

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
November 3, 2008  
6:00 P.M.**

- Time & Place*** A regular City Commission meeting was held on Monday, November 3, 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, Peura, and Elsaesser were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Ellen Bell representing the Helena Citizens Council.
- Pledge of Allegiance*** Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.
- Minutes*** The minutes of the regular City Commission meeting of October 20, 2008 were approved as submitted.
- Appointments*** APPOINTMENTS:  
A. Lewis & Clark County/City of Helena Library Board
- Mayor Smith asked for Commission concurrence on the following appointments:
- Lewis & Clark County/City of Helena Library Board** – Appointment of Hugh Ambrose to the Library Board. Unexpired term will begin upon appointment and expire January 1, 2011.
- Public comment Mayor Smith asked for public comment, none was received.
- Motion*** **Commissioner Peura moved approval of the appointment to as outlined above.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Consent Agenda*** CONSENT AGENDA:  
A. Claims  
B. Utility Bill Insert - Youth Connections Coalition  
C. Final passage of Ordinance No. 3104 amending Chapter 2, Chapter 4 and Chapter 40 of Title 11, the City of Helena Zoning Ordinance  
D. Extension of approval for vacation of a portion of the Donaldson Street right-of-way adjacent to Lot 12 in Block 75 of the Original Helena Townsite as granted by Resolution No. 19409
- City Manager Tim Burton recommended approval of the claims and the consent agenda.
- Commission comment Commissioner Cartwright asked that item C be removed for further discussion.
- Public Comment Mayor Smith asked for public comment, none was received.

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

**Item C** FINAL PASSAGE OF ORDINANCE NO. 3104 AMENDING CHAPTER 2, CHAPTER 4 AND CHAPTER 40 OF TITLE 11, THE CITY OF HELENA ZONING ORDINANCE

**Commission comment** Commissioner Cartwright expressed concern for the proposed amendments to the Zoning Ordinance regarding district dimensional standards. He agreed with the deletion of the reference to a 60% square footage limitation for secondary structures in the R-1, R-2 and R-3 Districts, but spoke in support of the intent of the requirement as its purpose was to keep neighborhoods looking the same. He indicated he is prepared to offer an amendment to the ordinance that in the R-1 and R-2 Districts, buildings on a lot receiving city sewer service can only have one with an area of lot coverage greater than 700 square feet.

City Attorney Nielsen recommended any amendments go through the public hearing process via Zoning Commission consideration and recommendation to the City Commission. Commissioner Cartwright indicated he would discuss his amendment at the November 12, 2008 Administrative Meeting.

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

**Motion** Commissioner Cartwright moved approval of item C on the consent agenda. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. Ord #3104

**Bid Award** BID AWARD:  
A. Kindrick Legion Field Lighting Project

Community Facilities Director Gery Carpenter reported the Kindrick Legion Field Lighting Project was advertised for bid on October 12 and 19, 2008. Bids were opened on October 24, 2008 at 2:00p.m. The city received one bid from Musco Sports Lighting LLC for the base bid in the amount of \$270,000; Alternate No. 1, the base bid plus a ten year warranty, in the amount of \$275,000; and for Alternate No. 2, the base bid plus a 25 year warranty, in the amount of \$280,000.

Director Carpenter recommended award of the bid with alternate No. 2 to Musco Sports Lighting, LLC in the amount of \$280,000, which will include a 25 year warranty on all the materials and labor to maintain the operation of the lighting system to original design criteria for 25 years. The project will provide average light levels of 75 footcandles in the infield and 50 footcandles in the outfield over 25 years without additional costs to the city. He noted the proposed energy savings could be more than 20% per year.

**Commission comment** Commissioner Cartwright asked if there are provisions in place to keep the new lights from bleeding into the neighborhood? Director Carpenter stated yes, there is a special provision on the lights that keeps the light from going into the air; they will comply with the dark skies ordinance.

Commissioner Elsaesser asked for the annual cost of the energy bill for the lights? Director Carpenter stated the Parks & Recreation Department would know the annual cost and would provide that information to the Commission at a later date.

Public comment

Mayor Smith called for public comment, none was received.

Motion

**Commissioner Peura moved approval for a bid award in the amount of \$280,000 for the Kindrick Legion Field Lighting Project to Musco Sports Lighting, LLC including Alternate No. 2.**

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Peura encouraged citizens to vote tomorrow, Tuesday, November 4, 2008, and thanked the candidates for running for office.

Commissioner Elsaesser concurred with Commissioner Peura's comments and announced a plastics recycling drive will be held November 7-11, 2008 in the YMCA/Armory parking lot.

Commissioner Cartwright spoke of recent travels to other communities and commented on how well Helena's infrastructure is holding up versus other cities.

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 Chair Ellen Bell thanked the city for the Volunteer Event held on Thursday, October 30, 2008. The HCC has completed their retreat process and their regular November Meeting will be held November 19, 2008, because of the Thanksgiving holiday. She noted there continues to be openings in Districts 4, 5 and 6.

Ms. Bell gave an update on the undeveloped parks plan and thanked HCC Vice-Chair Bob Habeck for his work on the project.

Commissioner Peura requested a report on the HCC's retreat sessions be distributed to the Commission when completed.

Civic Center Fees

CONSIDER A RESOLUTION OF INTENTION TO INCREASE THE FEES CHARGED BY THE HELENA CIVIC CENTER FOR TICKETING SERVICES.

Staff Report

Community Facilities Director Gery Carpenter reported an internet based ticketing system has been purchased for ticketing services. There are additional costs associated with the new system requiring an increase to users and promoters for ticketing services. The Civic Center Board's Fee Committee in conjunction with Civic Center staff reviewed the policy and recommended changes. The Civic Center Board approved the proposed schedule at their October 2, 2008 meeting.

The ticket charge and return charge will increase from \$.25/ticket to \$.50/ticket. Box office service fees will remain the same, but he

maximum fee charged per show to promoters increases from \$2,500 to \$3,000. The fee for box office hours outside normal business hours is set at \$25/hour per person. Comp tickets will increase from \$.40/ticket to \$1.00/ticket. Patrons who purchase by mail, phone or internet will be charged a \$2.00/ticket convenience fee.

Director Carpenter recommended approval of the fee increase so clients will be able to purchase tickets from the internet, allowing for 24/7 access to ticketing services. Promoters will also be able to see ticket sales on a particular show on the internet any time of the day or week.

## Public comment

Mayor Smith called for public comment, none was received.

## Motion

**Commissioner Elsaesser moved approval of a resolution of intention to increase the fees charged by the Helena Civic Center for ticketing services and set a public hearing date for November 17, 2008.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Res #19613**

**Final Plat Extension**

CONSIDER AN EXTENSION OF ONE YEAR FOR FINAL PLAT APPROVAL FOR THE ASPEN TRAILS RANCH SUBDIVISION. (TABLED ON OCTOBER 6, 2008).

## Staff Report

City Planner Lucy Morell-Gengler reported on Monday, November 21, 2005, the Helena City Commission conditionally approved the preliminary plat for Aspen Trails Ranch Major Subdivision, a major subdivision creating 341 lots (325 residential lots, one commercial lot and 15 lots for parkland) from 267.76 acres. The proposed subdivision is legally described as Tract 1A COS #598543/B as amended per Quit Claim Deed #3025005 Book –M26, Pg-9866, Lewis and Clark County, Montana.

Montana Codes Annotated Section 76-3-610 states: "This preliminary plat] approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider."

The subdivider has submitted a request for an extension for filing the final plat for the Aspen Trails Ranch which is a relatively large subdivision (341 lots). The preliminary plat approval was contingent on the completion of twenty-seven conditions, most of which related to infrastructure improvements and mitigation of the impacts to waterways. Within the 3 years since preliminary plat approval the applicant has demonstrated a commitment to completing the subdivision by completing infrastructure plans, most of which have been approved by the Public Works Department.

A complaint from area property owners was filed in December 2005 challenging the City's approval of the Aspen Trails Ranch subdivision. Proceeding further with the subdivision has been delayed by the uncertainty of the outcome of this lawsuit. Therefore, the applicant has requested additional time beyond the typical one-year extension to accommodate the delays associated with the lawsuit. The applicant has also identified plans to phase the development and delays

regarding construction of a regional lift station that could serve the Aspen Trails Ranch subdivision as reasons for granting the extension.

Although the applicant had identified delays in the regional lift station as justification for the extension, the conditions of approval did not require participation in the regional lift station. Staff has maintained that if construction of a regional lift station could not meet the developer's timeframe, the applicant needed to proceed with the design and construction of an individual lift station with adequate capacity to serve this subdivision and the developer must provide rights-of-way dedicated to the City, or exclusive easements to the City for the lift station, and related infrastructure.

The preliminary engineering plans for an individual lift station have been submitted to the City for review but corrections to these plans, as identified by staff, have not been submitted. In addition to those corrections, options were presented to the developer early in the process if he decided to participate in a regional lift station. Since there is not a developed plan for the regional lift station those options are no longer available to the developer. Staff has indicated a willingness to administer a rebate program if the developer constructs a lift station with capacity in excess of the needs of the Aspen Trails Ranch Subdivision.

If the conditions of preliminary plat approval are not met within this one-year extension, an additional time extension and a written agreement, between the city and the subdivider, for filing the final plat for the Aspen Trails Ranch Subdivision must be approved prior to the expiration of the one-year extension.

Commission comment                    Commissioner Cartwright asked if this plat has been reviewed for connectivity? Ms. Morell-Gengler confirmed when the development was first reviewed by staff and the City Commission, connectivity was considered. She noted the applicant had submitted a drawing to the Commission members before the beginning of the meeting, that drawing has not been reviewed by Planning Department staff. Ms. Morell-Gengler added the preliminary plat has been approved and the conditions are set, no additional conditions can be set on the plat.

Public comment                         Mayor Smith called for public comment.  
Dick Bowen, applicant, Whidbey Island, Washington; urged the Commission to approve the extension.

Discussion                                 Commissioner Peura asked if there are criteria for the decision on the extension or is it based on the Commission's discretion? Attorney Nielsen responded it is a decision of Commission discretion. Commissioner Peura thanked Mr. Bowen for his comments but indicated he would not support the plat extension. He stated he was not on the Commission when the preliminary plat was approved and would not have voted for it as he believes it is one of the worst places for the city to grow because of its wetland and riparian areas, and it is not contiguous to the city limits.

Commissioner Elsaesser concurred with Commissioner Peura's concerns but noted the applicant has shown a clear commitment to meeting the requirements of the preliminary plat and indicated he would support the extension.

Commissioner Cartwright indicated he would support the extension but also has concerns with the subdivision. He spoke of valley zoning and the prospect of a regional lift station as impacting his decision

for approval of the preliminary plat in 2005. He noted he is less comfortable now with the subdivision because times have changed but it is not right that the subdivision has been in litigation for three years. He spoke of Helena and the nation's economy a year from now and would base his decision on what was happening then but commented he hopes the subdivision is successful.

Mayor Smith stated the reason for the extension is due to conditions the applicant has no control over and indicated he would support the extension. He noted when he joined the Commission the goal was to stimulate development to the north of the city, not the south, and commented he is totally comfortable with the development.

**Motion**

**Commissioner Elsaesser moved approval for a one-year extension for meeting the conditions of preliminary plat approval for the Aspen Trails Ranch Subdivision.** Commissioner Cartwright seconded the motion. Motion carried 3-1, with Commissioner Peura voting no.

**Access Easement**

CONSIDER GRANTING A PRIVATE ACCESS EASEMENT OVER AND ACROSS CITY-OWNED PROPERTY TO LOT 10 IN BLOCK 6 OF THE BELT VIEW PLANNED UNIT DEVELOPMENT, SHOWN ON COS NO. 236558.

**Staff Report**

Parks & Recreation Director Amy Teegarden reported the applicant, Mr. Newell, contacted the city in May 2008 concerning a land exchange or easement on his property at 10 Comstock Road for a portion of an existing driveway that is located on parkland. Mr. Newell opted for an easement because the cost of a survey required for an exchange was cost prohibitive.

The subject property crosses a parcel of parkland that is undeveloped and will likely never be developed. The house and driveway were built in 1982 and so the access has existed for more than 25 years. There is no other feasible access to the house, other than across parkland. Mr. Newell recently purchased the property and when a survey was completed the fact that a portion of the driveway was located on city parkland was discovered.

The square footage of the easement equals 777.12 square feet. As part of the easement, the owner will be required to pay a one-time charge of 100% of the fair market value of the city's property upon which the easement lies in the amount of \$1087.97.

Director Teegarden recommended approval of the easement as it would alleviate parkland encroachment.

**Commission comment**

Commissioner Elsaesser asked if there are any requirements related to maintaining the retaining wall? Director Teegarden stated there are requirements in the easement related to meeting ordinances and standards. She added she will be meeting with an engineer to look at the retaining wall in the coming week.

**Public comment**

Mayor Smith called for public comment, none was received.

**Motion**

**Commissioner Cartwright moved approval for a private access easement over and across city-owned property to Lot 10 in Block 6 of the Belt View Planned Unit Development, shown on COS No. 236558, utilizing the portion of city as shown on Exhibit "A".**

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

***Public  
Communications***

PUBLIC COMMUNICATIONS

None communications were given.

***Meetings of  
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is Wednesday, November 12, 2008 and the next Commission Meeting is Monday, November 17, 2008. There will be a City/County Commission Joint Work Session on Thursday, November 6, 2008 in the Commission Chambers.

City Manager Burton recommended cancelling the November 26, 2008 Administrative Meeting due to the Thanksgiving holiday; the Commission concurred.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 7:07p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission