

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**February 8, 2010**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, February 8, 2010 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, Thweatt and Elsaesser were present. Commissioner Ellison was excused. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Dan Bernhardt 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 25, 2010 were approved as submitted.

***Consent Agenda***

CONSENT AGENDA:

- A. Claims
- B. Utility bill insert – Growing Friends of Helena
- C. State of Montana Board of Crime Control contract for FY10 in the amount of \$4,399
- D. Construction Agreement with MDT for the Cedar Street Reconstruction project
- E. State bid award for Street Division 1½ ton cab and chassis

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

**Commission comment**

Commissioner Cartwright asked Item D be removed for further discussion.

**Public Comment**

Mayor Smith asked for public comment, none was received.

**Motion**

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

**Discussion**

Commissioner Cartwright noted Item D is the first construction agreement related to the Custer Interchange Project and asked what provisions would be provided for cyclists and pedestrians crossing north and south. Public Works Director John Rundquist explained there will be 5-foot shoulders on each side of the road, curbside 5-foot sidewalks adjacent to each side of the road, and at each signalized intersection there will be a push-button pedestrian walkway with countdown timers. Commissioner Cartwright commented he is pleased there will be countdown timers but hoped there would be better provisions for pedestrians between the post office and Montana Avenue, as it is a long stretch of road with no signalized intersection. He recommended the city adopt design standards to better address the issue.

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

**Motion** **Commissioner Cartwright moved approval of Item D on the consent agenda.** Commissioner Thweatt seconded the motion. All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Commissioner Cartwright spoke of skiing on McDonald Pass over the past weekend and expressed appreciation to Mayor Smith for submitting a letter to the Independent Record thanking the Last Chance Nordic Ski Club for their work on cross-country trails in the area. He noted donations to the ski club can be mailed to: PO Box 1893, Helena MT 59624.  
Commissioner Thweatt encouraged citizens to shovel their sidewalks and noted sidewalks that aren't cleared of snow can be turned in to the city by contacting Enforcement Officer Greta Dige.

**Report of the City Attorney** REPORT OF THE CITY ATTORNEY  
No report was given.

**Report of the City Manager** REPORT OF THE CITY MANAGER  
No report was given.

**Report from the Helena Citizens Council** REPORT FROM THE HELENA CITIZENS COUNCIL  
HCC member Dan Bernhardt introduced the HCC's 2010 Officers. In attendance were Treasurer Jim McCormick, Secretary Olivia Tooley and Chair Dan Bernhardt. Vice-Chair Winson Greely was not present. He announced the HCC's Neighborhood Fair would be held on Wednesday, March 24, 2010 from 6:00 – 8:30pm at the Civic Center.

**Intent to Annex** CONSIDER A RESOLUTION OF INTENTION TO ANNEX LOT 3, BLOCK 1 OF THE SLEEPING GIANT ADDITION AMENDMENT OF INDUSTRIAL PARK, DOCUMENT #310668, LEWIS AND CLARK COUNTY, MONTANA; GENERALLY LOCATED WEST OF ELAINE STREET AND SOUTH OF TRICIA STREET, AND ESTABLISH CONDITIONS FOR ANNEXATION.

**Public Hearings** PUBLIC HEARINGS:  
A. CONSIDER THE PRELIMINARY PLAT FOR THE PROPOSED BIG SKY ESTATES MAJOR SUBDIVISION CREATING 9 LOTS AND AN AREA FOR STORM WATER FROM 2.23 ACRES FOR PROPERTY GENERALLY LOCATED WEST OF ELAINE STREET AND SOUTH OF TRICIA STREET.

**Staff Report** City Planner Lucy Morell-Gengler reported a resolution of intent to annex and the preliminary plat for the Big Sky Estates Subdivision creating 9 residential lots were approved by the City Commission in August of 2005 but the approval expired after four years. The property has since changed hands and the new owner, Koehler Properties LLC, is requesting annexation of the same 2.23 acres in conjunction with preliminary plat approval for the Big Sky Estates Major property is contiguous with existing city limits.  
The property is currently vacant and undeveloped, and is bordered by the city on three sides. The property has been rezoned R-4 (Residential-Office) District and many of the improvements have been

installed such as water and sewer mains and the internal street. The adjacent right-of-way (ROW) for Elaine Street was previously annexed but the street has not been installed to city standards. The applicant has indicated he would like to construct multifamily units on the property.

On Tuesday, January 19, 2010 the Consolidated Planning Board held a public hearing on the preliminary plat for the Big Sky Estates major subdivision. The Planning Board unanimously recommended conditional approval (8:0 vote) for the preliminary plat and to adopt the Findings of Fact and the conditions contained therein.

Ms. Morell-Gengler noted in cases of simultaneous subdivision and annexation, infrastructure requirements are ordinarily secured by the city through the subdivision process. Annexation is conditioned upon completion of requirements of the preliminary plat and payment of any taxes owed at that time, and is subject to the time constraints specified in the preliminary plat.

When the property located east and north of the subject subdivision was annexed into the city, the property owner signed a Development Agreement with the city and was granted a time extension for the installation of Elaine Street. Although Elaine Street has been annexed into the city it has not been brought up to city standards for street construction, curb and gutter. Elaine Street is the primary access to the currently proposed annexation and subdivision; thus, the owner of the Big Sky Estates Subdivision must pay a proportional share in the cost of the construction of Elaine Street to city standards per the conditions stated in the resolution of intent to annex.

Ms. Morell-Gengler recommended approval of the proposed resolution and preliminary plat as annexation of this property in conjunction with the proposed subdivision would enable services to be extended to the area consistent with state and local laws. This proposal represents efficient use of energy, infrastructure and resources. The subdivision would promote development at the proposed urban density development close to major transportation routes and close to employment opportunities and would provide housing within the city utilizing municipal water and wastewater.

#### Commission comment

Commissioner Cartwright asked if there is space in the streets for sidewalks? Ms. Morell-Gengler stated yes. He spoke of increased usage of the frontage road due to this subdivision and asked if there are any plans to construct bike or pedestrian provisions on the road. City Engineer Ryan Leland stated the frontage road is not currently a Montana Department of Transportation (MDT) priority. Following completion of the Custer Interchange city staff plans to work with MDT to review the area.

Commissioner Thweatt asked how many dwelling units could be built on the property. Ms. Morell-Gengler stated two-three dwelling units per lot.

#### 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.

#### Discussion

Commissioner Cartwright again expressed concern for bike and pedestrian traffic on the frontage road. He also stated Elaine Street is

about a quarter-mile long, which is too long for urban blocks.  
Commissioner Elsaesser concurred with Commissioner Cartwright.

**Motion** **Commissioner Cartwright moved approval of a resolution of intention to annex Lot 3, Block 1 of the Sleeping Giant Addition as legally described in the resolution and establish conditions for annexation.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19720**

**Motion** **Commissioner Cartwright moved approval of the preliminary plat for the Big Sky Estates Major Subdivision creating 9 lots and a stormwater pond area; and to adopt the Findings of Fact and conditions contained therein for property legally described in the Findings of Fact.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

B. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A PORTION OF A FINANCIAL SERVICE USE WITH A DRIVE-THRU AND PARKING AREA FOR PROPERTY GENERALLY LOCATED EAST OF NORTH LAST CHANCE GULCH, SOUTH OF LYNDAL AVENUE AND WEST OF JACKSON STREET.

**Staff Report** City Planner Elroy Golemon reported on January 12, 2010 the Zoning Commission held a hearing to consider a resolution granting a CUP to allow a portion of a financial service use with a drive-thru and parking area to be located on lots located in an R-O (Residential Office) District. As part of that request, the applicant asked that the CUP approval be granted for two years instead of one year. According to City Code the City Commission can consider the request and may allow a longer time period for extenuating circumstances. The circumstances considered by the Zoning Commission were additional time could be needed to relocate the current occupants, remove the buildings, relocate utilities located on the subject property and the amount of site work that will be required. The Zoning Commission unanimously recommended approval (5:0 vote) of a resolution granting a CUP to allow a portion of a financial service to use with a drive-thru and parking area to be located on lots located in an R-O District.

Mr. Golemon recommended approval of the CUP as the proposed use will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity or in the zoning district in which the subject property is located. In addition, this proposal will allow for redevelopment of nine lots located in an R-O District.

**Commission comment** Commissioner Cartwright asked what additional Commission actions will be required for this project. Mr. Golemon explained an alley closure and vacation will be requested in the near future.

Commissioner Cartwright asked how patrons will be able to leave the property and go west. Mr. Leland stated it will be very difficult due to the proximity to the intersection; however, it won't be any worse than it already is. Commissioner Cartwright expressed concern that Jackson Street will receive increased traffic from patrons that are not able to turn left onto Last Chance Gulch.

Commissioner Thweatt asked for more information on the landscaping requirements. Mr. Golemon explained the applicant will

have to submit a landscaping plan that complies with city code and be reviewed and approved by building department. Commissioner Thweatt asked what would happen if MDT won't allow access onto Lyndale or Last Chance Gulch; would the re-design come back before the City Commission for approval? Mr. Golemon stated changes to the ingress and egress by MDT would not require Commission approval and noted a condition of approval is that no access can be obtained via Jackson Street.

Public Testimony

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

Tim Bury, Morrison-Maierle, 1 Engineering Place, representing the applicant; urged the Commission to support the CUP. He noted they are in coordination with MDT regarding the project and only expect minor revisions, such as installation of a pork chop, to the ingress and egress.

Bruce Hayes, 1021 North Jackson; spoke in support of the CUP.

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

Discussion

Commissioner Cartwright recommended the applicant build larger sidewalks along Lyndale because of the amount of snow that piles up from plowing the area. He expressed concern for landscaping and urged the applicant to follow the landscaping shown in the conceptual site plan and also plant trees in front. Commissioner Cartwright stated he wishes the applicant had gone with a more urban design rather than a strip-mall type development. Commissioner Elsaesser thanked the applicant for working with the neighborhood and spoke in support of the project. Commissioner Thweatt agreed with Commissioner Cartwright's comments regarding urban design.

Motion

**Commissioner Cartwright moved approval of a resolution granting a CUP to allow a portion of a financial service with a drive-thru and parking area to be located on lots located in an R-O District; for property legally described in the staff report, subject to the following conditions:**

- 1. Vehicular access for Lyndale Avenue from the R-o zoned portion of the property must be reviewed and approved by the Montana Department of Transportation.**
- 2. No vehicular access to the subject property will be permitted along North Jackson Street.**
- 3. All required improvements must be completed within two years and before utilizing the property for the new use.**

Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19721**

- C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP, DESCRIBED IN SECTION 11-1-3 OF THE HELENA CITY CODE, FOR A ZONE CHANGE FROM PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT TO R-4 (RESIDENTIAL-OFFICE) AND B-2 (GENERAL COMMERCIAL) DISTRICTS FOR PROPERTY GENERALLY LOCATED NORTH OF CUSTER AVENUE AND WEST OF YORK ROAD.

- D. CONSIDER THE PRELIMINARY PLAT FOR THE PROPOSED BURNHAM RANCH MARKETPLACE MAJOR SUBDIVISION-PHASE II CREATING 145 LOTS AND PARKLAND FROM APPROXIMATELY 118.7 ACRES; GENERALLY LOCATED NORTH OF CUSTER AVENUE AND WEST OF YORK ROAD.

Staff Report

Planner Morell-Gengler reported the applicant is requesting approval for two simultaneous actions for the same property:

- 1) Zone change from PLI (Public Lands and Institutions)

District to:

- R-4 (Residential-Office) District for Blocks 1-12, and Block 14, Lots 3-5 for a total of 128 residential lots;
- B-2 (General Commercial) District for Blocks 13 and 15 and Block 14, Lots 1 and 2 for a total of 17 commercial lots;

Note: Park lots to be dedicated to the city will remain PLI.

2) Preliminary plat for proposed Burnham Ranch Marketplace Major Subdivision-Phase II creating 145 lots and parkland from approximately 118 acres.

On January 12, 2010 the Helena Zoning Commission recommended approval (4:0 vote and one abstention) for the adoption of an ordinance amending the Official Zoning Map for an approximately 118-acres from PLI (Public Lands and Institutions) District as listed above.

On Tuesday, January 19, 2010 the Consolidated Planning Board held a public hearing on the preliminary plat for the Burnham Ranch Marketplace Major Subdivision-Phase II. The Planning Board unanimously recommended conditional approval (8:0 vote) for the preliminary plat of that major subdivision, and to adopt the Findings of Fact and the conditions contained therein.

Ms. Morell-Gengler noted this proposal is consistent with the 2001 Helena Growth Policy, Zoning Ordinance, and the Montana zone change criteria. The zone change would promote infill development to city standards with city services such as water and sewer. 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, thus promoting a reduction in vehicle miles traveled. 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 neighborhoods.

Commission comment

Commissioner Thweatt submitted the following questions:

1. Is the proposed subdivision located within the airport noise influence area? Ms. Morell-Gengler stated no.

2. The discussion on soil liquefaction in the EA mentions a geotechnical report concluding the risk of soil liquefaction at this site is low. Who prepared the report? What are their qualifications? What data did they collect and use? Is the report publicly available and does the city have a copy? Ms. Morell-Gengler explained the geotechnical report

was prepared by Pioneer Engineering, submitted to the city and is available for public review.

Commissioner Thweatt asked if data was collected from the site. Ms. Morell-Gengler stated yes, the engineering firm did borings for both phase I and II.

3. The EA's discussion of geology at page 2 mentions the possible existence of a concealed fault crossing the site. The fault appears on a map prepared by Dr. Mitchell Reynolds (USGS scientist emeritus), but not on a map prepared by Mike Stickney (MT Bureau of Mines and Geology). The preparer of the EA communicated with Mr. Stickney about the discrepancy, but not with Dr. Reynolds, who lives in Lakewood, Colorado and has studied the geology of the Helena area for decades. Why did they not talk with Dr. Reynolds too? Should staff ask them to do so before proceeding? Ms. Morell-Gengler explained when the application was submitted the fault lines had been reviewed based on one map; that map did not have the same fault lines as the city's GIS program. The applicant researched the inconsistency between the two maps and felt that the map done by the Bureau of Mines and Geology was accurate. Ms. Morell-Gengler explained concealed fault lines and noted staff felt the applicant was sufficient in their review of the issue.

Commissioner Cartwright asked if the block lengths of 700-feet in the R-4 District will provide adequate connectivity. Ms. Morell-Gengler responded 700-feet would be sufficient and is the amount allowed for a dead-end street. Commissioner Cartwright stated the applicant submitted a landscaping plan at a prior hearing. Ms. Morell-Gengler concurred and explained the plan can change since it's not a standard of the zoning or subdivision application process. Commissioner Cartwright recommended landscaping plans be a condition for approval and if they change the new plan should have to come before the Commission for approval. Commissioner Cartwright commented the property is located next to the wastewater treatment plant and he feels the need to protect future Commissions from any issues that may arise by doing a zoning overlay that would recognize the plants existence before development in the area. He recommended adding a condition requiring a pedestrian crossing other than at the intersection. Ms. Morell-Gengler explained MDT is reviewing improvements to Custer Avenue related to phase I and explained where the bike/ped path from phase II are anticipated to be located. She noted since it is MDT right-of-way (ROW) the city has no jurisdiction. The Commission could make a condition but wouldn't be able to enforce it. Commissioner Cartwright recommended providing some kind of access at the southeast corner.

Commissioner Elsaesser asked if the bike lane is required or a condition of plat approval? Ms. Morell-Gengler explained the subdivision regulations require either two 5-foot wide sidewalks or one 10-foot wide bike/ped path; the applicant has chosen to install the bike/ped path.

#### Public Testimony

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

Dennis O'Keefe, 2110 Wedgewood, Livermore, CA, applicant; urged the Commission to approve the subdivision.

Mark Brooke, Morrison-Maierle Engineering, 1 Engineering Place, representing the applicant; gave the history of the design of the proposed subdivision.

Gary Burnham, applicant; spoke in support of the zone change and preliminary plat.

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

#### Discussion

Following discussion on block length, Commissioner Cartwright recommended the longer blocks have passage ways in the middle of them. Commissioner Cartwright asked if the Parks Board required landscaping plans. Ms. Morell-Gengler explained the Findings of Fact indicate landscaping and irrigation would be required. He asked if the bike lane is on Custer or the main thoroughfare. Mr. Brooke stated MDT has a template for future expansion of Custer Avenue and it is included in plans for improvements adjacent to this project. The applicant is proposing to locate the bike/ped lane on one side of Kelleher Drive. Commissioner Cartwright asked what pedestrian provisions would be on the South and East side of Kelleher? Mr. Brook stated the bike path will be on the South and East side and the North and West side will have sidewalks. Commissioner Cartwright referred to the wastewater treatment plan and irrigation ditch and asked if the applicant foresees issues with the smell or flooding? Mr. Brooke explained the applicants have worked very closely with the Helena Valley Irrigation District, Bureau of Reclamation and City of Helena on those issues. He noted the stormwater plan takes into account any possible flooding. Commissioner Cartwright stated if anything goes wrong it's the city, not the developers, that will have to deal with it.

Commissioner Thweatt referred to the concealed fault as shown on map created in 2000 by Dr. Mitchell Reynolds and asked if Dr. Reynolds had been contacted about this fault line. Mr. Brooke gave an overview of the studies that were performed to indicate if there is a concealed fault and noted he did not contact Dr. Reynolds.

Commissioner Elsaesser asked if the applicant is paying for the lift station on the property. Ms. Morell-Gengler stated yes. He asked if the city has rights to use the adjacent land zoned PLI. Ms. Morell-Gengler stated under ownership the city has control over the use of those properties.

Commissioner Thweatt asked Mr. Brook what the significance of the concealed fault would be if it were on the property? Mr. Brooke explained it would take an earthquake greater than 6.0 to activate it and hypothetically, it would be the least of the city's worries.

Mr. O'Keefe commented they intend to use the subdivision's landscaping to market the project; it is very important to have nice landscaping. Commissioner Thweatt asked Mr. O'Keefe if they would be willing to provide pedestrian accesses through the longer blocks. Mr. O'Keefe stated they would consider it.

Commissioner Elsaesser stated he is pleased with the subdivision and how the Commission's concerns have been addressed. He recognized written testimony had been submitted expressing concern for the proposal and noted staff is being mindful of those issues.

#### Motion

**Commissioner Elsaesser moved approval for first passage of an ordinance amending the Official Zoning Map, described in Section 11-1-3 of the Helena City Code and adopted by reference, for a zone change from PLI (Public Lands and Institutions) District to:**

**R-4 (Residential-Office) District for Blocks 1-12, and Block 14, Lots 3-5 for a total of 128 residential lots; and**

**B-2 (General Commercial) District for Blocks 13 and 15, and Block 14, Lots 1 and 2 for a total of 17 commercial lots.**

**All lots are as shown on the preliminary plat of the proposed Burnham Ranch Marketplace Phase II subdivision for property legally described in the attached ordinance.** Commissioner Thweatt seconded the motion. All voted aye, motion carried. **Ord #3122**

**Discussion**

Commissioner Cartwright reiterated his concern for connectivity at York Road and Custer Avenue. Commissioner Thweatt disclosed he had ex-parte communications about the concealed fault in the area with Dr. Mitchell Reynolds. Dr. Reynolds explained how he first located the fault and stated this area hasn't been active for a very long time and he does not believe the fault is much of a risk.

**Motion**

**Commissioner Elsaesser moved conditional approval of the preliminary plat for the Burnham Ranch Marketplace Major Subdivision -Phase II creating 145 lots and parkland; and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Facts.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

***Public Communications***

PUBLIC COMMUNICATIONS  
No public communications were given.

***Meetings of Interest***

MEETINGS OF INTEREST  
The next Administrative Meeting is February 17, 2010 and the next Commission Meeting is February 22, 2010.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 8:05p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission