

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
June 4, 2007
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, June 4, 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 George McCauley 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 May 21, 2007 were approved as submitted.

Appointments APPOINTMENTS:
A. Pre-release Screening Committee

Mayor Smith asked for Commission concurrence on the following appointment:

Helena Pre-release Screening Committee – Appointment of Murray Strong. The term will begin upon appointment and does not have an expiration date.

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

Motion **Commissioner Throssell moved approval of the appointment of Murray Strong to the Helena Pre-release Screening Committee.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Agreement amendment – Rocky Mountain Development Council Neighborhood Center lease
C. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Resolution #19471**

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

Bid Award

BID AWARD:

A. Missouri River Water Treatment Plant - 1.5 million gallon Clearwell

Staff Report

Public Works Director John Rundquist reported the current phase of improvements for the Missouri River Treatment Plant (MRTP) began in earnest when the City Commission awarded the construction contract last December for the new High Service Pump Station. The companion project for the Pump Station is a new 1.5 million gallon Clearwell and this was bid separately.

Together, the new Pump Station and Clearwell will replace 50 year old equipment and inadequate Clearwell storage in the existing facility. Chlorine gas disinfection equipment will be replaced with a safer hypochlorite chemical feed system. A new emergency generator will be provided to allow continuous operation of facilities in the event of power failure. The new Clearwell will allow the City to remain in compliance with regulatory requirements for disinfection contact time. Both the Clearwell and Pump Station are designed to meet the city's projected water demands for 20 years. With minor upgrades, the Pump Station can be improved to meet projected demands for 40 years. After 20 years, an additional Clearwell tank will be needed to meet the projected demand in 40 years.

The Clearwell project was bid once before in 2006. The lowest bid received at about \$1.9 million was well above the engineer's estimate and the project budget, so the bid was allowed to expire with no action to award the contract. City staff and consultants worked to develop additional tank alternatives that would reduce the cost and allow the project to remain within budget. With the current bid, five different styles of tank were allowed for bid in order of preference based upon staff's estimate of relative maintenance and aesthetics. Prestressed concrete is preferred for both lifetime maintenance and aesthetics.

The city opened new bids on May 8, 2007. The competitive bidding among the different tank styles and contractors was successful in reducing the cost for all the tank alternatives. The city received a low bid for the preferred tank option that is within the current budget for the project and which allows adequate contingencies for project completion.

Director Rundquist recommended award of the low bid for a Prestressed Concrete tank to Williams Brothers Construction of Billings, Montana. Williams Brothers is the construction contractor for the current Pump Station project and has successfully completed other comparable work for the city. This project will complete an important master planned water project that will assure reliability, capacity and regulatory compliance at the city's Missouri River Water Treatment Plant. He noted about 55% of the project cost will be paid with STAG grants that the city has been awarded with assistance from our congressional delegation in Washington DC. The remainder will be funded from water revenues and a State Revolving Fund Loan.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Peura moved approval to award construction of the Missouri River Water Treatment Plant Clearwell Addition, City Project #66-03 (Prestressed Concrete Alternate) to the lowest responsible bidder, Williams Brothers Construction of Billings, Montana at the bid price of \$1,528,736. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger wished congratulations to 2007 graduates of Capital and Helena High Schools.

Commissioner Peura spoke of the recent weekend races and runs to support non-profit entities. He thanked those non-profit organizations for putting on the races and congratulated the runners.

Commissioner Cartwright spoke of touring the walking mall with Mr. Jerry Hutch, who is vision impaired; there were many obstacles. He referred to improvements that could be made to help citizens with disabilities.

Commissioner Cartwright referred to the Reber PUD and asked when the Commission could expect to be informed on the traffic analysis related to the subdivision. Manager Burton explained short of further subdivision of the property by the landowner, the city can't add additional conditions on the already approved subdivision. Commissioner Cartwright stated he thought the traffic study would occur when the city applied engineering standards to the subdivision, such as road width and access. He spoke of an Environmental Impact Assessment that was done in the valley, well before construction was begun. The assessment occurred so prematurely the county requested another assessment. He urged staff to require some kind of traffic study as the number of houses proposed to be built will have some kind of impact on the city's transportation network. City Manager Burton noted the concern and will keep Commission apprised.

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. Spirit of Service "Golden Shovel" award

City Manager Burton reported City of Helena employees participated in the annual Spirit of Service Day and were chosen to receive the Golden Shovel award. He invited Gary Carlson from Anderson Zurmuehlen & Company and Jeff Miller from Rocky Mountain Development Council to speak on the program. Mr. Carlson and Mr. Miller explained the Spirit of Service program and presented the "Golden Shovel" award to city employees who participated in the cleanup day.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member George McCauley reported the HCC would be performing cleanup on the Walking Mall on Sunday, June 10, 2007. He spoke of upcoming July 19, 2007 Neighborhood Meetings and announced the HCC will provide the Quality of Life Survey results to the Commission in near the future.

The next HCC Meeting will be held on Wednesday, June 17, 2007; the meeting will begin with a tour of the Wastewater Treatment Facility at 6:00p.m.

Transfer Station fees CONSIDER A RESOLUTION OF INTENTION TO SET FEES CHARGED FOR DISPOSAL OF GARBAGE AND REFUSE AT THE CITY OF HELENA TRANSFER STATION FOR FISCAL YEAR 2008.

Staff Report Assistant Public Works Director Phil Hauck reported the City Commission passes a resolution annually establishing charges for the Transfer Station. The Public Works Department is recommending a Transfer Station fee increase not to exceed \$3.00 per ton for fiscal year 2008. Assistant Director Hauck recommended approval of the fee increase and asked the Commission to set a public hearing date of June 18, 2007.

Public comment Mayor Smith called for public comment.
Jane Phillips, 1320 Floweree; commented if more citizens recycled it would keep the tipping fees down.

Motion Commissioner Oitzinger moved approval for a resolution of intention to set fees charged for disposal of garbage and refuse at the City of Helena Transfer Station for FY 2008 and set a public hearing date of June 18, 2007. Commissioner Peura seconded the motion. All voted aye, motion carried. **Res #19472**

Urban Deer Management Plan CONSIDER ACCEPTANCE OF THE "CITY OF HELENA URBAN DEER MANAGEMENT PLAN - FINDINGS AND RECOMMENDATIONS OF THE HELENA URBAN WILDLIFE TASK FORCE"

Staff Report Parks & Recreation Director Randy Lilje reported after a lengthy process, the Helena Urban Wildlife Task Force has submitted its findings and recommendations for the Urban Deer Wildlife Management Plan. The City Commission has reviewed the plan and is now ready to hold a public hearing to receive further public comment on the recommendations from the task force.

Director Lilje recommended approval of the management plan so it can be forwarded on to the Montana Department of Fish, Wildlife and Parks (FWP) for its review and approval. He noted approval of the plan would begin to address the problems and concerns created by the growing urban deer population within the City of Helena.

Public comment Mayor Smith called for public comment.
Phil Brooks, 417 Albert Street; spoke against using sharpshooters within the city limits to control the deer problem for safety reasons and urged the Commission to sterilize the deer.
Stan Frasier, PO Box 5841, Helena; expressed concern for the funding of the plan.
Larry Sickerson, 1000 Wildwind Road; spoke against FWP funding the plan.
Jim Crichton, 1248 South Hills Drive; spoke against FWP funding the plan. He requested an RFP for sharpshooter services if the plan should be approved.
Judy Grumbridge, 725 Cedar; urged the Commission to sterilize and not kill the deer.
Deb Wambach, 1958 Beltview Drive; voiced questions over the content of the plan.

Jay Weyner, 435 South Oakes; expressed concern over city resources being used on the plan.

Norb Lauer, 4975 Prospector Gulch; commented the deer problem is the least important problem Helena is facing.

Leo Rogge, 1101 Washington Street; spoke in support of reducing the amount of deer in the area.

Carrie Fairbrother, 642 Dearborn Avenue; stated her dog had been killed by a deer and urged the Commission to cull the herd and use the meat to feed the hungry.

Colonel Joe Goldes, 642 Dearborn Avenue; stated the deer are a threat and spoke in support of the Commission coming up with a plausible, effective solution to the deer problem that does not inconvenience citizens.

John Traub, 5040 Smallwood Court; spoke against the use of sharpshooters and high-powered rifles within the city. He also expressed concern for the cost. He spoke in support of urban hunting and using bow hunters.

Berma Saxton, 922 Stuart Street; spoke against culling the deer and in favor of sterilization.

Susan Nybo, 803 9th Avenue; urged the Commission to sterilize the deer.

Inga Taut, 5040 Smallwood Court; spoke against using sharpshooters to control the deer population.

Jane Phillips, 1320 Floweree; urged the Commission to cull the deer.

Marshall Gingery, 2522 Primrose Lane; urged the Commission to ask FWP to work with the city on the report. He also stated that any work to control the population is a long-term commitment for the city.

Ann Lauer, 4975 Prospector Gulch; believes the plan was formulated too fast.

George McCauley, 926 5th Avenue; urged the Commission to table their decision.

James Bailey, Helena; spoke against culling the deer and in support of stopping drinking and gambling.

Mayor Smith recognized the UWTF Members in the audience.

Commission comment

Commissioner Cartwright referred to the public comment supporting sterilization. In the task force recommendation and other reports, there seems to be the professional opinion that it is an iffy prospect right now. There may be successful vaccines and treatments developed in the future, but at the moment there aren't any that can be even reasonably successful. He asked a member of the task force to speak to this.

Commissioner Oitzinger stated the vaccines that are now available have to be re-administered on an annual basis. Also, the sterilized deer have to be marked, as they cannot be hunted. Matthew Cohn, UWTF Member, concurred with Commissioner Oitzinger and explained sterilization is of limited use. The effectiveness is not well known and the task force couldn't find anything that has been properly approved. Sterilization may be an option in year two of the plan and beyond. There is a need to get the herd to a target density, which couldn't be done without culling or removal.

Commissioner Cartwright referred to an accusation made during public comment that the UWTF recommendation was pre-determined. He stated he understood the UWTF to be very hesitant to recommend

dealing with the deer problem by lethal means. Commissioner Oitzinger concurred there are task force members that are extremely reticent to cull the herd. She confirmed the task force worked together so there was no rush to judgment in the plan.

Commissioner Peura stated the issues brought up in public testimony tonight have been examined and the data is included in the UWTF report. Commissioner Peura stated according to the report, relocating deer was considered to be one of the least humane options available and asked for an explanation. Mr. Cohn stated on the surface capture and transfer seems ideal but involves a myriad of issues and problems. You must use nets or darting to capture the deer. If the darts do not hit right on, it results in incoherent, dazed deer. In areas that have tried to relocate urban deer there is a 60-80% mortality rate. The meat is unusable so the deer must be tagged so hunters know not to eat it. Also, there is a concern with moving urban deer to the wild as they are used to different food and behavior. Mr. Cohn noted relocation is currently not allowed under FWP rules.

Commissioner Peura asked FWP's Gayle Joslin to address disease issues in the UWTF report. Gayle Joslin, FWP, explained FWP tries very hard to keep the ungulate populations in Montana healthy and disease free, much of this results from animals remaining in wild conditions with less dense populations. She confirmed the FWP Commission passed moratorium on moving ungulates around the state because they tend to be animals that get chronic wasting disease. Regarding disease of animals located in Helena, there have been deer with ringworm and viral skin papalomas. Also, when animals drink stagnant water at communal sites there is concern for tuberculosis. All of these conditions may have implications for humans. FWP doesn't want to risk the spread of infection by trap and transfer.

Commissioner Peura referred to growth projections in the report and stated by 2010 the population could be as high as 1,832 deer. He asked Ms. Joslin to explain her comfort level with those projections. Ms. Joslin stated when the task force commissioned the deer inventory the consultant systematically set up a process to survey the city as extensively and intensively as possible, covering every road on two to three occasions. The consultant felt he saw an extremely high proportion of the deer. He used the HCC districts; some had 100% coverage, as there were roads throughout the district. Some districts on the edge of the city had only 30% coverage because of undeveloped areas. From the animals that were seen within the areas with less than 100% coverage you can extrapolate out to get the number of deer you would expect to see should the coverage be 100%. Ms. Joslin noted FWP does aerial inventories of wildlife and even in perfect conditions they never get 100%; the best you can hope for is 85%. Regarding the projected 2010 population, an adult female deer has the capacity to produce twins almost every year. Assuming the deer won't produce twins, using a number like 1.5 offspring per year, you can follow those projections in the cohorts of ages through, you can expect to have a growth rate that becomes logarithmic. Truthfully, you don't know if the number would reach around 1,800 because of mortality factors for the deer. Ms. Joslin added the mere biology of the animal is such that they will expand.

Commissioner Throssell asked for more information about the urban deer herd's migration into and out of town. Ms. Joslin explained over the past ten years the expansion of the city has incorporated natural

deer into the system. Once the deer are born here and raised here they perpetuate themselves. That's not to say there's not some movement in and out of the city limits by wild or semi-wild animals, particularly males. Males will wander in and out of town, females tend to set up their home ranges and be faithful to them. With respect to trying to remove males from the situation so there is no reproduction, one male can have a huge effect as they can breed with dozens and dozens of females.

Commissioner Cartwright referred to comments about an urban deer plan not being the best use of resources. He recommended requiring a time specific report, one or two seasons out, on how the plan is working so the people understand this is not open ended. He noted the plan must be approved by FWP so it is not just Helena's problem. He is bothered by insinuation that deer can tell the difference between being killed by hunter and being killed by a sharpshooter. When issues of morality are discussed people need to be very careful about what they see in other people and what they see in themselves.

Commissioner Oitzinger stated according to elder folk wisdom out there, trap and transfer is not nearly the anathema that it was among biologists and other wildlife experts. She noted it is not allowable and the FWP will not approve a plan that includes it in the cafeteria of options. She recommended the UWTF maintenance committee be directed to drill down on the trap and transfer issue. Over generations of deer, even if they were habituated to Helena, if they were put out on a ranch in Broadwater County, they would soon learn on an intergenerational basis that they need to run because they are being put out there to be hunted. There are some of us that while we would not go out with a rifle ourselves can kind of get our heads around the hunting culture of Montana because there is such a tremendous ethic of fair chase. Over time, trap and transfer to places where deer would be hunted would be the option for these urban deer on an intergenerational basis that wouldn't restore a greater normalcy over time to our own Montana hunting ethic of fair chase. It is an important adherence to what we believe as a state. Although trap and transfer isn't allowed now, it is important to look at it in the future. She referred to FWP funding and stated she was not aware there were match requirements that had to be considered and whether or not FWP could participate financially in this type of work. In many agencies that have substantial resources there are sometimes interest earnings that do not have the restrictions on the corpus of the funds. She noted the plan was started after the city was approached by FWP with the prospect of a grant; there are many good reasons for the agency to want to partner with the city on these urban deer issues. It was always implicit that the city would not be on their own in the effort. Commissioner Oitzinger recommended tabling the acceptance of the plan to June 18, 2007 to cogitate on the issues associated with it.

Motion

Commissioner Throssell moved approval of the City of Helena Urban Deer Management Plan submitted by the Urban Wildlife Task Force on April 9, 2007 and directed staff to submit the plan to the Montana Department of Fish, Wildlife and Parks for its review and approval. Commissioner Peura seconded the motion.

Discussion

Commissioner Throssell stated this is an issue the city needs to start moving and working on; delaying it is not the answer. He noted he is curious to see what FWP does with the city, it may come back to the

city looking like a totally different study with different issues. There were issues brought up tonight that deserve more consideration. He likes the fact that the plan indicates the city will create an ongoing maintenance committee to review the issue. He spoke of letter from Dr. Robert Ream, professor of wildlife biology at University of Montana that stated we have created the deer herd because we feed it and it's important to educate the public and enforce the laws related to feeding. The deer are a safety and health issue. He noted this isn't the final decision but believes it is important to keep moving forward.

Mayor Smith stated he is not willing to table the recommendation as he did not hear new information tonight and does not see what would be served by tabling motion. He referred to comments about the city's misplaced priorities and noted public requests for the commission to address the problem started this plan. He stated funding questions related to the plan rest with FWP.

Substitute Motion

Commissioner Oitzinger moved approval of the Helena Urban Deer Management Plan submitted by the Urban Wildlife Task Force on April 9, 2007 with the exception of including "certified urban hunt" under maintenance options and direct staff to submit the plan to FWP for review and approval but that no certified urban hunting be included in any such plan. Commissioner Cartwright seconded the motion. Motion failed 2-3 with Commissioners Peura, Throssell and Mayor Smith voting no.

Comment

Commissioner Peura indicated he would support Commissioner Throssell's motion. He concurred with Mayor Smith's comments about new information related to the plan. He spoke in support of the process and believes the public had good opportunities to get informed. He concurred with public comments about where and what the city spends its money on but believes this is an emerging issue that cannot be ignored. Commissioner Peura commented he is motivated by the increase in vehicle accidents, proliferation of disease and the possibility of predators entering the city; the deer population is out of balance and needs to be addressed.

Vote on original motion

Motion carried 4-1 with Commissioner Oitzinger voting no.

Motion

Commissioner Oitzinger moved to reopen the agenda item. Commissioner Cartwright seconded the motion.

Motion

Commissioner Oitzinger moved the maintenance committee, which is part of the UWTF recommendation, be instructed to revisit the trap and transfer option and do additional research into the literature and examine as to why it is not acceptable as an option. Motion died for lack of a second.

Commissioner Cartwright noted there would not be a maintenance committee until the plan is approved by FWP.

Motion

Commissioner Oitzinger moved that the forwarded recommendations from the City Commission to FWP include a condition that funding in the amount of 50% of the ultimate options be provided by the state. Commissioner Cartwright seconded the

motion. Motion failed 2-3 with Throssell, Peura and Mayor Smith voting no.

Commissioner Peura indicated he would not support the motion, as he prefers the city enter into discussions with FWP without a pre-set goal.

Motion

Commissioner Oitzinger moved that the forwarded recommendations from the City Commission to FWP include a condition that there be financial participation from the state for the purposes of the recommendations. Commissioner Cartwright seconded the motion.

Commissioner Throssell commented the motion sets criteria that may inhibit discussions with the state; the plan should be submitted before funding is required. He commented it should be noted the City of Helena is looking for support and leave it at that.

Vote

Motion failed 2-3 with Throssell, Peura and Mayor Smith voting no.

Commissioner Oitzinger noted she was pleased with her vote against sending the plan forward.

ADA

CONSIDER A RESOLUTION AMENDING RESOLUTION NO.10456 THAT ESTABLISHED A GRIEVANCE PROCEDURE PROVIDING FOR PROMPT AND EQUITABLE RESOLUTION OF COMPLAINTS ALLEGING ANY ACTION PROHIBITED BY TITLE I AND TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990; APPOINTING AN ADA COORDINATOR AND ASSISTANT COORDINATOR; AND CREATING AN ADA COMPLIANCE COMMITTEE.

Staff Report

City Zoning Officer Elroy Golemon reported the City of Helena has always been committed to serving the needs of persons' with disabilities. On July 20, 1992 the Helena City Commission passed Resolution No. 10456 that established a grievance procedure, identified the ADA Coordinator as the Administrative Department and the Human Resource Manager as the Assistant Coordinator and created the ADA Compliance Committee. At this time, staff proposes to amend Resolution No. 10456 by updating the grievance procedures, reassign the duties of the ADA Coordinator to the Community Development Director or their designee and identify the Assistant Coordinator as the Human Resource Director or their designee; and reestablish the ADA Compliance Committee.

Staff proposes to amend Resolution No. 10456 for prompt and equitable resolution of complaints alleging any action prohibited by Title I and Title II of the Americans with Disabilities Act of 1990. This act provides comprehensive civil rights protection in the areas of employment; state and local government services programs, and telecommunications to individuals with disabilities.

Mr. Golemon recommended approval of the proposed resolution as it would reaffirm the City of Helena's commitment to persons' with disabilities; to provide for the prompt and equitable resolution of grievances where complaints alleging any action prohibited by Title I and Title II of the Americans with Disabilities Act of 1990; to identify the

departments assigned the responsibilities of ADA Coordinator and Assistant Coordinator; and reestablish an ADA Compliance Committee.

Public comment

Mayor Smith called for public comment.

Bob Maffit, MT Independent Living Project, 1820 11th Avenue; referred to letters sent to the city regarding some accessibility problems around Helena and stated those letters are about process not staff. Mr. Maffit urged the Commission to approve the resolution but recommended the membership be no less than 51% people with disabilities.

George McCauley, 926 5th Avenue; urged the Commission to pass the resolution.

Motion

Commissioner Throssell moved approval of a resolution amending Resolution No. 10456 that established a grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Title I and Title II of the Americans with Disabilities Act of 1990; appointing an ADA Coordinator and Assistant Coordinator; and creating an ADA Compliance Committee. Commissioner Peura seconded the motion.

Friendly Amendment

Commissioner Peura recommended increasing the amount of individuals representing disabled community from one to two. Commissioner Throssell accepted the amendment and offered an additional friendly amendment to then decrease the membership to one community at large member. The second amendment was accepted.

Comment

Mayor Smith referred to the requirement that the Community Development Director and Human Resource Director or their designees serve as the ADA Coordinator and Assistant Coordinator. He indicated he would be more comfortable if the resolution required the directors only and did not allow for them to appoint designees.

Friendly Amendment

Commissioner Oitzinger offered a friendly amendment to require people with disabilities membership at 51%. Commissioner Throssell did not accept the amendment.

Commissioner Throssell explained a numerical standard might look inclusive but may actually exclude someone from applying. The language requiring preference gives him enough comfort and he doesn't feel it is necessary to require an arbitrary percentage. Commissioner Oitzinger withdrew her amendment and noted she supports the resolution as amended.

Commissioner Cartwright stated membership should include the HR Director unless he or she is absolutely not available to keep the committee moving. Mayor Smith stated he doesn't believe the resolution needs to be amended, as staff understands the concerns of the Commission.

Vote

All voted aye, motion carried. **Resolution #19473**

**Res. of Intention
to Annex**

CONSIDER A RESOLUTION OF INTENTION TO ANNEX PROPERTY GENERALLY LOCATED NORTH OF PROSPECT AVENUE, SOUTH OF MISSOULA AVENUE AND WEST OF MARKET STREET AND TO ESTABLISH CONDITIONS OF ANNEXATION.

Staff Report

City Planner Kathy Macefield reported the proposal is for the annexation of Block 20, except the parcel described in the deed of M20, Page 4823, Boyce Addition and the adjacent rights-of-way in Lewis and Clark County; generally located west of Market Street. The annexation would also include the 40-foot wide closed and vacated portion of Market Street running north-south between Blocks 20 and 21 (Resolution #1979-4), and the adjacent 70-foot wide Missoula Avenue right-of-way. The property owner has requested annexation by petition for property that is located adjacent to the city limits. The Helena Zoning Commission recommended denial (3:2 vote) for rezoning the property as a B-2 (General Commercial) District on May 8, 2007.

Water and sewer mains must be extended to serve the property and across the property frontage in accordance with City Code. A fire hydrant is located at the intersection of Butte Avenue and Blaine Street, approximately 550+ feet east of the applicant's property. The adjacent streets must be improved to city standards or a signed waiver of protest for the creation of an SID will be required.

The portion of Blaine Street ROW located between Billings Avenue and Butte Avenue has not been annexed, nor has the portion of Missoula Avenue ROW located between Blaine and Market Streets. These streets will provide access to the subject property but neither of these streets have been constructed. These ROWs must be annexed and constructed to city standards. Annexation of these ROWs must be done under a separate process that requires a public hearing.

Ms. Macefield recommended approval of the resolution of intention as the property is located adjacent to the city limits and infrastructure can be readily extended to serve the property, making efficient use of land, infrastructure, energy and other resources. This proposal would not create any individually wholly surrounded properties.

Commission comment

Mayor Smith asked why the Zoning Commission recommended denial of the pre-zoning. Ms. Macefield explained over concerns with increased traffic in the area. Commissioner Peura asked if the Commission is comfortable with a property's annexation but uncomfortable with proposed zoning, can just the annexation be approved? Attorney Nielsen explained before the city annexes property it is pre-zoned. Technically, the Commission could approve a resolution of intention to annex without pre-zoning the property but the danger is it could be annexed without zoning in the future. Commissioner Peura asked if a condition could be added that states pre-zoning would be completed before annexation can be completed. Attorney Nielsen stated yes. Commissioner Cartwright recommended holding discussion on zoning until agenda item F.

Public comment

Mayor Smith called for public comment.

Ed Maronick, applicant; urged the Commission to approve the resolution of intention. He noted the surrounding area was forcibly annexed in the past and this property was inadvertently left out.

- Discussion Mayor Smith asked Manager Burton about Mr. Maronick's term of forcibly annexed? Manger Burton gave the history of the property, it was forcibly annexed in 2000 or 2001 because it was wholly surrounded property receiving city services; CLM zoning was not requested by the landowner.
- Motion **Commissioner Throssell moved approval for a resolution of intention to annex the eastern portion of Block 20, Boyce Addition, and the adjacent rights-of-way in Lewis and Clark County, subject to the 4 conditions stated in the resolution and as legally described herein.** Commissioner Peura seconded the motion.
- Friendly Amendment **Commissioner Peura recommended adding a Condition No. 5 stating pre-zoning must be approved by the City Commission prior to annexation. Commissioner Throssell accepted the amendment.**
- Vote All voted aye, motion carried. **Resolution #19474**
- Res. of Intention to Annex*** CONSIDER A RESOLUTION OF INTENTION TO ANNEX PROPERTY GENERALLY LOCATED NORTH OF KNIGHT STREET AND EAST OF JOSLYN STREET WITH A PROPERTY ADDRESS OF 1922 KNIGHT STREET AND TO ESTABLISH CONDITIONS OF ANNEXATION.
- Public Hearings*** PUBLIC HEARINGS:
A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359, AMENDING THE OFFICIAL ZONING MAP THEREOF, AND PRE-ZONING TO A R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT FOR APPROXIMATELY .29 ACRES; GENERALLY LOCATED NORTH OF KNIGHT STREET AND EAST OF JOSLYN STREET WITH A PROPERTY ADDRESS OF 1922 KNIGHT STREET.
- Staff Report City Zoning Officer Elroy Golemon reported the property is currently developed with a single-family residential dwelling on four lots. The property is adjacent to Joslyn Street, a city right of way. The septic system is failing and the property owner is seeking annexation to obtain City services.
A signed petition for annexation in accordance with § 7-2-4601, MCA, has been received from Helen Heier, owner of the property. Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.
On May 08, 2007 the Helena Zoning Commission unanimously recommended approval for the adoption of an Ordinance for a pre-zoning designation prior to annexation to R-2 (Single-Family Residential) District for this property.
The property is currently receiving water from a well located on the property. There are two 8-inch water mains that are approximately 400+ feet from the property. The first main is one block to the west at the corner of Knight and Winston Street. The second main is located one block south at the corner of Hauser and Joslyn Street. The applicant will be required to connect to city water service when this portion of Knight Street is improved or the well serving the property fails. A city sanitary sewer main is located in the alley to the north of the property. The

applicant will be required to connect to the sanitary sewer main. The applicant will also be required to install a meter on the well to measure sewer usage for the property.

The streets adjacent to the property do not meet city standards. The applicant will be required to install paving, curb, sidewalk and gutter on Joslyn and Knight Street across the full frontage of the property. The Joslyn and Knight Street improvements could be deferred until such time as a project is commenced for design, installation and construction of paved streets up to the applicant's property. The applicant will be required to waive the right to protest the creation of a special improvements district.

The full width of the adjacent rights of way of the property being annexed must also be included in the annexation. Annexation of this property will require taking in a portion of Knight Street on the south side of the property and the alley north of the property.

Mr. Golemon recommended approval of the resolution of intention to annex approximately .29 acres of land and noted the property is located adjacent to the City; infrastructure can be readily extended to serve the property, making efficient use of land, infrastructure, energy and other resources. This proposal does not create any individually wholly surrounded properties. Annexation of the private property is consistent with city policy, and consistent with the policy of annexing properties contiguous with city boundaries.

Mr. Golemon reported the applicant is requesting pre-zoning prior to annexation. The property is currently developed with a single-family residential unit which has a failing septic system on the property; generally located north of Knight Street, east of Joslyn Street, with a property address of 1922 Knight Street.

On May 08, 2007 the Helena Zoning Commission unanimously recommended approval for the adoption of an ordinance pre-zoning to a R-2 (Single-Family Residential) District prior to annexation for the subject property located in Lewis and Clark County.

Mr. Golemon recommended approval of the proposed pre-zoning as it is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and is compatible with the surrounding land uses and the established County Special Zoning District.

Public Testimony

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

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

Motion

Commissioner Cartwright moved approval of a resolution of intention to annex Lots 29, 30, 31 and 32 in Block 177 of the Syndicate Addition and the portion of Knight Street and alley adjacent to the property, located in Lewis & Clark County, Montana, into the City of Helena, Montana, and establish conditions of annexation for the property as stated in the resolution.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19475**

Motion

Commissioner Cartwright moved approval for first passage of an ordinance pre-zoning to a R-2 (Single-Family Residential) District prior to annexation for a single property located in Lewis

and Clark County as legally described in the ordinance.

Commissioner Peura seconded the motion.

Comment

Commissioner Cartwright commented at some point the city will have waivers of right to protest an SID from 51% of property owners on the westside and be able to move forward.

Vote

All voted aye, motion carried. **Ordinance #3087**

B. CONSIDER A RESOLUTION INCREASING THE FEE CHARGED FOR USE OF THE FIRING RANGE AT THE HELENA REGIONAL AIRPORT.

Staff Report

Police Chief Troy McGee reported in the mid 1990's, the Helena Regional Airport handed over control of the firing range to the Helena Police Department (HPD). The city has always used the airport range for firearms qualifications, but now has the opportunity to begin instituting some changes and planning for future improvements. In FY06, the HPD started making plans for improvements, but due to limited funding, progress was slow. The only source of funding was the revenue brought in from other agencies that used the range, which is currently \$5 per shooter per day. This means about \$1,000 per year, but the plans went beyond this financial limit. The other agencies that use the range are Security Armored, VA Police, State Gambling Division, MLEA, ICE and Probation & Parole.

Starting in FY08, the HPD is planning on making major improvements to the range, including installation of electricity, erecting storage structures and mounting permanent targets. The goal is to transform the range to simulate an actual city-like area to improve firing accuracy and familiarization with hazards, i.e., vehicles, blind corners and buildings, various lighting situations, traffic etc. The cost of these improvements have been requested in the HPD's Projects and Reimbursement Budget (Fund 215) and will be covered with FY08 reimbursements and revenue collected from previous years that has been carried over.

Chief McGee recommended approval of the resolution to increase firing range rates and noted most outside agency users have agreed to continue using the range, especially with the improvements being instituted.

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 Peura moved approval for a resolution to increase the fee charged for use of the firing range at the Helena Regional Airport. Commissioner Throssell seconded the motion. All voted aye, motion carried. **Resolution #19476**

C. CONSIDER A RESOLUTION TO VACATE PORTIONS OF AN ALLEY BETWEEN LOTS 2 AND 3 OF BLOCK 539 OF THE ORIGINAL TOWNSITE; LOCATED BETWEEN CHAUCER STREET AND BEATTIE STREET AND CONNECTING 3RD STREET AND STATE STREET.

Staff Report

City Engineer Ryan Leland reported Charles and Cynthia Shipley, the owners of 319 Chaucer Street, did a title search on their property and discovered that a 9' alley is platted through their property and part of their house is constructed on the Right-of-Way (ROW).

Mr. and Mrs. Shipley have petitioned to vacate a portion of the alley between Lots 2 and 3 of Block 539 of the Original Helena Townsite. The proposed vacation is approximately 495 square feet of ROW. The fee for the vacation is approximately \$1,405.80; the square foot value for the ROW as determined from the Montana Department of Revenue is \$2.84. The applicants have not been paying taxes on the property.

Mr. Leland recommended approval of the vacation, as it would allow the owners to have clear title of their property and clean up useable ROW.

Public Testimony

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

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

Motion

Commissioner Cartwright moved approval of a resolution to vacate a portion of alley ROW between Lots 2 and 3 in Block 539 of the Original Helena Townsite with the understanding there is a fee of \$1405.80 for the vacation. Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution #19477**

D. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3086 AMENDING SECTIONS 8-11-7, NO PARKING AREAS, OF THE HELENA CITY CODE.

Staff Report

Fleet Superintendent Ed Robinson reported Section 8-11-7 of the Helena City Code identifies the Director of the parking and traffic division as the person authorized to determine and designate places in which the stopping, standing, or parking of vehicles would create an especially hazardous condition or could cause unusual delay to traffic. The proposed ordinance revisions would accomplish:

1. Authorize the Public Works Director as the individual responsible to determine and designate where stopping, standing, or parking vehicles would create hazardous conditions or unusual traffic delays.

2. Expand the ordinance to include bus and trolley loading zones.

Mr. Robinson recommended approval of the ordinance revisions.

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 Peura moved approval for final passage of Ordinance No. 3086 amending Sections 8-11-7 of the Helena City Code. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance #3086**

E. CONSIDER THE AMENDED PRELIMINARY PLAT FOR THE CUSTER LANDING MAJOR SUBDIVISION CREATING 8 LOTS FROM APPROXIMATELY 14.9 ACRES LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT, GENERALLY LOCATED SOUTH OF CUSTER AVENUE AND WEST OF I-15; PROPOSAL INCLUDES A VARIANCE REQUEST TO EXCEED THE MAXIMUM LENGTH FOR A DEAD-END STREET.

Staff Report

City Planner Lucy Morell-Gengler reported the applicant is proposing to subdivide 14.87 acres into 8 commercial lots; it is anticipated the property will be developed as a shopping center. Primary access to the subdivision will be provided via Custer Avenue to a southward extension of Sanders Street that will be constructed through the subdivision. This extension of Sanders Street will exceed 700 feet; thus, the applicant is requesting a variance from §12-4-2-(C) of the subdivision regulations to allow a dead end street longer than 700 feet. Secondary access is proposed through the Power Townsend parking lot. The subdivision provides for future connections to undeveloped properties located to the east of the subdivision by way of a 30-foot wide easement and access drives through the proposed parking lot.

On May 15, 2007 the Consolidated Planning Board held a public hearing for a major subdivision/preliminary plat, to be known as Custer Landing subdivision. The Planning Board unanimously recommended conditional approval (7:0 vote) for the preliminary plat of the Custer Landing major subdivision creating 8 lots from 14.9 acres and to adopt the Findings of Fact and the conditions contained therein.

The applicant is proposing a change in the preliminary plat design that was previously reviewed by the Planning Board. The proposed change would remove a stormwater detention pond from the right-of-way and would instead place the stormwater pond within a lot. An access and maintenance easement to the City would then be provided. Staff has reviewed this change and found that it is not a material change.

The Consolidated Planning Board unanimously recommended approval (7:0 vote) for a variance from §12-4-2-(C) of the Helena City Code to allow a dead end street longer than 700 feet to facilitate future extension of Sanders Street.

Ms. Morell-Gengler recommended approval of the amended preliminary plat and stated the proposed subdivision would provide for infill development consistent with current B-2 zoning and would extend Sanders Street southward through the Custer Landing subdivision to facilitate the future extension of that street.

Discussion

Commissioner Throssell asked for an explanation of city subdivision regulations requiring two access and ingress points per subdivision. Ms. Morell-Gengler stated the regulations require two public accesses be provided to a subdivision that would generate more than 200 vehicle trips per day. The regulations do not state that has to be through a street. The applicant is proposing the 30-foot wide access drive be recognized as their second access. A condition is included in the Findings of Fact that requires the access to be reviewed by city staff to assure it would accommodate emergency vehicles. He asked if the Power Townsend parking lot is a public access point or private property? Ms. Morell-Gengler stated the agreement would recognize shared

access between the two properties for the public on those properties. He asked if an agreement for the use of the parking lot has been submitted to the city signed by the owners of Power Townsend? Ms. Morell-Gengler stated not at this time, if it were submitted to the city in the future it would be reviewed by city staff to assure emergency access would be available through the property. Commissioner Throssell asked for the requirements for the Commission to consider approval of a variance. Ms. Morell-Gengler read the criteria listed in the subdivision regulations: the variance will not be detrimental to public health, safety or general welfare, or injurious to other adjacent properties; that literal enforcement of the regulations will result in undue hardship due to particular physical surroundings, shape or topographical conditions that are unique to the specific property involved and cannot be reasonably resolved by redesigning the subdivision proposal; the variance will not cause a substantial increase in public cost; and the variance will reflect the consideration of the growth policy or zoning ordinances. Commissioner Throssell asked Ms. Morell-Gengler if she saw anything on the topography of the property that would warrant the proposed variance? Ms. Morell-Gengler stated nothing in the shape or topography although the physical surroundings may present difficulties for the property. He asked for an explanation of the difficulties in the physical surroundings. Ms. Morell-Gengler stated the 700 feet is measured from the intersection of a street. The nearest streets are Custer and Marshall. There is no right of way available to connect the property to Marshall. The only opportunity this property has to physically connect to a street is Custer and that limits the property's ability to extend to Marshall. The applicant could develop it with the 700 feet but it is not within the city's transportation goals and subdivision regulations to allow for future connectivity of the street network. The granting of the variance would accommodate not only the applicant but also the city's transportation goals. Commissioner Throssell stated he believes there is not a physical limitation for the variance but a legal limitation. He asked City Attorney Nielsen if a legal impediment, or physical impediment, for granting the variance is one in the same? Attorney Nielsen stated he disagrees with Ms. Morell-Gengler and believes there is a physical impediment for the variance because of its location on Custer Avenue, which prohibits a second access point from Custer. Commissioner Throssell asked Police Chief McGee if he is concerned regarding adequate secondary ingress and egress? Chief McGee stated yes. Commissioner Throssell asked if the proposed secondary access through the Power Townsend parking lot is inadequate? Chief McGee stated yes related to the needs of the Police Department. Commissioner Throssell asked Assistant Fire Chief J.R. Feucht if this subdivision would have adequate secondary access? Assistant Chief Feucht commented secondary access is always preferable from a fire and life safety standpoint. Commissioner Throssell asked if the proposed second access through the Power Townsend parking lot would be adequate? Assistant Chief Feucht stated it would work.

Commissioner Cartwright referred to property south of Power Townsend's outbuildings and asked if the alley is platted right-of-way? Ms. Morell-Gengler stated not to her knowledge. She gave the history of the subdivision of the shopping center. Commissioner Cartwright stated it appeared to be an alley way; there is a great difference between the pathway and how they have cut the property for Custer Landing

Subdivision. An alley in at that angle would relieve a lot of the concerns that have been expressed previously.

Commissioner Peura asked for more information on the requirement of two accesses. City Attorney Nielsen explained in the subdivision act, there has to be a legal and physical access to the property. The city goes beyond that requirement and requires if there is over 700 foot in length on a dead end street or if the subdivision will exceed a certain amount of traffic generation there must be two accesses, which means physically accessible for the owners of the property and also emergency vehicles. Through a property drafted easement to the public or to this property allowing this property to use the Power Townsend property both for emergency vehicles and access of patrons would suffice as the legal minimum. Ideally the city would like to acquire the right-of-way but the zoning regulations don't rise to that sort of requirement.

Mayor Smith commented he is concerned with providing access through Power Townsend and granting the variance seems risky because of the access issues.

Manager Burton commented the city has tried to put together an SID with all of the adjacent property owners, including the former owner of the subject property, for the extension of Sanders Street, as it is part of the transportation plan. Staff has been unsuccessful. If the adjacent property owners apply to subdivide their property the authority will exist to extend Sanders Street all the way south to the post office. He noted if the Commission chose to go back to the 700 foot where a variance is not required, in the future the city would not be in a position to get the remainder of the right-of-way to hook into the adjacent property owners so future development would take place and Sanders would be able to be extended.

Commissioner Cartwright stated if the Commission turned down the variance, instead of putting pavement for a city street the developer would use asphalt for a parking lot. It seems to him the question is whether the access to Power Townsend at the north end of the lot is adequate for safety purposes. Regarding Sanders, it does extend fairly far north and there are two to three blocks that are undeveloped. Were there to be access from an alley on the south side of Power Townsend that would take care of his concerns. He indicated he would support the variance.

Commissioner Peura asked if the variance were denied, could a condition be attached to that the remaining 250 feet would still need to be financially guaranteed by the developer so that when Sanders is developed, the city will have a financial guarantee that the cul-de-sac would be broken through and the final 250 feet developed to city standards? Manager Burton stated typically financial guarantees are required, particularly during the time of the preliminary plat. In this case, once the final plat is filed the financial guarantee wouldn't want to be carried forward too long as they are expensive to buy and odd to track if all the conditions are met. Commissioner Peura asked if the applicant could be required to waive the right to protest an SID so that as soon as Sanders is ready to be developed south, the developer would be required to contribute to the cost of the final 250 feet? City Attorney Nielsen stated the problem with that would be if the street was developed to the south and the developer did not want to do an SID, it would become very expensive for 250 feet. To alleviate concern with the turnaround, he suggested the Commission require a temporary deed

restriction or part set aside for an appropriate turnaround, such as a hammerhead, for fire apparatus.

Public Testimony

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

Brian Huffaker, Hawkins Companies; urged the Commission to approve the preliminary plat and variance. He stated they would be agreeable to the installation of a hammerhead turnaround on the south end of development. He reported an agreement regarding the shared access of the Power Townsend parking lot has been signed by the applicant and submitted to Mr. Wall of Power Townsend for their approval. He added their development is similar to Lowe's.

Todd Cooksaus, Morrison-Maierle; spoke in support of the development. He stated that emergency service vehicles should have no problem turning around on their property.

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

Discussion

Commissioner Cartwright asked if the applicant has plans to deal with elevation issues in the southwest corner of the lot in order to build a useable alley in the area? Mr. Huffaker stated no. Commissioner Cartwright asked if the applicant would be amendable to condition the subdivision to require a useable alley in the southwest right-of-way? Mr. Huffaker stated no, as they feel they have met requirements of the code by using Custer Avenue and Power Townsend for access.

Commissioner Cartwright clarified his suggestion would be in addition to the other identified accesses and would require minimum alley standards. Mr. Huffaker stated they could certainly evaluate the suggestion but feel Hawkins Company has gone above and beyond and has worked with city and made many financial obligations. They could certainly consider the suggestion if necessary but would prefer not too. Commissioner Cartwright spoke of fire dangers related to Power Townsend's lumber storage area.

Commissioner Peura referred to page 11 of the staff report which states Custer Avenue does not meet design standards for the additional traffic from the development and asked City Engineer Ryan Leland if the proposed improvements to Custer and the proposed improvements related to the interchange would put Custer to the point where the concern for the increased traffic would be alleviated? Mr. Leland stated that is a loaded question because there are considerable changes that would need to happen along Custer Avenue. The interchange will definitely help the situation on Custer all the way to Montana Avenue; however, the problem lies with needed improvements, widening Custer to five lanes, all the way west to the Fairgrounds. He noted it is a broad issue and if Sanders were improved all the way south it would greatly change the traffic patterns. City Manager Burton stated in discussions with MDT the scope of the interchange project is from Montana Avenue to the YMCA. It also includes the reconstruction to a wider standard on Cedar Street to accommodate traffic while construction occurs. Part and parcel of those discussions have been about Custer Avenue to Montana Avenue and west, tying into Joslyn and Highway 12. MDT is clearly aware Custer is a state road and a major issue. While it's not a slated project per say, it's a utility corridor and incremental steps are being taken to relocate those utilities. In the interim, Custer Avenue has been selected for the pavement preservation program for 2008.

Commissioner Cartwright referred to Helena's requirements for variances versus state law. Helena's current requirements are considerably stricter than state law and the zoning review will include a review of the variance ordinance. There may be different answers related to the variance if it was reviewed under state law.

Motion

Commissioner Cartwright moved conditional approval for the amended preliminary plat of the Custer Landing Major Subdivision creating eight commercial lots, to be located in the B-2 (General Commercial) District; and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact, with one additional finding of fact that the upgrade of Custer Avenue in the interchange construction is not guaranteed even though it is intended to be built. Commissioner Oitzinger seconded the motion.

Comment

Commissioner Throssell stated he is concerned and can't be assured that access through Power Townsend property will provide adequate secondary ingress and egress; he would support the 30-foot alleyway as a true access point. He believes it could increase the city's liability and is not comfortable risking public health and safety for the next thirty years. Commissioner Peura indicated he would vote against the motion for public health and safety reasons, because the development would create a traffic level-of-service F and access concerns. Mayor Smith stated his concerns have been mitigated by the applicant's comments regarding the access agreement with Power Townsend and indicated he would support the motion.

Vote

Motion carried 3-2, with Commissioners Throssell and Peura voting no.

Motion

Commissioner Cartwright moved approval for a variance from Section 12-4-2 (C) of the Helena City Code to allow a dead end street to exceed 700 feet with the condition it terminate in an arrangement that staff approves is equivalent to a hammerhead turnaround. Commissioner Oitzinger seconded the motion.

Comment

Commissioner Throssell commented there is a difference between physical access problems and legal access problems. This is a legal access problem and the applicant knew that when they bought the property; they have been unable to correct it and that does not make it a physical access problem. He is concerned that granting the variance will result in the same situation in future subdivisions. He believes the Commission is not getting clarity on the criteria for granting a variance and approval of this variance will set a bad precedence. Commissioner Oitzinger stated she believes there is a physical access problem due to location. She referred to the unanimous Planning Board approval of the plat and variance and believes the problems will be solved.

Vote

Motion carried, 3-2 with Commissioners Throssell and Peura voting no.

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 PROPERTY GENERALLY LOCATED NORTH OF PROSPECT AVENUE, WEST OF MARKET STREET AND SOUTH OF MISSOULA AVENUE.

G. 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 CLM (COMMERCIAL LIGHT MANUFACTURING) TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR PROPERTY GENERALLY LOCATED NORTH OF PROSPECT AVENUE AND SOUTH OF BILLINGS AVENUE BETWEEN GIBBON AND MARKET STREETS.

Staff Report

City Planner Kathy Macefield reported on May 8, 2007 the Helena Zoning Commission recommended denial (3:2 vote) for the adoption of the following ordinances:

Property #1: An ordinance for rezoning to B-2 (General Commercial) District for property legally described Block 20 except the parcel described in the deed recorded in M20, Page 4823, and the closed and vacated portion of Market Street running north-south between Blocks 20 and 21, Boyce Addition (Resolution #1979-4), Helena, Montana; generally located north of Prospect Avenue, south of Missoula Avenue and west of Market Street.

Property #2: An ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof for a zone change from CLM (Commercial-Light Manufacturing) to B-2 (General Commercial) District in reference to those multiple properties, legally described as Block 15 (Quit Claim deed M27, Page 3282), and Blocks 21 and 22 (M20, Page 4823), Boyce Addition; and the closed and vacated portion of Butte Avenue (Resolution #1979-4), and vacated Missoula Avenue located between Blocks 15 and 22 (Resolution 1991-86), Helena, Montana; generally located north of Prospect Avenue and south of Billings Avenue between Gibbon and Market Streets.

Staff recommended approval of both proposals as they represent 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.

Discussion

Commissioner Peura asked if generally the criteria related to traffic and generated trips per day are higher in a B-2 District? Ms. Macefield stated retail uses do tend to be higher traffic generators than what might be warehouse type uses in the CLM District.

Public Testimony

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

Ed Maronick, applicant; explained the city chose the zoning for his property; he did not agree then and still doesn't. The property is surrounded on two sides by B-2 zoning. Mr. Maronick urged the Commission to approve the pre-zoning and zone change.

Steve Netschert, 665 South Davis; gave the history of the property's annexation and zoning and spoke in support of the zone change and pre-zoning.

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

Discussion

Commissioner Peura referred to the projected traffic level-of-service change from E to F and asked Mr. Leland if any of the capital interchange improvements will assist in traffic issues in this area? Mr. Leland stated the interchange construction would not include any work to the subject intersection. However, with a level-of-service F, MDT may include some improvements with the scope of the project. It is purely an MDT decision as it is their ROW. Commissioner Peura asked if signalization is the primary mitigation technique to address the volume concerns of the intersection? Mr. Leland stated the level-of-service rating addresses leaving the area because of traffic on Prospect Avenue. Signalization may help Gibbon Street but hurt Prospect Avenue's rating. Commissioner Peura asked Ms. Macefield if the need for a signalized intersection can be alleviated by requiring the developer to provide those improvements? Ms. Macefield explained the intersection is under MDT jurisdiction.

Motion

Commissioner Throssell moved approval for the adoption of an ordinance for pre-zoning to B-2 (General Commercial) District for property described as the east portion of Block 20 in the Boyce Addition, legally described in the ordinance. Commissioner Oitzinger seconded the motion.

Comment

Commissioner Cartwright indicated he would prefer to table the zone change and pre-zoning in order wait for a specific application for use of the property to better judge the traffic impact.

Substitute motion

Commissioner Cartwright moved to table the adoption of an ordinance for pre-zoning to B-2 (General Commercial) District for property described as the east portion of Block 20 in the Boyce Addition, legally described in the ordinance, to the call of City Manager. Commissioner Peura seconded the motion. Motion carried 4-1, with Mayor Smith voting no.

Motion

Commissioner Cartwright moved to table the adoption of an Ordinance amending City of Helena Ordinance No. 2359, and amending the Official Zoning Map thereof for a zone change from CLM (Commercial-Light Manufacturing) to B-2 (General Commercial) District in reference to those multiple properties, legally described in the ordinance to the call of the City Manager. Commissioner Peura seconded the motion. Motion carried 4-1, with Mayor Smith voting no.

City Manager Burton asked for direction from the Commission on what additional information they need to make the decision on the zoning. Mayor Smith explained the Commission would like to see what specific use is proposed for the property to better judge traffic impact to the area. Commissioner Cartwright asked for the size of the traffic impact and proposed mitigation.

***Public
Communications***

PUBLIC COMMUNICATIONS

Steve Netschert, 665 South Davis; stated the Commission can look at the traffic study with the application. He asked if the city would extend the timeframe of the application? City Attorney Nielsen explained there is no specific timeframe for zoning and since the Commission tabled the application it doesn't count against the applicant.

***Meetings of
Interest***

MEETINGS OF INTEREST

The next Budget Work Sessions are June 6 and 11, 2007; the Joint Work Session is June 7, 2007; Administrative Meeting is June 16, 2007 and the next Commission Meeting is Monday, June 18, 2007.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 11:00p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission