

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 3, 2007
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, December 3, 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 City Clerk Debbie Havens were present. Others present were Marshall Gingery 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 19, 2007 were approved as submitted.

Appointments

APPOINTMENTS:

- A. Bill Roberts Golf Course Advisory Board
- B. Helena International Affairs Council

Mayor Smith recommended the following appointments: Robert Anderson representing the Men's Golf Association and Paul D. Caruso, Jr., representing the golf community to the Bill Roberts Golf Course Advisory Board. Both terms will begin upon appointment and expire October 30, 2010.

Mark D. Annas and Jessica Peterson to the HIAC, both terms will begin upon appointment and expire on October 28, 2010.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Peura moved approval of the appointment of Robert Anderson and Paul Caruso, Jr. to the Bill Roberts Golf Course Advisory Board and Mark Annas and Jessica Peterson to the Helena International Affairs Council. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Printing and mailing contract for utility statements
- C. Utility bill insert - Montana Shares
- D. Utility bill insert - United Way
- E. Professional Services Agreement for monitoring of the old City Landfill

City Manager Tim Burton recommended approval of the claims and the consent agenda items.

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

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

Bid Award BID AWARD:
A. State Bid for Administrative and Service Fleet Purchases

Staff Report Fleet Manager Ed Robinson reported the State of Montana opened bids for administrative and service vehicles in October 2007. The city of Helena included the following vehicles for fleet replacement from all divisions in the bid process:

| | | | |
|------------------|---------------|------------------------|----------------|
| Parks | Ford Ranger | \$16,717.95 Unit Price | Bison Ford |
| Parks | GMC 4X4 | \$18,332.00 Unit Price | Bennett Motors |
| Parks | Ford pickup | \$24,303.00 Unit Price | Bennett Motors |
| Streets | GMC 4X4 | \$18,332.00 Unit Price | Bennett Motors |
| Traffic | ¾T Silverado | \$19,629.00 Unit Price | Karl Tyler |
| Transfer Station | ¾T GMC Sierra | \$19,828.00 Unit Price | Bennett Motors |
| Recycling | ½T Silverado | \$24,000.00 Unit Price | Bennett Motors |
| Res. Solid Waste | Ford 4x4 | \$32,275.00 Unit Price | Bison Ford |

Fleet Manager Robinson recommended awarding the low bids to those dealers listed above.

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

Motion Commissioner Peura moved to award the low bids to the dealers as recommended by staff and listed above. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
A. Helena International Affairs Council Annual Report
Pat Murdo, HIAC Chair, presented the 2007 Helena International Affairs Council report to the City Commission. A hard copy of the report was given to the commission.

On behalf of the entire commission, Mayor Smith thanked Ms. Murdo for the report and for the work that HIAC does throughout the year.

B. Resolution on Global Climate Change for the City of Helena
Commissioner Peura presented the resolution for commission consideration. He highlighted the discussions that have been held regarding global climate change. Commissioner Peura noted that he, Mayor Smith and the community group worked on the wording of the resolution.

Public Comment Mayor Smith called for public comment. The following persons spoke in support of the resolution: Stan Bradshaw, 430 S. Lamborn; Patrick Judge, MEIC; Mary Caferro, WEEL; Ben Brouwer, AERO; Katie Knight, 707 Highland; Matt Elsaesser, S.A.V.E. Foundation and Lisa Bay, 31 Division Street.

Mr. Bradshaw submitted a letter of support from Stephanie Wallace.

Commission comments Commissioner Cartwright noted the city of Helena has moved forward on energy conservation. However, the community has become aware of the issue and is in support of the resolution.

Commissioner Peura stated this resolution will encourage a public-private partnership and he looks forward to working with the task force.

Motion

Commissioner Peura moved approval of a resolution on Global Climate Change for the City of Helena. Commissioner Cartwright seconded the motion. All voted aye, motion carried.
Resolution 19530

C. Mayor Smith referred to an article in the Independent Record and referencing local governments withdrawing funds from STIP. He asked City Manager Burton to comment on the article and what is going on with the city's investments. City Manager Burton stated there is a lot of vulnerability in the market; however, city staff has been engaged with the Department of Investments and will continue to monitor the market on a daily basis.

Manager Burton noted he will recuse himself at this time from any further discussion or decisions regarding STIP and referred any questions to Administrative Services Director Tim Magee. Manager Burton noted that his spouse works with the Board of Investment and does not believe there is a conflict of interest but does not want there to be an appearance of one. The city of Helena has not withdrawn their funds from STIP; however, staff will continue to monitor the situation. There are long-term considerations prior to removing the city's funds from STIP.

Commissioner Oitzinger stated she works for an agency that is associated with the Board of Investment. Therefore, if there ever is a motion regarding the city's investments, she would abstain from any discussion or vote. Commissioner Oitzinger stated she had read an article on Bloomberg.com stating the city of Helena had withdrawn \$5 million from STIP. However, from the comments of City Manager Burton, this withdrawal would have happened for liquidity purposes and not because of the market.

Commissioner Oitzinger referred to the big bill and incoming tax proceeds and asked if they would be deposited into the STIP program. City Manager Burton stated a decision has not been made if the tax revenue will be deposited in the STIP program.

Mayor Smith stated he has asked City Manager Burton to put the short-term investment discussion on an upcoming administrative meeting agenda.

Commissioner Cartwright asked to what extent does the city rely on for short-term credit. City Manager Burton stated the city relies very little on short-term credit. There are times when the city may rely on short-term credit, but it is not standard operating procedures.

Commissioner Peura stated he participated this past weekend as a judge for the high-school debate tournament. He thanked all the teachers and volunteers who judged and congratulated the students who participated.

Commissioner Peura thanked Youth Connections for sponsoring the town hall meeting on teen alcohol use. He anticipates follow-up town hall meetings so the community can address this issue.

Mayor Smith thanked Commissioner Throssell for serving on the commission.

**Report of the City
Attorney**

REPORT OF THE CITY ATTORNEY
No report was given.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER
City Manager Burton reported the city of Helena was awarded a Community Development Block Grant for the construction of a new Montana Youth Home.

**Report from the
Helena Citizens**

REPORT FROM THE HELENA CITIZENS COUNCIL
HCC member Marshal Gingery reported the ballots for the HCC election will be mailed on December 14, 2007 and must be returned to the election office by January 8, 2008.
Mr. Gingery stated there may be some HCC members who would be interested in serving on the newly created task force for global climate change.
Commissioner Oitzinger asked if there would be an opportunity prior to the election for the HCC candidates to be interviewed on HCTV. Mr. Gingery stated he would take that suggestion back to the HCC Executive Committee.

Barbeau Villa Sites

CONSIDER A RESOLUTION OF INTENTION TO ANNEX PROPERTY GENERALLY LOCATED NORTH OF CUSTER AVENUE, EAST OF CANBY WAY AND SOUTH OF NORTHGATE LOOP WITH A PROPERTY ADDRESS OF 226 CUSTER AVENUE.

CONSIDER A DEVELOPMENT AGREEMENT FOR PROPERTY GENERALLY LOCATED NORTH OF CUSTER AVENUE, EAST OF CANBY WAY AND SOUTH OF NORTHGATE LOOP WITH A PROPERTY ADDRESS OF 226 CUSTER AVENUE.

Staff Report

City Planner Elroy Golemon reported a signed petition for annexation in accordance with § 7-2-4601, MCA, has been received from property owners Mary L Kropp, Vicki A. Horton and William A Kropp. Whenever more than 50% of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

The applicants are seeking annexation of their property to obtain city water, sewer and other services, which are readily available to their property. The property has a 12-inch water main and an 8-inch sewer main available to serve the property. The water and sewer mains are located in Canby Way, a private drive located near the northwest corner of the subject property.

The property is currently developed with a single-family residential dwelling on a single lot containing approximately 12,197 square feet (approximately .28 acres). The property is part of a wholly surrounded area and is adjacent to Custer Avenue, a city right of way. Located to the west and adjacent to applicant's property are Lots 27A and 29A-1 of the Terraces at Northgate Meadows part of the Northgate Meadows Major Subdivision.

On November 19, 2007, the City Commission adopted a resolution of annexation (Resolution 19527) to annex Lots 27A and 29A-1. City water and sewer mains were required to be extended for lots 27A and 29A-1 as a condition for annexation. The developer of Lots 27A and 29A-1 installed connection points in Canby Way to service the applicants' property. These connection points are located near the northwest corner of the applicant's property.

§ 7-2-4610 MCA specifies that city services must be provided either: (a) according to a plan for extension of services, or (b) when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed. Any plan for extension of services must also comply with § 7-2-4736 MCA, which concerns the extension of city garbage services to newly annexed areas.

The owners will be required to enter into a Development Agreement for Enlargement of Service Area that establishes conditions that must be followed and or completed prior to annexation into the city. The agreement was attached to the staff memo.

In compliance with § 7-2-11 MCA, the full width of the adjacent rights of way of the property being annexed must also be included in the annexation. Custer Avenue to the south and adjacent to the applicants' property is located in the city. Therefore, annexation of this property does not require annexing adjacent rights of way.

However, prior to final action by the City Commission for annexation, the applicants' property must be pre-zoned to a zoning district that is consistent with the City of Helena's Growth Policy and adjacent zoning.

Planner Elroy Golemon recommended the following two motions:

Approval of a resolution of intention to annex a portion of Lot 3 of the Barbeau Villa Sites in Lewis and Clark County, Montana and establish conditions for annexation.

Approval of a Development Agreement for enlargement of service area for property legally described as portion of Lot 3 of the Barbeau Villa Sites in Lewis and Clark County, Montana.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Cartwright moved approval of a resolution of intention to annex a portion of Lot 3 of the Barbeau Villa Sites in Lewis and Clark County, Montana and establish conditions for annexation. Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution 19531**

Motion

Commissioner Cartwright moved approval of a Development Agreement for enlargement of service area for property legally described as portion of Lot 3 of the Barbeau Villa Sites in Lewis and Clark County, Montana. Commissioner Peura seconded the motion. All voted aye, motion carried.

Curb Cut Variance

CONSIDER A CURB CUT VARIANCE FOR 1530 NATIONAL AVENUE

Staff report

City Engineer Ryan Leland reported the owner of the property at 1530 National Avenue has torn down the old existing steel warehouse building and wants to construct a new 16,000 square foot steel warehouse. As part of the site plan the owner is requesting a curb cut variance for a 105-foot curb cut. The current retail store has two curb cuts, approximately 50-feet each, for angle parking.

Engineer Leland stated there are no advantages noted with this proposal and the disadvantage is allowing a wider curb could have the potential for increased conflicts with on-street traffic when exiting the property.

City Engineer Leland noted the recommended motion is to approve, table or deny the curb cut variance for the property at 1530 National Avenue.

Commission comment Commissioner Cartwright asked if there is an accident history at that location? City Engineer Leland stated there was no accident history that showed up in the search for that intersection.

Commissioner Oitzinger asked if the parking spaces on the south side were required parking. Engineer Leland stated the parking spaces are required, however, he does not know if the parking is in compliance.

Public comment Mayor Smith called for public comment. Rick Schlenker, SMA, spoke in support of the proposal. The parking does meet the permitting process and will remain. The new building will provide for clearer sight distance and better access.

Motion **Commissioner Oitzinger moved approval of a curb cut variance for the property at 1530 National Avenue.** Commissioner Throssell seconded the motion. 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. **(TABLED FROM NOVEMBER 19, 2007)**

Staff Report 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.

On November 5, 2007, the City Commission held a public hearing for the Burnham Ranch Marketplace Subdivision and tabled action on the request until November 19, 2007. At the request of the applicant, the City Commission again tabled further action until December 3, 2007. The applicant has submitted a site layout plan showing how the condition for the dedication of right-of-way through the subdivision could be met.

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.

Ms. Morell-Gengler 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.

Increased traffic congestion on Custer Avenue resulting from the development of this property is a concern. Custer Avenue is an urban arterial route maintained by the Montana Department of Transportation; therefore, MDT must approve access to this route and any improvements in the Custer Avenue ROW. MDT will also determine mitigation of impacts to Custer Avenue through issuance of an access permit for Kelleher Drive and the proposed direct access to Custer Avenue.

MDT has stated that a number of improvements to Custer Avenue will be required including:

- A signal warrant study for Kelleher/Custer
- The addition of a second eastbound lane between Washington and east of Custer/Kelleher
- The addition of a second westbound lane across the Burnham frontage to Washington Street
- Left turn bays on Custer at Kelleher for both eastbound and westbound traffic
- A $\frac{3}{4}$ turning movement at the midway access to Burnham which means a left turn bay for eastbound traffic
- ADA compliance on all four quadrants of the Custer/Kelleher intersection.

These MDT requirements are consistent with the future design of Custer Avenue and the interchange improvements. These improvements will be enforced through the issuance of MDT access permits for the northern extension of Kelleher Drive and for the proposed second access into the subdivision.

Ms. Morell-Gengler recommended the following motions to amend the Findings of Fact and the conditions for approval. This language clarifies the applicant's responsibility for improvements to Custer Avenue:

Move to amend the Findings of Fact for the preliminary plat for the Burnham Ranch Marketplace Major Subdivision creating 15 commercial lots to include the following new language in the 'Transportation and streets' section: Compliance with conditions associated with acquiring an access permit from MDT including improvements to Custer Avenue and the Custer Avenue/Kelleher Drive intersection could mitigate some of the traffic impacts of the proposed subdivision.

Move to amend the conditions of approval of the preliminary plat for the Burnham Ranch Marketplace Major Subdivision creating 15 commercial lots to include the following new condition number 6 under 'Streets': Access permits from the Montana Department of Transportation must be obtained for the proposed access onto Custer Avenue, and the developer must comply with all requirements associated with obtaining those permits.

Move to conditionally approve 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 and to adopt the Findings of Fact and the conditions contained therein as amended for property legally described in the Findings of Fact.

Ms. Morrell-Gengler stated Jean Riley with MDT is present to answer any questions.

Commission comment

Commissioner Cartwright asked what is the anticipated build-out time. Ms. Morell-Gengler stated the market conditions would guide the build-out time. However, staff cannot give a definite build-out timeframe and the applicant could address the question during his presentation.

Commissioner Cartwright asked if the development is on the up-slope or down-slope from the irrigation canal. Ms. Morell-Gengler stated the subdivision is upgrade from the canal.

Commissioner Cartwright stated one of the conditions stated the wastewater lift station serving more than one lot or building must be city owned and maintained by the city of Helena and asked for the rationale for taking on those extra costs. Public Works Director John Rundquist stated in general the city has had problems with lift stations that are owned by more than one owner in terms of maintenance and operation. It is city staff's preference and policy operationally to have these lift stations city owned and maintained.

Commissioner Cartwright stated the Findings of Fact gave a current traffic volume of 13,390 from 2006 and asked if those counts were before COSTCO was built. Public Works Director Rundquist stated those counts were completed prior to COSTCO opening.

Commissioner Cartwright stated the traffic studies suggest by 2012 there would be a 23% growth increase and asked if that sounds reasonable to staff? Public Works Director concurred with the estimated increase. Commissioner Cartwright estimated by 2012 there would be approximately 24,000 trips per day on a two-lane road. Commissioner Cartwright asked if Custer Avenue could handle the increased traffic counts. Public Works Director Rundquist stated the traffic study completed with the development is readable and correct in it's level of service projections for Custer Avenue. He noted there would need to be improvements to Custer Avenue associated with this and the conditions of MDT are compatible with the future interchange and the Custer Avenue corridor.

Ms. Jean Riley, MDT representative, appeared to answer commission questions. Commissioner Cartwright referred to the letter from MDT that recognizes that Custer Avenue would be severely overloaded so a number of mitigation measures are suggested. However, the letter ends by saying rather than to require all of the above, we will immediately allow the developer to provide interim design improvements, taking into account utility conflicts and financial guarantee the full mitigation requirements. Commissioner Cartwright asked what are the interim measures and what will be built when the entire corridor is rebuilt? Ms. Riley stated MDT is going to require the left turn lanes to be installed for Kelleher Drive and the other access and if traffic signals were warranted they would be installed. In the future, due to the utilities that need to be moved in this corridor, those will be moved with the Custer Avenue Interchange project.

Commissioner Cartwright stated the through lanes would happen when the whole corridor is re-built and asked until that time, what level of service would Custer Avenue be rated? Ms. Riley stated she does not have the exact level of service and will have to check and report back.

Commissioner Cartwright asked if there would be additional conditions for the intersection of Kelleher and Skyway Drive? Ms. Riley stated there were no additional requirements on that intersection. Commissioner Cartwright asked what is the anticipated cut through traffic for this intersection? Ms. Riley stated MDT asked the applicant to update the TIS and that information is forthcoming.

Commissioner Peura stated the conversation so far has been about the level of service and volume of traffic on the Custer corridor. However, he has expressed concerns with the stability and safety of the bridge overpass in terms of the additional volumes of traffic, the additional number of times the cars will likely be stopped on the bridge because of backups. He asked Ms. Riley if MDT has done any studies on the safety of the bridge. Ms. Riley stated she would have to check with the Traffic Safety Bureau; she recognized they have been looking at this issue, but she did not have the information.

Commissioner Peura asked when the anticipated improvement to Custer Avenue would be completed and what the status is with MDT getting the interchange started. Ms. Riley stated she does not have that information. City Manager Burton stated he was in a meeting today with the Director of MDT and this project is moving forward and the deadline for the plans to be completed is 2010. MDT has currently spent \$10 million toward the plans and right-of-way acquisition. This project is MDT Commission's top priority and they will be engaging the congressional delegation on funding. If all the funding falls into place, construction could possibly begin in 2011 or 2012.

Commissioner Peura asked if the issue of the bridge safety could be addressed in discussions between the applicant and MDT. MDT representative Jean Riley stated she would include this issue as part of her comments and make sure the Traffic Safety Bureau is aware of them as well. Mayor Smith noted the Director of MDT has a presentation on bridge safety and suggested the City Commission be given that presentation.

Mayor Smith asked if there has been any discussion with the irrigators in the valley to enclose the irrigation ditch. Ms. Morell-Gengler stated she is not aware of any discussions. Mayor Smith referred to the stormwater run-off plan and asked if it would be underground stormwater pipe? Ms. Morell-Gengler stated the plan is an off-site stormwater detention pond. However, the applicant would address this during his presentation.

Public Testimony

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

Applicant Steve Allen, 3953 Fawn Meadow Drive, thanked the commission and staff for the time they have spent on the review of this application.

Mr. Allen reviewed the following information and addressed the concerns from the November 19th commission meeting.

- Right of Way and Lot Configuration
- Conceptual Site Plan
- Preliminary Plat Approval with Conditions
- Conformance with City Policies and Goals
- Location is Close to Helena – showed proximity map
- Location of 10' Bike/Ped Paths with connectivity to adjacent property
- Burnham Ranch Marketplace build out schedule
- Solutions to traffic issues

- Benefits to the City of Helena's Infrastructure

Mr. Allen asked for a show of hands of those present in support of the proposal. Mr. Allen then stated he is in total support of the recommended conditions in the Findings of Fact. He reviewed the many meetings he and his representatives have had with city and MDT staff. Mr. Allen stated the Planning Board unanimously recommended approval of the preliminary plat and he asked the City Commission to approve it as well.

Phil Forbes, Traffic Impact Study Engineer, Morrison-Maierle, addressed the commission regarding the traffic impact study. Mr. Forbes outlined how the study was completed and what criteria was used.

Mr. Forbes stated Morrison & Maierle did perform turning moving counts during peak hours at the intersection of Kelleher/Custer Avenue in April of 2007; therefore, there should be some influence of the COSTCO development in those counts. Mr. Forbes then reviewed the predicted level of service on the Custer corridor, including the intersection of Custer Avenue and Kelleher Drive.

Mr. Forbes stated it is his opinion that the mitigation measures identified in the traffic impact study, as modified by MDT, are consistent with the Helena Area Transportation Plan and will largely mitigate the impacts from the site.

Mark Brooke, Project Engineer, Morrison-Maierle, clarified there would be a pipe going from the development to the regional detention facility. Mr. Brooke addressed how this subdivision conforms to the Greater Helena Area Transportation Plan, 2004 Update for non-motorized routes within the city. Mr. Brooke then highlighted the proposed bike/ped trails within and adjacent to the proposal.

Cathy Burwell, Helena Area of Chamber of Commerce, stated the Chamber does not endorse any developments or developers; however, they do support economic development and recognize the positive economic impact that commercial developments have on the local economy.

Albert Clark, 1411 Cherry, spoke in opposition to the proposal.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

Commission comment

Commissioner Cartwright commented this developer is carrying a large amount of the load for the entire area for infrastructure improvements. He then noted this proposal is adjacent to the city's wastewater treatment facility and asked if it would be advisable to get a formal recognition from the developer that they are building adjacent to the plant. Mr. Nielsen advised against asking for a formal recognition.

Commissioner Cartwright stated the developer's schedule anticipates construction would begin approximately in 2010 with occupancy in 2011; he then stated he would like to consider conditioning building permits, to make sure they follow the schedule that has been discussed. Commissioner Cartwright asked if there is any way the commission could do that. City Attorney Nielsen stated with this type of a process for subdivision, which is simply dividing land, he does not believe it is possible to put a condition as to the ultimate development of structures. The final plat needs to be approved prior to any building permits being issued. Therefore, to try to do that is putting on a condition that just could not survive legally. Commissioner Cartwright asked if

there is a point in the process where the commission could condition the building permits. City Attorney Nielsen stated, "no."

Commissioner Cartwright addressed the bike-ped proposal on one-side of the road when the standards require both sides and asked if it would be appropriate to require a standard configuration and then the applicant could request a variance. City Attorney Nielsen explained the current city code allows for as an alternative to the 2' sidewalks on each side, for one 10' sidewalk on one side.

Commissioner Cartwright commented the crossing of Custer Avenue is going to be particularly wide; he then asked if the city could require a pedestrian countdown timer instead of the standard. Attorney Nielsen stated Custer Avenue is a state route and the traffic will be within their guidelines. Commissioner Cartwright asked if the City Commission could request the developer to ask MDT about a countdown timer. City Attorney Nielsen stated the commission could ask the developer to do that. Commissioner Cartwright noted that is one condition he would like to add.

Commissioner Cartwright stated this development meets the criteria; however, the timing is awkward. He noted there is clearly the intention of annexing land between this proposal and the new subdivision further north. On the annexation, the commission is under no obligation to accept it or refuse it and he will be hesitant to annex any land to the north until the traffic improvements have been worked out.

Commissioner Peura asked City Attorney Nielsen to explain the recommended changes to the Findings of Fact that were distributed this evening. City Attorney Nielsen stated the recommended changes to the conditions recognize that Custer Avenue is a state route and that any access from adjacent properties onto Custer Avenue is under the jurisdiction of MDT. Therefore, in order to have that access, MDT will set the conditions. The amendments to the conditions assure the applicants will work with MDT and comply with the recommended conditions of MDT.

Commissioner Peura thanked Mr. Allen for his presentation and the attention given to the non-motorized chapter of the transportation plan. Commissioner Peura stated traffic and the timing of the construction of the Custer Avenue interchanges are still major concerns for him. Commissioner Peura asked the applicant if the recommended changes to the conditions are agreeable to him. Mr. Allen confirmed they are agreeable to him.

Mayor Smith stated he appreciates the applicant's presentation and he sees no reason to deny the preliminary plat.

Motion

Commissioner Cartwright moved to amend the Findings of Fact for the preliminary plat for the Burnham Ranch Marketplace major subdivision creating 15 commercial lots to include the following new language in the 'Transportation and Streets' sections: Compliance with conditions associated with acquiring an access permit from MDT including improvements to Custer Avenue and the Custer Avenue/Kelleher Drive intersection could mitigate some of the traffic impacts of the proposed subdivision and the installation of a countdown head pedestrian cross signal would improve pedestrian safety and the applicant will make the request to MDT. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion

Commissioner Cartwright moved to amend the conditions of approval of the preliminary plat for the Burnham Ranch Marketplace major subdivision creating 15 commercial lots to include the following new condition number 6 under 'Streets': Access permits from the Montana Department of Transportation must be obtained for the proposed access onto Custer Avenue, and the developer must comply with all requirements associated with obtaining those permits. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion

Commissioner Cartwright moved to conditionally approve the preliminary plat of 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 as amended for property legally described in the Findings of Fact. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Commission comments

Commissioner Cartwright stated the commission has to base their decisions on the Findings of Fact because of the way the subdivision laws and case law reads. The commission does not get to participate with anything dealing with shaping the proposal. He stated he is particularly concerned with the proposed 24,000 vehicle trips per day is acceptable with mitigation. Commissioner Cartwright noted there were a number of citizens in support of the proposal.

Commissioner Oitzinger stated she appreciates Ms. Riley's willingness to take the safety of the bridge back to MDT and asked City Manager Burton to follow-up on this concern.

B. CONSIDER A RESOLUTION VACATING A PORTION OF CABERNET DRIVE RIGHT-OF-WAY (ROW) BETWEEN LOTS 1-4 IN BLOCK 17 AND LOTS 3-6 IN BLOCK 5 AND THE ALLEY RIGHT-OF-WAY IN BLOCKS 5 AND 17 IN 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.

City Engineer Leland stated there have been no objections from any of the utilities; however, there are city utilities that will need to be relocated and we do have an easement on the ROW until they are relocated.

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 value 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 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.

Commissioner Peura referred to the resolution and asked who is an "affected property owner". City Engineer Leland stated it is the adjacent property owners, as they have the right to protest because they might benefit or lose the right of way. Commissioner Peura stated up to this point there has been no objections from affected property owners, but certainly tonight there may be public testimony objecting to the proposal. City Engineer noted the adjacent property owner in this case is the developer.

Commissioner Peura asked City Attorney Nielsen who is an affected property owner. City Attorney Nielsen stated an affected property owner is an adjacent owner or who might need the right of way to access their property. Any time you vacate a right of way, you might change the use of the right-of-way, this is simply from a legal access.

Commissioner Peura asked if he was a property owner who lives across from the proposal, would he be an affected property owner, City Attorney Nielsen stated legally no.

Mayor Smith asked when the final plat was filed. Engineer Leland stated it was approved on October 5, 2005. Commissioner Peura stated although someone who lives across the street and is not an affected property owner, it is still in the purview of the commission to hear testimony from non-affected property owners. City Attorney Nielsen stated right of way is the benefit of the public and the commission has the right to hear the testimony.

Commissioner Oitzinger spoke on public hearings B and C and the order they are on the agenda. If the commission approves the vacation of the alley, it has an impact on what happens to the property. She suggested accepting testimony on both public hearings at the same time. City Attorney Nielsen stated legally there is not a difference of hearing the vacation first. It might be more helpful as a matter of how the commission wants to analyze the testimony.

City Attorney Nielsen stated legally the commission could accept testimony on both issues at once. Commissioner Peura stated he would prefer to keep the public hearings separate. Mayor Smith concurred with Commissioner Peura's comments.

Public Testimony

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

Didi Peccia, P.E.C. Design-Build, spoke in support of the resolution. Ms. Peccia stated Nob Hill Development was designed to incorporate smart growth policies. It was platted and zoned as a mix-use area. Ms. Peccia asked the commission to approve the resolution.

Mark Aukamp, SBC Archway III, LLC, stated this a private development and they are currently under option to purchase the property. He then reviewed the plans for the development and asked the city to approve the vacation of Cabernet Drive and the ROW. The property is already zoned B-2 and R-O.

Jeff Key, 1318 Knight, Traffic Engineer and Transportation Planner for the project, stated in June 2004 a traffic impact study was completed that looked at the entire site and as a result of the zone change an amendment to the traffic impact study was submitted. The amendment to the traffic impact study discussed the likely trip generation and traffic impacts from the zone change. Mr. Key noted if the 14 lots are aggregated into two lots and there is one land use on those lots the total calculated trips from the proposed office-building amount to 2, 202 vehicles trips per day. Mr. Key stated based on what is currently

approved and could be developed on this property, this proposal results in approximately 223 trips per day less than what is on the books right now.

Pat McCutcheon, 7 Cloverview, spoke on the best use of the land and how the property within the Nob Hill Subdivision could be developed. Mr. McCutcheon spoke in support of the vacation of Cabernet Drive right-of-way.

Bob Murdo, 203 N. Ewing, attorney representing several of the residential property owners on Deerfield Lane, spoke in opposition to the vacation. Mr. Murdo handed out the zone map on which the property was zoned when the preliminary plat was approved. The property was re-zoned approximately one-year ago.

Cory Hill, 1117 Saddle Drive, spoke in opposition to the closure. He stated he bought his property based on the zone map that was provided with the preliminary plat.

Maria Stark, 460 Cyprus Road, spoke against the closure.

Bob McCullough, 526 Saddle Drive, spoke against the vacation of Cabernet Drive, the CUP and the variance from Section 11-22-3 of the Helena Zoning Ordinance.

Don Erpenbach, 226 Deerfield Lane, spoke against the vacation, the CUP and the variance from Section 11-22-3 of the Helena Zoning Ordinance.

Mike Wetherell, property owner of the corner lot of Chianti Drive and Deerfield Lane, spoke against the vacation, the effects this building will have on residential property values and against the requested variance.

Mike Ishak, 2217 Deerfield Lane, spoke against the closure and the impacts the proposal would have on this residential neighborhood.

Brian Schlaugh, 2213 Deerfield Lane, spoke against the closure of Cabernet Drive and the proposed CUP. The applicant should have showed the potential purchasers the proposal and not what was approved with the preliminary plat.

Mike Casey, Tri-Mac Group, 25 Neill Avenue, commented what was initially proposed was a good proposal and then within a public process what was presented to the commission and amended, the residents are now upset. The proposal before the commission is a building that comes with 2½ times the required landscaping. Mr. Casey stated the proposed building is no closer than 100' yards from the adjacent property owners. Mr. Casey stated he believes the revised plat was put on the web site and acknowledged that he should have removed the original preliminary plat from the web site.

Nicole Emmineth, 2207 Deerfield Lane, spoke on the public process for the zone change and stated many of the property owners were not aware of the proposal.

Robert Peccia, Nob Hill Development, stated he believes this is a good development. He acknowledged that this proposal has changed from the preliminary plat. Mr. Peccia spoke in support of the vacation of Cabernet Drive.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

Commission comments

Commissioner Peura stated he appreciates the public testimony and shares the concerns of the residents. Commissioner Peura stated he does not believe it is in the best interest of the city to vacate a portion of Cabernet Drive or the right-of-way based upon the residents comments. He also spoke on the global climate change resolution and

his concerns with an office building of this size being built on the edge of town and ripple effect of creating more sprawl in terms of the residential patterns that would be driven by this building.

Motion

Commissioner Peura moved to deny a resolution 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. Commissioner Oitzinger seconded the motion.

Commissioner Oitzinger stated as a member of the Fire Service Review committee, another aspect that has given her some concerns is there may be a base of employees who live in the area; however, other employees may look at developing up in the hills of Jefferson County. Although, the houses would be in Jefferson County, the Helena Fire Department would respond through mutual aid. She concurred that this vacation is not in the best interest of the city.

Commissioner Cartwright asked if there are one or two alleys being vacated. Engineer Leland stated there is one alley and a portion of the cul-de-sac. Commissioner Cartwright stated the drawing shows the building sits on the alley. Engineer Leland stated the building would be sited north of the alley, which would not be vacated. Staff would not allow a building to be located on non-vacated right of way.

Commissioner Cartwright asked if parking lots are allowed in R-O Districts. Community Director Haugen stated the parking lot was reviewed as an accessory to the building and therefore would be allowed.

Commissioner Cartwright asked Mr. Key if traffic flows slower for buildings that are closer to the street? Mr. Key stated yes, generally it does. Commissioner Cartwright commented a building that is 30' from the street is more pedestrian friendly than one that is 100 yards. Mr. Keys generally concurred with the comment.

Mayor Smith stated he will support the motion, this proposal was not anticipated by the people who purchased the lots.

Vote

All voted aye, motion carried.

- C. CONSIDER TWO PROPOSALS AFFECTING THE SAME PROPERTY IN THE NOB HILL SUBDIVISION, GENERALLY LOCATED SOUTH OF COLONIAL DRIVE, EAST OF CHIANTI STREET AND NORTH OF DEERFIELD LANE:
1. A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW CONSTRUCTION OF A STATE OFFICE BUILDING, UP TO 19 FEET OVER THE 34-FOOT HEIGHT LIMIT, IN THE B-2 (GENERAL COMMERCIAL) DISTRICT; ACTION: APPROVE, TABLE OR DENY A RESOLUTION.
 2. A VARIANCE FROM SECTION 11-22-3 OF THE HELENA ZONING ORDINANCE TO ALLOW ONE LOADING BERTH INSTEAD OF THE THREE LOADING BERTHS REQUIRED. ACTION: APPROVE, TABLE OR DENY A VARIANCE FROM SECTION 11-22-3 OF THE HELENA ZONING ORDINANCE

Staff Report

Planner Kathy Macefield reported on November 13, 2007 the Helena Zoning Commission recommended approval (3:2 vote) for a resolution granting a conditional use permit (CUP) to allow construction

of a state office building up to 19 feet over the 34-foot height limit (for a total building height up to 53 feet) in the B-2 District. Property is legally described as Lots 1-6, Block 5; and Lots 1-8, Block 17, Nob Hill Subdivision Phase IV, Helena, Montana; generally located south of Colonial Drive, east of Chianti Street and north of Deerfield Lane. This approval is subject to the following conditions:

1. Cabernet Drive Right-of-Way (ROW)

The Cabernet Drive ROW must be closed and vacated prior to issuance of a building permit or the structure must be relocated northward so it's not located in the ROW.

2. Site Plan

To help maintain views from the adjacent residential zoning districts due to the increased building height, the building must be located on the northern portion of the property as shown on the site plan with no curb cuts allowed onto Deerfield Lane.

The Zoning Commission did not consider the variance request since it's not integral to the CUP for increased building height.

At the November 13, 2007 public hearing, questions were asked related to the history of zone changes in this portion of the Nob Hill area. A brief chronology of the applicable zone changes is as follows:

The Zoning Commission held a public hearing on the zone changes on Oct. 10, 2006. The City Commission held a public hearing on Dec. 4, 2006 for first passage of the ordinance. The City Commission did the second passage on Dec. 18, 2006 so the ordinance for the zone changes became effective Jan. 18, 2007.

Ordinance # 3074 changed the following zoning designations in the Nob Hill Subdivision:

- Lots 5 and 6, Block 5 (between Colonial and Cabernet Drives), from R-3 (Medium Density Residential) to B-2 (General Commercial);
- Lots 1-4, 7 and 8, Block 17 (between Cabernet Drive and Deerfield Lane), and Lots 1-4, Block 19 (south of Deerfield Lane) from R-3 to R-O (Residential-Office);
- Lots 5 and 6, Block 17 (between Cabernet Drive and Deerfield Lane), from R-2 (Single-family Residential) to R-O.

Planner Kathy Macefield stated the proposal is for a resolution granting a conditional use permit (CUP) to allow a state office building to be constructed up to 19 feet over the 34-foot height limit (for a total building height up to 53 feet) in the B-2 (General Commercial) District. The purpose of the CUP is solely to allow the additional building height. The B-2 District allows the construction of a 200,000 square foot state office building at this location as a permitted use.

Planner Macefield showed the site plan map, which had been revised from the one City Engineer Leland showed during the previous public hearing; due to the CUP and the vacation were not on the same timeframe. All of the building would be located in the B-2 District. With the vacation of a portion of Cabernet Drive being denied, the building would need to be located northward so it is not in the street right-of-way and the alley closure would also need to be resolved. The applicant will also have to re-design and modify the on-site parking proposal.

The application also includes a request for a variance from Section 11-22-3 of the Helena Zoning Ordinance to allow one loading berth instead of 3 loading berths. Planner Macefield noted the variance request is not part of the use of the property in terms of the additional

building height. Therefore, the recommendation is for the variance from Section 11-22-3 is heard by the Board of Adjustment.

Planner Macefield stated the B-3 District allows for buildings up to 75'; PLI District up to 60'; the MI & CLM Districts up 40' and the B-2 District up to 34'. She then noted the following buildings were approximately the same height being requested for this proposal: St. Peter's Hospital new tower building is 53'; the Justice & Law Building is 50'; Sam Mitchell Building is 58' and the Law Enforcement Center is 58'.

Planner Kathy Macefield stated the advantage is this proposal represents infill development, and efficient use of energy, infrastructure and resources. This proposal is consistent with the 2001 Helena Growth Policy and zoning ordinance, and is compatible with the surrounding land uses.

Planner Macefield recommended approval of a resolution granting a conditional use permit (CUP) to allow construction of a building up to 19 feet over the 34-foot height limit (for a total building height up to 53 feet) in the B-2 District for property legally described in the staff report, and subject to the 2 conditions stated in that report.

Commission comment

Commissioner Oitzinger stated she is puzzled that the variance request would go to the Board of Adjustment and not the City Commission. In the past these variances have been heard when in conjunction with another application. City Attorney Nielsen stated it is his recommendation that the Board of Adjustment consider the variance request. The city codes states and what we have done in the past is if the variance relates to a condition in the CUP. In this instance, the CUP is for height and has nothing to do with the loading berths.

Commissioner Cartwright stated he continues to be concerned that the proposal shows the building sitting on top of the north alley that has not been vacated. Commissioner Cartwright asked how this proposal could be considered. City Manager Burton stated the site plan does show the building on an alley that has not been vacated. This information was provided by the applicant and hopefully they can address this; but certainly the alley has not been vacated.

Commissioner Peura asked how much of the total square footage is the additional 19' accommodating and without the additional 19' what size would the building be? Ms. Macefield stated it is approximately 50,000 square feet per floor and the extra 19' would allow for the top floor.

Commissioner Peura referred to the CUP criteria where it states the use conforms generally to the objectives of the Comprehensive Plan. He was surprised at the conclusion because the 2001 Helena Growth Policy states that this area is identified as residential, medium high density; it further defines areas which may be used predominately for housing of density that may exceed six dwelling units and it further states additional non-residential uses may not be allowed when the cumulative affect of the non-residential is measurably detrimental to the residential neighborhood. Commissioner Peura expressed concern that staff's Finding of Facts would conclude that this 19' is generally conforming to the Growth Policy. He then asked Ms. Macefield to explain how to reconcile that Finding of Facts with that statement from the Growth Policy? Ms. Macefield explained the Growth Policy map that is currently used is basically a current situation; staff is in the process of updating the Growth Policy and will be looking at not only the existing land use map but also creating a future land use map. Part of the problem is when that map was created 1994 and carried forward in 2001, it was prior to any of

this new development on the southeast side. Staff recognized this is the only Growth Policy map available; again it is reflective of the current situation and not of future development.

Commissioner Peura stated the Growth Policy is what it is and the commission is bound to look at the Growth Policy as it is currently stated to some degree. City Attorney Nielsen concurred with Commissioner Peura's comments. Commissioner Peura stated the Comprehensive Plan says what it says in the report, which talks about a residential medium high-density area and additional non-residential uses; but they have a measurably detrimental impact. Commissioner Peura stated he is still not comfortable that he sees where that Growth Policy leads to staff's conclusion that this proposal conforms to add 19' and thus hundreds of employees into a residential medium high density area.

Planner Kathy Macefield stated when staff is looking at the Growth Policy, this is just one part that they look at. They also look at all the goals and objectives and policies, which are included in the appendix portion of the staff report. When you look at everything as a whole; that is how that conclusion was derived at.

Commissioner Peura referred to the Growth Policy where it addresses land use intensity and the staff conclusion is the "proposal would represent an efficient use of the land, infrastructure energy and other resources". He asked what staff meant by an efficient use of energy in that statement? Planner Kathy Macefield explained it is an area that already has the entire infrastructure in place; it is an area that is anticipated to have other commercial and residential development in the area, so conceivably you might have some employees who work in this area that may live in close proximity to the area. Commissioner Peura stated he would disagree with that analysis.

Commissioner Peura referred to the traffic study, it's conclusion of 2202 vehicle weekday trips and asked if it contemplates customer service visits and other state employees who would need to visit the building from the capital complex. Planner Macefield deferred the question to the traffic study engineer.

Public Testimony

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

Mark Aukamp recommended this hearing be tabled until the December 17, 2007 commission meeting to allow an update on the proposal and the vacation of Cabernet Drive.

Mr. Aukamp stated the developers continue to plan to move forward with the development. Zoning is in place to permit this building and accessory parking in the R-O zoning. Mr. Aukamp stated with the decision not to vacate, it will reduce the proposed landscaping on site in order to maintain the proposed building and required parking.

Mayor Smith asked if the applicant could request a delay and still remain in the statutory timelines. City Nielsen stated for a CUP there is no statutory timeline.

Mr. Ishak, 2217 Deerfield, stated he was not notified of the zone change public hearing. He also disagreed with the developer's comments that this proposal will better the area. He asked the commission to move forward with the consideration of the CUP and not table the decision.

Corey Hill, 1117 Saddle Drive, spoke on the re-sale value of the residential properties. He asked that this not be tabled and to keep the building height to 34-feet.

Seth Shields, 2205 Deerfield, spoke in opposition to the CUP and addressed the location and size of the building, the height, and market values of the residential lots.

Jeff Key stated the 2,202 vehicles trips per day does anticipate the customer service visits. Mr. Key stated he had not separated the dynamics of other employees visiting the building.

Maria Stark, 460 Cyprus Road, addressed the anticipated traffic impacts on the area.

Viola Shields, 2205 Deerfield Lane, spoke in opposition to the CUP due to the same reasons listed from others.

Bob McCullough stated this building should not be approved for 53'. In addition this building is the wrong building in the in the wrong place and may be a great building in the right place. He asked the commission to deny the CUP.

Bob Murdo stated with the decision to deny the vacation of a portion of Cabernet Drive, the plans show the building sitting right on top of the cul-de-sac and the street. Mr. Murdo asked the commission to deny the CUP.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

Commission comment

Commissioner Peura referred to the staff report where it addresses how well the proposal complies with certain issues and specifically under zoning, lot area and width. And under findings the lots exceed the minimum lot size requirements of the B-2 District and it is marked no. He asked staff to explain that statement. Ms. Macefield stated the lot does exceed the minimum requirements of the B-2 District. Commissioner Peura stated how do we get a fair traffic comparator to what is actually currently allowed there. Commissioner Peura stated he is looking for a comparator that could actually happen should a decision not be required by this commission. He is not sure a 200,000 square foot retail shopping center could also fit on the current platting and use of that land. Therefore, this seems to be not a very fair comparator. Ms. Macefield stated when the Traffic Engineer Jeff Key testified he talked about that based on the existing platted lots and the existing zoning, he had anticipated 2425 vehicle trips per day; however, with the office which is specific that was estimated at 2202 vehicle trips per day. That is for the entire building, if you are looking only at one floor, the anticipated vehicle trips per day is 550.

Commissioner Peura stated he is prepared to make a motion to deny the CUP. He asked City Attorney Nielsen if he would need to precede that motion with a couple of motions to amend the Findings of Fact. City Attorney Nielsen stated with CUP's it would be helpful to announce the rationale for the motion; a formal motion on why is not necessary.

Commissioner Peura stated he will make a motion to deny the CUP for the additional 19' of height for the reasons that the CUP criteria as laid out in the zoning ordinance 11-21-2(c) talks about the use conforms generally to the objectives of the comprehensive plan; and he would disagree that the additional building height and the addition of about 50,000 square feet of office space would generally conform to the comprehensive plan, which currently talks about the area as residential medium high density.

Commissioner Peura stated he would also look to criteria #2, the proposed use would not adversely affect nearby properties or their occupants by measurably and substantially reducing the value or

marketability of such properties. He stated he would disagree with that rather strongly, the additional 19' would have an impact on the views. Commissioner Peura stated he went to the Nob Hill web site where the very first amenity that is listed is "expansive mountain views." Therefore he disagrees with the Findings of Facts, as he believes the 19' will substantially and measurably reduce the value and marketability of the properties. Commissioner Peura stated he has concerns with the increased traffic that would be driven by the 19' of building height.

Motion

Commissioner Peura moved to deny a resolution granting a conditional use permit (CUP) to allow construction of a building up to 19 feet over the 34-foot height limit (for a total building height up to 53 feet) in the B-2 District for property legally described in the staff report, and subject to the 2 conditions stated in that report.
Commissioner Oitzinger seconded the motion.

Commissioner Oitzinger stated she believes the proposed CUP is out of sync with the Growth Policy, specifically the section that talks about seeking flexibility which enhances the unique conditions of individual properties and neighborhoods; it encourages the high standard of visual appearance that is consistent with the scale and character of the neighborhood. The height is not consistent with the scale nor was the original building proposal.

Commissioner Cartwright stated he would have preferred to table consideration of the CUP, as he could imagine a development that would meet all the objections raised by the neighbors.

Mayor Smith stated he concurs with the announcements of Commissioners Peura and Oitzinger and will support the motion.

Vote

Motion carried 4-1 with Commissioner Cartwright voting no.

Public Communications

PUBLIC COMMUNICATIONS
None was received.

Meetings of Interest

MEETINGS OF INTEREST
The next Administrative Meeting is, December 12, 2007 and the next Commission Meeting is December 17, 2007.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 10:50 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission