

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**June 7, 2010**  
**6:00 P.M.**

**Time & Place** A regular City Commission meeting was held on Monday, June 7, 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, Ellison, Thweatt and Elsaesser were present. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Bonnie O'Neill 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 May 17, 2010 were approved as submitted.

**Appointments**

APPOINTMENTS:

- A. Helena Open Lands Management Advisory Committee
- B. Historic Preservation Commission
- C. Intergovernmental Transit Committee
- D. Zoning Commission
- E. Non-Motorized Transportation Council

Mayor Smith asked for Commission concurrence on the following appointments:

Helena Open Lands Management Advisory Committee – Reappointment of Mary Arnold and Sarah Carlson to second term on HOLMAC. Terms will begin on July 1, 2010 and expire on June 30, 2013.

Historic Preservation Commission – Appointment of Peter Rudd to an unexpired term as a city representative on the HPC. The unexpired term will begin upon appointment and expire June 30, 2011. Reappointment of Richard (Dick) Alberts to a second term as a joint appointment on the HPC. Term will begin July 1, 2010 and expire June 30, 2013.

Intergovernmental Transit Committee – Reappointment of Vivian Crabtree and Robert Maffit to second terms on the Intergovernmental Transit Committee. Terms will begin on July 1, 2010 and expire June 30, 2013.

Non-Motorized Travel Advisory Committee – Appointment of Linda Saul to a first term on NMTAC. Term will begin upon appointment and expire on March 31, 2013.

Zoning Commission – Appointment of Tyler Emmert as the alternate member on the Zoning Commission. The unexpired term will begin upon appointment and expire on September 30, 2012.

Public comment

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Ellison moved approval of the appointments to the Helena Open Lands Advisory Committee, Historic Preservation Commission, Intergovernmental Transit Committee, Zoning Commission and Non-Motorized Transportation Council as outlined above.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Consent Agenda**

CONSENT AGENDA:

- A. Claims
- B. Archery range lease agreement – Lewis and Clark Archers, Inc.
- C. Resolution of intention to authorize the conveyance of surplus real property owned by the City of Helena – South Cruse Avenue & West Broadway Street
- D. Utility bill insert – Joint City/County Weed Control
- E. Acceptance of Justice Assistance Grant (JAG) funding in the amount of \$27,778
- F. FY2011 Rocky Mountain Development Council New Freedoms Grant
- G. FY2011 Job Access Reverse Commute (JARC) Operating Grant
- H. FY2011 Section 5311 Operating Grant
- I. Trolley System Memorandum of Understanding
- J. Right-of-way and temporary easement dedication for the Custer Interchange-Frontage Road project
- K. Construction agreements with MDT for pedestrian facilities associated with the Custer Interchange-Frontage Road project
- L. Consultant services agreement for the Water Master Plan Update
- M. Amendment to consultant services agreement for the LeGrande Cannon Boulevard Reconstruction project
- N. Expansion of Sewer Service Area for the south end of Sparta Street - Blocks 5, 6, 10 and 11 in the Joseph Cox Addition

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

Commissioner Cartwright requested item I be removed from the consent agenda for further discussion; Commissioner Elsaesser requested items C and K be removed.

Public Comment

Mayor Smith asked for public comment, none was received.

**Motion**

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

**Item K**

K. CONSTRUCTION AGREEMENTS WITH MDT FOR PEDESTRIAN FACILITIES ASSOCIATED WITH THE CUSTER INTERCHANGE-FRONTAGE ROAD PROJECT

Commissioner Elsaesser asked why the sidewalks will not be boulevard sidewalks. Public Works Director John Rundquist stated because of right-of-way (ROW) limitations. Commissioner Cartwright asked for the width of the sidewalks. Director Rundquist indicated they would be 5-foot wide. Commissioner Cartwright commented 5-foot sidewalks are certainly better than no sidewalks; however, curbside sidewalks do require extra maintenance.

**Item I****I. TROLLEY SYSTEM MEMORANDUM OF UNDERSTANDING**

Commissioner Cartwright referred to discussion on whether or not the trolley should be continued. He asked for confirmation that the proposed MOU doesn't prescribe a level of service unless the Business Improvement District wants to participate. Fleet Manager Ed Robinson explained the MOU allows the parties to change hours and/or levels of operation in partnership with the BID. Commissioner Cartwright summarized approval of the MOU indicates the city will run the trolley in some form and the BID is very interested in continuing the "Trolley to Trails" program.

**Item C****C. RESOLUTION OF INTENTION TO AUTHORIZE THE CONVEYANCE OF SURPLUS REAL PROPERTY OWNED BY THE CITY OF HELENA – SOUTH CRUSE AVENUE & WEST BROADWAY STREET**

Commissioner Elsaesser asked for more information on the market value of the property proposed to be surplus and conveyed. Attorney Nielsen explained the city has no firm formula as to when property becomes marginal in value. He noted this parcel's terrain is extremely steep and would have a very low market value. Staff recommends it be conveyed to the adjacent property owners in order to clear the title of the property. Commissioner Elsaesser noted he would support the resolution of intention but with concern for giving away increased value to the adjacent property owners.

**Motion**

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

**Motion**

**Commissioner Elsaesser moved approval of item I on the consent agenda.** Commissioner Cartwright seconded the motion.

**Discussion**

Mayor Smith noted would not support the motion and stated he looks forward to proposals from the Commission regarding the trolley. Commissioner Ellison concurred with Mayor Smith. Commissioner Elsaesser stated he would support the trolley MOU until an alternative proposal is formed. Commissioner Cartwright commented the MOU is necessary for services like "Trolley to Trails" and indicated he would support the motion. Commissioner Thweatt asked if the city would be responsible for costs over the \$32,000 outlined in the MOU. Mr. Robinson stated the city has never needed to provide funding for the trolley and the BID's cost provides a match for the 5311 transportation grant. Commissioner Thweatt asked if the trolley will continue to operate downtown. Mr. Robinson stated yes, under the proposed budget.



program is now available to anyone; you do not have to be located in a certain block of the city to qualify.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY  
No report was given.

**Report of the City Manager**

REPORT OF THE CITY MANAGER  
A. Presentation of FY2011 Preliminary Budget

City Manger Ron Alles gave an overview of the Fiscal Year 2011 (FY2011) Preliminary Budget. He reported the public hearing on the budget will be June 21, 2010, with final budget adoption proposed for July 12, 2010. The preliminary budget PowerPoint presentation is included in the Commission packet as part of the official record.

Commissioner Elsaesser thanked Manager Alles for his work on a difficult budget and spoke of future discussions between the Commission on new positions.

**Report from the Helena Citizens Council**

REPORT FROM THE HELENA CITIZENS COUNCIL  
HCC Coordinator Bonnie O'Neill reported the HCC met on May 26, 2010 and discussed the City Manager's budgetary recommendations. The council will hold a special meeting regarding the budget on June 9, 2010 to formulate a recommendation to the City Commission.

Ms. O'Neill added the HCC voted to support the proposed transit district and will be providing the Commission with a recommendation requesting the city support community gardens.

**Residential Garbage Fees – FY2011**

CONSIDER A RESOLUTION OF INTENTION TO SET FEES CHARGED FOR DISPOSAL OF GARBAGE AND REFUSE AT THE CITY OF HELENA TRANSFER STATION FOR FISCAL YEAR 2011, AND SET A PUBLIC HEARING DATE OF JUNE 21, 2010.

**Staff Report**

Assistant Public Works Director Phil Hauck reported the City of Helena and Lewis & Clark County jointly analyze and agree each year on a recommended tipping fee for the operation of the City Transfer Station and the Lewis & Clark County Landfill. The tipping fee also supports the community's recycling program. The Public Works Department is recommending a Transfer Station fee increase for fiscal year 2011 not to exceed \$7.50/ton to the current \$61.25/ton rate to defray the costs of operations.

Assistant Director Hauck recommended approval of the resolution of intention to set fees charged for disposal of garbage and refuse, recyclable materials and diverted materials at the City of Helena Transfer Station and set a public hearing date of June 21, 2010 to receive public comment on the proposed fees.

**Discussion**

Commissioner Cartwright asked if the tipping fee rates considered tonight would have an impact on the rates the city charges residents. Assistant Director Hauck explained approval of the tipping fee does not affect the residential and commercial rates that will be considered this fall. Commissioner Elsaesser stated his concerns related to renters and residents being affected by this fee have been resolved.

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

**Motion** Commissioner Ellison moved approval of a resolution of intention to set fees charged for disposal of garbage and refuse, recyclable materials and diverted materials at the City of Helena Transfer Station for FY2011 and set a public hearing date of June 21, 2010. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19735**

**Property Tax Revenue- FY2011** CONSIDER A RESOLUTION OF INTENTION TO BUDGET ADDITIONAL PROPERTY TAX REVENUE FOR FISCAL YEAR 2011, AND SET A PUBLIC HEARING DATE OF JUNE 21, 2010.

Staff Report Administrative Services Director Tim Magee reported state statute allows the City to budget additional property tax revenues over the prior year level as specified in 15-10-420, MCA. In accordance with 15-10-203, MCA the City is required to hold a public hearing before budgeting any increase in total property tax revenues.

The City intends to budget tax revenue increases over the total property tax revenue levied in the prior year, as follows:

\$ 73,271	0.89%	for the CPI-U based Inflation Factor of	1.15%
-	0.00%	for the tax revenue authorized but not levied in the prior year	
78,062	0.95%	for the increase in group benefit premiums	
-	0.00%	for the projected State Personal Property Tax Reimbursement decrease	
<u>\$ 151,333</u>	<u>1.84%</u>	Subtotal	
18,861	0.23%	for the increase in voter-approved 1997 general obligation bond levies	
242,900	2.95%	for the increase in voter-approved 2008 general obligation bond levies	
<u>\$ 413,094</u>	<u>5.02%</u>	Total increase over the property tax revenue levied in the prior year	

The total property tax revenue levied in the prior year was \$ 8,222,660

Director Magee recommended approval of the resolution of intention and noted these tax revenue increases are necessary to preserve the present level of services to the community.

Discussion Commissioner Elsaesser asked how much the city can levy for health insurance. Director Magee stated the levy can be increased by the same cost the health insurance has incurred. Commissioner Ellison referred to the large percentage differences in the 1997 and 2008 general obligation bond amounts; Director Magee explained the difference.

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

**Motion** Commissioner Elsaesser moved approval for a resolution of intention to budget additional property tax revenue of up to 5.02% for fiscal year 2011 and set a public hearing date of June 21, 2010. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19736**

**Apiary Permitting**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING AND REGULATING THE KEEPING OF APIARIES AND SETTING A FEE FOR AN APIARY LICENSE BY AMENDING SECTIONS 5-2-1 AND 5-3-5 AND ADDING A NEW SECTION 5-3-7 TO THE HELENA CITY CODE, AND SET A PUBLIC HEARING DATE OF JUNE 21, 2010.

Staff Report

City Attorney David Nielsen reported the City Code currently allows the keeping of one observational beehive for exhibition purposes. All other keeping of bees within the city is prohibited. There has been an interest by private citizens to keep and maintain beehives for the purpose of producing their own honey.

The proposed ordinance would permit and regulate the keeping of hobbyist apiaries within the city. Each hobbyist beekeeper will be allowed to have two hives on their premises if they obtain an annual apiary license from the city. Attorney Nielsen recommended approval of first passage of the ordinance.

Discussion

Commissioner Thweatt recommended tabling the ordinance to allow staff to discuss revisions and/or additions to the ordinance with local beekeepers.

Public Comment

Mayor Smith asked for public comment.

Ian Foley, State of Montana-Department of Agriculture Entomologist, spoke in support of allowing hobbyist beekeeping.

Beverly Magley, Rodney Street, spoke in support of the proposed ordinance. She asked if people are required to get a license to have chickens.

Jessica Allowalt, Helena; suggested the city require citizens prove their experience with beekeeping to obtain a license. She spoke against the requirement that hobbyist keepers must ask their neighbors if they are allergic to bees.

Katherine Berry, Helena; urged support of the ordinance.

Ed Heinlein, Helena; requested the ordinance be tabled to allow community beekeepers to work with city staff to make revisions to the ordinance.

Discussion

Mayor Smith asked Mr. Foley for the State of Montana's fees to keep bees. Mr. Foley stated the current fee is \$11.00 and noted it will be increasing to \$15.00. The state's hobbyist program is voluntary and if citizens register they are required to pay all fees.

City Attorney Nielsen indicated the city only charges fees for keeping dogs, no other animals that he is aware of.

Commissioner Thweatt indicated he would support tabling the ordinance to allow time for staff to work with the beekeeping community.

Motion

**Commissioner Thweatt moved to table first passage of an ordinance permitting and regulating the keeping of apiaries and setting a fee for an apiary license by amending Sections 5-2-1 and adding a new Section 5-3-7 until city staff can meet and consult with one or more Helena citizens with apiarian knowledge and experience, including if possible any such persons present at either the Administrative Meeting on June 2, 2010 or the City Commission Meeting on June 7, 2010, but not limited to those persons; to June 21, 2010 July 12, 2010.** Commissioner Cartwright seconded the motion.

Friendly amendment Commissioner Cartwright offered a friendly amendment to change the hearing date to July 12, 2010; the amendment was accepted.

Discussion Commissioner Cartwright indicated he would be comfortable setting the hearing for July 12, 2010 instead of tabling the ordinance. Commissioner Elsaesser spoke in support of setting the public hearing for June 21, 2010 and tabling the proposal at that time if amendments are not ready. Mayor Smith concurred with Commissioner Elsaesser's comments and indicated concerns about the ordinance are coming from commercial beekeepers and the intent of this motion is to allow hobby-keeping. Commissioner Thweatt again urged support for tabling the motion as hobbyist bees can infect commercial bees. Commissioner Elsaesser urged moving forward with first passage of the proposed ordinance.

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

**Motion** **Commissioner Elsaesser moved approval of first passage of an ordinance permitting and regulating the keeping of apiaries and setting a fee for an apiary license by amending Sections 5-2-1 and adding a new Section 5-3-7 and set a public hearing date of June 21, 2010 July 12, 2010.** Commissioner Cartwright seconded the motion.

Friendly amendment Commissioner Cartwright offered a friendly amendment to change the hearing date to July 12, 2010; the amendment was accepted.

**Vote** Motion carried 4-1 with Commissioner Thweatt voting no. **Ord #3123**

**Industrial Pretreatment** CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING TITLE 6, PUBLIC UTILITIES, CHAPTER 4 AND INDUSTRIAL WASTEWATER REGULATIONS OF THE HELENA CITY CODE AND SET A PUBLIC HEARING DATE OF JUNE 21, 2010.

Staff Report Public Works Director John Rundquist reported the City's Industrial Pretreatment regulations were last updated January 14, 2002. In July of 2009 the Environmental Protection Agency (EPA) performed an audit of the program and determined that there were areas that needed updated to align with federal regulations. The EPA's required amendments update definitions and deal mainly with the sampling and reporting requirements for industrial users. The City Attorney's Office has completed a draft ordinance intended to comply with all US EPA audit requirements.

Director Rundquist recommended approval of first passage of the ordinance as it will allow the city to remain in compliance with the Clean Water Act and its authorized Industrial Pretreatment Program.

Discussion Commissioner Elsaesser spoke in support of the proposed ordinance.

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

**Motion** Commissioner Ellison moved approval of first passage of an ordinance amending Title 6, Public Utilities, Chapter 4, and Industrial Wastewater Regulations, of the Helena City Code and set a public hearing date of June 21, 2010. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3124**

**Itasca Street Vacation** RESOLUTION OF INTENTION TO VACATE A PORTION OF ITASCA STREET ADJACENT TO LOT 2 IN BLOCK 192 OF THE BRADFORD ADDITION AND THE PETERSON LOT DESCRIBED ON COS #313756 AND SET A PUBLIC HEARING DATE OF JUNE 21, 2010.

**Staff Report** City Engineer Ryan Leland reported the City of Helena is designing the reconstruction of LeGrande Cannon Boulevard from the end of the existing pavement to the entrance to the Reber Subdivision. An existing portion of LeGrande Cannon Boulevard is currently located on private property owned by Nancy and Dennis Peterson.

City staff is recommending vacation of a portion of Itasca Street that would revert to the Petersons and become part of their property. In exchange, the Petersons are willing to convey portions of their property to the city as new right-of-way (ROW). The new design of LeGrande Cannon Boulevard will require that the city acquire Petersons' Lots 1 and 2 in Block 192 of the Bradford Addition and a portion of the Peterson's lot as defined in COS #313756. Mr. Ralph Van Daele, the owner of the lots abutting Itasca Street on the north, has consented to the partial vacation of Itasca Street and agrees that he portion that would normally revert to his property may revert instead to the Petersons. The additional LeGrande Cannon Boulevard ROW to be acquired is approximately the same acreage as the portion of Itasca proposed to be vacated, with the city receiving slightly more. Staff will present, at a future date, a proposed buy-sell agreement consummating the city's acquisition of the LeGrande Cannon Boulevard ROW needed for the reconstruction project.

**Discussion** Commissioner Thweatt thanked Mr. Leland for his work on the vacation. Commissioner Cartwright stated decades ago the Commission platted a piece of land that would probably not be platted today. Because the new owner is now developing it, the city has paid \$200,000 to improve LeGrande Cannon Boulevard and make a safe connection between the older developments and the new development. He commented this situation is an example of decisions made by a previous Commission that can negatively effect future Commissions.

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

**Motion** Commissioner Elsaesser moved approval for a resolution of intention to vacate a portion of Itasca Street, as described in the ROW Exhibit, adjacent to Lot 2 in Block 192 of the Bradford Addition and the Peterson Lot described on COS #313756, and set a public hearing date of June 21, 2010. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19737**

**Yellowstone Pipeline** CONSIDER AN EASEMENT AGREEMENT CLARIFICATION FOR YELLOWSTONE PIPELINE.

Staff Report

City Attorney Nielsen reported due to current litigation between the City of Helena and Yellowstone Pipe Line there is a desire to amend the original agreement from 1953 to avoid the same problems in future. He gave overview of the proposed amendments to, and guidelines of, the right-of-way (ROW) agreement. A copy of the amendments were included in the Commission packet as part of the official record.

Discussion

Discussion was held on the proposed revisions to the ROW agreement. The following concerns were discussed: abandonment and the necessary cleanup of the pipeline if it stops being used, adequate inspection of the pipeline via fly-over inspection, the possibility of installing a hard-surface trail over the pipeline, and whether or not the city is required to grant this easement.

Mayor Smith recommended tabling the proposed amendments to the easement to allow City Attorney Nielsen to discuss the Commission's concerns with Yellowstone Pipe Line.

Public Comment

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Cartwright moved to table an amendment to the existing Right-of-Way Agreement with Yellowstone Pipeline to June 21, 2010.** Commissioner Ellison seconded the motion. All voted aye, motion carried.

**BID Renewal**

CONSIDER A RESOLUTION OF INTENTION TO CREATE A BUSINESS IMPROVEMENT DISTRICT AND SET A PUBLIC HEARING DATE OF JULY 12, 2010.

Staff Report

Manager Alles requested the above item be tabled to allow additional time to obtain 60% of the property owners' signatures on the petition to create the district.

Public Comment

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Cartwright moved to table the resolution of intention to create a business improvement district to June 21, 2010.** Commissioner Ellison seconded the motion. All voted aye, motion carried.

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING ORDINANCE NO. 2933 CHANGING A PREZONING DESIGNATION OF R-3 (RESIDENTIAL) DISTRICT TO R-2 (RESIDENTIAL), B-1 (NEIGHBORHOOD BUSINESS), AND PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICTS FOR PROPERTY GENERALLY LOCATED BETWEEN GREEN MEADOW DRIVE AND BENTON AVENUE, NORTH OF HORSESHOE BEND ROAD.

Staff Report

City Planner Kathy Macefield reported on Tuesday, May 11, 2010 the Helena Zoning Commission unanimously recommended approval (4:0 vote) for the adoption of an ordinance amending Ordinance

No. 2933 to change from a rezoning designation of R-3 (Residential) District to R-2 (Residential) District for Lots 1-15 and 23; to B-1 (Neighborhood Business) District for Lots 16-18; and PLI (Public Lands and Institutions) District for Lots 19-22 of the proposed Our Redeemers Subdivision. Said property is legally described as Lot 6 per COS #501240/E, Lewis and Clark County, Montana.

The applicant has submitted a petition for annexation for the 20.02-acre property. A Resolution of Intention to Annex this property was approved in 2002 by Resolution No. 11730. The Resolution of Annexation will be considered by the City Commission with the final plat for Our Redeemers Subdivision in the future.

Ms. Macefield recommended approval of the ordinance as the proposed change to the pre-zoning designation is consistent with the 2001 Helena Growth Policy and the Montana zoning criteria. The proposed B-1 and PLI zoning districts, when combined with the R-2 zoning district, would allow the property to be developed with a greater variety of residential development with nearby employment options with public uses and some limited commercial activity to better facilitate a mixed use subdivision. Residential subdivisions are located in the city with city services on the north and south sides of the subject property so development of this property could be considered to be a logical expansion of the city, an opportunity to promote compatible urban growth, and would be consistent with the efficient use of land, infrastructure, energy and resources. The proposed infill, mixed-use development could encourage non-motorized traffic and reduce the amount of vehicle miles traveled.

#### Discussion

Commissioner Cartwright asked if consideration of the zoning would obligate the Commission to approve the plat. Attorney Nielsen stated no. Commissioner Cartwright noted along the northern edge of the property the block will be about ¼ mile long with no access. He commented the block length does not accommodate non-motorized or motorized transportation.

Commissioner Thweatt asked if the city's existing growth policy favors creating affordable housing. Ms. Macefield stated yes, it is discussed in the housing chapter. Commissioner Thweatt asked if smaller lots are more affordable. Ms. Macefield explained how many units may be located on a lot in B-1 and R-2 zoning. Commissioner Thweatt asked what uses are permitted under B-1 zoning. Ms. Macefield listed the commercial uses and noted it is more restrictive than B-2 zoning. Commissioner Thweatt noted the traffic analysis found commercial use along Green Meadow Drive could significantly impact traffic. Ms. Macefield explained when a traffic study is performed they use the highest trip generator, which in this case was a convenience store. Regarding the subdivision, traffic on Green Meadow Drive is protected by restricting direct access to it from the lots. Commissioner Thweatt asked if the B-1 designation is necessary for neighborhood businesses. Ms. Macefield stated R-2 zoning does not allow any type of non-residential zoning except for schools by Conditional Use Permit. The PLI District does allow offices in government and quasi-government but doesn't allow any commercial development. The B-1 district is the only one that would allow any kind of commercial uses. Commissioner Thweatt asked what kind of use will be located in the PLI portion of the subdivision. Ms. Macefield stated the applicant intends to develop assisted living facilities on that portion of the property. Commissioner

Thweatt asked if the growth policy includes language stating the importance of transportation connectivity. Ms. Macefield stated yes, in the land use and transportation chapters. The 2010 Growth Policy will include updates to these sections. Commissioner Thweatt referred to the 2010 Draft Growth Policy and asked for more information on nodal development versus strip development. Ms. Macefield explained the Planning Board discussed nodal development and decided to defer developing a nodal concept to a later date with the idea that you can beneficially concentrate uses and transportation together.

Commissioner Cartwright indicated he is pleased the applicant has chosen to develop assisted living facilities.

Public Testimony

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

Jeff Larson, Stahly Engineering, representing the applicant; urged the Commission to support the zone change.

Jeff Downhouer, Architect representing the applicant; spoke in support of the zone change.

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

Motion

**Commissioner Ellison moved approval of an ordinance amending Ordinance No. 2933 to change from a pre-zoning designation of R-3 (Residential) District to R-2 (Residential) District, to B-1 District, and PLI (Public Lands and Institutions) District for the proposed Our Redeemers Subdivision as legally described in the ordinance.** Commissioner Elsaesser seconded the motion.

Discussion

Commissioner Cartwright asked if the large lot would be an automobile free zone. Mr. Larson stated vehicles will be crossing it to access the parking for the church.

Commissioner Elsaesser spoke in support of the zoning proposal.

Commissioner Thweatt asked which zoning designation would provide more affordable housing. Ms. Macefield gave the statistics of the various districts.

Commissioner Ellison spoke in support of the proposal and indicated he would vote in favor of the ordinance.

Commissioner Thweatt noted he would oppose the motion for a variety of reasons. He expressed concern the B-1 designation along Green Meadow Drive will result in commercial strip development in that area. Also, the subdivisions to the north and south are zoned R-3 so this development would be more consistent with the surrounding land uses if zoned the same. He expressed concern that creating the large parcel of PLI zoning would create both a pedestrian and vehicle traffic barrier between the two existing subdivision and be contrary to the city's policy of encouraging a sense of community in neighborhoods.

Mayor Smith indicated he would not support the motion as he will not support any more annexations until there is a septic maintenance district in Lewis & Clark County. The capacity at the city's water/wastewater treatment plant should be reserved for current residents if a district will not be created.

Commissioner Cartwright concurred with Mayor Smith's comments regarding the need for a septic maintenance district and noted

those concerns could be addressed by the Commission at the time of annexation or subdivision approval.

**Vote**

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

- B. CONSIDER A MAJOR SUBDIVISION/PRELIMINARY PLAT CREATING A TOTAL OF 23 LOTS FOR OUR REDEEMERS SUBDIVISION GENERALLY LOCATED BETWEEN GREEN MEADOW DRIVE AND BENTON AVENUE, NORTH OF HORSESHOE BEND ROAD.

**Staff Report**

On May 18, 2010 the Consolidated Planning Board unanimously (7:0 vote) recommended approval for a major subdivision creating 16 lots that would be located in the R-2 (Residential) District; 3 lots in the B-1 (Neighborhood Business) District; and 4 lots in the PLI (Public Lands and Institutions) District for a total of 23 Lots for Our Redeemers Subdivision. Said property is legally described as Lot 6 per COS #501240/E, Lewis and Clark County, Montana.

The Planning Board recommendation is related to the Findings of Fact and the conditions contained in that Findings. Condition #1.C. had required a pedestrian access but the City Attorney's office had stated the pedestrian trails couldn't be required since it couldn't be demonstrated that it would offset an impact from the subdivision. As a result, the Planning Board deleted that condition and #3.V. in the Findings has been revised to address how pedestrian connectivity will be provided. A complete copy of the revised Draft Findings of Fact was included in the Commission packet.

The applicant is proposing to develop the property in two phases:

Phase I – one lot (Lot 22) with PLI zoning; 2 hydrants, water and sewer mains have been installed on Benton Avenue.

Phase II – one parkland lot with a stormwater detention area and 15 residential lots, 3 commercial lots and 3 public lands lots; water and sewer mains and necessary appurtenances in Horseshoe Bend and North Brookside Loop; construction of these same streets; construction of a community retention basin on the south side of Horseshoe Bend.

Ms. Macefield recommended approval of the subdivision/preliminary plat as it conforms to the 2001 Growth Policy, to the City's Subdivision and Zoning Regulations, and will meet the requirements of the Montana Subdivision and Platting Act after the conditions are met. The proposed subdivision with the combination of residential, commercial and public lands zoning districts could facilitate the development of this portion of the property that is located between two residential subdivisions that have been developed with city water, sewer and paved streets. Encouraging infill development for the beneficial concentration of mixed uses in the vicinity would assist walking and promote public health. Allowing the major subdivision, as infill development, would be a logical infill expansion of the city, an opportunity to promote compatible urban growth, and would be consistent with efficient use of land, infrastructure, energy and resources. She added the infill, mixed-use development could encourage non-motorized traffic and reduce the amount of vehicle miles traveled.

## Discussion

Commissioner Cartwright asked City Attorney Nielsen what the relationship is between preliminary plat and annexation, does one preclude the other? Attorney Nielsen responded technically, since it is outside the city limits the subdivision isn't enforced until it is under the city's jurisdiction by annexation. Commissioner Cartwright asked Ms. Macefield to explain why a ¼ mile long block is considered "accessible". Ms. Macefield stated there is a street network system that provides pedestrian access even though it may be considered long in length. The current subdivision regulations do not have a maximum block length requirement.

Commissioner Elsaesser asked if similar to the Shopko Minor Subdivision, the Commission could require the stormwater retention plan work to accommodate the formation of wetlands or serve as a wetlands habitat. Ms. Macefield indicated staff would need to review the proposed condition in depth and added this subdivision has very small wetlands. Commissioner Elsaesser asked if the Commission could require there be an easement but not require it to be constructed. City Attorney Nielsen stated he would not recommend the proposed condition as having an undeveloped easement exposes the city to liability under standard of care. He noted there is no underlying legal basis for requiring the easement and that is why staff recommended removal of condition. Commissioner Elsaesser asked if there is anything that would prohibit the developer from connecting the access. Attorney Nielsen stated no, any private property owner can allow for public access across their property and construct trails.

## Public Testimony

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

Jeff Larson, representing the applicant; spoke on why the applicant chose the R-2 zoning instead of R-3, gave an overview of the stormwater detention plan and future of the wetlands in the area, and indicated the applicant would provide an easement and constructed trail from north to south if the plat is approved. He also commented about the creation of a septic maintenance district in the county.

Jeff Downhouer, Architect representing the applicant and member of Our Redeemers Church; indicated the applicant would be providing north to south pedestrian connectivity. He referred to concern for the ¼ mile-long block length and explained there are no other options.

Dean Chausee, 505 South Roberts, applicant; urged the Commission to approve the preliminary plat.

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

## Discussion

Commissioner Thweatt referred to liability concerns with an undeveloped easement and asked if concerns would be alleviated if the path were developed. Attorney Nielsen stated yes and noted the path would have to be developed according to ADA standards. Commissioner Thweatt indicated he could not rely on the promise of the developer to provide a constructed pedestrian access. Discussion was held on how the applicant could provide access. Commissioner Thweatt suggested tabling the preliminary plat to allow time for the applicant to work with city staff on an agreement for non-motorized access across the parcel. Mr. Larson stated the applicant would agree to table the proposal.

and extend the review period, if necessary. He also indicated the applicant is willing to pay for the improvements to the pedestrian trail.

Commissioner Ellison asked for more information on Mayor Smith's comments regarding extension of water and sewer service. Mayor Smith explained there should've been a septic maintenance district formed in Lewis & Clark County by December 31, 2009; water quality problems continue to go unaddressed and unmitigated.

Commissioner Elsaesser referred to the condition requiring there be an exclusive left turn. Ms. Macefield stated MDT controls all access to Green Meadow Drive.

**Motion** Commissioner Elsaesser moved conditional approval of the preliminary plat for Our Redeemers Major Subdivision, creating 23 lots from 20.02 acres, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact. Commissioner Ellison seconded the motion.

**Amendment** Commissioner Elsaesser moved amend the Findings of Fact, Wetlands- Item Y. (page 12), to strike the second sentence and add "wetlands and stormwater detention areas must be designed to accommodate wetlands". Commissioner Thweatt seconded the motion. Motion carried 3-2, with Mayor Smith and Commissioner Cartwright voting no.

**Substitute Motion** Commissioner Cartwright moved to table conditional approval of the preliminary plat for Our Redeemers Major Subdivision, creating 23 lots from 20.02 acres, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings of Fact. Commissioner Thweatt seconded the motion.

Mr. Larson expressed consent to table consideration of the preliminary plat.

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

**Comment** Commissioner Elsaesser stated he is comfortable with the applicant's verbal commitment to provide pedestrian access in the subdivision. Commissioner Cartwright referred to connectivity and stated the applicant could've put an easement into the design before it came before the Commission for consideration. He urged the applicant to provide the easement in writing.

**Vote on original motion** Motion failed 2-3 with Commissioners Thweatt, Cartwright and Mayor Smith voting no.

**Motion** Commissioner Elsaesser moved to reconsider the previous vote on the Our Redeemers Major Subdivision in order to provide an amendment to address pedestrian connectivity through the PLI zoning. Commissioner Ellison seconded the motion. Motion failed 2-3 with Commissioners Cartwright, Thweatt and Mayor Smith voting no.

**Motion** Commissioner Cartwright moved to reconsider the previous vote to deny Our Redeemers Subdivision. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Motion** Commissioner Cartwright moved to table the preliminary plat of Our Redeemers Subdivision to the call of the City Manager. Commissioner Elsaesser 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 June 16, 2010 and the next Commission Meeting is June 21, 2010. Budget Work Sessions will be held on June 9 & June 14, 2010.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 9:46 p.m.

---

Mayor James E. Smith

ATTEST:

---

Clerk of the Commission