

2. Access:

The curb cut off 11<sup>th</sup> Avenue requires signage-prohibiting entry to the site at that location and requires a "right turn only" sign for exiting at the same location.

Ms. Waters recommended approval of the resolution and noted the proposed use appears to lend support to the existing uses in the area, which consists of office uses to the west, mixed residential uses to the north and east and public uses to the south. The proposed commercial business will provide efficient use of the property by utilizing an existing structure with in-fill development. Infrastructure (water, sewer, streets and storm water drainage) to serve the proposed use is already in place, which represents an efficient use of land, infrastructure, energy and other resources.

Commission comment Mayor Smith asked if a landscaping requirement was included in the previous CUP? Ms. Waters stated yes; however, the building sat empty for months with no maintenance. The property does meet

landscaping requirements and the applicant has indicated they would require proper lawn maintenance through lease agreements with their tenants.

Mayor Smith asked for an explanation of the ingress and egress of the property. Ms. Waters stated there is restricted entry to the parking lot; you can only enter on Rodney and exit on 11<sup>th</sup> Avenue.

Public Testimony

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

Darlene Kechley, property owner, spoke in support of the CUP.

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

Motion

**Commissioner Pouliot moved approval for a resolution granting a Conditional Use Permit (CUP) to allow professional and business offices in a R-3 (Medium Density Residential) District for property legally described in the staff report and subject to the conditions listed on page two of the staff report.** Commissioner Parriman seconded the motion. All voted aye, motion carried.  
**Resolution #19283**

F. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359, AMENDING THE OFFICIAL ZONING MAP THEREOF, AND PRE-ZONING TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR 13.55 ACRES; GENERALLY LOCATED NORTH OF CUSTER AVENUE BETWEEN WASHINGTON STREET AND THE I-15 FRONTAGE ROAD WITH A CURRENT PROPERTY ADDRESS OF 1822 EAST CUSTER AVENUE.

G. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A CASINO WITH 20 GAMING MACHINES IN A B-2 (GENERAL COMMERCIAL) DISTRICT AFTER THE 13.55-ACRE PROPERTY IS ANNEXED TO THE CITY OF HELENA; GENERALLY LOCATED NORTH OF CUSTER AVENUE BETWEEN WASHINGTON STREET AND THE I-15 FRONTAGE ROAD WITH A CURRENT PROPERTY ADDRESS OF 1822 EAST CUSTER AVENUE.

Staff Report

City Planner Kathy Macefield reported on February 8, 2005 the Helena Zoning Commission recommended denial (3:2 vote) for the adoption of an ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof in reference to a 13.55-acre tract of land, and rezoning to B-2 (General Commercial) District. Legally described as Tract A, COS # 3067109 (M24, Page 9277) located in the SW ¼ SE ¼ of Section 17, T10 N, R3W, Lewis and Clark County, containing 13.55 acres; generally located north of Custer Avenue between Washington Street and the I-15 frontage road with a property address of 1822 East Custer Avenue.

The proposed ordinance is for pre-zoning prior to annexation to B-2 (General Commercial) District for 13.55 acres to allow construction of a convenience store and casino in a single 6,320-square foot building with 6 gas pumps and a drive-through carwash. The proposed B-2 zoning would also allow commercial development of the remaining 13.55 acres, which may be subdivided in the future.

Ms. Macefield noted this proposal represents infill development, and efficient use of energy, infrastructure and resources. This proposal is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and is compatible with the surrounding land uses. The proposed conditions for annexation provide for traffic improvements that are consistent with the City's transportation plans for this area.

Ms. Macefield further reported, on February 8, 2005 the Helena Zoning Commission recommended denial (3:2 vote) for a Resolution granting a Conditional Use Permit (CUP) to allow a casino with 20 gaming machines in a B-2 District after the 13.55-acre property is annexed to the City of Helena for property currently located at 1822 Custer Avenue. The Helena Zoning Commission also unanimously recommended denial (5:0 vote) for variances from the freestanding sign requirements of the B-2 District for this same property.

The applicant is requesting approval of a resolution granting a Conditional Use Permit (CUP) to allow construction of a 1,800 square foot casino with 20 gaming machines on 13.55 acres after this property is annexed to the City of Helena. According to the applicant, the proposed casino would have 8 employees, would serve prepackaged food from the convenience store deli, and would be open daily from 8:00 AM to 2:00 AM.

According to the submitted site plan, the proposed casino would be located within a 6,320-square foot building; approximately 6,895 square feet of landscaping would be provided; a stormwater detention area would be located northeast of the proposed building; a new fire hydrant would be located at the southwestern property boundary; 44 paved onsite parking spaces would be located around the building; 3 ADA parking spaces and a bike rack would be located on the northeast side of the building; and 24 parking spaces could be located at the fuel pumps.

The following conditions are proposed for approval:

1. Annexation

This property must be annexed before the CUP is effective.

2. Traffic Improvements

All accesses onto Custer Avenue must be designed and constructed to City and State standards to be safe and to minimize vehicular and pedestrian conflicts.

3. Dumpster Location

Trash dumpster location and design must be submitted for review and approval by the Public Works Department to prevent trash from blowing into the waste water facility.

4. Building Permit

A. The property must be annexed prior to issuance of a building permit.

B. A building permit must be obtained within two years.

At the time the Commission packets were distributed the applicant had also proposed 2-freestanding signs and has requested variances from Section 11-23-10 of the Helena Zoning Ordinance:

A) To allow more than one freestanding sign for the principal building (shown as Montana Lil's Casino);

- B) To allow 167 square feet of background area instead of 150 square feet for one of the freestanding signs (shown as Conoco Phillips/Town Pump).

Ms. Macefield noted on October 17, 2005 the applicant revised their requested sign variances to the following proposal:

- A) To allow more than one freestanding sign for the principal building (shown as Montana Lil's Casino) that would not exceed 76 square feet, and would be 12.5 feet high;
- B) They withdrew their request for a variance to allow 167 square feet of background area instead of 150 square feet for one of the freestanding signs (shown as Conoco Phillips/Town Pump).

Ms. Macefield added this casino proposal represents infill development, and efficient use of energy, infrastructure and resources. This proposal is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and is compatible with the surrounding land uses. The proposed conditions provide for traffic improvements that are consistent with the City's transportation plans for this area.

This property is located more than 600 feet from a school property and more than 300 feet from any residential zoning district as required by Chapter 40 of the Helena Zoning Ordinance. If a variance is granted to exceed the maximum amount of background area as the applicant has requested, all of the businesses could be located on a single free-standing sign.

Commission comment

Commissioner Pouliot asked if the variance request they withdrew meant the second sign would be in compliance? Ms. Macefield agreed; the sign would be 150 square feet, which is allowable.

Mayor Smith asked if there was any statutory prohibition that would stop the Zoning Commission from meeting again on this proposal? Ms. Macefield stated no.

Public Testimony

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

Brian Angove, Construction Manager for Town Pump, spoke in support of the proposed pre-zoning, CUP, and sign variances.

Jesse Klennon, Alliance Neon, spoke in support of the requested sign variance.

Lyle Cusson, Display Marketing Manger for Town Pump, spoke in support of the sign variance.

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

Motion

**Commissioner Oitzinger moved an ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof, and pre-zoning to B-2 (General Commercial) District**

**for property with a current address of 1822 East Custer Avenue and as legally described in the ordinance be referred back to the Zoning Commission for consideration.** Commissioner Pouliot seconded the motion.

Discussion

Commissioner Parriman stated he believes B-2 is the right zone for the area and he would not support the motion to have the Zoning Commission reconsider the proposal. Commissioner Pouliot stated he does not have a problem with the requested zoning but would like the Zoning Commission to reconsider the entire proposal. Commissioner Oitzinger concurred with Commissioner Pouliot and noted Commissioner Cartwright also had some concerns about the proximity of the development to the Wastewater Treatment Plant.

City Manager Burton gave the history of the proposal and stated he believed the record was clear enough to differentiate between the proposal at the time of recommended denial and the proposal today. Another consideration was the length of time it has taken to get to this point, and the time requirements of going back to the Zoning Commission for review.

Mayor Smith stated he did not believe the Zoning Commission needed to review the proposal again. Their recommendation of denial is what led to the many meetings that resolved the issues in the original proposal.

Commissioner Pouliot requested Town Pump sign an agreement stating they would not sue the City over the possibility of unfavorable odor from the Wastewater Treatment Plant.

City Attorney Nielsen stated an agreement of "Waiver of the Possibility of Suit" could be added to the CUP.

Motion Withdrew

Commissioner Oitzinger withdrew the proposed motion to refer the proposal back to the Zoning Commission.

Commissioner Pouliot asked Mr. Richardson, for the record, if Town Pump would be agreeable to sign a waiver agreement? Mr. Richardson concurred and stated Town Pump would never sue the City over odors emanating from the Wastewater Treatment Plant.

Motion

**Commissioner Pouliot moved approval for an ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof, and pre-zoning to B-2 (General Commercial) District for property with a current address of 1822 East Custer Avenue and as legally described in the ordinance.** Commissioner Parriman seconded the motion. Motion carried 3-1, with Commissioner Oitzinger voting no.

Motion

**Commissioner Pouliot moved approval for a resolution granting a Conditional Use Permit (CUP) to allow a casino with 20 gaming machines to be located in a B-2 (General Commercial) District for property with a current address of 1822 East Custer Avenue and as legally described in the staff report. This approval is subject to the conditions stated in the staff report and the applicant must sign a waiver stating they would not sue the City over odors emanating from the Wastewater Treatment Plant.** Commissioner Parriman seconded the motion.

Mayor Smith stated he would prefer to take the applicant at his word regarding the waiver and not include it in the motion. Commissioner Parriman concurred with Mayor Smith.

**Vote** Motion failed 3-1, with Mayor Smith, Commissioner Parriman and Commissioner Oitzinger voting no.

**Motion** **Commissioner Parriman moved approval for a resolution granting a Conditional Use Permit (CUP) to allow a casino with 20 gaming machines to be located in a B-2 (General Commercial) District for property with a current address of 1822 East Custer Avenue and as legally described in the staff report. This approval is subject to the conditions stated in the staff report.** Commissioner Pouliot seconded the motion. Motion carried 3-1, with Commissioner Oitzinger voting no. **Resolution #19285**

**Motion** **Commissioner Parriman moved denial for a variance from Section 11-23-10 of the Helena Zoning Ordinance to allow a second free-standing sign for property located at 1822 East Custer Avenue Street.** Commissioner Oitzinger seconded the motion. Motion failed 2-2, with Mayor Smith and Commissioner Pouliot voting no.

**Motion** **Commissioner Oitzinger moved to refer the request for a variance from Section 11-23-10 of the Helena Zoning Ordinance to allow a second free-standing sign for property located at 1822 East Custer Avenue Street back to the Zoning Commission for review.** Commissioner Pouliot seconded the motion. Motion failed 2-2, with Mayor Smith and Commissioner Parriman voting no.

**Motion** **Commissioner Parriman moved to table the request for a variance from Section 11-23-10 of the Helena Zoning Ordinance to allow a second free-standing sign for property located at 1822 East Custer Avenue Street to October 31, 2005.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

H. CONSIDER A RESOLUTION GRANTING A CHANGE OF NON-CONFORMING USE FROM OFFICE AND MULTIPLE RESIDENCES TO A TRANSITIONAL HOME FOR UP TO 12 PERSONS TO BE LOCATED IN A R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; GENERALLY LOCATED ON THE NORTH SIDE OF LESLIE AVENUE BETWEEN CLEVELAND AND GRANT STREETS WITH A PROPERTY ADDRESS OF 1112 LESLIE AVENUE.

**Staff Report** City Planner Lucy Morell-Gengler reported the applicant is requesting a resolution granting a Change of Non-Conforming Use to convert the existing building into a 4-room transitional home for up to 12 homeless veterans and a residential manager to be located in a R-2 (Single-Family Residential) District.

This property is located in a single-family residential district but was an established commercial facility at the time the existing Zoning Ordinance was adopted in 1969. The pre-existing non-conforming use of the property has changed several times since the adoption of current zoning regulations. A number of 'change of non-conforming use' applications have been granted over the past 30 years to allow a grocery

store, antique store, pet store, and its present uses, two offices and two residences that were approved as nonconforming uses in 1983.

The City of Helena Zoning Ordinance provides the following guidance when changing from one non-conforming use another non-conforming use. Section 11-19-4 (B) of the Helena Zoning Ordinance states *"Provided that the same has not ceased for one year prior to the filing of an application for change of nonconforming use, and provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use, any nonconforming use of land and/or structures may be changed to another nonconforming use."*

On May 12, 2005, the Zoning Commission unanimously recommended (5:0 vote) approval for the adoption of a Change of Non-Conforming Use from offices and multiple residences to a transitional home for up to 12 persons for property located in a R-2 (Single-Family Residential) District.

Residential uses are more consistent with the R-2 District than non-residential uses; thus, the elimination of the office uses would be a step towards converting the subject property into a totally residential use. Therefore, the proposed residential use could be "more appropriate to the district" than the existing nonconforming office uses which are not permitted in the R-2 District, and "equally appropriate" as the existing multifamily uses which could have been permitted with a CUP if the building had been constructed a few years earlier.

#### Public Testimony

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

The following persons spoke in opposition to the proposed transitional home:

Ron Wilson, 1041 Leslie Avenue who read a letter into the record from Berkley Conrad, 1104 Leslie Avenue; Sherri McGuire 1114 Leslie Avenue; Mike McGuire, 1114 Leslie Avenue; Carolyn Miller, 639 Hollins; Mary Kay and Rich Senden, 1121 Leslie; Doug Monger, 1111 Leslie Avenue; Leonard Walsh, 1229 Hollins; Woodrow Fowler, 1112 Leslie; Joe Foster, 1109 Leslie; Berkley Conrad, 1104 Leslie Avenue; Alane Fitzpatrick, 1022 Hollins; Michelle Webster, 1041 Leslie Avenue; Eric Laymen, 1109 Hollins; Cindy Logan, 1023 Hollins; Tammy Engelbrecht, 1013 Wilder; and George Gluckert, 1308 Hollins.

The concerns included: safety of the neighborhood; accurateness of the grant application; the actual current use of the property; the size of the home being inappropriate for twelve people; lack of notification about the proposal in the neighborhood; the screening of the residents of the transitional home; drainage issues on the property; and the possible loss in property values.

The following persons spoke in support of the proposed transitional home:

Matt Dalton, 233 Meadow Drive; Pamela Mann, Coordinator for Homeless Grant Program at Fort Harrison; Carroll Jenkins, 813 Gilbert, President of the MT Veterans Foundation; Rick Alton, 65 Cloverview; Terrie Losey, Social Worker; Mike Hampson, 7858 Applegate Drive; Colleen Murphy, 1012 Wilder Avenue; Michael O'Niell, 621 Hillsdale; Patrick Hinman, 416 N Rodney; Susan Bjerke, 545 South Harris; John Duran, tenant at Willis-Cruse House; Rennay McDaniel, 115 Dudley, East Helena; Rick Nickelson, House Manager at Willis-Cruse House, read a letter submitted by Danita Conroy; Anne Wakeman, 517 Knight;

Gene Leuwer, Rocky Mountain Development Council; and Jim Ballock, 1450 Williamsburg Street.

The testimony included: an explanation of the screening process for residents of the transitional home; an overview of life at a transitional home; the community need for the program; an explanation of inconsistencies in the grant application; first hand accounts of working with homeless veterans; the history of use in the subject home; and general support for the project.

During the public testimony discussion was held regarding recessing the public hearing to the October 31, 2005 Commission meeting. It was decided to allow all persons in attendance to speak and to close the public hearing effective October 17, 2005.

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

Discussion

City Manager Burton stated Commissioner Cartwright will have an opportunity to review the record before the October 31, 2005 Commission meeting.

Motion

**Commissioner Pouliot moved to table the adoption of a resolution granting a change of a non-conforming use to allow a transitional home for up to 12 people to be located in a R-2 (Single-Family Residential) District; for property legally described in the Resolution and subject to the conditions listed in the staff report to October 31, 2005.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Public Communications**

PUBLIC COMMUNICATIONS

**Meetings of Interest**

MEETINGS OF INTEREST

The next regular Administrative Meeting is October 26, 2005 and the next Commission Meeting is October 31, 2005. There will be a special Administrative Meeting on October 19, 2005 to discuss the Montana Public Power Initiative. The joint City/County Commission public hearing on the Draft Transportation Plan will be held Thursday, October 20, 2005.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 12:46 a.m.

\_\_\_\_\_  
Mayor James E. Smith

ATTEST:

\_\_\_\_\_  
Clerk of the Commission