

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 19, 2007
6:00 P.M.**

- Time & Place*** A regular City Commission meeting was held on Monday, November 19, 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, and Peura were present. Commissioner Throssell was excused. City Manager Tim Burton, City Attorney David Nielsen and City Clerk Debbie Havens were present. Others present were Rebecca Ridenour 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 November 5, 2007 were approved as submitted.
- Proclamation*** PROCLAMATION:
A. Stuart Brownlow Day – Mayor Smith read into the record the Stuart Brownlow Day proclamation. Stuart Brownlow accepted the proclamation and thanked Mayor Smith for the proclamation.
- Introductions*** INTRODUCTONS:
A. Introduction and Confirmation of Police Officer Don Skidmore – Police Chief Troy McGee introduced and gave the background of Officer Don Skidmore. Chief McGee recommended confirmation of Don Skidmore as a Police Officer with the Helena Police Department. Officer Skidmore addressed the Commission and thanked the City and Chief McGee for the opportunity to serve on the Helena Police Department.
- Public Comment Mayor Smith asked for public comment. None was received.
- Motion*** Commissioner Oitzinger moved approval of the confirmation of Officer Don Skidmore. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

B. Introduction of Officers Bryan Fischer and Craig Campbell – Police Chief Troy McGee reported Officer Bryan Fischer is moving from his Violence Against Women Act (VAWA) position to Internet Crimes Against Children and the FBI Innocent Images program. Officer Craig Campbell will be the new VAWA Investigator.
Officer Fischer addressed the commission and gave an overview of the program he will be working with. Officer Campbell addressed the commission and thanked Chief McGee and the City Manager Burton for this opportunity.
- Appointments*** APPOINTMENTS:
A. Lewis & Clark Library Board – Mayor Smith recommended the appointment of Jesse Franzen to the Lewis & Clark Library Board as the joint member. The term will begin upon appointment and expire January 1, 2010.

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

Motion Commissioner Peura moved approval of the appointment of Jesse Franzen to the Lewis & Clark Library Board. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Change Order No. 1 and final payment, Sidewalk Replacements 2007, Project No. 07-08.

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 Cartwright moved approval of items A and B on the consent agenda. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Cartwright gave an overview of the city election by precinct; he also congratulated Mr. Elsaesser on being elected to the city commission.

Commissioner Peura stated he was pleased that most citizens have shoveled their sidewalks and reminded everyone to keep their sidewalks cleared of snow and ice. Commissioner Peura commented in the past a water bill insert has been used to remind citizens of the snow removal ordinance.

Mayor Smith congratulated Commissioner Cartwright on his reelection to the city commission. Mayor Smith announced at the applicant's request, agenda item 16A will be tabled until December 3, 2007. He then spoke of the new south hills trail signs that have been recently installed. Mayor Smith wished everyone a happy and safe Thanksgiving.

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 reported Rebecca Ridenour personally thanked City Attorney Nielsen and the city commission for acting quickly on the ballot error. The HCC ballots will be mailed out on December 14, 2007 and must be returned to the election office by January 8, 2008 at 8:00 p.m. Ms. Ridenour encouraged any citizen who is interested in the HCC to consider putting their name on the ballot in as a write-in candidate.

HCC Vista Volunteer Martha Eberle will begin writing a monthly article for the Independent Record and is working on a monthly show for HCTV. The HCC is also working on web-site improvements.

Ms. Ridenour stated the HCC will explore the quality of life survey results and discuss some solutions to several of the bigger

concerns. The next HCC meeting is Wednesday, November 28, 2007 at 7:00 p.m. in Room 326.

Skyway Regional Shopping Center

CONSIDER THE FINAL PLAT FOR PHASE 1 OF THE AMENDED SKYWAY REGIONAL SHOPPING CENTER MAJOR SUBDIVISION CREATING 15 COMMERCIAL LOTS; GENERALLY LOCATED SOUTH OF CUSTER AVENUE AND WEST OF WASHINGTON STREET.

Staff Report

Planner Lucy Morell-Gengler reported on September 10, 2007, the city commission gave conditional preliminary plat approval for the Amended Skyway Regional Shopping Center major subdivision creating 17 commercial lots from 28.7 acres located in the B-2 (General Commercial) District. Infrastructure plans have not been approved for all of the lots and the street closure process has not been completed; thus, the applicant is requesting approval of the first phase, which includes all of the lots except Lots 1-B, 4-B and 4-C. The lots included in the Phase 1 final plat can "stand alone" and are independent of infrastructure requirements of the Phase 2 lots.

The approval of the preliminary plat was subject to the conditions in the Findings of Fact; the conditions associated with this phase have been completed. For reference, a list of the original subdivision conditions and their status was attached to staff's memo.

A portion of Cromwell-Dixon Lane would become dedicated right-of-way in addition to a portion of proposed Lots 2-A and 4-F to accommodate improved access from the Skyway Drive/Washington Street intersection.

Approving the final plat would allow the sale of the lots; would encourage the development of property in this area; and would facilitate in-fill development and compliance with city regulations and B-2 zoning.

Ms. Morell-Gengler recommended approval of the final plat for Phase 1 of the Amended Skyway Regional Shopping Center major subdivision creating 15 commercial lots and to accept the dedication to the city of property for public improvement designated thereon.

Commission comment

Commissioner Peura referred to condition #2; the damaged portions of the bike/pedestrian path along the west side of Washington Street adjacent to the subject property must be reinstalled/repared or financially guaranteed. Commissioner Peura noted staff indicates the bike/pedestrian path has been financially guaranteed; he asked what the estimated timeframe is for the work to be completed. Ms. Morell-Gengler stated a portion of the path has been completed; however, it has not been reviewed and approved by the city. The other portion would be installed, weather permitting.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Oitzinger moved approval of the final plat for Phase 1 of the Amended Skyway Regional Shopping Center major subdivision creating 15 commercial lots and to accept the dedication to the city of property for public improvement designated thereon. Commissioner Peura seconded the motion. All voted aye, motion carried.

Barbeau Villa Sites

CONSIDER A RESOLUTION ANNEXING INTO THE CITY OF HELENA LOTS 4 AND 5, BARBEAU VILLA SITES BEING PORTIONS OF THAT PROPERTY NOW SHOWN AS LOTS 27A AND 29A-1; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND SOUTH OF NORTHGATE LOOP.

Staff Report

Planner Elroy Golemon reported Hamlin Construction & Development Co., Inc. is proposing to complete the annexation of Lots 4 and 5 of the Barbeau Villa Sites, all in Lewis and Clark County, Montana; generally located north of Custer Avenue and south of Northgate Loop.

On August 28, 2006, the city commission adopted resolution of intention (Resolution 19404) to annex Lots 4 and 5 of the Barbeau Villa Sites. The applicant has completed the conditions for annexation that included the following:

1. **Infrastructure:** The property owner shall install all infrastructure improvements required by the city, to city standards, or enter into a development agreement acceptable to the city that defines responsibility for installation or deferral of the improvements.
2. **Review of New Construction:** The property owner shall submit plans for review by the city of Helena for all construction commenced subsequent to the adoption of this resolution and prior to annexation of the property to ensure compliance with infrastructure, zoning, and all other code requirements including building and fire codes, and pay all fees for such reviews in the same manner and on the same basis as to owners of properties already in the city.
3. **Taxes and Assessments:** Taxes and assessments must be paid and current at the time of filing the resolution of annexation.
4. **Completion of Conditions:** These annexation conditions must be completed within one (1) year of the date of approval of this resolution. The property owner must notify City Planning in writing upon completion of the conditions for approval of annexation. If the conditions are not completed within that time frame, the city is under no obligation to annex the property and may discontinue any city services to the property, including water and sewer services.

Planner Golemon recommended approval of the resolution annexing property legally described at Lots 4 and 5 of the Barbeau Villa Sites in the Northgate Meadows Major Subdivision, Lewis and Clark County, Montana. Mr. Golemon showed the location of Canby Way; which is an internal street and does not connect to Custer Avenue.

Commission comment

Commissioner Cartwright stated with this annexation there will be a piece of property that will be wholly surrounded; he then asked if any conversations have started with those property owners? Mr. Golemon showed the property being proposed for annexation and the surrounding properties. Discussions are on going regarding bringing all the property into the city.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Cartwright moved approval of the resolution annexing property legally described at Lots 4 and 5 of the Barbeau Villa Sites in the Northgate Meadows Major Subdivision, Lewis and Clark County, Montana. Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution 19527**

Cabernet Drive

CONSIDER A RESOLUTION OF INTENTION TO VACATE THE CABERNET DRIVE RIGHT-OF WAY (ROW) BETWEEN LOTS 1-4 IN BLOCK 17 AND LOTS 3-6 IN BLOCK 5 AND THE ALLEY ROW IN BLOCKS 5 AND 17 OF THE NOB HILL SUBDIVISION PHASE IV.

Staff Report

City Engineer Ryan Leland reported the owners and developers of the subdivision petitioned the city of Helena to vacate the cul-de-sac at the south end of Cabernet Drive in order to provide a lot suitable for a proposed state of Montana office building. The alley ROW between Lots 1-4 and Lots 5-8 in Block 17 will also have to be vacated because the site plan shows a parking lot over the existing ROW. The proposed vacation is approximately 39,541 square feet of ROW. The fee for the vacation is approximately \$130,000, using the square-foot value for the ROW as determined by the Montana Department of Revenue. The fee was calculated with values for the adjacent properties, ranging from \$2.98 per square foot to \$3.67 per square foot.

City Engineer Leland recommended the commission approve, table or deny a resolution of intention to vacate a portion of Cabernet Drive ROW between Lots 1-4 in Block 17 and Lots 3-6 in Block 5 and the alley ROW between Lots 1-4 and Lots 5-8 in Block 17 in the Nob Hill Subdivision Phase IV in the City of Helena, Montana and set a public hearing date for December 3, 2007.

Commission comments

Commissioner Peura asked if the building being proposed is 288,000 square feet. Engineer Leland stated this is the preliminary plan and he was not certain if the size has remained the same. Commissioner Peura asked what is the total size of the proposed lot, if the vacation of the ROW is approved. Mr. Leland stated he believes the total lot size is approximately 5-acres.

Commissioner Peura asked if the vacation of the ROW was approved, what would be the rest of the process in order for the building to be built. City Engineer Leland stated this is a resolution of intention and if it is approved, a public hearing will be set for December 3, 2007 to consider the resolution to vacate. In order for the building to be built with the current proposal, a zone change would be required.

Commissioner Cartwright asked if the city has any criteria for approving or denying a proposal to give up a right-of-way. City Attorney Nielsen stated generally for the vacation of right-of-way, the litmus we look at is does it have a use by the public for access to private property and to make sure properties are not landlocked; and to site utility facilities. The right of way is for the use of the public; however, when it is vacated, it goes back to the adjacent property owners.

Commissioner Cartwright asked if there is any criteria on public good, public benefits for doing it or public costs for not doing it. City Attorney Nielsen stated he has never seen any state statute or city ordinance that says the vacation or non-vacation is dependent upon future development of the adjacent properties.

Commissioner Cartwright stated the drawing that was attached to the resolution has a building footprint of less than one-acre being built in the middle of a sea of asphalt. Commissioner Cartwright stated the current building footprint is not conducive to a walkable and bikeable community.

Public comment

Mayor Smith called for public comment. None was received.

Motion

Commissioner Peura moved to approve a resolution of intention to vacate a portion of Cabernet Drive ROW between Lots 1-4 in Block 17 and Lots 3-6 in Block 5 and the alley ROW between Lots 1-4 and Lots 5-8 in Block 17 in the Nob Hill Subdivision Phase IV in the City of Helena, Montana and set a public hearing date for December 3, 2007. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution 19528**

Lamborn Street

CONSIDER A RESOLUTION OF INTENTION TO VACATE A PORTION OF LAMBORN STREET RIGHT-OF-WAY (ROW) BETWEEN LOT 9 OF BLOCK 4 AND LOT 16 OF BLOCK 5 IN THE PHOENIX AVENUE ADDITION.

Staff Report

City Engineer Ryan Leland reported this portion of Lamborn Street is undeveloped with two utilities located in the ROW. The adjacent property owner has petitioned to vacate portions of Lamborn Street ROW between Lot 9 of Block 4 and Lot 16 of block 5 in the Phoenix Avenue Addition. The proposed vacation is approximately 6,270 square feet of ROW. The fee for the vacation would be approximately \$20,252. The square foot value for the ROW, as determined by the Montana Department of Revenue, is \$3.23.

The city of Helena has received two objections to the vacation from the city of Helena Utility Maintenance Division and Qwest. The city of Helena has a 6-inch water main and Qwest has a buried cable in the ROW. Staff has offered to work with the applicant, Mr. Skinner, towards an acceptable ROW vacation associated with an exchange for ROW needed for the future extension of Sanders Street. Mr. Skinner has refused. The city commission is required by state statute to consider all ROW vacation requests.

Engineer Leland recommended denial of the resolution of intention to vacate a portion of Lamborn Street Right-of-Way between Lot 9 of Block 4 and Lot 16 of Block 5 in the Phoenix Avenue Addition.

Public comments

Andy Skinner, representing Lifestyle Court, spoke in support of the proposal to vacate a portion of Lamborn. Mr. Skinner stated he would like to create an outside storage area for the tenants of the mobile home court. He noted he could build the storage area to the east of the street; the vacation of the ROW would allow them to build a fence around the storage units and the proposed outside storage area for security. Mr. Skinner submitted a copy of the utility notification form from Qwest stating that Qwest has cable buried in the affected area and wishes to maintain its right to the cable being there. If ROW were guaranteed then Qwest would have no objections.

Mr. Skinner stated he believes the \$3.23 per square foot value is incorrect and he currently has a tax appeal submitted with the Lewis & Clark County Tax Appeal Board.

Mr. Skinner objected to staff addressing the ROW exchange with this request and property on Sanders Street; he noted he does not own the land on Sanders Street, his children do. Mr. Skinner urged the commission to approve the resolution of intention.

Commission comments

Commissioner Peura asked Mr. Skinner for the status on the tax appeal. Mr. Skinner stated due to the city water main and the Qwest cable, this property is not a buildable lot and should not be assessed as one. He noted the appeal has been submitted and they expect to have a meeting in the very near future.

Commissioner Cartwright asked if there is an appeal process on the decision on a vacation. City Attorney Nielsen stated the commission makes the decision and there is no appeal process.

Commissioner Oitzinger asked Mr. Skinner to explain where the proposed fence would be located. Mr. Skinner, using the site plan map, showed the commission the proposed fence and current storage building. Mr. Skinner stated the fence would not interfere with the access to the utilities that are in the ROW. City Attorney Nielsen stated when a ROW is vacated, the city reserves easements for existing utilities.

Mayor Smith asked for clarification on the proposal to exchange this ROW with property on Sanders Street. City Engineer Ryan Leland stated staff has proposed an exchange of the ROW on Lamborn for ROW on Sanders Street. If the ROW on Sanders were obtained, it would allow the extension of Sanders Street to the Custer Landing Subdivision. City Engineer Leland noted this property is not currently zoned for outside storage.

City Manager Burton commented ownership aside; this might be a good discussion to have in terms of ROW ownership swaps. Manager Burton stated he could not recall when city staff has recommended approval for the vacation of a ROW where utilities are currently located.

Mayor Smith asked if the closure of this ROW was discussed versus the vacation? City Manager Burton stated closure and right of way use agreements are both options.

Commissioner Cartwright stated he is concerned that the value has not been established, the property is not currently zoned for the proposed outside storage and therefore recommended tabling this until all the questions are answered.

Mayor Smith stated there has always been a reluctance to vacate a ROW; he then asked Engineer Leland if staff had discussed the closure option with the applicant? City Engineer Leland stated it is an option to close this portion of the ROW; however, with the closure there would be a ROW use agreement between the two parties. In addition, to do the outside storage, there are other steps required of the applicant.

Mayor Smith asked Mr. Skinner for his opinion on a closure instead of a vacation and what are the relative merits of this parcel versus the parcel on Sanders Street.

Mr. Skinner stated he does not own the property on Sanders Street. Mr. Skinner stated this property is zoned R-3; it is a conditional use permit for a mobile home court and the outside storage is an allowable usage within a mobile home court.

Commissioner Oitzinger asked for clarification on the other portion of Lamborn Street. Mr. Skinner stated it is vacated.

Mayor Smith asked Steve Skinner for his opinion on the proposed trade on Sanders Street. Mr. Steve Skinner stated at this time the owners are not averse to dedicating a portion of Sanders Street; however, they do not believe they should have to pay for any SID assessments. The timing is not right to consider the exchange of property. Mr. Steve Skinner also spoke in support of vacating a portion of Lamborn.

Commissioner Cartwright stated he continues to be concerned with the taxable evaluation on the property and asked how to proceed. City Attorney Nielsen explained the taxable value is not a negotiable number; the square foot value would be assessed from what the taxable value at the time of vacation. Attorney Nielsen stated the commission

could deny the resolution of intention and start the process over; or it could be tabled; however the record would be clearer if denied.

Commissioner Oitzinger asked what is the typical term that is used instead of closure/vacation. City Engineer Leland stated both parties could sign a utility use agreement.

Commissioner Oitzinger stated she would like to consider the closure option with a utility use agreement. The closure is somewhat inconsistent with the vacated property to the north. Commissioner Oitzinger stated she does not believe the property on Sanders Street should be a part of the discussion.

City Manager Burton gave examples of where right-of-way agreements are used, including the outdoor cafes.

Commissioner Peura stated it is his intention to move to deny the resolution of intention. He then asked if there is a fee related to the application to vacate the ROW. If there is a fee and this resolution is denied and the applicant reapplies at a future date, the city would waive the fee. City Attorney Nielsen stated there is a \$250.00 application fee to begin the process.

Motion Commissioner Oitzinger moved to approve a resolution of intention to close a portion of Lamborn Street Right-of-Way (ROW) between Lot 9 and Block 4 and Lot 16 of Block 5 in the Phoenix Avenue Addition to the city of Helena. Motion died for a lack of a second.

Motion Commissioner Peura moved to table the resolution of intention to vacate a portion of Lamborn Street Right-of-Way between Lot 9 of Block 4 and Lot 16 of Block 5 in the Phoenix Avenue Addition, subject to the call of the City Manager. Commissioner Oitzinger seconded the motion.

Discussion Mayor Smith asked what the procedure is for the tax appeal and what happens once the taxable value is established. City Attorney Nielsen explained on an appeal of an appraisal, first it goes to the Department of Revenue, then it would go to the County Tax Appeal Board and then it could be appealed to the State Tax Appeal Board and they could increase, decrease or retain the appraised value. Commissioner Peura stated once the taxable value is received, the commission would then have a solid taxable value to assess for the vacation.

Vote All voted aye, motion carried.

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.

Mayor Smith noted the applicant has requested the city commission table further action on the subdivision until the December 3, 2007.

Motion

Commissioner Cartwright moved to table further action on the preliminary plat for the Burnham Ranch Marketplace major subdivision until December 3, 2007. Commissioner Peura seconded the motion. All voted aye, motion carried.

- B. CONSIDER A RESOLUTION 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.

Director Lilje recommended approval of the resolution establishing fees to be charged for the Bill Roberts Golf Course for the 2008 season.

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 the resolution establishing fees to be charged for the Bill Roberts Golf Course for the 2008 season. Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution 19529**

Public Communications

PUBLIC COMMUNICATIONS
None was received.

Meetings of Interest

MEETINGS OF INTEREST
The next Administrative Meeting is, November 28, 2007 and the next Commission Meeting is December 3, 2007.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:50 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission