

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 2, 2009
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, November 2, 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, Shropshire and Elsaesser were present. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Randy Phillips 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 19, 2009 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. A one-year time extension for final plat approval for the Stone Meadows Subdivision Phase II; generally located in the county east of Benton Avenue and north of the Lewis and Clark County shop
- C. Utility bill insert – Montana Shares
- D. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles)
- E. Final passage of Ordinance 3116 - 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. **Ord #3116**
- F. Final passage of Ordinance 3117 - pre-zoning to PLI (Public Lands and Institutions) prior to annexation into the City of Helena for property containing approximately 20 acres and commonly referred to as the Laborers AGC Training Program Site. **Ord #3117**
- G. Final passage of Ordinance 3118 - 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. **Ord #3118**

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

Commission comment

Commissioner Shropshire referred to Item C and asked for an explanation of the city's policy regarding utility bill inserts. City Attorney Nielsen stated he would distribute the policy to the Commission.

Public Comment

Mayor Smith asked for public comment, none was received.

- Motion** **Commissioner Shropshire moved approval of items A through G on the consent agenda.** Commissioner Peura seconded the motion. All voted aye, motion carried.
- Bid Award** BID AWARD:
A. Le Grande Forest Ecosystem Health Restoration & Forest Fuels Treatment Project (Powerline Treatment Unit)
- Staff Report** Natural Resource Coordinator Brad Langsather reported request for proposals (RFPs) for four treatment units that are located within the Le Grande project area were solicited. Dividing the Le Grande project into four distinct treatment units afforded the city the opportunity to design unique specifications for each unit to address the natural variability in terrain and treatment strategy. Only one of the treatment units, the Powerline Unit, is large enough in size and consequential treatment cost to necessitate Commission contract approval.
Two proposals for the Powerline Unit were received. Rocky Mountain Fire Mitigation, LLC, a Helena area company, provided the lower of the two bids for the fuels treatment work required for completion within the Powerline Unit. City staff has determined they are a responsible bidder and HOLMAC members reviewed the proposals and staff recommendations.
On September 14, 2009, the City Commission formally accepted the Le Grande project grant. The amount approved for the entire project was \$169,400, with the federal share being \$84,700 and the city's share estimated at \$84,700. The estimated forest fuels treatment contractual cost portion of the Le Grande Project was calculated at \$125,000 for all four treatment units contained within the project, \$55,000 of which was allocated to the Powerline Unit. Rocky Mountain Fire Mitigation's bid for the forest fuels treatment work required within the Powerline Unit is \$60,700. Although the bid is approximately 10% over the estimated budget figure for this single unit, the sole competing bid was approximately 36% over budget.
Coordinator Langsather recommended approval of the of the bid award as it will reduce the risk of an uncontrollable crown fire approaching the city from the northern portion of Mount Helena City Park while concurrently restoring an ecosystem that has been misbalanced due to the extensive proliferation of coniferous tree growth.
- Commission comment** Commissioner Shropshire discussed the process leading up to the bid award, the environmental impact of the project.
Commissioner Elsaesser spoke in support of the project and bid award.
- Public Comment** Mayor Smith asked for public comment.
Mary Arnold, HOLMAC; urged the Commission to support of the bid award.
- Motion** **Commissioner Shropshire moved to award the bid to Rocky Mountain Fire Mitigation LLC, based on the bid price of \$60,720.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.
- Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Cartwright announced the missing sidewalk south of the Galusha, Higgins and Galusha Building has been installed. He

spoke of recently planting trees and how dry the soil is already and asked citizens to give their trees a good soak before turning their water off for the winter.

Commissioner Elsaesser announced a plastics drive will be held in the YMCA parking lot November 6-9, 2009. He also encouraged citizens to vote in the November 3, 2009 election.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen referred to a lawsuit from Andy Skinner concerning the city's street maintenance assessment and tax appeal process and noted the city will be defending the lawsuit.

Report of the City Manager

REPORT OF THE CITY MANAGER

Manager Alles asked Public Works Assistant Director Phil Hauck to report on an item related to Global Climate Change Task Force Report. Assistant Director Hauck explained the report recommended lighting upgrades to the Tenmile Water Treatment Plant; that project has been completed and the city is awaiting a rebate from Northwestern Energy. He gave an overview of the project and noted it will result in an annual savings of \$16,000.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Randy Phillips reported a HCC Community Forum will be held November 18, 2009 at UM-HCT and will focus on the Global Climate Change Task Force Report. Mr. Phillips also thanked the city for the bicycle donation approved on the consent agenda.

Caird Project

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.

Mayor Smith introduced the agenda item and announced the public hearing was held and closed on October 19, 2009 so public comment would not be heard.

Commissioner Cartwright announced the idea of swapping land between the Helena College of Technology (HCT) and building behind St. Mary's Church is not an option under this timeframe. He stated there is a good idea at the core of the project. He expressed doubt that the project would ever be funded, whether by action of the City Commission or the state. He referred to how the NSP grant works and that priority is given to foreclosed properties and it is unclear whether or not NSP funds can be used for commercial development. A letter from the Department of Commerce outlining NSP funding, guidelines and already received grant applications is included in the packet as part of the official record. He stated a petition against the project by surrounding business owners had been submitted to the city by Mr. Skinner, and the neighborhood is opposed to the project. He added the Commission is not united in its decision of whether or not to support the project. For these reasons, he is worried about the project's viability in the long run. He would be willing to support the idea of the first phase of this project as a launching pad for some possible subsequent work. Commissioner Cartwright referred to the resolution which states 30 units will be constructed and asked if RMDC would have to construct 30 units or could they do 25 or 35? Attorney Nielsen stated since the resolution authorizes Mayor Smith to

submit the application, 30 must be constructed. Discussion was held on the three phases of the development. Commissioner Cartwright expressed concern that according to the resolution RMDC could purchase the entire Caird property and only build 30 units. Commissioner Cartwright asked if a majority of the Commission needs to agree to amendments in order for them to be included in the application. Attorney Nielsen stated yes.

Commissioner Shropshire referred to the resolution and noted RMDC isn't listed. Attorney Nielsen explained only local government can apply for NSP funding; the resolution just authorizes the city to submit the application and does not need to disclose who the sub-recipient would be. Further discussion was held on the resolution language, agenda item wording and fiscal responsibility for the project. Commissioner Shropshire concluded she would not support the application as the resolution language is unclear.

Motion **Commissioner Cartwright moved approval of a resolution authorizing submission of a NSP grant application on behalf of RMDC for the development of the Caird Property for low income housing.** Commissioner Elsaesser seconded the motion.

Amendment **Commissioner Cartwright moved to amend the resolution under Section 2, following 50% median income, by inserting the following language:**
“a project that could become a part of a larger Caird area Project.” Commissioner Elsaesser seconded the motion.

Discussion Commissioner Shropshire referred to the resolution and argued she does not know what the activity proposed is. Commissioner Peura noted he would be opposing the amendment as the letter from the Department of Commerce (DOC) made it clear the intent, goals and objectives of the project are not eligible for NSP funding. Commissioner Cartwright stated he believes the DOC letter may be referring to the land swap proposal. Mayor Smith indicated he would not support the amendment as it may cloud the project and urged support of submission of the grant. Further discussion was held on the intent of the amendment.

Commissioner Elsaesser asked if the amendment would make the resolution still viable. Gene Leuwer, 1601 Jerome, Executive Director of RMDC; discussed the three phases of the project. He noted RMDC is awaiting an answer from HUD as to whether the project would comply if it includes a commercial lot. He stated the amendment may lead a funder to ask what the real intent is. If the intent is to create a larger vision for the community then RMDC is fine with that.

Commissioner Elsaesser noted he would not support the amendment based on Mr. Leuwer's testimony.

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

Substitute motion **Commissioner Peura moved denial of a resolution authorizing submission of a NSP grant application on behalf of RMDC for the development of the Caird Property for low income housing.** Commissioner Shropshire seconded the motion.

Comment Commissioner Peura noted he would not support submission of the grant application as he believes the Caird property would be best used for commercial development. Commissioner Cartwright noted he would not support the grant application as the resolution is improper for a number of reasons. Commissioner Elsaesser expressed concern for how the Commission has dealt with proposal.

Vote Motion carried 3-2, with Mayor Smith and Commissioner Elsaesser voting no.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE 3115 – AMENDING THE SOCIAL HOST ORDINANCE MAKING A VIOLATION A MISDEMEANOR.

Staff Report

City Attorney David Nielsen 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.

Public Testimony

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

Drenda Carlson, Youth Connections; urged the Commission to support the amendment to the Social Host Ordinance.

Mike Franklin, Carroll College; spoke in support of the proposed amendment.

Patrick Fisher, Helena High School, Youth Connections Coalition; spoke of brain damage and other effects that can occur from underage drinking.

Albert Bruce Clark, Cherry; spoke against the amendment because it duplicates the law against providing alcohol to underage persons.

Dan Bernhardt, HCC Chair, Helena; spoke in support of the amendment to the Social Host Ordinance.

Randy Phillips, 3401 Dunlap Drive; expressed concern that the Social Host Ordinance may cause more underage drinkers to drive drunk.

Teresa Paqualet-Brown, Tamarack; spoke in support of the proposed amendment.

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

Motion

Commissioner Peura moved approval for final passage of Ordinance #3115, amending §§5-14-3 and 5-14-5 of the Helena City Code. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3115**

Public Communications

PUBLIC COMMUNICATIONS

Joe Mueller, 2002 Sweetgrass, representing the sellers of the Caird Property; asked the Commission to direct staff to identify the cost to buy the Caird property in order to take it over and work with the neighborhood to help the area get going. He commented he doubts a buyer would go for developing the property after seeing all of the Commission deliberation about the area.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is Wednesday, November 18, 2009 and the next Commission Meeting is Monday, November 23, 2009.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:50p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission