

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 5, 2007
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, November 5, 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 Oitzinger, Peura, and Throssell were present. Commissioner Cartwright was excused. City Manager Tim Burton, City Attorney David Nielsen and City Clerk Debbie Havens were present. Others present were Allen Tompkins 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 October 29, 2007 were approved as submitted.

Proclamation PROCLAMATION:
A. Great Conversations Week

Mayor Smith read the proclamation designating November 12 – 17, 2007 as “Great Conversations Week”. Ms. Cindy Lewis with the Helena Education Foundation accepted the proclamation.

Appointments APPOINTMENTS:
A. Business Improvement District/Helena Parking Commission
B. Bill Roberts Golf Course Advisory Board
C. Helena International Affairs Council

Mayor Smith asked for Commission concurrence on the following appointments:

Business Improvement District/Helena Parking Commission - Reappointment of Randall T. Green to the BID/HPC. Term will begin upon appointment and expire October 31, 2011.

Golf Course Advisory Board - Reappointment of Shelia Hill to the Golf Course Advisory Board. Term will begin upon appointment and expire October 30, 2010.

Helena International Affairs Council - Appointment of Campbell Pryor to the HIAC representing the arts community. The term will begin upon appointment and expire October 28, 2010.

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

Motion **Commissioner Peura moved approval of the appointments to the BID/HPC, Golf Course Advisory Board and HIAC.** Commissioner Throssell seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Utility Bill Insert - Montana Dept. of Transportation
- C. Utility Bill Insert - Consumer Credit Counseling Service

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 C on the consent agenda. Commissioner Throssell seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith reminded the citizens of Helena to return their mail ballots to the election office by 8:00 p.m. on Tuesday, November 5, 2007. He then wished all four candidates good luck.

Mayor Smith reported he participated in the ribbon cutting of the Exploration Works Museum. He encouraged everyone to visit the museum and exhibits.

Commissioner Peura reported he attended the Step It Up Event on local climate change at the Lewis & Clark Library on Saturday, November 3rd. Also in attendance was Commissioner Oitzinger.

Commissioner Oitzinger stated the Step It Up Event was timely and brought the issue of climate change to the forefront. Commissioner Oitzinger stated she too visited Exploration Works. She also acknowledged that City Manager Burton is participating as table leader at the Great Conversations Dinner to talk about growth in the rocky mountain west.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Allen Tompkins gave the following report on the HCC District meetings:

District #1, no residents attended, the HCC members discussed junk vehicles and the zoning ordinance;

District #2, 10 HCC candidates and a number of residents had a presentation on the parks bond and discussion on the Historical Society site and LED signs;

District 3 & 4, HCC members discussed with a property owner wishing to be annexed into the city but their property is not contiguous to the city limits;

District 5, five people attended and discussed new development;

District 6, two HCC members, three residents and two commission candidates attended and discussed the LED signs and the museum site;

District 7, discussed the museum site and six out of the nine people there favored the mall site; also discussed was the increased traffic on Broadway and Winnie once the south interchange opens. Also discussed was the HCC web site.

Mr. Tompkins thanked Mayor Smith for the letter he sent to all the HCC candidates regarding the election error. The HCC January meeting will be held on January 30, 2008. A topic discussed at the October HCC meeting was the "branding" of the city with the majority of the HCC members favoring it. One suggestion was to ask outside visitors how they view and identify Helena. Lieutenant Roger Johnson gave a report on abandoned vehicles.

Commissioner Oitzinger asked what the next step on the branding is. Commissioner Peura stated the Advantage Helena steering committee is meeting Friday, November 9th to discuss the recommendations and how to proceed. Commissioner Peura will keep the commission updated. Commissioner Oitzinger asked that the Public Arts Committee be kept updated.

Mr. Tompkins encouraged Helena residents to become active with the Helena Citizens Council.

Mayor Smith thanked Mr. Tompkins for his comments on the letter regarding the HCC election and also encouraged citizens to get involved with the Helena Citizens Council.

Golf fees

CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR THE BILL ROBERTS MUNICIPAL GOLF COURSE FOR THE 2008 SEASON.

Staff Report

Parks & Recreation Director Randy Lilje reported based on its review, the Golf Advisory Board is recommending an increase in fees at Bill Roberts Golf Course for the 2008 season. The changes recommended will help continue the high level of maintenance and operation that the golfers have come to expect at Bill Roberts Golf Course and fund the debt service for capital repairs, replacements, and improvements that have been done.

Finally, the Board always considers the golfing market in the Helena area as well as the region so that golf at Bill Roberts Golf Course remains affordable to the golfing public while maintaining its high standards. Director Lilje noted it is still the best golfing value in the area and approval of the resolution of intention would meet the goals of the city and Golf Advisory Board.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Throssell moved approval for a resolution of intention to establish fees to be charged for the Bill Roberts Golf Course for the 2008 season and set a public hearing date of November 19, 2007. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19526**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER THE PRELIMINARY PLAT FOR THE BURNHAM RANCH MARKETPLACE MAJOR SUBDIVISION CREATING 15 LOTS FROM 16.3 ACRES IN THE B-2 (GENERAL COMMERCIAL) DISTRICT; GENERALLY LOCATED NORTHEAST OF THE CUSTER AVENUE /KELLEHER DRIVE INTERSECTION.

Staff Report

City Planner Lucy Morell-Gengler reported the applicant, Steve Allen, is proposing to subdivide 16.3 acres into 15 commercial lots, which may be developed as a shopping center. Primary access to the

subdivision will be provided via Custer Avenue and a northward extension of Kelleher Drive that will be constructed adjacent to the subdivision. Kelleher Drive would provide for future connections to undeveloped properties located to the north of the subdivision.

On October 16, 2007 the Consolidated Planning Board held a public hearing for a major subdivision/preliminary plat, to be known as Burnham Ranch Marketplace Subdivision. The Planning Board adopted one change to the Findings of Fact and conditions recommended by staff. (Identified with underlining in the draft Findings of Fact.) The Planning Board unanimously recommended conditional APPROVAL (6:0 vote) for the preliminary plat creating 15 lots from 16.3 acres and to adopt the Findings of Fact and the conditions contained therein as amended.

Ms. Morell-Gengler reviewed the draft Findings of Fact to include: Impact on Agriculture and Agricultural Water User Facilities; Impact on Local Services; Impact on Natural Environment; Impact on wildlife and Wildlife Habitat; Impact on Public Health and Safety; Survey Requirements, Helena Subdivision Regulations; Local Subdivision Review Procedure; Easements; Legal and Physical Access; and Preliminary Plat Approval.

Staff has identified confusing language in the proposed conditions and recommends deleting "and filed with the county clerk and recorder." As stated it may imply the applicant must file the easement whereas the city typically files the type of easement described in the conditions. Staff has identified other language that is not clear. Thus, staff recommends eliminating language from the proposed conditions that is identified by ~~strikeouts~~ and adding language identified with underlining.

Ms. Morell-Gengler recommended the commission conditionally approve the preliminary plat for the Burnham Ranch Marketplace major subdivision creating 15 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.

Commission Comment

Commissioner Throssell asked Ms. Morrell Gengler to explain the rather unique shape of the 15 lots. Ms. Gengler explained one of the reasons for the configuration of the lots is to accommodate for parking. Should it not be developed as a shopping center, each of the lots would be required to provide for parking and landscaping. Approval of the subdivision doesn't necessarily mean approval of the site plan. Ms. Gengler stated staff anticipates the lots to be changed with the right-of-way.

Commissioner Throssell asked if staff is comfortable with the fact that it appears to be a major work in progress; there are no right-of-ways and that the lots are going to change shape? Ms. Gengler stated although there are a number of conditions that would affect the configuration of this subdivision, the principals would remain the same. The traffic impact, the impacts for criteria for review of the subdivision would both remain the same.

Commissioner Throssell then referred to traffic impact and asked when that is going to occur, when do the applicants anticipate full build-out and what are the traffic numbers onto Custer Avenue going to be? Ms. Gengler stated traffic would increase considerably; however, that is one reason for the warrant study for the traffic light at the intersection of

Custer Avenue and Kelleher Drive. Ms. Gengler stated the anticipated build out is two to three years.

