

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**October 19, 2009**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, October 19, 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. Commissioner Shropshire was excused. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Winston Greely 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 5, 2009 were approved as submitted.

***Appointments***

APPOINTMENTS:

- A. ADA Compliance Committee
- B. Board of Adjustment
- C. Pre-Release Screening Committee
- D. Golf Course Advisory Committee

Mayor Smith asked for Commission concurrence on the following appointments:

ADA Compliance Committee - Appointment of George McCauley to the ADA Compliance Committee. First term will begin upon appointment and expire September 1, 2011.

Board of Adjustment - Appointment of Bridget Holland to an unexpired term on the Board of Adjustment. Term will begin upon appointment and expire October 1, 2011.

Pre Release Screening Committee - Appointment of Rob Tate to the Pre Release Screening Committee. Term will begin upon appointment.

Bill Roberts Golf Advisory Board - Reappointment of Alec Hansen to the Golf Advisory Board. Term will begin upon appointment and expire October 30, 2012.

**Public comment**

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Peura moved approval of the appointments to the ADA Compliance Committee, Board of Adjustment, Pre-Release Screening Committee and Golf Course Advisory Committee as outlined above.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Consent Agenda**

CONSENT AGENDA:

- A. Claims
- B. HB 645 Local Government Infrastructure Grant Contract (Helena- Centennial Park Phase 1 Earthwork and Memorial Park Bandshell Renovation)
- C. Helena/Lewis & Clark County Consolidated Planning Board Bylaws

City Manager Ron Alles recommended approval of the claims and the consent agenda.

Discussion

Commissioner Cartwright asked that Item B be removed for discussion.

Public Comment

Mayor Smith asked for public comment; none was received.

**Motion**

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

Commission comment

Commissioner Cartwright asked for more information on the bandshell renovation and its place on the Comprehensive Capital Improvement Program (CCIP). Parks & Recreation Director Amy Teegarden explained the mural is scheduled to be redone in 2011. She explained when defining the scope of work for the grant, the stimulus funds were at first identified for Centennial Trail. There was concern about expending the funds by September 2010, so the scope was negotiated to include Centennial Park earthwork. In the meantime, members of the State Capital Band approached the city requesting acoustical tiles and graffiti cleanup in the bandshell. Staff felt this grant was an opportunity to provide attention to the bandshell along with the other upgrades at Memorial Park. Commissioner Cartwright asked for the status of the basketball court upgrade included in the CCIP. Director Teegarden noted the CCIP needs to be adjusted as the basketball courts at Memorial Park were removed for the waterpark; they will be relocated to Centennial Park in Phase II or III.

Public Comment

Mayor Smith asked for public comment.  
Norman Brunken, 2030 5<sup>th</sup> Avenue, past conductor of the State Capital Band; spoke in support of improvements to the bandshell.

**Motion**

**Commissioner Cartwright moved approval of item B on the consent agenda.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith welcomed Ron Alles to the position of City Manager with the City of Helena.

Commissioner Elsaesser announced he attended 1<sup>st</sup> Time Homebuyer Graduation over the weekend.

Commissioner Peura reported he has received many complaints about traffic lights that change off of motion sensors; they do not activate when a bicycle is waiting at the light. Public Works Director John Rundquist reported he had contacted the Montana Department of Transportation and they indicated the camera sensors are supposed to

be able to sense bicycles. He encouraged citizens to contact the Public Works Department with specific locations of concern so staff can work to fine tune the lights.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

- A. Resolution establishing a permanent Urban Wildlife Advisory Committee for the City of Helena.

City Attorney Nielsen reported on April 9, 2007 the Helena Urban Wildlife Task Force issued its 2007 Urban Deer Management Plan. That plan recommended that a permanent wildlife advisory committee be established to advise the City Commission as to implementation of the plan.

Attorney Nielsen recommended approval of a resolution establishing a permanent committee as its establishment will allow the city to take steps toward following the recommendations of the 2007 Urban Deer Management Plan. He noted advertising for committee members would begin right away.

Public comment

Mayor Smith asked for public comment; none was received.

**Motion**

**Commissioner Peura moved approval for a resolution establishing a permanent Urban Wildlife Advisory Committee.**

Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19698**

City Attorney Nielsen updated the Commission on the city and Helena School District's lawsuit against Yellowstone Pipeline. The case has been moved to federal court and the United States Magistrate has notified the city of its mediation. The City Commission must designate a staff member with settlement authority. Attorney Nielsen recommended the Commission authorize City Manager Alles with settlement authority and asked Commissioners to contact him with any recommendations on the settlement.

Public comment

Mayor Smith asked for public comment; none was received.

**Motion**

**Commissioner Peura moved to give City Manager Ron Alles settlement authority regarding the Yellowstone Pipeline lawsuit.**

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

**Report of the City Manager**

REPORT OF THE CITY MANAGER

Manager Alles asked Community Development Director Sharon Haugen to report on a recent city award. Director Haugen gave an overview of the "Ambassadors for City Award" given to the City of Helena by the United States Council of Mayors and National Association of Realtors for work towards a housing study to analyze needs in the community.

Mark Simonich, Director of the Helena Association of Realtors; commended the city for receiving the award.

**Report from the Helena Citizens**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Winston Greely reported on the upcoming HCC

**Council** election and announced a "Meet Your New District Representative" Meeting will be held on November 18, 2009 at the University of Montana-Helena College of Technology (HCT) from 6:00 to 8:00pm.

**Water & Wastewater Service Enlargement** CONSIDER ENLARGEMENT OF WATER AND WASTEWATER SERVICE AREA FOR TRACT 1, COS #3069987 OF THE BURNHAM RANCH MARKETPLACE.

Staff Report

City Engineer Ryan Leland reported Tract 1, COS 3069987, is a platted undeveloped lot north of Custer Avenue, east of Kelleher Drive and south of the Helena Irrigation District Main Canal owned by the City of Helena. No streets or utilities exist at the present time. Exact location of streets will be determined by conditions applied to preliminary plat and finalized at the time of final plat.

Lichwardt Enterprises LLC, represented by Jim Carpenter, is requesting enlargement of the water and sewer service area for Tract 1, COS 3069987. Infrastructure plans for streets, water, wastewater and storm water are currently being reviewed by city staff. A second phase of infrastructure will be reviewed to complete the Tract 1 development.

Mr. Leland noted the extension as it would allow development of an existing tract of land within the city limits and added staff has no recommendation on the proposal.

Commission comment Commissioner Cartwright asked if the city has protection against future legal complaints about the wastewater treatment plant in the area? Attorney Nielsen stated the plant was located in the area first so there would be no legal basis for complaints.

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

Motion

**Commissioner Peura moved approval to enlarge the water and sewer service area to include Tract 1, COS #3069987 with the following conditions:**

- 1. A new water system design providing service to all lots including valves, fire hydrants, pressure reducing vaults and water sampling station. Design will comply with City Codes and City Engineering Standards and must be approved by DEQ and the City of Helena Public Works Department.**
- 2. A new sewer system design providing service to all lots including manholes, lift station and force mains will comply with City Codes and City Engineering Standards and be approved by DEQ and the City of Helena Public Works Department.**
- 3. Applicant must submit construction and post construction storm water management plans with Best Management Practice to control storm water quality for approval by City of Helena Public Works Department.**

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

**Water & Wastewater Service Extension** CONSIDER ENLARGEMENT OF WATER AND WASTEWATER SERVICE AREA FOR LOTS 10-13 IN BLOCK 10 AND ½ OF THE ADJACENT CLOSED SOUTHERN STREET IN THE JOSEPH COX ADDITION.

## Staff Report

City Engineer Ryan Leland reported the above referenced lots are within the City limits but not in the water and sewer service area boundary. Access to the lots is Sparta Street, which is a platted but unimproved gravel street. Water mains are located in Sparta Street and connect to water mains in Division Street and South Rodney Street. Sewer is located in South Rodney Street and in Division Street.

A sewer main extension has been designed and other property owners along Sparta Street have attempted to form an SID for extension of this main. Extension of a sewer main in Sparta would help facilitate new homes on existing platted lots on Sparta Street.

Erik Pritchard, owner, is requesting enlargement of the water and sewer service area to build a single family house. The owner is proposing to install a private lift station and run the sewer service line in either Sparta Street right-of-way or alley right-of-way to an existing main in South Rodney Street.

The city standard requirement for sewer service is to extend a sewer main to and across the property frontage in public right-of-way and connect perpendicular to the main.

Because the area is currently not served by city standard infrastructure (sewer, streets, and drainage) and because the owner's proposal does not mitigate these deficiencies, staff recommended denial of the boundary extension. The proposal will not improve basic infrastructure in the area. Service lines in rights-of-way are difficult to track and can cause future problems with the installation of other utilities. Streets don't meet City standards and increased traffic will only exacerbate existing dust and erosion from the dirt streets.

## Public comment

Mayor Smith called for public comment, none was received.

## Discussion

Commissioner Peura asked if it would be viable for the applicant to run water and sewer from the southeastern corner through the alley up to the lower connection on Rodney Street. Mr. Leland stated yes. Commissioner Peura stated this proposal represents good public policy and infill development.

Commissioner Cartwright encouraged use of the City Code 6-6-36 but spoke of the difficult topography and large expense to develop in the subject area. He commented he is not inclined to encourage more development in the area via total water and sewer installation and would support the extension. Commissioner Elsaesser indicated he would support the motion. Mayor Smith stated development should be done according to city procedure and policy and noted he would not support the motion.

## Motion

**Commissioner Peura moved approval of an application to enlarge the water and sewer service area to Lots 10-13 in Block 10 & ½ of adjacent closed Southern Street in the Joseph Cox Addition with the following conditions:**

**1. Applicant must tie into city wastewater and water on Rodney Street by running the lines underneath the undeveloped alley that runs north/south along the eastern edge of the parcel.**

**2. Applicant must waive the right to protest any future SID to bring adjacent infrastructure up to City Standards.**

**3. Any alterations to the existing storm ditch must be according to the City of Helena Engineering Standards.**

Commissioner Cartwright seconded the motion. Motion carried 3-1, with Mayor Smith voting no.

**Social Host Ord.**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE SOCIAL HOST ORDINANCE MAKING A VIOLATION A MISDEMEANOR.

Staff Report

Deputy City Attorney Ole Olson reported Chapter 14 of Title 5 of the Helena City Code, entitled the "Social Host Ordinance," was enacted on July 7, 2008. Violations of that City Code section were classified as municipal infractions rather than misdemeanors. Currently, the City is neither citing nor prosecuting such violations because of various problems associated with prosecuting municipal infractions.

A typical misdemeanor offense proceeds in the following manner: (1) a police officer observes facts that constitute a crime; (2) the officer issues a citation at the scene and presents the defendant with a notice to appear in City Court; (3) the defendant appears and pleads guilty or not guilty; (4) if the defendant pleads not guilty the City Prosecutor takes over prosecution of the case; (5) if the defendant pleads guilty or is found guilty in a trial, the defendant is sentenced. If at any point during the criminal process a defendant fails to appear or comply with a sentence or order of the Court, then the Court can suspend the defendant's driver's license and/or issue a warrant for the defendant's arrest.

A municipal infraction requires several steps not required by the typical misdemeanor offense. Instead of citing a defendant at the scene, the officer must forward a report of the facts to the City Attorney's Office. The City Attorney's Office then reviews the facts and determines whether there is sufficient basis to charge the defendant with a municipal infraction. If so, the City will draft a civil complaint and forward it to the officer. The officer then reviews the complaint, signs the complaint, files the complaint in City Court, and serves the complaint on the defendant. The defendant must then appear and respond to the complaint. If the defendant denies the allegations, then the officer must prosecute the case. The City Prosecutor is not allowed to appear in City Court to prosecute a municipal infraction. If the defendant is found guilty, the Court will enter a civil judgment against the defendant. If, at any point during this process, the defendant fails to appear or pay on a judgment, the City's only remedy is to try and attach the civil judgment on the defendant's real property. If the defendant owns no real property, then the City has no effective remedy. The city cannot issue an arrest warrant or suspend the defendant's driver's license.

The City Attorney's Office has concluded that the social host ordinance, in its current form, is not an effective tool due to the extra resources required to prosecute a municipal infraction, combined with the fact that police officers must act as prosecutors and the fact that the city lacks a remedy if the defendant is not cooperative. Staff is recommending amending the ordinance to allow the violation to proceed just as any other misdemeanor criminal offense, rather than through the cumbersome process of a municipal infraction.

Commission comment

Commissioner Elsaesser asked if a landlord would be categorized as someone who would be in control of a premises? Deputy Attorney Olsen stated yes, but unless they were partying with their tenants they would not be held responsible.

Public comment

Mayor Smith called for public comment.  
Drenda Carlson, Director of Youth Connections; urged the Commission to approve the amendment.  
Mike Franklin, Carroll College; spoke in support of the change to the Social Host Ordinance.

Discussion

Commissioner Peura spoke of high DUI and underage drinking rates in Montana and commented the Social Host Ordinance helps change the drinking culture. Commissioner Elsaesser noted he would propose minor amendments to final passage of the ordinance.

Motion

**Commissioner Peura moved approval of first passage of an ordinance amending §§5-14-3 and 5-14-5, Helena City Code and set a public hearing date of November 2, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3115**

***Intent to Annex-Fairgrounds and Woodlawn-Dunbar Area***

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF HELENA PROPERTY COMMONLY REFERRED TO AS THE LEWIS AND CLARK COUNTY FAIRGROUNDS CONTAINING APPROXIMATELY 160 ACRES.

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF HELENA PROPERTY COMMONLY REFERRED TO AS THE WOODLAWN PARK SUBDIVISION AND THE GREEN MEADOW MARKET CONTAINING APPROXIMATELY 40 ACRES.

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF HELENA PROPERTY COMMONLY REFERRED TO AS THE LABORERS AGC TRAINING PROGRAM SITE CONTAINING APPROXIMATELY 20 ACRES.

CONSIDER A RESOLUTION OF INTENTION TO ANNEX INTO THE CITY OF HELENA PROPERTY KNOWN AS WOODLAWN PARK SUBDIVISION BLOCK 7, LOTS 5-20 AND 30-48 CONTAINING APPROXIMATELY 1.89 ACRES.

Staff Report

City Planner Dustin Ramoie reported the Lewis and Clark County Fairgrounds is currently receiving city water and sewer services. In addition, the Fairgrounds is currently provided fire service through the Helena Fire Department Contract Service Area. The annexation of the Lewis and Clark County Fairgrounds is part of the ongoing effort that was started several years ago when the decision was made to extend water and sewer to the Laborers AGC Training Facility, Woodland Dunbar area and Fairgrounds property. City Staff conducted several public informational meetings regarding the annexation and pre-zoning process and to answer any questions that the property owners may have concerning these processes.

The Lewis and Clark County Commissioners made a formal request on August 31, 2009 to annex the Lewis and Clark County Fairgrounds into the City of Helena in accordance with 7-2-4403, MCA. In addition, the full width of the adjacent rights-of-way of the property being annexed must also be included in the annexation. Annexation of this property will require annexing a portion of Horseshoe Bend Road on the west side of the property.

The Woodlawn Park Subdivision and the Green Meadow Market are currently receiving city water and sewer services. In addition, they are currently provided fire service by the City of Helena through the Westside Fire District. The annexation of the Woodlawn Park and Green Meadow Market area is part of the ongoing effort that was started several years ago when the decision was made to extend water and sewer to the Laborers AGC Training Facility, Woodland Dunbar area and Fairgrounds property. City Staff conducted several public informational meetings regarding the annexation and pre-zoning process and to answer any questions that the property owners may have concerning these processes.

The properties are currently developed and are used for residential, commercial, and light industrial uses. The properties are adjacent to Green Meadow Drive to the east and Custer Avenue to the south.

A signed petition for annexation and provision of services in accordance with § 7-2-4601, MCA, has been received from the residents of the Woodlawn park Subdivision and the Green Meadow Market. 69% of the property owners signed in support of the petition for annexation and provision of services agreement. Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

The Laborers AGC Training Program Site is currently receiving city water and sewer services. In addition, the Laborers AGC Training Program property is currently provided fire service by the City of Helena through the Westside Fire Service Area. The annexation of the Laborers AGC Training Program Site is part of the ongoing effort that was started several years ago when the decision was made to extend water and sewer to the Laborers AGC Training Facility, Woodland Dunbar area and Fairgrounds property. City Staff conducted several public informational meetings regarding the annexation and pre-zoning process and to answer any questions that the property owners may have concerning these processes.

The property is currently developed and is used for educating students in skill trades such as masonry work, electrical linemen, cell tower repair and machine operations etc. The site also has an on-site groundskeeper building which is accessory to the main educational use of the property. The property is adjacent to Horseshoe Bend Road to the east and Crystal Springs Road to the north.

A signed petition for annexation in accordance with § 7-2-4601, MCA, has been received from the AGC Trust Group, owner of the property. Whenever more than 50 percent of property owners petition for annexation, the City Commission may approve or disapprove the petition upon its merits.

The city owned parcels currently have city water and sewer services available but is not being served since it is open space. Fire protection is provided from the Westside Fire Service Area. The annexation of the city owned parcels in the Woodlawn Dunbar Area is part of the ongoing effort that was started several years ago when the decision was made to extend water and sewer to the Laborers AGC Training Facility, Woodland Dunbar area and Fairgrounds property. City staff conducted several public informational meetings regarding the annexation and pre-zoning process and to answer any questions that the property owners may have concerning these processes.



The City of Helena acquired these lands in a project with conservation organizations to help preserve open space, wetlands, and critical wildlife habitat. The properties have effectively been maintained as open space and preserved from future development.

The City of Helena made an official request to annex these properties into the City of Helena in accordance with 7-2-4403, MCA. In addition, the full width of the adjacent rights-of-way of the property being annexed must also be included in the annexation.

Mr. Ramoie recommended approval of the intent to annex as all of the properties proposed for annexation are served by city water and sewer services, making efficient use of land, infrastructure, energy and other resources. Annexation of the property is consistent with city policy and the policy of annexing properties contiguous with City of Helena boundaries.

## Public comment

Mayor Smith called for public comment.

Jenny Balcerzak, 1734 Hauser; questioned why the Laborer's Training Facility would be zoned PLI.

## Discussion

Mr. Ramoie addressed Ms. Balcerzak's question and explained the training center is qualified as quasi-public and is an institutional training center under the zoning definitions.

## Motion

**Commissioner Peura moved approval for a resolution of intention to annex property commonly referred to as the Lewis and Clark County Fairgrounds as legally described in the resolution, and set a public hearing date of November 23, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19699**

## Motion

**Commissioner Peura moved approval for a resolution of intention to annex blocks 1 through 6, Lots 1 through 4 and Lots 21 through 29 of Block 7, and Block 8 of the Woodlawn Park Subdivision, and Parcel D, on COS #447163/O, less B&S Deed referenced in the book of Deeds M10, page 9289, and the western half of the Green Meadow Drive right-of-way adjacent to Block 1 of the Woodlawn Park Subdivision and set a public hearing date of November 23, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19700**

## Motion

**Commissioner Elsaesser moved approval for a resolution of intention to annex property commonly referred to as the Laborers AGC Training Program Site as legally described in the resolution and set a public hearing date of November 23, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19701**

## Motion

**Commissioner Elsaesser moved approval for a resolution of intention to annex Lots 5 through 20 and Lots 30 through 48 in Block 7 of the Woodlawn Park Subdivision and set a public hearing date of November 23, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19702**

**Public Hearings**

**PUBLIC HEARINGS:**

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO PLI (PUBLIC LANDS AND INSTITUTIONS) PRIOR TO ANNEXATION INTO THE CITY OF HELENA PROPERTY COMMONLY REFERRED TO AS THE LEWIS AND CLARK COUNTY FAIRGROUNDS AND CONTAINING APPROXIMATELY 160 ACRES.

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO PLI (PUBLIC LANDS AND INSTITUTIONS) PRIOR TO ANNEXATION INTO THE CITY OF HELENA FOR PROPERTY CCONTAINING APPROXIMATELY 20 ACRES AND COMMONLY REFERRED TO AS THE LABORERS AGC TRAINING PROGRAM SITE.

C. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO B-2 (GENERAL COMMERCIAL) DISTRICT, CLM (COMMERCIAL LIGHT MANUFACTURING) DISTRICT AND R-4/R-O (HIGH DENSITY RESIDENTIAL/RESIDENTIAL OFFICE) DISTRICT PRIOR TO ANNEXATION INTO THE CITY OF HELENA FOR PROPERTY COMMONLY KNOWN AS WOODLAWN SUBDIVISION AND THE GREEN MEADOW MARKET CONSISTING OF APPROXIMATELY 40 ACRES.

**Staff Report**

Planner Ramoie reported on September 8, 2009 the Helena Zoning Commission held a hearing to consider the pre-zoning of the parcel commonly referred to as the Lewis and Clark County Fairgrounds. The parcel contains approximately 160 acres. Staff recommended PLI (Public Lands and Institutions) as an appropriate zoning district. The Zoning Commission unanimously recommended APPROVAL (4:0 vote) for the adoption of an ordinance pre-zoning to a PLI (Public Lands and Institutions) District, prior to annexation for a developed parcel generally located north of Custer Avenue, west of Green Meadow Drive, east and south of Horseshoe Bend Road.

Also on September 8, 2009 the Helena Zoning Commission held a public hearing to consider recommending an ordinance pre-zoning to a PLI (Public Lands and Institutions) District, prior to annexation for property commonly referred to as the Laborers AGC Training Program Site. City ordinance requires property to be pre-zoned prior to annexation. The property is legally described in the attached staff report. Staff recommended PLI (Public Lands and Institutions) District zoning for the parcel. The parcel contains approximately 20 acres and is generally located north of Burwood and Custer Avenue, west of the Lewis and Clark County Fairgrounds and south and west of Horseshoe Bend Road. The Helena Zoning Commission unanimously voted (4-0) to recommend the ordinance pre-zoning the property to PLI (Public Lands and Institutions).

At the same meeting, the Helena Zoning Commission held a public hearing to consider recommending an ordinance pre-zoning to a B-2 (General Commercial) District, CLM (Commercial Light Manufacturing) District, and R-4/R-O (High Density Residential/Residential Office) Districts zoning as shown on the proposed pre-zoning map for developed parcels commonly referred to as the Woodlawn Park subdivision and the Green Meadow Market prior to annexation. City ordinance requires property to be pre-zoned prior to annexation. The property is legally described in the attached staff report.

Staff recommended B-2 (General Commercial) District, CLM (Commercial Light Manufacturing) District, and R-4/R-O (High Density Residential/Residential Office) Districts zoning for the parcels. The parcels contain approximately 40 acres and are generally located north of Custer Avenue, west of Green Meadow Drive, east of the Lewis and Clark County Fairgrounds and south of Silsbee Avenue. The Zoning Commission unanimously voted (4-0) to recommend the ordinance pre-zoning the property to B-2 (General Commercial) District, CLM (Commercial Light Manufacturing) District, and R-4/R-O (High Density Residential/Residential Office) Districts.

Mr. Ramoie noted all of the proposed pre-zoning is consistent with the 2001 Helena Growth Policy and Zoning Ordinance, and is compatible with the surrounding uses.

Public Testimony

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

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

Motion

**Commissioner Peura moved approval of first passage of an ordinance r pre-zoning to PLI (Public Lands and Institutions District prior to annexation into the City of Helena property commonly referred to as the Lewis and Cark County Fairgrounds as legally described in the ordinance.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3116**

Public Testimony

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

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

Motion

**Commissioner Elsaesser moved approval of first passage of an ordinance pre-zoning to PLI (Public Lands and Institutions) District prior to annexation into the City of Helena property commonly referred to as the Laborers AGC Training Program Site as legally described in the ordinance.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3117**

Public Testimony

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

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

Motion

**Commissioner Elsaesser moved approval of first passage of an ordinance pre-zoning prior to annexation into the City of Helena, as shown on the attached ordinance, Blocks 1 through 8 of the Woodlawn Park Subdivision and Parcel D, on COS #447163/O, less B&S Deed referenced in the book of Deeds M10, page 9289, commonly referred to as the Green Meadow Market, all in Lewis and Clark County.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3118**

D. CONSIDER A LAND EXCHANGE BETWEEN THE CITY OF HELENA AND MARTIN W. AND BRYNN D. HOLT; PROPERTY IS GENERALLY LOCATED NEAR THE "OLD QUARRY" PROPERTY ON SOUTH CHAUCER STREET.

Staff Report

Natural Resource Coordinator Brad Langsather reported in 2008, Martin Holt approached the city with a proposal to trade his and his son's full ownership of three city lots located adjacent to city of Helena Open Lands ownership, for the city's 95% undivided interest in four city lots that are co-owned by the Holt's who hold a 5% undivided interest on the same four city lots. Included in the staff report was a land exchange agreement that has been completed by the City Attorney's office and signed by the Holts.

The four city lots, co-owned by the city and the Holt's, lie just south of the southern termination point of Blake Street within, and on the edge of, "The Quarry". The three city lots, owned solely by the Holts, lie just east of Dale Harris Park along the Acropolis Crest Trail.

The total 2007 final assessed land value of the city's 95% undivided interest in the four "old Quarry" city lots is \$26,505.00 and the total 2007 final assessed land value of the Holt's 100% in the three "Dale Harris" city lots is \$25,800.00.

A courtesy letter was sent to all landowners within 300 feet of the above-mentioned property on October 9, 2009 announcing the public hearing. A legal advertisement was published in the Helena Independent Record on October 9 and 16, 2009.

Staff recommended the Commission consider approval of a land exchange between the city of Helena and Martin W. Holt and Brynn D. Holt as shown in Exhibits A-1 and A-2. . The Holts would give the City Lots 95, 96, and 97 in Block 3 of the Original Helena Townsite, and the City would give Holts the city's 95% undivided interest in Lots 10 and 11 in Block 554 and Lots 1 and 20 in Block 556, all in the Original Helena Townsite of the city of Helena, Montana.

Coordinator Langsather noted the land exchange will benefit both parties by eliminating an impractical co-ownership which will allow the Holt's to proceed forward with their property management objectives for the "Old Quarry" property. The city will be gaining land that is adjacent to its current open lands holdings which will allow for more effective land management including trail maintenance and weed control.

Commission comment

Commissioner Peura asked if the city were to approve the proposal would it preclude development of the lots accessed by 1<sup>st</sup> and 2<sup>nd</sup> Street? Coordinator Langsather explained there have always been logistical problems with developing properties and right-of-way in this area. The surrounding landowners' concern lies with the possibility of a future petition to close and vacate Blake Street; that issue would be outside the scope of Parks & Recreation Department. Commissioner Peura asked if any petition to close Blake Street would be a separate issue and require approval by the City Commission. Coordinator Langsather concurred. Discussion was held on access to the area.

Public Testimony

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

Martin Holt, 576 3<sup>rd</sup> Street; urged the Commission to support the land swap.

Kim Baraby-Hurtle, Helena; expressed concern for future access to the surrounding lots.

Brian Miller, 6<sup>th</sup> Street; spoke in support of the proposal.

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

Discussion

Commissioner Peura asked if there is anything in the proposed motion to approve the land exchange that would preclude the Hurtles from having access to their lots and the platted streets. Attorney Nielsen explained what would happen if 2<sup>nd</sup> Street were vacated and noted the city does not allow vacations to right-of-way if it denies legal access.

Motion

**Commissioner Peura moved approval to exchange the city's 95% undivided interest in Lots 10 and 11 in Block 554 and Lots 1 and 20 in Block 556, all in the Original Helena Townsite of the city of Helena, Montana as shown on that Tax Deed recorded in Book 267, Page 56 in the Lewis & Clark County Clerk and Recorder's Office for City Lots 95, 96, and 97 in Block 3 of the Original Helena Townsite, as shown by the Warranty Deed recorded under Document Number 3024058 in the records of the Clerk and Recorder of Lewis & Clark County, Montana.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

- E. CONSIDER A RESOLUTION INCREASING WATER RATES UP TO 1%.
- F. CONSIDER A RESOLUTION INCREASING WASTEWATER RATES UP TO 14%.
- G. CONSIDER A RESOLUTION INCREASING WATER CHARGES FOR ALL CUSTOMERS.
- H. CONSIDER A RESOLUTION INCREASING WASTEWATER CHARGES FOR ALL CUSTOMERS.

Staff Report

Administrative Services Director Tim Magee reported each year the Commission may adjust the above rates. Approval of the resolutions will allow for this. The FY2010 Annual Budget and management discussions call for funding of essential services, including:

- Providing annual funding of regularly recurring Comprehensive Capital Improvement Program (CCIP) components;
- Annually reviewing rates to:
  - Ensure adequate funding of operations, maintenance, and debt;
  - Address capital project priorities;
  - Provide for part or all of the impact of inflation; and
  - Make incremental rate and charge changes that are regular and predictable for citizens...

The water and wastewater rates include recommended rate increases as a result of the City Commission's CCIP review. Water and wastewater rates were last increased November 2008.

The water and wastewater charges include recommended increases to cover the costs of providing those services or equipment to

customers. Director Magee recommended approval of the resolutions to allow the city to provide current and future operational and capital needs.

Public Testimony

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

Barbara Rush, 720 Holter; spoke against the proposed water rate increase.

Jenny Balcerzak, 1734 Hauser Boulevard; spoke against the proposed water rate increase.

Connie House, 1217 Wilder Avenue; spoke against the proposed wastewater increase.

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

Discussion

Commissioner Cartwright commented if Helena were developed differently, with the density of the original Helena townsite, the rates would be lower. For the city to provide services and have sprawl development it more expensive. He noted he would support the proposed increase to water rates but not support a 14% increase for wastewater.

Commissioner Peura spoke about the dilemma of how to manage the business of the utilities with the rates; city services come with a cost. He expressed support for funding a larger percentage of the city's CCIP via ongoing regular increases, instead of periodic large increases.

Commissioner Elsaesser spoke against large increases to the water and wastewater rates due to the economy.

Mayor Smith referred to two large water main breaks over the past year.

Motion

**Commissioner Peura moved approval for a resolution increasing water rates 1%.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19703**

Motion

**Commissioner Elsaesser moved approval for a resolution increasing wastewater rates 6%.** Motion died for lack of a second.

Motion

**Commissioner Cartwright moved approval for a resolution increasing wastewater rates 9%.** Commissioner Peura seconded the motion. Motion carried 3-1, with Commissioner Elsaesser voting no. **Res #19704**

Motion

**Commissioner Peura moved approval of a resolution increasing water charges for all customers of the City of Helena water system.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19705**

Motion

**Commissioner Peura moved approval of a resolution increasing wastewater charges for all customers of the City of Helena water system.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19706**

Discussion

Commissioner Cartwright noted the resolutions related to charges for water and wastewater are for new meters.

- I. CONSIDER A RESOLUTION AUTHORIZING SUBMISSION OF A CDBG NEIGHBORHOOD STABILIZATION PROGRAM (NSP) APPLICATION ON BEHALF OF ROCKY MOUNTAIN DEVELOPMENT COUNCIL (RMDC) FOR THE DEVELOPMENT OF THE CAIRD PROPERTY FOR LOW INCOME ELDERLY HOUSING.

#### Staff Report

Community Development Director Sharon Haugen reported at the July 6, 2009 Commission Meeting, the City Commission considered a request from Rocky Mountain Development Council to sponsor a Neighborhood Stabilization (NSP) Grant to develop senior housing on the Caird property. The Commission, at that time, decided not to sponsor the grant. Environmental issues associated with the clean up of the property, neighborhood concerns, and concerns over Stewart Homes were cited as some of the reasons for not voting to sponsor the project.

The Phase II Investigation has been completed on the property as part of the Brownsfield grant project being conducted by the County. A copy of that report is attached to this memo. RMDC is asking the City Commission to reconsider the decision regarding the sponsorship of the NSP grant, based on the results of the investigation. A copy of their request is attached to this memo.

The Montana Department of Commerce has received \$19,600,000 in Neighborhood Stabilization Program (NSP) funds as part of the Housing and Economic Recovery Act. Twenty four counties and seven Indian Reservations are eligible to apply, along with any incorporated communities in the qualifying counties. Twenty five percent of the NSP funds must be used to assist households at or below 50% of the area median income. There is no limit on the number of applications that an entity can submit or any limit on the dollar amount.

Rocky Mountain Development Council (RMDC) is purchasing the former Caird Foundry to develop low income housing. The multi phased redevelopment project will result in the construction of a combination of senior housing, other multifamily housing, and commercial mixed used development. The first phase, which is the subject of the NSP application, consists of 15 one-bedroom and 15 two-bedroom units for persons who are 62 or older.

The US Census estimates that almost 30% of the city's population will be 65 years or older by 2030. There continues to be a demand for additional housing units for lower income senior citizens. The site of the project is centrally located to businesses and public services, including transit. It will also result in the redevelopment of an area that is currently underutilized.

The property is currently zoned Commercial Light Manufacturing (CLM). The CLM zoning district permits multi-family uses with a Conditional Use Permit. The other zoning that may be appropriate for the site is B-2 Commercial zoning. RMDC could request that the property be rezoned to B-2 General Commercial zoning which would allow the uses proposed by right. The zone change and the CUP would require hearings in front of the Helena Zoning Commission and the Helena City Commission. Sponsorship of the grant doesn't obligate the City Commission to any future land use decisions or other related matters regarding the development of this property.

There has been concern expressed by the neighborhood for the reuse of the property for residential purposes and potential impacts of those uses. The neighborhood association also expressed an interest in

the property remaining available for commercial or light industrial uses. Area residents have also expressed concerns related to traffic and pedestrian access at the site. RMDC has met with the Mid Towne and Sixth Ward Neighborhood Association to try to address some of these concerns.

Commission comment

Commissioner Cartwright asked who the applicant of record would be on the grant? Director Haugen explained the City of Helena, who would then sign a sub-recipient agreement with RMDC. Commissioner Cartwright asked who would be responsible for the grant if the financial and construction terms are not met. Attorney Nielsen stated the sub-recipient agreement includes language obligating the sub-recipients to meet the terms and conditions of the grant and indemnify the city if they don't.

Public Testimony

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

Gene Leuwer, Director of RMDC; gave an overview of the project and grant and urged the Commission to support the grant application for the Caird property.

Clint Erb, Better Body Fitness; spoke in support of the proposal and expressed interest in developing the Montana Avenue portion of the site.

Byron Stahly, 56 Saddle Mountain Drive; urged support for the Caird project.

Dean Bjerke, 545 South Harris; encouraged the Commission to approve the resolution.

Ed Biehl, 1092 Helena Avenue; spoke in support of the project.

Mignon Waterman, 530 Hazlegreen Court; spoke in support of submittal of the grant application.

Mary Verworn, Caird owner; urged the Commission to support RMDC's proposal.

Mark Simonich, Helena Association of Realtors; urged the Commission to approve submittal of the grant application.

Terry Krantz, 1413 Boulder Avenue; spoke in support of the project.

Rose Casey, 1422 Walnut Street; spoke in opposition to the project as it is a poor location for housing.

Roxanne Verworn, Helena; expressed support for the project.

Leroy Beebe, 1620 Townsend Avenue; spoke against the project and submission of the grant application.

Anne Wakeman, 1616 Lewis Street, representing Helena Food Share; spoke in support of the Caird project.

Shawn White Wolf, 616 Helena Avenue; urged the Commission to deny the proposal.

Steve Skinner, 1805 N. Lamborn Street; spoke in opposition to residential development of the Caird property as it is zoned CLM, will devalue properties in the area, and compete with private rental property owners in the neighborhood.

Ralph Coslitt, 1519 Aspen; expressed concern for too much low-income housing in the area and submitted a letter of opposition for the record.

M.C. Beebe, 1620 Townsend; urged the Commission to deny the Caird property proposal and submitted written comments for the record.



Daniel Pocha, 1306 Cole Avenue; spoke in support of the proposal.

Michael O'Neill, 621 Hillsdale, A.W.A.R.E.-MT Home Choice Coalition; urged the Commission to approve submission of the grant application and submitted a letter of support from residents of Eagles Manor for the record.

Linda Kindrick, 71 Ruby Mountain Road; stated the Caird property would qualify for commercial development financing.

Kent Mollehan, 524 S. Roberts; spoke in support of the proposal.

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

Commission comment

Commissioner Cartwright referred to the zoning of the property and asked if the city would have to grant a Conditional Use Permit (CUP) by authorizing submittal of the grant. Attorney Nielsen stated no, because there is a process for consideration of a CUP, it requires recommendation by the Zoning Commission. Commissioner Cartwright asked for the city's obligation to the Department of Commerce if the Zoning Commission were to recommend denial of the CUP. Attorney Nielsen explained the Zoning Commission is an advisory board and the Commission is not bound by the recommendation. Commissioner Cartwright asked for confirmation that the Commission is under no obligation to zone the property in any way. Attorney Nielsen concurred.

Commissioner Cartwright referred to financing of the project and asked for the additional sources of funding and their respective timelines. Mr. Leuwer explained if the NSP grant were awarded, none of grant money will be spent until the zone change and additional financing is in place. In addition to the NSP money, RMDC would apply for low income housing tax credits, which is due January 15, 2010, HOME and CDBG grant funding. Commissioner Cartwright asked if the commercial development would be leased by RMDC. Mr. Leuwer stated RMDC hasn't yet determined how the commercial development will work and noted a sale will be simple and preferable and a lease arrangement would also be conceivable. Commissioner Cartwright stated the property would be bought with NSP funding and RMDC could transfer the commercial portion with the proceeds going to low-income housing? Mr. Leuwer stated yes. Commissioner Cartwright asked if the first phase of the project is stand-alone. Mr. Leuwer stated technically it would be in separate ownership and a separate project.

Commissioner Peura asked Mr. Leuwer for the precise acquisition costs for the land. Mr. Leuwer stated \$1.3 million for acquisition, demolition and remediation of the Caird site, including approximately \$394,000 for housing. Commissioner Peura asked Mr. Erb why he is interested in developing his commercial business at this site. He stated he believes it is a good location for retail site and better than his current location. He commented the site has always peaked his interest and has significant appeal; he believes has a phenomenal vision for the area that will address all community concerns. Commissioner Peura referred to the resolution stating RMDC's intent to construct apartments for seniors and asked if it could be revised to include commercial development? Attorney Nielsen stated the proposal wasn't originally submitted with commercial development; as the land separation and project moves forward city staff will monitor the process for compliance.

Mayor Smith asked Mr. Erb if the findings from the Environmental Assessment were helpful in his decision to pursue the site for development. Mr. Erb stated certainly and noted the funding for cleanup is a huge benefit as well. Mayor Smith asked if the \$1.3 million in grant funding being sought makes the project more attractive. Mr. Erb stated yes and explained it makes the project more of a reality.

Commissioner Cartwright suggested the Caird property be used by the University of Montana/Helena College of Technology (HCT) and in exchange locate the new senior housing behind St. Mary's Church on property that is currently owned by the State of Montana. He referred to Urban Renewal using federal money quickly; the same projects today would be more thought out and not be done if the process had gone more slowly. This project could potentially be a similar problem. The Commission's job is to deal with the issue at hand and look at the consequences down the line. He expressed concern that everyone does not appreciate how close HCT is to this piece of land and how rapidly the university is growing. He spoke of HCT expanding into inconvenient outlying areas or into the existing neighborhood, knocking down affordable housing. He commented the land swap would require jumping through a number of hoops at the state and federal level and needs to meet federal deadlines. He reported the Department of Commerce told him to have RMDC put their application in, sketch out both scenarios and they would work with the city to see what could be made of the scenarios. He recommended approval of the grant submission requiring the following scenarios: locate senior housing in the back of St. Mary's Church and place Institutional and Commercial buildings on the Caird property. He indicated he would also support tabling the application for two weeks to work on the details.

Commissioner Peura indicated he would be interested in pursuing Commissioner Cartwright's motion regarding a land swap with HCT. He commented no one can deny the need for affordable housing in Helena but the decision needs to be made on what is the best use of the Caird property. He expressed concern for the land to be used for housing because of poor pedestrian connectivity and a possible lack of nearby services. He commented now that the cost of remediation has been identified other parties may be interested in developing the area and RMDC's proposal may not be wise just because there is immediate money available to do it.

Commissioner Elsaesser thanked everyone for being involved in the process and spoke in support of the project, including the newly proposed commercial development. He indicated he would support submission of the grant application.

Mayor Smith stated RMDC is before the Commission with a proposal, not an idea. Commissioner Cartwright has discussed an idea, not a proposal. The Commission's job is to vote on the proposal. He added Mr. Leuwer has indicated via written correspondence that a land swap with HCT isn't practical. He urged Commissioners Peura and Cartwright to support the grant application.

Further discussion was held on the HCT land swap proposal. Mr. Leuwer stated his belief is if the proposal is limited to a land swap option, the HUD regulations and Department of Commerce process will not fund it. He indicated he would support the scenario if RMDC were to have the option to try to explore the land swap and if it proves not workable given the federal regulations and the state's decision, then move forward with the current proposal. He requested the Commission

act on the proposal as soon as possible due to the timeframe of the project and funding.

**Motion** Commissioner Cartwright moved to table the submission of the CDBG Neighborhood Stabilization Program (NSP) Application on behalf of RMDC for the development of the Caird property for low income elderly housing to November 2, 2009. Motion died for lack of a second.

**Motion** Commissioner Elsaesser moved to authorize the submission of the CDBG Neighborhood Stabilization Program (NSP) Application on behalf of RMDC for the development of the Caird property for low income elderly housing. Motion died for lack of a second.

**Motion** Commissioner Cartwright moved to table the submission of the CDBG Neighborhood Stabilization Program (NSP) Application on behalf of RMDC for the development of the Caird property for low income elderly housing to November 2, 2009 with direction to staff to refine the proposal the Commission is being asked to sign.

**Substitute motion** Commissioner Peura moved to table the submission of the CDBG Neighborhood Stabilization Program (NSP) Application on behalf of RMDC for the development of the Caird property for low income elderly housing to the call of the City Manager.  
Commissioner Cartwright seconded the motion. Motion carried 3-1, with Mayor Smith voting no.

**Comment** Attorney Nielsen noted the public hearing has been satisfied; a change in location is not enough to require another hearing. He stated the Commission could begin the tabled hearing with a proposed motion. Discussion was held on ex-parte communications; Attorney Nielsen requested Commissioners discuss the proposal through staff rather than the public.

**Public Communications** PUBLIC COMMUNICATIONS  
No public communications were given.

**Meetings of Interest** MEETINGS OF INTEREST  
The next Administrative Meeting is October 28, 2009 and the next Commission Meeting is November 2, 2009.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 10:39 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission