

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
May 19, 2008
6:00 P.M.

- Time & Place*** A regular City Commission meeting was held on Monday, May 19, 2008 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 Elsaesser were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Dave Dalthorp representing the Helena Citizens Council.
- Pledge of Allegiance*** Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.
- Minutes*** The minutes of the regular City Commission meeting of May 5, 2008 were approved as submitted.
- Consent Agenda*** CONSENT AGENDA:
A. Claims
B. 2008 Helena Open Lands Work Plan
C. Resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property (patrol vehicle light bar and control unit) **Resolution #19558**
D. Buy/Sell Agreement with the Valley View Evangelical Lutheran Church for the purchase of Rights-of-Way from Tract A as described by Certificate of Survey #139083 for the extension of Benton Avenue.

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 Elsaesser moved approval of items A through D on the consent agenda.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Communications*** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Cartwright reminded citizens when the walk light is on pedestrians have the right of way at traffic lights.
Commissioner Oitzinger congratulated all students graduating this year.
- 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 referred to a letter from the Montana Historical Society (MHS) regarding 2008 being the last year the Civic Center Board will co-sponsor the Western Rendezvous of Art. The city

owns the assumed business name and trademark for the Western Rendezvous of Art and the MHS would like to apply for rights to the name. Manager Burton stated he would like to hold discussions with MHS related to use of the name. There was Commission concurrence for Manager Burton to work with the Civic Center Board and MHS and report back to the Commission.

Manager Burton also referred to a letter from the Ten Mile/Pleasant Valley Sewer District stating their desire to work with the city on an agreement that would allow the district to connect to the City of Helena's wastewater treatment system with a deferral of annexation. The letter stated the Ten Mile Pleasant Valley Sewer District anticipates completing the annexation process by petition. Manager Burton gave an overview of how an agreement may be structured and asked for Commission concurrence to begin discussions with the District and report back to the Commission.

Commissioner Cartwright stated he has no interest in annexing these areas right away; maybe in five to ten years when it is close enough that police, fire and other services can be provided. He noted it would take a majority of property owners to sign petition for annexation and all infrastructure would be required to be installed, not just water and sewer, although some things may be phased in. City Manager Burton commented this path or any other path is up to neighborhood and by getting involved he will see if city can work out a fair and equitable arrangement for both the city and the neighborhood. Commissioner Cartwright added he appreciates that the subdivisions are moving forward to find a solution.

Commissioner Peura asked how many homes are in the Woodlawn/Dunbar area? Manager Burton stated there are 60 lots in the Woodlawn/Dunbar neighborhood and 300 total in the Ten Mile Estates and Pleasant Valley Subdivisions. Commissioner Peura asked how much staff time and resources would be involved in responding to this request? City Manager Burton explained there was around 75 hours of collective staff time spent on the Woodlawn/Dunbar project and he foresees the same amount of time on this proposal, as staff will be dealing with a Sewer District Board. Commissioner Peura stated he is comfortable with the negotiations, but asked Manager Burton to track the amount of staff time spent on the project, as those resources are paid by city taxpayers and at some point consideration of appropriate reimbursement should be discussed.

Commissioner Elsaesser spoke in support of discussions on potential options for the sewer district. Mayor Smith also spoke in support of pursuing conversations with the district but noted his support is largely predicated by Lewis & Clark County Commission actions to move forward with interim zoning in the county. He commented if the county can't plan and zone rationally into the future, he would've been hesitant to extend city services into this area.

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

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Dave Dalthorp thanked the Commission members for attending the neighborhood meetings. He spoke on changes in council membership and relayed citizen concerns from the District 1 and 2 neighborhood meeting.

Lease Agreement CONSIDER A LEASE AGREEMENT WITH HELENA BASEBALL CLUB, LLC FOR THE LEASE OF KINDRICK-LEGION FIELD.

Staff Report

City Attorney David Nielsen reported since 2002 the city has granted a non-exclusive lease to Helena Baseball Club, LLC (Helena Baseball) for use of the Kindrick Legion Field by the Brewer baseball team. The current lease, with two extensions, expires October 31, 2008. Helena Baseball desires to enter into another lease for an initial term of ten years with two optional extensions of five years each. The city is currently undertaking major improvements to Kindrick Legion Field that are financed through the general obligation bond recently approved by Helena voters.

The proposed lease is similar to the previous contract except for the initial term being longer, ten years, and the cap on Helena Baseball's obligation for payment of expenses being increased annually by 3%. The proposed lease also contains an enhanced provision for the city to establish a capital program for improvements to the field over the life of the lease. Attorney Nielsen reviewed revisions to the agreement that had been made since the packet was distributed. A copy of the revised agreement was given to the Commission members and is included in the commission packet.

Attorney Nielsen recommended approval of the lease agreement, as it would provide Helena citizens who enjoy professional baseball with a firm commitment that a team will be in Helena for at least ten years.

Manager Burton gave the history of baseball in Helena and the proposed lease agreement.

Commission comment

Commissioner Cartwright referred to Section 3, page 2 and asked if the lease would be terminated if the current lessee were no longer a franchise holder? Attorney Nielsen explained this is a non-exclusive lease, if the lessee were to lose their franchise; the city could enter into another lease with another team.

Commissioner Peura thanked City Attorney Nielsen and Mr. Elmore for their work on the revisions to the agreement and spoke of the lease rate for utilities.

Public comment

Mayor Smith called for public comment.

D.G. Elmore, Helena Baseball Club, LLC; spoke in support of the agreement and expressed appreciation for the improvements that will be done to the field.

Motion

Commissioner Peura moved approval of a Lease Agreement between Helena Baseball Club, LLC and the City of Helena.

Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

ICLEI Appointments

CONSIDER APPOINTMENTS FOR THE ICLEI (INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVES) APPLICATION.

Staff Report

Administrative Services Director Tim Magee reported the Global Climate Change Task Force recommended the city join the ICLEI and initiate a project to create an emissions inventory utilizing their Clean Air

Climate Protection (CACP) software. The Commission has authorized \$14,065 in funding from contingency for this project. The ICLEI application process calls for the city to appoint:

- Elected official liaison to ICLEI
- Staff liaison to ICLEI
- Press and media liaison to ICLEI

Director Magee recommended the Commission appoint Commissioner Peura as the elected official liaison and authorize the City Manager to appoint a staff and press and media liaison, and direct completion and filing of the application for membership. Membership is required to utilize the CACP software tool; the next monthly training opportunity for the software is May 29-30, 2008.

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

Motion **Commissioner Cartwright moved approval of the appointment of Commissioner Peura as the elected official liaison to International Council for Local Environmental Initiatives (ICLEI) and authorize the City Manager to appoint the staff liaison, the press and media liaison and direct completion and filing of the application for membership in ICLEI.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Variations-curb cut & sidewalk CONSIDER A CURB CUT VARIANCE FROM 40' TO 84' AND SIDEWALK VARIANCE FOR NO SIDEWALKS ALONG WARREN STREET FOR THE PROPERTY AT 210 EAST LYNDALE.

Staff Report City Engineer Ryan Leland reported WTR Consulting is located at 210 East Lyndale and is in the permit process for adding and 844 square foot addition. Sidewalks along Warren Street were required as part of the building permit. Warren Street is an undeveloped gravel road that the applicant is using to access their parking lot.

The owner of the property has added new parking on west and north sides of the property. The adjacent Warren Street is unpaved and has no sidewalks. The owner is requesting a variance for a curb cut in excess of 40' and a variance for no sidewalk on Warren Street. The curb cut request is for an 84' curb cut.

Mr. Leland noted staff has no recommendation on the proposed variances.

Commission comment Commissioner Peura asked why Warren Street is undeveloped? Mr. Leland stated the structure was built before the city required the street be paved with development. Commissioner Peura asked for the extent of the Commission's authority in terms of requiring paving, curbs, gutters and sidewalks? Mr. Leland explained the applicant isn't asking for any land use changes, only an addition to their building. The Commission can order in sidewalk, curb and gutter at any time. Commissioner Peura asked if it would be possible to install curb, gutter and sidewalk without needing to remove it in the future in order to pave the street? Mr. Leland stated he could not be sure without intensive study of the area.

Mayor Smith asked if the sidewalk only could be installed and kept if the street were paved in the future? Mr. Leland stated yes,

sidewalks are more forgiving and wouldn't need to be removed for future improvements.

Commissioner Cartwright asked if the Commission could order in a temporary sidewalk? City Engineer Leland stated nothing but city standards can be ordered in. Commissioner Cartwright stated he wishes the applicant had worked with the city before they paved anything; a solution that worked for both parties may have been found.

Commissioner Elsaesser stated this is an important pedestrian corridor and needs sidewalks.

Commissioner Peura asked if for the feasibility of a motion to approve a curb cut variance from 40' to 84' contingent upon an SID to complete the sidewalk, curb, gutter and street. City Attorney Nielsen explained the Commission could order in the curb at any time and at that point decide what the variance would be. He suggested the Commission take no action on the curb and speak with the applicant about a waiver of SID. City Manager Burton commented a waiver of right to protest an SID may be a valuable tool in the future with adjacent property owners, including the City of Helena. The Commission has discussed fixing the roads around the park in past budget discussions. Commissioner Peura recommended tabling the request to allow time for staff to work with the applicant.

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

Motion Commissioner Peura moved to table for a curb cut variance from 40' to 84' and sidewalk variance for no sidewalks along Warren Street for the property at 210 East Lyndale to the call of the City Manager. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Variance- curb cut CONSIDER A CURB CUT VARIANCE TO REDUCE THE SEPARATION BETWEEN CURB CUTS FROM 25' TO 12' FOR THE PROPERTY LOCATED AT 83 DAYSPRING LOOP.

Staff Report City Engineer Leland reported the developer at 83 Dayspring Loop has constructed a four-plex. The approved building plans show the curb cuts in compliance with city code. However, during construction the contractor experienced elevation problems with the site and deviated from the approved plans.

The contractor is requesting a variance to reduce the required 25' between curb cuts to 12". Mr. Leland noted staff has no recommendation on the proposed variance.

Commission comment Commissioner Cartwright asked for the Commission's options in dealing with the situation. Mr. Leland explained there are only two options, the curb must be removed and installed in compliance with city code or the variance must be granted; the city cannot fine the contractor.

Commissioner Peura asked for the policy goal of setting the 25-foot separation between curb cuts. Mr. Leland explained the separation provides more landscaping in the boulevards and to try and avoid continuous curb cuts. Continuous curb cuts can result in more conflict between vehicles.

Public comment Mayor Smith called for public comment.

Paul Wibling, applicant, Knotty Pine Lane; spoke in support of the variance.

Discussion

Commissioner Cartwright noted many other lots in the area don't meet curb cut requirements. He stated he wished there were a third option in these situations such as requiring the contractor perform community service or pay restitution.

Mayor Smith indicated he would support the variance. Commissioner Peura commented he doesn't want to appear as to not enforce the city's requirements but requiring removal would be a waste of resources. He noted he would vote in support of the variance.

Motion

Commissioner Cartwright moved approval of a curb cut variance to reduce the separation between curb cuts from 25" to 12" for the property located at 83 Dayspring Loop. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER A RESOLUTION GRANTING A TWO-YEAR EXTENSION OF A PREVIOUSLY APPROVED CONDITIONAL USE PERMIT (CUP) (RESOLUTION #19458) FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF FRONT STREET AND 13TH STREET.

Staff Report

City Planner Kathy Macefield reported on April 9, 2007 the City Commission approved Resolution #19458 for a CUP which allowed construction of a building that would be up to 50 feet high, thereby exceeding the maximum height limit of the B-2 District. No conditions were required with the original CUP.

Section 11-21-4: Conditional Approval, of the Helena Zoning Ordinance states: *If compliance with the conditions for approval is not achieved within one year of the time specified by the City Commission, the conditional use permit may not be granted.* The applicant has requested two years to obtain financing for this project due to recent market fluctuations.

Section 11-21-3 (H, 3-a) of the Helena Zoning Ordinance states: *a public hearing is not required before the Zoning Commission if no changes have been made to the originally approved site plan or to any other circumstances surrounding the original approval.* No changes have been made to the previously reviewed site plan.

Ms. Macefield recommended approval of the extension to allow the applicant additional time to construct the building as originally approved.

Public Testimony

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

Blair Williams, 21 Last Chance Gulch, applicant; explained the distillery building across the street from the proposed project stands at just less than 60 feet and spoke in support of the extension.

Mike Hughes, 806 Harrison Avenue, property owner; urged the Commission to support the extension.

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

Motion

Commissioner Cartwright moved approval for a resolution granting a two-year extension of a previously approved CUP (Resolution #19458), in accordance with section 11-21-3 of the Helena Zoning Ordinance and the previously reviewed site plan.

Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution #19559**

Public Communications

PUBLIC COMMUNICATIONS

None communications were given.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is Wednesday, May 21, 2008 and the next Commission Meeting is Monday, June 2, 2008.

The town hall discussion series Growing Up or Growing Out will hold a second session on Transportation on Thursday, May 22, 2008 at 6:00 p.m. at the Civic Center. Youth Connections will hold a town hall meeting on underage drinking on Tuesday, May 20, 2007 at 6:30 p.m. at All Saints Hall.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:26p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission