

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
February 9, 2009
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, February 9, 2009 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 Maleen Olson 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 January 26, 2009 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Change Order No. 1 - Westside Sidewalk Replacements 2008
- C. Change Order No. 1 - Southcentral Sidewalk Replacements 2008
- D. Resolution authorizing a lease purchase agreement with US Bank National Association and related documents to build a parking garage and surface parking adjacent to the Montana State Fund Office Building and issue Certificates of Participation to finance the project
- E. Construction Management General Contractor contract for the 15th Street parking ramp
- F. Amendment to Resolution No. 19530 to extend the Global Climate Change Task Force sunset by six (6) months

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 Peura moved approval of items A through F on the consent agenda. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

- A. Civic Center sign

Community Facilities Director Gery Carpenter reported the replacement of the Civic Center sign was advertised on December 14 and 21, 2008 and the bid opening was held on December 23, 2008. One bid was received from the Young Electric Sign Company. The bid tabulation was included in the Commission packet. The funding for this project is from the City of Helena (\$25,000) and the Civic Center Board (\$37,000). The base bid included the lowest resolution message center

that would meet the needs of the Civic Center. Alternate 1 provided a computer for control of the message center. Alternates 2 and 3 provided progressively higher resolution message centers. Alternate 4 included the repainting of the support covers for the message center and Alternate 5 provided new support covers.

Director Carpenter recommended award of the base bid with Alternates 1, 2 and 5. This would provide the middle resolution message center with a computer to control the information and new covers on the support system. The total cost would be \$60,310. The Civic Center Board approved staff's recommendation and their financial contribution at the meeting on January 8, 2009. Director Carpenter noted the new message center will allow color messages including full color posters of events occurring at the Civic Center for the next ten to fifteen years.

Commission comment Commissioner Peura asked if the energy use would decrease with the new sign? Director Carpenter stated yes and explained the energy use would be slightly less than the old sign because the lights run 24 hours per day/7 days per week on the current sign to keep it illuminated; the proposed LED sign will use less energy.

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

Motion **Commissioner Elsaesser moved approval for a bid award to Young Electric Sign Company in the amount of \$60,310 which includes Alternates 1, 2 and 5 for a replacement electronic message center at the Civic Center.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Elsaesser praised consent agenda items related to the sidewalk replacement program, State Fund Parking Garage and the extension of the Global Climate Change Task Force.
The Commission members commended the work of the Legislature.

Report of the City Attorney REPORT OF THE CITY ATTORNEY
City Attorney Nielsen reported Luxan Murfitt, who is representing the Helena Regional Airport Authority (HRAA) in a lawsuit with Plan Helena and Alan Nicholson, have requested the City of Helena and Lewis & Clark County present amicus briefs in the case. It would not make the city a party but would be an opportunity for the city and county to say how the litigation and outcome could have impacts on the city and county. The reason they have asked for the involvement is because the city and county were involved with the HRAA and drafting the rules for disposal and lease of airport property. Attorney Nielsen asked the Commission for guidance on whether the city should provide the amicus briefing or not.

Mayor Smith asked if the brief could be discussed at the March Joint Work Session. Attorney Nielsen explained the county has already joined in as an amicus and the case is on an accelerated briefing schedule with the defendant's brief due Friday, February 13, 2009. Mayor Smith expressed concern that the issue deserves an in-depth discussion and the Commission has a very large agenda to get through.

Commissioner Cartwright asked what the usual procedure is for these requests. Attorney Nielsen stated the last time he wrote an amicus

brief was years ago, to the Supreme Court. The city does get involved from time to time but has not received a request in years.

Commissioner Elsaesser shared Mayor Smith's concerns that more discussion and information on the brief is needed. Further discussion on the amicus brief was held at the end of the meeting.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Maleen Olson announced the HCC's new Executive Board members: Chair Dan Bernhardt, Vice-Chair Winston Greely, Secretary Jim Penner and Treasurer Harlan Rudolf. She reported the quarterly district meetings would be held together in one location on Thursday, March 5, 2009 at the University of Montana-Helena College of Technology from 6:30-8:00pm. Ms. Olson listed some of the organizations participating in the meeting and invited Mayor Smith and the Commission members to attend.

ROW Dedication

CONSIDER A RIGHT-OF-WAY DEDICATION FOR CROMWELL DIXON LANE, BETWEEN WASHINGTON STREET AND KELLEHER DRIVE; KELLEHER DRIVE, BETWEEN SKYWAY DRIVE AND CUSTER AVENUE; AND SKYWAY DRIVE, BETWEEN WASHINGTON STREET AND KELLEHER DRIVE.

Staff Report

City Engineer Ryan Leland reported currently Cromwell Dixon Lane, Kelleher and Skyway Drive are being used as city streets. The Helena Regional Airport Authority (HRAA) is proposing to dedicate the related right-of-way (ROW) in order to fulfill the preliminary plat condition of approval. Engineer Leland recommended approval of the proposed dedications as it would allow the city to have full jurisdiction over the ROW in addition to fulfilling preliminary plat approval.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Cartwright moved to accept ROW dedications for Cromwell Dixon Lane, between Washington Street and Kelleher Drive; Kelleher Drive, between Skyway Drive and Custer; and Skyway Drive, between Washington Street and Kelleher Drive. Commissioner Shropshire seconded the motion. All voted aye, motion carried.

Public Improvements Agreement

CONSIDER A PUBLIC IMPROVEMENTS AGREEMENT FOR THE HELENA REGIONAL AIRPORT AUTHORITY WEST (HRAA-WEST) SUBDIVISION.

Staff Report

Engineer Leland reported the City Commission approved a preliminary plat for the Helena Regional Airport Authority (HRAA) West Subdivision with the conditions that the 12" line in Skyway Drive be extended to the 16" main in Washington Street and extend the 16" line in Washington Street from Skyway Drive to Cedar Street. A 12" line in Washington Street is all that is required for the subdivision to meet their needs, so the city's participation in the upsizing of the 12" main to a 16" main will be the difference in the material costs between the mains.

The HRAA is proposing to sign an Agreement for Public Improvements in a subdivision to defer the construction of the water mains until the mains are needed for the construction of buildings. The 12" water main along Skyway Drive will be required for any building located within Lot D-5 between Skyway Drive and the Airport fence. Then the 16" water main will be required for any building located in the area located between Airport Road, Washington Street and the Airport fence.

Engineer Leland recommended approval of the agreement as it would allow the water mains to be installed prior to any building construction.

Commission comment

Commissioner Peura asked for the criteria the Commission should use to approve or deny the agreement? Attorney Nielsen explained the lower, 12" main isn't needed until there is a building or construction; the installation could be deferred until a building permit is issued for the property. Usually, the developer must install or financially guarantee the improvements. If the developer doesn't want to or cannot install the improvements, the governing body can enter into a moral agreement that would not require a financial guarantee, in lieu of installation.

Commissioner Cartwright asked what kind of financial guarantee is usually required. Attorney Nielsen reiterated this agreement would be for more of a moral guarantee and the city will not issue building permits for the area until all of the infrastructure is installed. Usually, the developer will be required to submit a letter of credit or bond.

Public comment

Mayor Smith called for public comment.

Alan Nicholson, 1 Quarry Lane; spoke in opposition to the proposed agreement and subdivision.

Tim Bury, Morrison-Maierle, representing the HRAA; spoke in support of the agreement and subdivision.

Ron Mercer, HRA Director; spoke in support of the proposed agreement and subdivision.

Discussion

Commissioner Shropshire asked Mr. Mercer if the proposed development would accommodate future expansion of the airport? Director Mercer responded yes, the airport has enough property to extend another 1,000 feet and has acquired approximately 300 acres to protect future growth to the east. He added the aviation industry is going to more efficient, smaller aircraft. He referred to public comment regarding relocating the airport and stated it would not be possible in the Helena area.

Commissioner Cartwright asked if this type of agreement has been used in other subdivisions? Attorney Nielsen stated no. Manager Burton explained the HRAA is receiving consideration for the agreement because they are a public entity created by the city and the county. Commissioner Cartwright asked what staff would say to a private developer that requested the same agreement? Manager Burton stated this type of agreement would not be offered to a private developer.

Commissioner Peura expressed concern for the agreement with no financial bond because the HRAA sunsets in 2011; if the authority isn't renewed the City and County Commissions would become responsible for any agreements and obligations. He added that due to

the current economy, he feels it would be a breach of the public trust to not back up an agreement with some kind of financial certainty.

Motion **Commissioner Peura moved to deny the Public Improvements Agreement for the Helena Regional Airport Authority West Subdivision for rent or lease.** Commissioner Cartwright seconded the motion.

Discussion Commissioner Elsaesser noted he would not support the motion to deny the agreement as he is comfortable with the proposal. Commissioner Cartwright stated he is comfortable with the underlying purpose of the agreement but uncomfortable regarding the same agreement not being offered to private developers in relation to subdivision laws. Mayor Smith indicated he would not support the motion as he doesn't believe it is appropriate to require a bond in this instance.

Vote Motion failed 2-3 with Commissioners Elsaesser, Shropshire and Mayor Smith voting no.

Motion **Commissioner Elsaesser moved to approve the Public Improvements Agreement for the Helena Regional Airport Authority West Subdivision for rent or lease.** Commissioner Shropshire seconded the motion. Motion carried 4-1, with Commissioner Peura voting no.

HRAA Subdivision CONSIDER SITE PLAN APPROVAL FOR THE HRAA-WEST MINOR SUBDIVISION FOR THE CREATION OF 5 LOTS FOR LEASE OR RENT; GENERALLY LOCATED EAST OF WASHINGTON STREET, WEST OF KELLEHER LANE AND SOUTH OF CUSTER AVENUE.

Staff Report City Planner Lucy Morell-Gengler reported on May 8, 2006, the Helena City Commission gave conditional preliminary approval for the HRAA-West Minor Subdivision creating 5 commercial lots for lease in a B-2 (General Commercial) District. Section 76-3-208 MCA states *"Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased."* Therefore, although there is no final plat for this division, the applicant has submitted a site plan for City Commission review that indicates the areas to be leased and the access to those areas.

The approval of the site plan is subject to the conditions stated in the Findings of Fact which have been completed. For reference, a list of the original subdivision conditions and their status was included in the Commission packet. Planner Morell-Gengler recommended approval for the final site plan as it would allow the lease of the lots, encourage the development of property in the area and will provide ROW for access to the lots.

Commission comment Commissioner Peura referred to approval of the preliminary plat in 2006 and asked if the conditions contemplated the Airport Affected Areas statute approved by the 2005 Legislature? Planner Morell-Gengler stated she did not believe that statute was in the Findings of Fact; however, the record indicates the Noise Influence Area and No

Build Area were considered. Commissioner Peura expressed concern that the Airport Affected Areas statute (AAAS) was not contemplated with the preliminary plat. Attorney Nielsen explained the Airport Influence Areas is a zoning type of statute; within a subdivision preliminary plat it would be unusual to incorporate that type of zoning. The statute is self-executing and has applicability regardless of whether there are lots for rent or not and is not dependent on being linked with the subdivision. He noted he does not recall discussing the AAAS when reviewing the subdivision in 2005.

Public comment

Mayor Smith called for public comment.

HRA Director Mercer; explained the AAAS, and spoke in support of the site plan.

Alan Nicholson; spoke in opposition to the site plan and expressed concern for the Airport Affected Area.

Tim Bury; spoke in support of the site plan.

Tim Orthmeyer, Morrison-Maierle, aviation engineer, representing HRAA; spoke in support of the site plan and commented on the AAAS.

Discussion

Commissioner Cartwright commented on the process for approval of the preliminary plat and the sunset of the HRAA. Commissioner Peura expressed concern for the AAAS and the fact that it was not considered in conjunction with the preliminary plat. He noted he is comfortable with the site plan north of Skyway Drive but recommended denying or tabling the site plan because of his concern with the rest of the proposal.

Commissioner Shropshire asked if the proposed site plan is in compliance with the AAAS. Mr. Orthmeyer responded yes.

Motion

Commissioner Peura moved denial of the site plan for the HRAA-West Minor Subdivision for the creation of five lots for lease.
Commissioner Cartwright seconded the motion.

Discussion

Commissioner Cartwright asked if there is something in the subdivision regulations that would allow the Commission to review the subdivision again in light of the AAAS. Attorney Nielsen stated at present, the city does have ordinances on the Airport Influence Area which has to do with health and safety of Helena citizens in relationship to the use of the airport and sets overlay zoning. Much of that zoning is the same information as the AAAS. Subdivision of property contemplates zoning and use of the area being zoned as part of the review criteria. The AAAS refers to areas outside of the airport so it would not logically be part of a discussion on a subdivision within the airport. Attorney Nielsen noted there is nothing in the mandatory standards of the AAAS that is not already covered by the city's current ordinance. He concluded there is nothing in the statute that would trigger a review of the preliminary plat/subdivision and reiterated the AAAS is a zoning overlay and independent of the preliminary plat approval in 2006. Attorney Nielsen added the subdivision law is explicit that you cannot add new conditions once the preliminary plat approval has been granted for three years plus any extensions.

Commissioner Elsaesser indicated he would support the site plan although he appreciates Commissioner Peura's concerns with the proposal. Commissioner Shropshire asked for the timeframe to approve

the site plan? Attorney Nielsen stated it must be considered within three years, the deadline would be May of 2009. Mayor Smith indicated he would not support the motion to deny the site plan. Commissioner Cartwright expressed concern for subdivision laws related to preliminary plat approval and conditions.

Vote Motion failed 1-4, with Mayor Smith and Commissioners Cartwright, Elsaesser and Shropshire voting no.

Motion **Commissioner Elsaesser moved approval of the site plan for the HRAA-West Minor Subdivision for the creation of five lots for lease.** Commissioner Shropshire seconded the motion. Motion carried 4-1, with Commissioner Peura voting no.

Colwell Building CONSIDERATION OF A REQUEST TO APPROVE THE ALTERATION OF THE EXTERIOR OF THE COLWELL BUILDING, TO ACCOMMODATE A BALCONY FOR APARTMENT NO. 3, 62 S. LAST CHANCE GULCH.

Staff Report Community Development Director Sharon Haugen reported City staff has been forwarded a request from Steven Browning to construct a balcony on his apartment in the Colwell Building, located on the downtown walking mall at 62 S. Last Chance Gulch. Mr. Browning owns one of several apartments in that building.

Director Haugen reported the applicant has requested tabling the proposal as the other condominium owners would like to be considered as part of this proposal.

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

Motion **Commissioner Peura moved to table the proposal for the alteration for the exterior of the Colwell Building, to accommodate a balcony for Apartment No. 3, 62 S. Last Chance Gulch to the February 23, 2009 Commission Meeting.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Private Use of Public Row CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING TITLE 7 OF THE HELENA CITY CODE TO REGULATE THE PRIVATE USE OF PUBLIC RIGHTS-OF-WAY BY ADDING A NEW CHAPTER 13, AND AMENDING SECTIONS 7-9-4 AND 7-9-12.

Staff Report Deputy City Attorney Thomas Jodoin reported the city has had numerous requests from private restaurants to use adjacent ROW to operate sidewalk cafes over the last several years. The City Commission has approved these uses through ROW use agreements particular to each request. Concurrently, there has been an increase in unauthorized private commercial use of public ROW. A review of other private uses of ROW, ranging from encroachments such as placement of private irrigation systems to conducting commercial activities on the streets and sidewalks, made it apparent that our current city code does not provide comprehensive guidance for this problem. Presently, under §7-9-4 Helena City Code, a mall sale permit is required to sell goods on the pedestrian walking mall and §7-9-12 prohibits obstructions except when by a permit under §7-9-4. Because portions of §7-9-4 and §7-9-

12, Helena City Code, are inconsistent with the proposed ordinance, they must be amended for conformity.

Deputy Attorney Jodoin recommended approval of the proposed ordinance in order to provide comprehensive regulation of all private encroachments and uses on public ROW. It would allow certain encroachments and uses by right, non-exclusive uses would be subject to review and permitting through the City Manager, and exclusive uses would require City Commission approval.

Commission comment Discussion was held on posting menus or sandwich signs related to the sign ordinance. It was recommended that City Manager Burton have the authority to approve the posting of a menu or sandwich sign with a permit in a non-exclusive area. There was Commission concurrence to approve first passage of the ordinance and discuss the proposed amendment related to signs at final passage on February 23, 2009.

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

Motion Commissioner Peura moved approval of first passage of an ordinance that regulates the private use of public rights-of-way by adding a new Chapter 13 to Title 7 and amending §7-9-4 and §7-9-12, Helena City Code, and set a public hearing date of February 23, 2009. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3107**

Section 5-9-1 CONSIDER FIRST PASSAGE OF AN ORDINANCE REPEALING SECTION 5-9-1: STREET STANDS, HELENA CITY CODE.

Staff Report Deputy City Attorney Jodoin reported Section 5-9-1 of the Helena City Code permits street stands that do not cause interference with traffic and pedestrians. The proposed ROW regulation and control ordinance provides for a comprehensive legal process for reviewing and approving various private uses of public ROW. The proposed ordinance creating a new regulation and control on private uses of ROW creates a conflict with §5-9-1.

Deputy Attorney Jodoin recommended repealing §5-9-1 in order to place review of street stands under the new ROW regulation and control ordinance and eliminate the conflict.

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

Motion Commissioner Shropshire moved approval for first passage of an ordinance repealing §5-9-1, Helena City Code, and set a public hearing date of February 23, 2009. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3108**

Final Plat Extension CONSIDER AN ADDITIONAL 10-YEAR TIME EXTENSION FOR FINAL PLAT APPROVAL FOR THE ASPEN PARK AT MOUNTAIN VIEW MEADOWS SUBDIVISION; GENERALLY LOCATED SOUTHWEST OF EAST HELENA, WEST OF HIGHWAY 282 AND NORTH OF THE JEFFERSON COUNTY LINE.

Staff Report City Planner Lucy Morell-Gengler reported on February 14, 2005, the City Commission gave conditional preliminary plat approval for

the Aspen Park at Mountain View Meadows Major Subdivision creating 330 residential lots and parkland from approximately 192 acres. The City Commission gave final plat approval for Phase A for 41 residential lots on June 2, 2008; a one-year extension for filing the final plat for the remaining phases was granted on February 11, 2008.

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..."

Aspen Park at Mountain View Meadows is a relatively large subdivision (330 residential lots) and is the first phase of development between Helena and East Helena. The preliminary plat approval was contingent on the completion of twenty-two conditions, most of which related to infrastructure improvements. Within the 4 years since preliminary plat approval the applicant has demonstrated a commitment to completing the subdivision by satisfying many of the conditions, and installing significant lengths of water and sewer mains that will serve not only this subdivision but also future development in the area. Furthermore, the applicant is in the process of installing much of the transportation network for the subdivision plus portions of the regional transportation network needed for connecting Highway 12 to the south interchange. The applicant has filed the final plat for the first phase this multi-phase subdivision.

Some of the issues associated with the subdivision have taken longer to resolve than anticipated such as obtaining approval from the Montana Department of Transportation for access to Highway 12, and determining the best method of addressing the Airport lift station which is near capacity. The applicant has requested additional time beyond the one-year extension granted by the City Commission last year to phase the development to accommodate the housing market. Although the applicant requested an extension until 2025, staff is recommending a 10-year extension, until 2019, with an option to extend the agreement if additional time is requested after the 10-years extension.

Although the city has granted several one-year extensions, this is the first time the City of Helena has been asked to grant an extension of this length. Staff is recommending that an agreement between the city and the developer include provisions for changes in the city requirements that may occur over the next 10 years. The proposed agreement would require the developer to comply with any new engineering standards that might be adopted during the 10-year extension period and would allow acquisition of parkland in large segments instead of the minimum amount required per phase so that parkland planning and improvements would not have to be delayed with the time extension.

Planner Morell-Gengler noted extending the time to 10 years for completing the conditions established with the preliminary plat would allow the applicant an opportunity to complete the relatively large Aspen Park at Mountain View Meadows Subdivision and respond to changes in the housing market. This extension can facilitate the development of a large area which can promote regional planning of infrastructure and facilities. The proposed agreement would require compliance with

changes in the city engineering standards and would accommodate park planning for the subdivision.

Commission comment

Commissioner Cartwright referred to MCA 76-3-610 and noted the subsection says the governing body may not impose any additional conditions after preliminary plat as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period. He asked if the Commission were to extend final plat approval beyond the three plus one years, would there be authority to impose new conditions? Attorney Nielsen explained if the extension is by agreement, the Commission can't change conditions.

Commissioner Peura asked if the developer could choose to adhere to new subdivision regulations as they are approved in the future? Attorney Nielsen stated there is some interaction between the city's zoning and subdivisions so if there were a change, a developer could come in with an amended preliminary plat approval and take advantage of new requirements. The amendment may have to go through the full review process though, if it increases lots or density. If development standards changed more to the favor of the developer, they could be incorporated into the final plat without have to go through review.

Public comment

Mayor Smith called for public comment.

Greg Dahl, R & D Partners, applicant; urged the Commission to support an extension, in any length of time.

Alan Nicholson; urged the Commission to put some caveats in the extension and stated 10 years is too long.

Discussion

Commissioner Shropshire expressed concern that ten years is too long of an extension and recommended following the intent of the statute; three years with a one year extension.

Commissioner Peura expressed appreciation to the developers for their investment in a mixed use, compact development. He expressed concern for a ten year extension and recommended allowing a five year extension with the option to request an additional five year extension if the infrastructure isn't completed within the first five years.

Commissioner Cartwright expressed concern for connectivity in the subdivision and noted several of the blocks in the subdivision are over ½ mile or ¼ mile long and asked the developer to address those issues.

Mayor Smith noted he would support the extension and commended the developer on the subdivision.

Motion

Commissioner Peura moved approval of an Agreement for Extension of Preliminary Plat Approval to allow an additional 5-year extension for meeting the conditions of preliminary plat approval for the Aspen Park at Mountain View Meadows Subdivision for property legally described in the amended agreement. The agreement is amended strike the year 2019 and replace it with 2014, and to add language stating if all of the conditions of approval and public improvements are not completed and approved or financially guaranteed by February 2014, the developer is allowed to apply for an additional 5 year extension. Commissioner Cartwright seconded the motion.

Discussion Commissioner Cartwright stated he would not support the agreement because he can't change the conditions of the subdivision. Commissioner Peura urged the developer to contemplate the Commission's comments about block length and connectivity. Commissioner Elsaesser noted he would support the extension.

Vote Motion carried 3-2, with Commissioners Shropshire and Cartwright voting no.

Res of Intent to Annex CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF HELENA AND ESTABLISH CONDITIONS FOR ANNEXATION FOR: 1) THE CROSSROADS AT MOUNTAIN VIEW MEADOWS SUBDIVISION; 2) OFF-SITE PARKLAND AREA; AND 3) THE FULL WIDTH OF THE ADJACENT HIGHWAY 12, ROUTE 240, AND CROSSROADS PARKWAY RIGHTS-OF-WAY; THE PROPERTY IS GENERALLY LOCATED SOUTH OF HIGHWAY 12, EAST OF CROSSROADS PARKWAY, SOUTHWEST OF EAST HELENA, WEST OF HIGHWAY 282 AND NORTH OF JEFFERSON COUNTY.

Staff Report Planner Morell-Gengler reported the applicants, R & D Partners, LLC; the International Church of the Four Square Gospel; and Marvin and Maria Nyberg, are requesting to annex the annex the Crossroads at Mountain View Meadows Subdivision containing approximately 381 acres (229 acres planned for commercial development and 152 acres for residential development). The Crossroads Subdivision is the second phase of the Mountain View Meadows mixed-use development. Additionally, off-site areas for park use would be annexed. This area includes required parkland dedication for both the Crossroads and Aspen Park Subdivisions.

MCA Section 7-2-4211 states: In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed. Therefore, a portion of Highway 12, Route 240, and Crossroads Parkway must be annexed with the Crossroads at Mountain View Meadows Subdivision. These rights-of-way will be annexed when the adjacent phase of the Crossroads Subdivision is annexed.

The proposed resolution of intention to annex allows the City to establish conditions for annexation as an intermediate step toward the finalization of annexation.

This proposal is accompanied by two simultaneous proposals affecting the same property:

- Pre-zoning of: R-4/R-O (Residential - Office) District for 571 lots and two off-site parkland lots (including parkland from the Aspen Park Subdivision), and B-2 (General Commercial) District for 321 lots.
- Major Subdivision /preliminary plat for proposed Crossroads at Mountain View Meadows creating 892 lots and one new off-site parkland lot.

Planner Morell-Gengler recommended approval of the resolution of intention as the proposed annexation and subdivision would develop

an area that is near the city with urban density residential and commercial uses. This annexation and subdivision would reduce sprawl and ease some of the pressure to develop lots in the County with septic systems which could have a negative impact on ground water. Annexation allows city standards to be applied to development of this property.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PREZONING, PRIOR TO ANNEXATION INTO THE CITY OF HELENA, CROSSROADS AT MOUNTAIN VIEW MEADOWS SUBDIVISION AND TWO OFF-SITE PARKLAND AREAS TO R-4/R-O (RESIDENTIAL-OFFICE) AND B-2(GENERAL COMMERCIAL); FOR PROPERTY GENERALLY LOCATED SOUTH OF HIGHWAY 12, EAST OF CROSSROADS PARKWAY, SOUTHWEST OF EAST HELENA, WEST OF HIGHWAY 282 AND NORTH OF JEFFERSON COUNTY.

Staff Report

Planner Morell-Gengler reported the applicant is requesting the adoption of an ordinance pre-zoning to R-4/R-O and B-2 Districts the Crossroads Subdivision prior to annexation to the City of Helena. This request is part of a development plan which includes simultaneous requests for annexation of the Crossroads at Mountain View Meadows Subdivision containing approximately 381 acres (229 acres planned for commercial development and 152 acres for residential development) and annexation of off-site areas for parkland (approximately 20 acres); and major subdivision /preliminary plat for proposed Crossroads Subdivision creating 892 lots and 1 new off-site parkland lot.

On January 13, 2009, the Zoning Commission recommended (4:1 vote) APPROVAL for the adoption of an ordinance pre-zoning prior to annexation into the City of Helena, Montana to:

R-4/R-O (Residential - Office) District for 571 total lots as follows: Blocks 22, 25, 27, 28, 36 – 46; Block 20, Lots 8-12; Block 23, Lots 4-23; Block 24, Lots 3-16; Block 26, lots 2-25; Block 29, Lots 12-20; and off-site parkland lots (including parkland from the Aspen Park phase); and

B-2 (General Commercial) District for 321 total lots as follows: Blocks 1-19, 21, 30-35, 47; and Block 20, Lots 1-7; Block 23, Lots 1-3; Block 24, Lots 1 and 2; Block 26, Lot 1; and Block 29, Lots 1-11 ().

All as shown on the preliminary plat for the proposed Crossroads at Mountain View Meadows Subdivision.

Planner Morell-Gengler recommended approval of the proposed ordinance as the proposed zoning would allow development of commercial and residential uses in accordance with city zoning on property in close proximity to the city. This annexation would allow the extension of city services and infrastructure to this area assuring compliance to city approved infrastructure plans, building codes, fire codes and stormwater plans.

B. CONSIDER THE PRELIMINARY PLAT FOR THE PROPOSED CROSSROADS AT MOUNTAIN VIEW MEADOWS MAJOR SUBDIVISION CREATING 892 LOTS AND ONE OFF-SITE PARKLAND LOT FOR PROPERTY GENERALLY LOCATED SOUTH OF HIGHWAY

12, EAST OF CROSSROADS PARKWAY, SOUTHWEST OF EAST HELENA, WEST OF HIGHWAY 282 AND NORTH OF JEFFERSON COUNTY.

Staff Report

Planner Morell-Gengler further reported on January 20, 2009 the Consolidated Planning Board held a public hearing for the Crossroads major subdivision/preliminary plat. The Planning Board adopted one change to the Findings of Fact and conditions recommended by staff (identified with underlining in the Findings of Fact). The Planning Board unanimously recommended conditional approval for the preliminary plat for the Crossroads at Mountain View Meadows Subdivision and to adopt the Findings of Fact and the amended conditions contained therein.

Planner Morell-Gengler recommended approval of the preliminary plat and stated development at the proposed urban density could lower some of the pressure to develop property in the county and, as a result, reduce sprawl. The proposal would provide commercial development in close proximity to single-family and multifamily uses and to two major arterials. The subdivision would provide a variety of housing types within the city utilizing municipal water and wastewater. The proposed subdivision would facilitate the city transportation network and encourage more walkable development.

Commission comment

Commissioner Cartwright commented this is a good development and appreciates the bike routes between long blocks. Discussion was held on the location of the Yellowstone Pipeline, which is a petroleum products pipeline, and not a gas pipeline as stated in the EIS. Commissioner Cartwright stated wastewater at the maximum level would exceed the city's current capacity and recommended expanding the city's treatment capacity and being careful on future subdivisions developed for annexation. He referred to the lighting listed in the covenants and asked if the applicants could put be ordered to install a different type of lighting if it became available. Ms. Morell-Gengler explained the city is not a party to the covenants, so they would not enforce them. Commissioner Cartwright spoke against an optional cul-de-sac near Alice Street. He referred to the collector streets and asked if a bike/ped path would only be located on one side of the street. Ms. Morell-Gengler stated yes and explained what the subdivision design standards require. She noted the developers are looking at providing adequate space for a curbside sidewalk in areas where there is only a bike/ped path.

Commissioner Peura asked for more information about access restrictions on Alice Street. Planner Morell-Gengler explained the final plat would include language that the subject section of roadway restricts vehicular access onto the adjacent right-of-way. Commissioner Peura asked for confirmation that there would be no driveways on Alice Street for those homes where a rear alley would be an option. Planner Morell-Gengler stated yes.

Discussion was held on watercourses on the property. Commissioner Shropshire referred to open space in the subdivision and asked if there is access to them without going through someone's property? Ms. Morell-Gengler explained there would be access at street crossings and via bike/ped paths. Commissioner Shropshire expressed concern for access to the open space parcels. She also spoke about the large volume of information to review related to the subdivision.

Public Testimony

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

Greg Dahl, applicant; spoke in support of the subdivision proposal and discussed wetlands on the property.

Marshall Gingery, 2522 Primrose Lane; spoke in support of the subdivision but expressed concern for the extension of the final plat.

Carl Schweitzer, Four Square Church; spoke in support of the development.

Mark Runkle, R & D Partners; spoke in support of the subdivision.

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

Discussion

Commissioner Cartwright asked Mr. Dahl if he would be agreeable to the Commission tabling the proposal. Mr. Dahl stated he would prefer the Commission act on the subdivision tonight.

Motion

Commissioner Peura moved approval for a resolution of intention to annex the Crossroads at Mountain View Meadows Subdivision; off-site area for park use; and the full width of the adjacent Highway 12, Route 240, and Crossroads Parkway ROW, as legally described in the attached Resolution of Intention to annex into the City of Helena, and establish conditions for annexation as stated in the resolution. Commissioner Shropshire seconded the motion.

Amendment

Commissioner Cartwright moved to amend the resolution of intention to add a condition of approval that the commission must find that the final plat provides a reasonable degree of connectivity and access to all modes of transportation. Commissioner Peura accepted the amendment.

Discussion

Discussion was held on Commissioner Cartwright's proposed amendment.

Vote

Motion carried 4-1, with Mayor Smith voting no. **Res #19627**

Motion

Commissioner Cartwright moved approval of first passage of an ordinance pre-zoning prior to annexation into the City of Helena, Montana to R-4/R-O (Residential-Office), B-2 (General Commercial) District for property described in the ordinance; and as shown on the preliminary plat of the proposed Crossroads at Mountain View Meadows Subdivision. Commissioner Peura seconded the motion.

Comment

Commissioner Elsaesser indicated he would not support the pre-zoning because of the scope of use that could go into the B-2 District.

Vote

Motion carried 4-1, with Commissioner Elsaesser voting no. **Ord #3109**

Motion

Commissioner Peura moved to conditionally approve the preliminary plat for the Crossroads at Mountain View Meadows Major Subdivision creating 892 lots and one off-site parkland lot from approximately 381 acres, and to adopt the Findings of Fact

and the conditions contained therein for property legally described in the Findings of Fact. Commissioner Cartwright seconded the motion.

Commission comment Commissioner Cartwright outlined and spoke in support of the amendments listed below.

He referred to amendment #2 and recommended continuing Alexis northwest across the swale; however, the exact location of the connection is left up to staff and the developers. Further, the condition does not specify whether the connection should be a full street or a bike-ped path.

Regarding amendment #4, he commented the condition could be met either by covenant or by donation of ROW. The connections should be bike-ped and/or motorized traffic, depending on what was appropriate give the development in a block. He gave an example of the connection in the parking lot between Hastings and Target.

He noted amendment #5 doesn't specify bike paths or sidewalks; that decision would be up to staff and the developers.

Amendment #1 **Commissioner Peura moved to remove the option of a cul-de-sac on Upland Street near Alice Street.** Commissioner Cartwright seconded the motion. Motion carried 3-2, with Mayor Smith and Commissioner Elsaesser voting no.

Amendment #2 **Commissioner Cartwright moved to add a condition that the long north-south section of Alice Street, between Alpine View and Upland Street, should be broken in two parts, with a connection being made to the B-2 District to the northwest.** Commissioner Elsaesser seconded the motion. Motion carried 4-1, with Mayor Smith voting no.

Amendment #3 **Commissioner Cartwright moved to add a condition that an additional connection should be provided between Stacia, in the southwest corner of Crossroads Subdivision, and the area labeled PUD R-4.** Commissioner Peura seconded the motion. Motion failed 2-3, with Mayor Smith and Commissioners Shropshire and Elsaesser voting no.

Amendment #4 **Commissioner Cartwright moved to add a condition that internal traffic flow between lots in the large blocks in the B-2 District should be provided for, as appropriate.** Commissioner Peura seconded the motion. All voted aye, motion carried.

Amendment #5 **Commissioner Cartwright moved to add a condition that provisions should be made for non-motorized traffic on both sides of collector streets.** Commissioner Shropshire seconded the motion. Motion carried 4-1, with Mayor Smith voting no.

Discussion Discussion was held on the wetlands in the subdivision. Shawn Higley, 1275 Maple Street, WWC Engineering, representing the applicant; explained how wetlands are delineated and the city's policy and jurisdiction related to the subject wetlands. He also outlined wetland mitigation and regulations.

Amendment #6 Commissioner Peura moved to amend condition 12 as follows: the existing water course must be retained and relocated in part and maintained in accordance with the proposal by the applicant dated February 5, 2009. Commissioner Cartwright seconded the motion.

Commission comment Commissioner Shropshire expressed concern that the applicant's proposal may not be acceptable wetland mitigation. Commissioner Peura spoke in support of the applicant's proposal. Commissioner Elsaesser expressed concern for the applicant's proposal.

Vote Motion carried 3-2, with Commissioners Elsaesser and Shropshire voting no.

Amendment #7 Commissioner Shropshire moved that the marginal wetlands affected by the plat be mitigated to protect the recreational wildlife value of the drainage. Commissioner Elsaesser seconded the motion. Motion carried 3-2, with Mayor Smith and Commissioner Cartwright voting no.

Motion Commissioner Cartwright moved to conditionally approve the preliminary plat for the Crossroads at Mountain View Meadows Major Subdivision creating 892 lots and one off-site parkland lot from approximately 381 acres, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact, as amended. Commissioner Peura seconded the motion.

Planner Morell-Gengler noted the Findings of Fact would need to be amended to reflect the conditions added to the preliminary plat. There was Commission concurrence for staff to amend the Findings of Fact for future review by the Commission.

Comment Commissioner Elsaesser noted he would not support the preliminary plat because of the B-2 zoning in the subdivision. Commissioner Shropshire expressed concern with the speed of the actions related to the subdivision and commented there may not have been enough time for public comment on the proposal.

Vote Motion carried 3-2, with Commissioners Elsaesser and Shropshire voting no.

Amicus Brief Following discussion, there was Commission concurrence to not submit an amicus brief regarding the Helena Regional Airport litigation.

Public Communications PUBLIC COMMUNICATIONS
Alan Nicholson, 1 Quarry Lane; commented on his litigation with the HRAA.

Meetings of Interest MEETINGS OF INTEREST
The next Administrative Meeting is February 18, 2009 and the next Commission Meeting is February 23, 2009.

Adjournment

There being no further business to come before the Commission,
the meeting was adjourned at 10:47 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission