

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**January 8, 2007**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, January 8, 2007 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, Peura, and Throssell were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Bill Roberts representing the Helena Citizens Council.

***Pledge of Allegiance***

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

***Minutes***

The minutes of the regular City Commission meeting of December 18, 2006 were approved as submitted.

***Appointments***

APPOINTMENTS:

- A. City-County Impact Fee Study Committee
- B. Public Art Committee

Mayor Smith asked for Commission concurrence on the following appointments:

**Joint City/County Impact Fee Advisory Committee** – Appointment of Mark S. Bruno as Certified Public Accountant Representative and Don Hoffman as Citizen Representative

**Public Art Committee** – Reappointment of Andrea Atwood as Artist Representative

***Public Comment***

Mayor Smith asked for public comment, none was received.

***Motion***

**Commissioner Cartwright moved approval of the above listed board appointments to the City/County Impact Fee Advisory Committee and the Public Art Committee.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

***Consent Agenda***

CONSENT AGENDA:

- A. Claims
- B. Final passage of Ordinance No. 3075 pre-zoning prior to annexation into the City of Helena to R-3 (Medium Density Residential) District, R-4 (High Density Residential) District, and PLI (Public Lands and Institutions) District for the proposed Stone Meadows Subdivision; generally located east of Green Meadow Drive and north of the Crystal Springs Subdivision  
**Ordinance #3075**
- C. Helena Area Transit Development Plan Update 2007-2011
- D. Approval of the installation of a stop sign at the intersection of 13th Street and Front Street

- E. Resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property (sixty two-yard solid waste containers) **Resolution #19437**

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 Oitzinger moved approval of items A through E on the consent agenda.** Commissioner Peura seconded the motion. All voted aye, motion carried.

***Bid Award***

BID AWARD:

- A. Front-end loader – Street Division

Fleet Manager Ed Robinson reported bids were received for a new front-end loader for the Street Division. This is a scheduled replacement for Unit #320, a 1991 John Deere Front End Loader. The low bid was received from Modern Machinery. A summary of the bids was attached to the staff report.

Modern Machinery bid a 2007 Komatsu WA200-5 at a unit cost before trade of \$99,690. Modern Machinery offered \$32,000 as trade for Unit #320. The net bid is \$67,690. Modern Machinery also offered an optional extended warranty for five years of 7,500 hours for an additional cost of \$6,500. The FY07 budget appropriation for this replacement is \$81,950.

Mr. Robinson recommended the purchase of this unit and the extended warranty, as it will allow the city to continue to upgrade the Street Division's fleet thus providing reliable equipment and reducing rising maintenance costs.

Commission comment

Commissioner Cartwright asked what percentage bio-diesel this vehicle could run on? Mr. Robinson stated he was unsure of the specific percentage but noted the state will not accept bids on vehicles that can run on an amount over 10%.

Public comment

Mayor Smith called for public comment, none was received.

**Motion**

**Commissioner Oitzinger moved to award the bid to Modern Machinery for the purchase of one new front-end loader, including a five-year extended warranty, at the bid price of \$74,190.** Commissioner Throssell seconded the motion. All voted aye, motion carried.

***Communications***

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

There were no communications or proposals.

***Report of the City Attorney***

REPORT OF THE CITY ATTORNEY

No report was given.

***Report of the City Manager***

REPORT OF THE CITY MANAGER

City Manager Burton reported staff met with Jefferson County officials today and they have agreed to work on an interlocal agreement

to form the Joint City of Helena/Jefferson County Planning Board. Manager Burton expressed to Jefferson County that the City of Helena has no aggressive posture towards annexation of the northern portion of their county. Required services and conditions for commercial development in the area were also discussed. Mayor Smith requested that copies of the Commission's work schedule be made available to the public at future meetings. City Manager Burton agreed and noted Independent Record reported Larry Kline is currently writing an article regarding the Commission work schedule.

Manager Burton reported a meeting was held this morning on how to set up the governance structure of the Montana Inter-Operable Radio System. The position of local governments involved is that it ought to have local control and partner with state and federal agencies. There are currently nine consortia throughout the state. City Attorney Nielsen has recommended these consortia reconstruct their memorandums of understanding that created them, to an interlocal agreement with statutory authority. The agreement would also allow for the creation of a governing board, on which a member from each consortium would sit. Manager Burton noted Governor Schweitzer has allocated, in the preliminary budget, \$7.5 million for a redundant main system in addition to other funding that can be used throughout the state.

Manager Burton referred to the Commission workload and asked them to think about joining with the county to hire a lobbyist for the 2007 Legislative Session. Further discussion will be scheduled for the January 24, 2007 Administrative Meeting.

Manager Burton asked Administrative Services Director Tim Magee to brief the Commission on the City/County Impact Fee Advisory Committee. Director Magee stated staff from the city and county representing Planning, Finance and Public Works Departments have completed a review of proposals received from a number of consultants to do an impact fee study. The consultant has been selected and the next step will be to negotiate a contract for the scope of services in the feasibility portion of the study. Following approval of the contract by the Commission, the study will be performed and the Impact Fee Advisory Committee will begin reviewing the results.

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

**REPORT FROM THE HELENA CITIZENS COUNCIL**

HCC member Bill Roberts reported the HCC has been involved with Rodney Street neighborhood meetings, the Midtown Group and the deer census. This year, the HCC is planning to hold quarterly neighborhood meetings, with some districts combined. These meetings will be advertised using the city's water utility bill insert program.

He announced the HCC would like to help educate citizens on the proposed Open Space Maintenance District proceedings and will discuss it at their January 24, 2007 meeting.

Commissioner Peura thanked HCT Dean Daniel Bingham for the assistance the college has provided to the Midtown/6<sup>th</sup> Ward Neighborhood Association. Commissioner Oitzinger commended the HCC for their work with the deer census. Mayor Smith thanked the HCC for their work within the districts.

**Open Space  
Maintenance  
Dist. No. 1****CONSIDER A RESOLUTION OF INTENTION TO CREATE OPEN  
SPACE MAINTENANCE DISTRICT NO. 1.**

## Staff Report

Parks & Recreation Director Randy Lilje reported the proposed Helena Open Space Maintenance District No. 1 is the long term funding mechanism as recommended by HOLMAC and the Helena Open Lands Management Plan adopted by the City Commission in February 2004 and again in the 2006 Open Lands Work Plan.

Up to now the maintenance and management of Helena's Open Lands system has been funded primarily by means of one-time funds set aside for maintenance out of the Open Space Bond passed by city voters in 1996. Those funds will most likely be entirely expended by the end of fiscal year 2007.

The citizens have for a long time valued the natural open space of Mount Helena Park and in 1996 voted to expand the open space throughout the south hills of Helena from Mount Helena to Mount Ascension to I-15. With the desire to secure this open space for the public good comes the responsibility to manage and maintain it.

This maintenance district is a city-wide assessment allowed by Montana state statute like a park maintenance district that would provide long term funding for the maintenance of the City's open lands system. The proposed assessment would be based on the amount of impervious area within a lot or parcel of land within the city. The assessment formula would have two variables:

1. Base charge for all properties with impervious area from 0 to 2,222 square feet would be \$6.00;
2. Plus a rate of \$0.00245 per square foot for impervious area greater than 2,222 square feet on the property.

"Impervious area" is the developed part of a lot or parcel impermeable to storm water infiltration. The impervious area is really the built-up areas of the city that need to be offset by the city's open space and parks. This is why this method of assessment has been selected on which to assess this maintenance district.

If the City Commission approves this resolution of intention to create the district, cards will go out to all the city property owners of record at this time that briefly describe the purpose of the district and how the assessment will be determined. The informational card will also have a place for the property owner to protest the creation of the district if they so choose.

Mr. Lilje recommended approval of the resolution of intention and asked the Commission to set a public hearing date for January 29, 2007 to hear comments on the proposed district so that it may make a final decision on its creation. If approved, the assessment will show up on the November 2007 tax bill.

## Commission comment

Commissioner Cartwright asked if state law binds the process for the creation of the district or if the city has any discretion in the process? City Attorney Nielsen stated state law requires that the city must send a notice to all affected property owners and publish notice of the proposal twice. Staff is following the process to the letter, with the addition of

providing a card design that makes it easier for citizens to protest the district.

Public comment

Mayor Smith called for public comment.

Alice Stanley, 1217 University, HOLMAC member; urged the Commission to approve the resolution of intention to create the district.

Andy Bauer, 21 N Last Chance Gulch, Prickly Pear Land Trust; spoke in support of the open space maintenance district.

George McCauley, 926 5<sup>th</sup> Avenue; urged the Commission to approve the resolution of intention.

Dawn North, 707 2<sup>nd</sup> Street; spoke in support of the maintenance district.

Discussion

Commissioner Cartwright spoke in support of the fee structure but recommended revising the proposed formula to a base rate of \$7.00 per parcel and \$0.00215 per impervious square feet over 2,222 square feet, as he believes this would provide a more balanced charge per household. He noted this formula would still provide for the \$156,000 total revenue goal.

Commissioner Peura thanked HOLMAC for their work on the proposal. He spoke in support of the proposed district and stated he believes the funding mechanism is equitable and fair.

Mayor Smith spoke in support of the creation of an Open Space Maintenance District, but indicated he would not support the resolution of intention, as he does not agree with the funding mechanism.

Commissioner Oitzinger stated she agrees with the fee structure and spoke in support of the logic behind the assessments.

Commissioner Throssell expressed his respect for Helena citizen's hard earned dollars. He asked people to put into perspective where this open space maintenance district fee fits in with the overall amount of services and projects the city undertakes and funds.

Commissioner Cartwright commented these fees would not need to be increased anytime soon and compared them to tree maintenance district fees, which haven't increased since the district was created. He asked Ms. Stanley if HOLMAC has approved the protest card. Ms. Stanley concurred.

Motion

**Commissioner Cartwright moved approval for a resolution of intention to create the Helena Open Space Maintenance District No. 1 in the City of Helena and set a public hearing date for January 29, 2007, with the base rate of \$7.00 per parcel and \$0.00215 per impervious square feet over 2,222 square feet.** Commissioner Oitzinger seconded the motion. Motion carried 4-1, with Mayor Smith voting no. **Resolution #19431**

Comment

Manager Burton referenced a letter to the Commission from Helena Regional Airport Director Ron Mercer regarding the proposed district. The letter is included in the Commission packet as part of the official record.

***Final Plat- Nob Hill Phase IV, Block 6***

CONSIDER THE FINAL PLAT FOR THE HOWETH MINOR SUBDIVISION CREATING FIVE LOTS FROM LOT 1, BLOCK 6, AMENDED NOB HILL SUBDIVISION, PHASE IV; GENERALLY LOCATED NORTH OF DEERFIELD LANE, WEST OF INTERSTATE 15 AND EAST OF CABERNET DRIVE.

## Staff Report

City Planner Kathy Macefield reported the City Commission approved the preliminary plat creating 5 lots in Block 6, Phase IV, of the Nob Hill Subdivision on December 1, 2006. The minor subdivision approval was subject to two conditions that have been satisfactorily completed:

1. Effect on Local Services

The property owner must get approval from the Montana Department of Transportation, as stated in the Memorandum of Agreement, for the three proposed approaches off of Colonial Drive.

2. Survey Requirements Provided for in Part 4 of this Chapter

The final plat for this subdivision must be tied to the city coordinate system and provided to the city on acceptable digital format for archival and mapping purposes.

Ms. Macefield recommended approval of the final plat as it will facilitate infill development, is an efficient use of land, energy and resources, and will allow the five new lots to be sold and developed.

## Public comment

Mayor Smith called for public comment, none was received.

## Motion

**Commissioner Peura moved approval of the Final Amended Plat of Block 6, Nob Hill Subdivision, Phase IV.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

**Angle Parking**

CONSIDER A RESOLUTION CHANGING THE CURBSIDE (PARALLEL) PARKING ON PORTIONS OF LIVINGSTON AVENUE AND SANDERS STREET RIGHTS-OF-WAY (ROW) IN THE CONRAD-STANFORD ADDITION TO ANGLE PARKING.

## Staff Report

City Engineer Ryan Leland reported the Helena College of Technology (HCT) is expanding its Donaldson Campus on Livingston Avenue. As part of this expansion, HCT has constructed a parking lot at the corner of Harris Street and Townsend Avenue, but is required to provide more parking in accordance with City Code.

HCT wishes to install angle parking on a portion of Livingston Avenue ROW adjacent to Lots 1-8 and a portion of the Sanders Street ROW adjacent to Lots 8 & 9, all in Block 32 of the Conrad-Stanford Addition, next to its Donaldson Campus. Angle parking, rather than the current curbside parking, will accommodate the parking requirement for the college's expansion. The requested angle parking would be public parking, however, HCT would prefer that this parking have a two-hour time limit. This request will be decided on a future Commission Meeting agenda. The street improvements needed to allow angle parking will be constructed by the college as part of its expansion and at its expense.

Mr. Leland recommended approval of the resolution, as it will allow the required parking closer to the college.

## Commission comment

Mayor Smith referred to a prior street closure approval to allow for additional parking in the same area and asked for more information on the purpose of the closure. Mr. Leland concurred that the Commission had given approval for the closure of a portion of Sanders

Street to allow for parallel parking. At this time, the closure does not fit into HCT's overall parking plan.

Public comment

Mayor Smith called for public comment, none was received.

Motion

**Commissioner Peura moved approval of a resolution changing curbside (parallel) parking on portion of the Livingston Avenue ROW and the Sanders Street ROW in Block 32 of the Conrad-Stanford Addition to angle parking.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19432**

**Public Hearings**

PUBLIC HEARINGS:

A. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A CONCRETE CONSTRUCTION CONTRACTOR TO BE LOCATED IN A M-I (MANUFACTURING AND INDUSTRIAL) DISTRICT; GENERALLY LOCATED ON THE SOUTH SIDE OF BOZEMAN AVENUE BETWEEN CARTER DRIVE AND A STREET.

Staff Report

City Planner Lucy Morell-Gengler reported on December 12, 2006 the Helena Zoning Commission unanimously recommended approval (4:0 vote) for a resolution granting a Conditional Use Permit (CUP) to allow a concrete construction contractor to be located in a M-I (Manufacturing and Industrial) District; legally described as Lot 20A, Block 1 of the Helena Industrial Site Subdivision, Helena, Montana; generally located on the south side of Bozeman Avenue between Carter Drive and A Street.

The applicant is requesting a Conditional Use Permit (CUP) to allow a concrete construction business in a M-I (Manufacturing and Industrial) District. According to the applicant, the CUP would allow the utilization of the property for a construction company, including an office and storage, a contractor specializing in concrete construction falling under Standard Industrial Classification C 177 Concrete Work.

Ms. Morell-Gengler recommended approval of the CUP as the 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.

Commission comment

Commissioner Peura asked why this use required a CUP in a Manufacturing and Industrial Zone? Ms. Morell-Gengler stated the way the current zoning ordinance was written requires this use as a CUP; this type of requirement could be eliminated with the update to the Zoning Ordinance.

Public Testimony

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

Jason Armstrong, President of Arco Builders, applicant; notified the Commission he was available to answer questions about the proposal.

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

**Motion**

**Commissioner Peura moved approval for a resolution granting a Conditional Use Permit (CUP) to allow a concrete construction business in a M-I (Manufacturing and Industrial) District; generally located on the south side of Bozeman Avenue between Carter Drive and A Street, and as legally described in the staff report.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Resolution #19433**

B. CONSIDER A RESOLUTION TO VACATE PORTIONS OF TAYLOR STREET AND CLORE STREET TO THE CENTERLINE OF THE RIGHTS-OF-WAY (ROW) ADJACENT TO LOTS 23 AND 24 IN BLOCK 1 OF THE ORIGINAL HELENA TOWNSITE.

**Staff Report**

City Engineer Ryan Leland reported Joseph Hrella and David Brown own an existing building that was partially constructed on public right-of-way (ROW) prior to their ownership. They now wish to expand the building, and have applied to vacate a portion of Taylor and Clore Street ROW.

The applicant proposes to vacate approximately 1,891 square feet of ROW. The fee for the vacation is approximately \$9,393. Mr. Leland recommended approval of the vacation and noted the ROW is not usable by the city.

**Public Testimony**

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

Cherche Prezeau, 40 W. Lawrence; spoke in support of the vacation.

Joe Hrella, 615 Stuart; urged the Commission to approve the proposed vacation. He assured the Commission they will not disturb the retaining wall.

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

**Discussion**

Commissioner Oitzinger asked if the Commission has discretion in setting the fee amount? City Attorney Nielsen stated the Commission has the authority to adjust the fee. City Manager Burton asked the Commission to include the reasoning behind any adjustments to the fee in the motion.

Commissioner Cartwright asked if taxes have been paid on this property? Attorney Nielsen stated no, as right-of-way it was not taxed. Commissioner Cartwright indicated he would not support waiving the fee if taxes hadn't been paid.

Commissioner Peura asked Ms. Prezeau if the applicant is satisfied with the proposed fee? Ms. Prezeau explained the applicant has been paying taxes on the footprint of the buildings that fall outside of the lot lines. Mr. Hrella urged the Commission to exempt the fee because of long-standing issues with the plat.

Commissioner Oitzinger spoke in support of reducing or exempting the fee. Manager Burton recommended charging the fee as the proposal is reconstructing history.

**Motion**

**Commissioner Oitzinger moved approval for a resolution to vacate portions of Taylor Street and Clore Street to the centerline of the rights-of-way adjacent to Lots 23 and 24 in Block 1 of the**

**Original Townsite.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution #19434**

**Additional Motion**

**Commissioner Oitzinger moved to reduce the fee from \$9,393 to \$3,000. This reduction is attributable to the building having existed prior to the plat; \$3000 is the charge because there may be some portion of the lot that taxes were not paid on.**  
Commissioner Peura seconded the motion.

**Friendly Amendment**

Commissioner Peura offered a friendly amendment to reduce the fee by the amount of taxes paid on the footprint of the building. Commissioner Oitzinger accepted the amendment.

**Substitute Motion**

**Commissioner Peura moved to reduce the fee being charged for the vacation by a formula that would take the original assessment of \$9393 and subtract the assessment total for the amount of the right of way that the applicant has been paying taxes on.** Commissioner Oitzinger seconded the motion.

**Comment**

Mayor Smith indicated he would not support the motion, as it may not be a unique situation. Commissioner Cartwright stated he would support the motion because it will provide consistency in situations where property owners have been treating city property as private property by paying taxes on the subject property.

**Vote**

Motion carried 4-1, with Mayor Smith voting no.

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF FROM R-O (RESIDENTIAL OFFICE) DISTRICT TO R-4 (HIGH DENSITY RESIDENTIAL) DISTRICT FOR PROPERTY GENERALLY LOCATED NORTH OF DAYSRING LOOP AND EAST OF SADDLE DRIVE.

**Staff Report**

City Planner Lucy Morell-Gengler reported on December 12, 2006 the Helena Zoning Commission unanimously recommended approval (4:0 vote) for the adoption of an Ordinance for a zone change from R-O (Residential Office) District to R-4 (High Density Residential) District for property legally described as "3.59 acres" identified on COS #349449; generally located north of Dayspring Loop and east of Saddle Drive, Helena, Montana.

The applicant is requesting a zone change from R-O District to R-4 District for 3.59 acres that are currently vacant and undeveloped. The applicant is requesting the zone change to provide consistent zoning with his property located to the east. Although the applicant has indicated this zoning would facilitate future development of condominiums on the subject property in conjunction with development on property to the east, a zone change would allow development of any use allowed in that zoning district.

Ms. Morell-Gengler recommended approval of the proposed zone change and 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.

Commission comment                    Commissioner Peura asked if the adjacent development had to abide by the 25-foot drainage setback? Ms. Morell-Gengler stated yes. Commissioner Throssell asked if subdivision review would be necessary to build the proposed condominiums? Ms. Morell-Gengler explained condominiums could be built on the property without granting the requested zone change; approval of the zone change will just facilitate the location of the condominiums. Mayor Smith asked if a stormwater drainage plan would be reviewed for the setback? Ms. Morell-Gengler stated the plan has already been submitted and noted the applicant was present to answer questions.

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

Timothy Bury, 1 Engineering Place, representing the applicant; gave an overview of the proposed development and assured the Commission the applicant is in compliance with the setback regulation and all city requirements.

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

**Motion**                                        **Commissioner Peura moved approval of first passage of an ordinance amending the City of Helena Ordinance No. 2359 and amending the Official Zoning Map thereof from R-O (Residential Office) District to R-4 High Density Residential) District for property legally described in the ordinance.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Ordinance #3076**

D.        CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW FOUR RESIDENTIAL CONDOMINIUMS IN A B-2 (GENERAL COMMERCIAL) DISTRICT; GENERALLY LOCATED EAST OF GETCHELL STREET, NEILL AVENUE AND STUART STREET WITH A PROPERTY ADDRESS OF 739 GETCHELL STREET.

Staff Report                                City Planner Kathy Macefield reported on December 12, 2006 the Helena Zoning Commission recommended approval (3:0 with one abstention) for a Resolution granting a Conditional Use Permit (CUP) to allow construction of four upper level residential condominiums in the B-2 (General Commercial) District. Legally described as Lot A as shown on COS #3114987, Helena, Montana; generally located east of Getchell Street, Neill Avenue and Stuart Street with a property address of 739 Getchell Street.

The applicant has applied for a Conditional Use Permit (CUP) to allow construction of four upper level residential condominiums in the B-2 (General Commercial) District. The existing building located on the southern portion of the property would be used for residential storage. The proposed condominiums would be built above a 4,280-square foot office space; offices are typically a permitted use in this zoning district.

The four residences would require eight onsite parking spaces; the entire project would require a total of 20 onsite parking spaces if developed for offices, plus one ADA space. Ten onsite parking spaces would be located in a garage under the proposed building; one ADA space plus six full-size parking spaces would be located onsite; and four on-street spaces.

Ms. Macefield recommended approval of the CUP and stated 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.

Public Testimony

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

Jeff Downheouyer, 1013 East Broadway, representing the applicant; urged the Commission to approve the CUP.

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

Commission comment

Commissioner Cartwright asked if the applicant could install a pedestrian path on the east side of the property at a future date? Mr. Downhower explained the east side runs next to the Federal Reserve Bank fence and a very steep drop, which limits construction of a walkway. However, there will remain enough room for a path, should the geography and layout of the area change in the future.

Motion

**Commissioner Cartwright moved approval for a resolution granting a Conditional Use Permit (CUP) to allow construction of 4 upper level residential condominiums in the B-2 (General Commercial) District for property legally described in the staff report.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution #19435**

E. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A CASINO WITH UP TO 20 GAMING MACHINES, PLUS ALCOHOL SALES AND A LIMITED FOOD MENU, TO BE LOCATED IN A B-2 DISTRICT; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND EAST OF DREDGE DRIVE WITH A PROPERTY ADDRESS OF 1110 W. CUSTER AVENUE.

Staff Report

City Planner Kathy Macefield reported the applicant proposes to locate a 2,400-square foot casino with up to 20 gaming machines, plus alcohol sales and a limited food menu, in an existing building located in the B-2 (General Commercial) District. The applicant also intends to include a lounge within the same 2,400 square feet, and an office (typically a permitted use in the B-2 District) in the adjoining 1,200 square feet of the existing building. The applicant has submitted a written statement that the office portion of the building would not be used for the casino (attached to the staff report). The proposed casino/lounge and office are not connected internally in the building, and have separate water, sewer, gas, electric and phone services.

A traffic impact study has also been submitted that states traffic to and from the casino would not present a problem for the adjacent streets. The applicant must obtain approval from the Montana Department of Transportation to access onto Custer Avenue.

On December 12, 2006 the Helena Zoning Commission unanimously recommended approval (4:0 vote) for a Resolution granting a Conditional Use Permit (CUP) to allow up to a 2,400 square foot casino with 20 gaming machines to be located in a B-2 (General Commercial) District. Said property is legally described as Lot 1, Orphanage Acres, Helena, Montana; generally located north of Custer

Avenue and east of Dredge Drive with a property address of 1110 Custer Avenue. This approval is subject to the following conditions:

1. Access

Legal and physical access must be obtained to provide for ingress and egress to the parcel and all on-site parking spaces. All parking spaces must be accessible for vehicle use.

2. Parking

Paved onsite parking and related landscaping must be installed in accordance with Chapter 22 of the Helena Zoning Ordinance prior to issuance of an occupancy permit.

Ms. Macefield recommended approval of the CUP as the proposal represents adaptive reuse of an existing building, 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.

Commission comment

Commissioner Peura referred to a letter in the packet that referenced a parking variance and noted that a parking variance was not being applied for. Ms. Macefield concurred and clarified the applicant's site plan meets all parking requirements.

Discussion was held on the authority of the city related to the number of gaming machines allowed in a casino. City Attorney Nielsen explained the state regulates the number of machines; cities have no jurisdiction. Commissioner Cartwright commented he is leery of any regulations related to a monopoly such as liquor licensing and gaming.

Commissioner Oitzinger spoke of regulations mandating required distances for casinos from schools. Ms. Macefield confirmed the applicant is in compliance will all state and city regulations.

Public Testimony

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

Kevin DeTienne, 40 W Norris Road, applicant; urged the Commission to support the CUP application.

Kim Smith, 3709 Cooney Drive; spoke in support of the CUP.

Bob Abelin, 130 South Howie; gave an overview of the traffic study he performed for the property.

Kris Sandroock, 1305 LeGrande Cannon Boulevard; spoke in support of the CUP.

Sydney DeTienne, 40 W Norris Road; spoke in support of the proposed casino.

Bob McWilliams, 2111 Gold Rush; spoke in support of the CUP.

Leighton Lindsay, 1068 North Ewing; spoke in support of the CUP.

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

Discussion

Discussion was held on accesses on Dredge Drive and future plans for the expansion of Custer Avenue.

Motion

**Commissioner Cartwright moved approval for a resolution granting a Conditional Use Permit (CUP) to allow up to a 2,400 square foot casino with 20 gaming machines to be located in a B2**

**District subject to the two conditions stated for property legally described in the staff report.** Commissioner Throssell seconded the motion. All voted aye, motion carried. **Resolution #19436**

F. CONSIDER PROPOSED LOW INCOME HOUSING TAX CREDITS TO REHABILITATE THE EAGLES MANOR II FACILITY LOCATED AT 715 NORTH FEE, AS MEETING COMMUNITY HOUSING NEEDS.

Staff Report

Community Development Director Sharon Haugen reported Rocky Mountain Development Council (RMDC) would like to purchase the current Eagles Manor Project II and rehabilitate it. Part of the financing for this project would come from the proceeds of the sale of Low Income Housing Tax Credits. RMDC would like to apply for the tax credits in February. MCA 15-6-221 requires the unit of local government where the proposed project is to be located to give due notice, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing will be forwarded to the Board of Housing for consideration in granting the allocation of tax credits.

The current Eagles Manor Project II is in disrepair and in need of rehabilitation. RMDC is considering purchasing this building and rehabilitating and reconfiguring the building. This project is currently located on the same campus and the Penkay Eagles and Eagles Manor I projects. Currently there are 53 efficiency units for senior and disabled citizen. The facility is currently owned by a non-profit. RMDC would like to do a complete rehabilitation and reconfiguring of the building to create 3 efficiency units and 40 one-bedroom units. The total estimated project cost is \$6 million. RMDC is considering using Low Income Housing Tax Credits, HOME funds and CDBG funds to finance the project. If successful in receiving all of the funds the rehabilitation will begin next year.

Director Haugen recommended approval and stated the rehabilitation of Eagles Manor II will address a community housing need by addressing the need for additional one-bedroom units for senior and disabled citizens in the community. There is more of a demand for this type of unit than for the efficiency units that now exist. There is always a shortage of one-bedroom units that are affordable to the low and very low income. If funded, the project will take a building with a limited lifespan and extend its use longer so that the building can continue to serve this population.

Commission comment

Mayor Smith asked for the difference between an efficiency unit and a one-bedroom unit? Ms. Haugen explained an efficiency unit is similar to a studio apartment.

Public Testimony

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

Jeff Miller, RMDC, applicant; gave a description of the project and urged the Commission to designate the renovation of Eagles Manor II as a community need.

Michael O'Neill, 621 Hillsdale; spoke in support of the renovation of Eagles Manor II. He also spoke in support of the Housing Montana Fund.

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

**Motion**

**Commissioner Throssell moved to determine that the Eagles Manor II project proposed by RMDC, located at 715 North Fee, would address a community housing need.** Commissioner Peura seconded the motion. All voted aye, motion carried.

***Public Communications***

**PUBLIC COMMUNICATIONS**

Michael O’Niell, 621 Hillsdale; invited the Commission to attend the school board meeting on Tuesday, January 9, 2007 at 6:15 p.m. at the Front Street Learning Center to congratulate Dr. Bruce Messinger on 10 years of service.

George McCauley, 926 5<sup>th</sup> Avenue; commented on the lack of affordable housing in the Helena community.

Mayor Smith asked City Manager Burton to speak about a letter from Department of Environmental Quality that was distributed to the Commission tonight. The letter is included in the Commission packet as part of the official record.

***Meetings of Interest***

**MEETINGS OF INTEREST**

The next Administrative Meeting is January 24, 2007 and the next Commission Meeting is January 29, 2007. The Commission will hold a retreat Friday, January 12 and Saturday, January 13, 2007.

Commissioner Peura announced the Downtown Visioning Partnership is holding a seminar hosted by Rodger Brooks, January 17 and 18, 2007 at the Great Northern Hotel.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 9:07p.m.

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

ATTEST:

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Clerk of the Commission