Commissioner Peura referred to page three of the traffic impact study where it indicates an increase of 9,646 vehicles per day based on estimates relating to the shopping center. He asked who conducted the traffic impact study? Ms. Gengler stated the applicant contracted the traffic impact study and their engineer is here and will speak to that. Commissioner Peura stated he is concerned because at one point the traffic impact study talks about the Custer Interchange and Burnham Ranch Marketplace being completely built by 2012 and then the report from the state of Montana basically says the Custer Interchange construction schedule has not been finalized and it states the developer should not rely on these two projects running concurrently. He asked that the applicant address his concern.

Commissioner Peura asked staff to give the commission an update on the Custer Avenue Interchange project, specifically where are we on that, when is the planned build-out, is there any level of certainty on that build-out. City Engineer Ryan Leland reported staff has received updates on the Custer Interchange; they are starting to come together with some of the plans and the conceptual ideas of what they are planning to do. There are some updated estimates and they are still on track to get the plan completed by the end of 2010 and be ready to go out to bid. However, as far as when the interchange is actually constructed is still based on funding.

Commissioner Peura again referred to page three of the traffic impact study where it refers to Custer Avenue being a "minor" arterial and it states that the 2006 traffic study estimated about 13,390 vehicle trips per day. He asked Engineer Leland if he is comfortable with the estimated vehicle trips per day. City Engineer Leland stated the numbers in the traffic impact study are as good as what is available. There are traffic counts for the area; however MDT controls this and their traffic counts for this year have not been completed. He does not see any new build out from two years ago that would significantly increase the number. However, new traffic counts should be available in the next few months. Commissioner Peura stated in the same paragraph it talks about minor arterials typically carry between 5,000 and 15,000 trips per day. When the traffic counts begin to exceed the 15,000 trips per day and even consider going up to 24,000, what kind of stresses are we talking about? He explained if we are about 13,300 and the traffic impact study indicates 9,646 vehicle trips per day, we are now about to close in on about 23,000. He then asked what kind of stresses are we looking at about 15,000 and what could be anticipated if we had a minor arterial with about 23,000 vehicle trips per day? Engineer Leland explained a minor arterial is classified on how many trips it has per day and on the size of the road that is actually out there, the number of lanes that is there. As you get to the ultimate capacity, there will be significant delays in traffic or you find people using alternative routes.

Commissioner Peura referred to subdivision criteria #6, public safety, in this we talk about the Growth Policy that defines public health and safety as a condition of well being, free from danger or injury; although this report specifically addresses fire, flooding and earthquakes, he asked if traffic concerns is something we could be concerned with regarding public health and safety? Ms. Gengler stated traffic is usually evaluated under local services and it is not evaluated under two topics.

If it is a concern that this may be a health and safety issue, then it may be appropriate to evaluate it under that condition.

Public Testimony

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

Steve Allen, applicant, 3953 Fawn Meadow Drive, addressed the commission. He thanked City Manager Burton for the excellent city staff and how they have worked with him on this proposal. Mr. Allen then went on record in agreement with the Findings of Fact and the conditions contained therein.

Mr. Allen gave an overview of the proposed subdivision which will be built in a commercial corridor that is already designed to handle that particular use; the city infrastructure is more than adequate there and the current B-2 zoning is the correct zoning for that intended use. The addition of the Custer Avenue Interchange will increase the commercial use in the area.

Mr. Allen addressed condition #2 which requires the developer to incorporate the recommendations of the traffic impact study when the project is built out. One of those recommendations was to extend the fence on the airport property by the soccer fields from the existing stormwater detention facility, westward along Custer to the Kelleher intersection in order to keep pedestrians from crossing Custer without going to a crosswalk and intersection. Mr. Allen stated he had no problem with the condition, except they do not own the land. The airport administration has agreed to work with the developer to make this happen.

Mr. Allen stated the condition of approval with the most significant impact to the developers is Condition #4 which is for right of way access instead of private drives with access easements. After discussions with city staff, the applicant concurs with the recommendation. The recommendation will accomplish a couple of things, it will give the city much better control of access for emergency vehicles and also the ability to enforce traffic on those access points. There will be minor lot reconfiguration because of the recommendation but the number of access points and the number of lots is going to remain the same. This issue will also be addressed in the conditional use permit process. Mr. Allen gave an overview of the proposed pedestrian access within the development and the connectivity to the adjacent properties.

Condition #6 requires the sewer design to be compatible with the future lift station design and he is willing to participate in that and has been in contact with Public Works Director Rundquist to work out the details.

Mark Brook, engineer with Morrison-Maierle and project manager, addressed the comments regarding this project. Mr. Brook concurred that this is a major work in process; the applicants are addressing the comments from staff, MDT, the public, the commission, the conditions of approval and are incorporating those into a final plan. The property is already in the city limits and has access to all city services; the applicant is trying to perfect the plan that uses the B-2 use to get the maximum utilization and benefit and will be acceptable to all parties.

Mr. Brook noted staff recommended approval with conditions and the Planning Board recommended approval of the preliminary plat. The applicant is working with MDT to address their concerns.

Mr. Brook addressed the projected traffic volume; the 9,000 vehicle trips per day does not mean all 9,000 will be on Custer Avenue; some will be internal and some will be on Kelleher Drive. Mr. Brook referenced the September 26, 2007 letter from MDT with comments on the traffic study. The interchange will not totally be built out until 2012 and the developer should not rely on the two projects running concurrently. Also in the letter MDT is looking at providing additional capacity on Custer and having the applicant pay for their portion of the improvements. The proposal is to widen Custer Avenue from a two-lane road to a five-lane road. The build-out proposal is five years; the applicant has up to three years minimum to receive final plat approval.

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

Commission Comments

Commissioner Peura stated he has great concerns with approving this tonight without additional information on the Custer Interchange. He asked what the options are for tabling this instead of a motion to deny it. City Manager Burton stated the statutory deadline is November 12th and at that point the commission would have to make a decision.

City Manager Burton stated staff has been working through the highway corridor infrastructure improvements for at least a decade. The priorities that came out of the study included the South Helena Interchange, improvements to the Capital Interchange and the Custer Avenue Interchange. As part of the Custer Interchange project, the proposal is to widen Cedar Street, from Montana Avenue to Cedar Street Interchange, to a five-lane. The Custer Avenue Interchange is under design, right-of-way discussions have been fruitful and the plans are moving forward. To date, approximately \$6 million have been spent for right-of-way, the design will be completed by 2010. The financing of the various portions of the project will be paid by different funding sources. City Manager Burton stated he does not believe the funding will be defined any better within the next few months. MDT has been very consistent in moving forward with this project.

Commissioner Peura stated he does not plan on supporting this and stated he would distinguish this decision as being dramatically different from some of the others because this is a significant amount of vehicle trips per day that are generated by something north of Custer Avenue; this is going to put enormous additional stress on the bridge over the interstate. Commissioner Peura stated he believes under item three, impact on local services, those vehicle trips per day of 9,600 would also be a un-safe impact on the current minor arterial. He then referred to item six, public health and safety, and stated having recently spent an evening with the Helena city police, and having the officers comment the crime issues are in good stead but the bad news was the number of vehicle accidents and traffic safety issues. Commissioner Peura stated based on the subdivision criteria, his analysis on the date the commission has been given and the fact that MDT has stated in a letter that it would not be appropriate for the developer to rely on these two project running concurrently, he would not support this proposal at this time.

Commissioner Throssell stated his concern has to do with the design; he recognizes the developer and staff's comments that this is a work in progress and the plan needs to be flexible. However, he is trying to balance the needed flexibility and his responsibility of setting policy. Commissioner Throssell commented he does not believe the commission has anything to review. The lot lines are going to change, there will be dedicated public roadways and he would like to see those prior to making a decision.

Mayor Smith stated he is willing to take a leap of faith with the developers and city staff. He also stated he believes the Custer Avenue Interchange will be built to address the traffic and will be built within the next five to six years.

Motion

Commissioner Peura moved to deny the preliminary plat of the Burnham Ranch Marketplace Major Subdivision creating 15 lots from approximately 16.3 acres located in the B-2 District; generally located northeast of the Custer Avenue/Kelleher Drive intersection.

Commissioner Throssell seconded the motion. Motion failed 2-2 with Mayor Smith and Commissioner Oitzinger voting no.

City Manager Burton stated an option is to ask the applicant if they are willing to extend the deadline for a decision until November 19, 2007, city commission meeting.

City Manager Burton stated based on the commission's position, they need to speak to the Findings of Fact and the conclusions of law. The commission has to conclude what the proposed conditions of approval are and what the mitigating factors are. You have to conclude those proposed improvements do not mitigate the impact. The commission has to look into the future; you cannot look at what is there today and not look at the mitigation.

City Manager Burton clarified the commission could table this until November 19th without the permission of the applicant.

Commissioner Peura explained it was his intention that his previous comments were creating the concerns as a basis to amend the findings of fact; that being the vehicle trips, undue stress on a minor arterial, the statement the state of Montana has no willingness to say with any certainty that this will run concurrently with 2012, therefore that stress is do to continue for an unknown time at this point and therefore this impacts upon both traffic, transportation and the public health and safety concerns.

City Attorney Nielsen explained under the statute, once the applicant has submitted all the information the commission has to take an action to approve, approve with conditions or deny within 60-working days. The deadline with this proposal is November 20th. He also noted the applicant could consent to extend the deadline longer than the 60-working days.

Mayor Smith stated he is trying to understand the findings of fact and conclusion of law and apply it to this preliminary plat. It does seem rather difficult to determine the findings of fact on a preliminary plat, for example, if the right-of-way were going to be dedicated through this major subdivision that would seem to mitigate the impact on traffic. However, that is not the proposal before the commission tonight.

City Manger Burton stated the process of a subdivision is a phased process. The steps include a pre-application meeting; staff then reviews the application; the preliminary plat is developed and then the

findings and fact and conditions are developed; the planning board holds a public hearing and then the city commission holds their public hearing. There is a three-year timeframe on when the final plat has to be approved or a request for an extension is submitted.

Commissioner Throssell stated the recommendation to mitigate is to dedicate a public right of way; and then in three years the sitting commission will be reviewing the final plat and there will be a dedicated public right-of-way. Commissioner Throssell stated he would like to see the public right of way now and not at final plat. Commissioner Throssell stated this preliminary plat is not ready for his review.

Mayor Smith asked that in three years the sitting commission could review dedicated public right-of-way on the final plat and at that time make the decision on whether it mitigates the additional traffic. City Manager Burton stated it is most important that when the commission sets the condition to say here is the impact, here is the mitigating condition; if the applicant complies with the mitigating conditions and meets the conditions of approval, then the commission would approve the final plat. Once the conditions of preliminary plat approval are set and the developer complies with those conditions, the commission would find it difficult to deny.

Commissioner Peura explained the right of way through the subdivision has no bearing on his motion to deny, his is strictly the traffic on Custer Avenue and the timing of Custer Avenue Interchange being built. Commissioner Peura stated he disagrees with staff's findings of fact in that they did not raise the concerns about traffic, public safety as a function of 9,646 vehicle trips that are going to continue to put stress on the Custer corridor and the fact that it is north of Custer means it is going to drive most of that traffic over the bridge.

Mayor Smith stated there would be a full commission at the November 19th meeting and suggested having a representative from MDT available to update the commission on the Custer Avenue Interchange. Mayor Smith asked if the applicant could ask for an extension at the November 19th meeting. He then asked Mr. Allen how he would like the commission to proceed.

Mr. Allen stated he would like this item put back on the November 19th agenda.

Motion

Commissioner Peura moved to table the preliminary plat of the Burnham Ranch Marketplace Major Subdivision creating 15 lots from approximately 16.3 acres located in the B-2 District; generally located northeast of the Custer Avenue/Kelleher Drive intersection.

Commissioner Oitzinger seconded the motion. Motion carried 3-1 with Commissioner Throssell voting no.

Public Communications**PUBLIC COMMUNICATIONS**

No public communications were given.

Meetings of Interest**MEETINGS OF INTEREST**

The next Administrative Meeting is Wednesday, November 14, 2007 and the next Commission Meeting is Monday, November 19, 2007.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:45p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission