

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**August 9, 2010**  
**6:00 P.M.**

***Time & Place*** A regular City Commission meeting was held on Monday, August 9, 2010 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

***Members Present*** Mayor Pro Tem Cartwright indicated for the record that Commissioners Ellison, Thweatt and Elsaesser were present. Mayor Smith was excused. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. There was no representative from the Helena Citizens Council.

***Pledge of Allegiance*** Mayor Pro Tem Cartwright 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 August 9, 2010 were approved as submitted.

***Consent Agenda*** CONSENT AGENDA:

- A. Claims
- B. Authorization to void the following check numbers: 91502, 91900, 91908, 92682, 93688, 93828, 94677, 96440, 96538, 96580, 96756 and 98581
- C. Approval of alteration to the exterior of the Colwell Building, located at 62 S. Last Chance Gulch, to accommodate balconies for residential apartments
- D. Rocky Mountain Development Council/Head Start Bus Service Transportation Agreement and Lease Agreement
- E. Resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the sale of that property
- F. Professional Services Contract for the design of the Missouri River Treatment Plant Backwash Recycle Loop Improvements to Hydrometrics, Inc.
- G. Final passage of Ordinance No. 3129 permitting General Retail Sales by right in the Commercial Light Manufacturing District and consolidating the definitions of General/Specialty Sales and Secondhand Sales by amending Section 11-2-3 and 11-2-4 of Helena City Code
- H. Final passage of Ordinance No. 3130 excluding the first two feet of roof eaves from the calculation of Lot Coverage by amending Section 11-4-1 of Helena City Code
- I. Final passage of Ordinance No. 3131 clarifying that the vehicular entrance to a garage must be setback twenty feet from the property line where the driveway curb cut is located by amending Section 11-4-2 of Helena City Code
- J. Final passage of Ordinance No. 3132 permitting Community Residential Facilities, Type II, (13 or more residents) in the R-4/R-O Residential Districts by amending Section 11-2-3 of Helena City Code
- K. Final passage of Ordinance No. 3133 permitting Indoor Entertainment, Sports and Recreation Uses by right in the PLI

(Public Lands and Institutions) District by amending Section 11-2-3 of Helena City Code

- L. Alternative resolution of intention to establish charges and consider a fee increase up to 6.32% for collection and disposal of residential garbage and refuse in the City of Helena, Montana, for fiscal year 2011 and setting a public hearing date

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

Commissioner Ellison asked that Items K and J be removed from the consent agenda for further discussion; Commissioner Elsaesser asked that Items C and G be removed.

Public Comment

Mayor Pro Tem Cartwright asked for public comment, none was received.

Motion

**Commissioner Elsaesser moved approval of items A, B, D, E, F, H, I and L on the consent agenda.** Commissioner Ellison seconded the motion. All voted aye, motion carried.

Item J

- J. FINAL PASSAGE OF ORDINANCE NO. 3132 PERMITTING COMMUNITY RESIDENTIAL FACILITIES, TYPE II, (13 OR MORE RESIDENTS) IN THE R-4/R-O RESIDENTIAL DISTRICTS BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE

Commissioner Ellison expressed concern for Item J as it would allow large structures to be built within the R-4/R-O zoning designation city-wide. He indicated he would prefer to see those structures built via a Conditional Use Permit (CUP) or variance and reviewed on a case-by-case basis.

City Attorney Nielsen noted the Commission cannot discriminate against Community Residential Facilities, Type II, because of the type of clientele they will have if the Commission were to allow the same intensity of use by another residence. He commented under the Federal Fair Housing laws it can look discriminatory because the city requires a certain type of housing go through the CUP process and not others.

Commissioner Elsaesser concurred with Commissioner Ellison's comments and indicated he would support tabling final passage of the ordinance.

Motion

**Commissioner Ellison moved to table final passage of Ordinance No. 3132 permitting Community Residential Facilities, Type II, (13 or more residents) in the R-4/R-O Residential Districts by amending Section 11-2-3 of Helena City Code.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Item K

- K. FINAL PASSAGE OF ORDINANCE NO. 3133 PERMITTING INDOOR ENTERTAINMENT, SPORTS AND RECREATION USES BY RIGHT IN THE PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE

Commissioner Ellison stated he asked at the July 26, 2010

Commission Meeting for the amount of PLI zoning in the city and has not received an answer. He expressed support for preserving existing PLI zoning and noted he would support denial of the ordinance.

Commissioner Elsaesser expressed concern for the proposed ordinance.

City Manager Alles noted the proposed uses would be non-permitted in facilities like the Civic Center and the Fairgrounds.

Public Comment Mayor Pro Tem Cartwright asked for public comment, none was received.

**Motion** Commissioner Ellison moved to deny final passage of Ordinance No. 3133. Commissioner Elsaesser seconded the motion. Motion carried 3-1 with Mayor Pro Tem Cartwright voting no.

**Item G** G. FINAL PASSAGE OF ORDINANCE NO. 3129 PERMITTING GENERAL RETAIL SALES BY RIGHT IN THE COMMERCIAL LIGHT MANUFACTURING DISTRICT AND CONSOLIDATING THE DEFINITIONS OF GENERAL/SPECIALTY SALES AND SECONDHAND SALES BY AMENDING SECTION 11-2-3 AND 11-2-4 OF HELENA CITY CODE

Commissioner Elsaesser expressed concern for Item G as he believes it circumvents the city's zoning.

Public Comment Mayor Pro Tem Cartwright asked for public comment, none was received.

**Motion** Commissioner Elsaesser moved to deny final passage of Ordinance No. 3129. Motion died for lack of a second.

**Motion** Commissioner Ellison moved to table final passage of Ordinance No. 3129 to the call of the City Manager. Commissioner Thweatt seconded the motion. All voted aye, motion carried.

**Item C** C. APPROVAL OF ALTERATION TO THE EXTERIOR OF THE COLWELL BUILDING, LOCATED AT 62 S. LAST CHANCE GULCH, TO ACCOMMODATE BALCONIES FOR RESIDENTIAL APARTMENTS

Commissioner Elsaesser asked for the Historic Preservation Commission's (HPC) recommendation on the proposal. Community Development Director Haugen explained the HPC was not able to come to consensus and compromise with the Colwell Building owners in favor of installation of the balconies.

**Motion** Commissioner Thweatt moved to approve the alteration of exterior of Colwell Building located at 62 S. Last Chance Gulch to accommodate balconies for the residential apartments provided the design of the balconies is architecturally consistent with the building. Commissioner Elsaesser seconded the motion.

Public Comment Mayor Pro Tem Cartwright asked for public comment.  
Ali Wibler, Colwell Building resident; asked for clarification of how many balconies could be built.  
Community Development Director Haugen gave the history of

the proposal and explained the motion expands upon the original request for one balcony; all property owners would be allowed to apply for a building permit for a balcony. City Manager Alles noted Community Development Director Haugen would monitor compliance with the motion.

**Vote** All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Commissioner Elsaesser spoke of attending the Last Chance Stampede and Fair.  
Commissioner Ellison commended the Montana Department of Transportation and city staff for their work on the Cedar Street Project.  
Commissioner Cartwright encouraged citizens to view the newly installed public art at the traffic calming circle on Butte Avenue.

**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. 22<sup>nd</sup> consecutive Certificate of Achievement for Excellence in Financial Reporting (CAFR)  
  
City Manager Alles reported the City of Helena has received its 22<sup>nd</sup> consecutive Certificate of Achievement for Excellence in Financial Reporting (CAFR) and invited City Controller Glenn Jorgenson and Accounting Supervisor Liz Hirst to speak about the award.  
The Commission thanked Mr. Jorgenson and Ms. Hirst for their excellent work and 22<sup>nd</sup> CAFR.

**Report from the Helena Citizens Council** REPORT FROM THE HELENA CITIZENS COUNCIL  
No report was given.

**CTEP** CONSIDER ALLOCATION OF COMMUNITY TRANSPORTATION ENHANCEMENT PROGRAM (CTEP) FUNDS.

Staff Report  
Neighborhood Transportation Coordinator Allen Cormany reported in January of 2010, the Public Works Department asked the Helena community to submit project proposals for the CTEP Program. Eligible projects include but are not limited to pedestrian & bicycle facilities, education, landscaping and historic preservation. Public Works received 19 requests for CTEP funding. Projects were reviewed and ranked by the Non-motorized Travel Advisory Council and Public Works staff. A public open house was conducted on May 12, 2010 to gather community input.

Staff is proposing to allocate CTEP funding as follows:

- Centennial Trail (\$367,000). Funds would be combined with CTEP allocations from Lewis & Clark County to design and construct Phase I of Centennial Trail. This phase could include construction of a shared use path from Centennial Park to National Avenue, North Montana Avenue to Billings Avenue and the installation of a pedestrian bridge at Henderson Street. The

required 13.42% project match will be provided by the Friends of Centennial Trail and the value of the Railroad right of way dedication to the City of Helena.

- Way To Go Campaign (\$15,000). The project entails developing a bicycle and pedestrian safety awareness campaign centered around four community events, Bike To Work Day, Walk To School Day, Bike/Walk Community Day and Use Public Transit Day. Education requests do not require a match.
- Broadway ADA Crossing (\$103,460). Per the Federal Highway Administration, the City of Helena is in violation of the ADA regarding accessibility on the north and south side of Broadway and Last Chance Gulch. The project would replace the existing ADA access with the installation of a raised pedestrian crosswalk. The required 13.42% project match will need to be identified before awarding a contract for construction. Staff is working to identify the source of the match and gas tax monies may be used.
- Guardian Building sidewalk repair (\$36,700). Although not discussed at the last administrative meeting, this sidewalk does pose a safety issue for the general public and a determination by the City Commission on the use of CTEP funds would be helpful to the Guardian Condominium Association, who first asked for assistance on this matter in 2006. The project would repair a deteriorated concrete walkway that provides ADA access to the Walking Mall from City Parking Lot 9. The required 13.42% project match will be provided by the Guardian Condominium Association.

If approved, these four projects would utilize \$522,160 of the total City CTEP allocation. As of July 16, 2010, the City of Helena has a total of \$886,262.77 available to fund CTEP eligible projects. Coordinator Cormany noted an education program and the installation of new sidewalks and a shared use path will provide safety and accessibility for pedestrians, bicyclists and the disabled.

Discussion

Discussion was held on proposed improvements to the Guardian Building ramp and who should be responsible for the repairs.

**Motion**

**Commissioner Ellison moved approval to allocate CTEP funding for the following projects: Centennial Trail - \$367,000, Way To Go Campaign - \$15,000, Broadway ADA Crossing - \$103,460 and Guardian Building - \$36,700.** Commissioner Elsaesser seconded the motion.

Public Comment

Mayor Pro Tem Cartwright asked for public comment. Jim McHugh, Executive Director of the Business Improvement District; spoke in support of CTEP funding for the Guardian Building.

Discussion

Commissioner Elsaesser spoke in support of the proposed CTEP projects. Commissioner Cartwright spoke in support of the CTEP projects but expressed hesitancy to support the Guardian Building repairs as it could set a precedent.

**Friendly Amendment**                    **Commissioner Thweatt offered a friendly amendment to the motion to strike the Guardian Building ramp from the list of projects.** The amendment was denied.

**Vote**    Motion failed 2-2 with Commissioners Cartwright and Elsaesser voting no.

**Motion**                                        **Commissioner Elsaesser moved approval to allocate CTEP funding for the following projects: Centennial Trail - \$367,000, Way To Go Campaign - \$15,000 and Broadway ADA Crossing - \$103,460.** Commissioner Thweatt seconded the motion. All voted aye, motion carried.

**Motion**                                        **Commissioner Ellison moved to table the proposed CTEP funding allocation for the Guardian Building project to the call of the City Manager.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Public Hearings**                        PUBLIC HEARINGS:  
A.        CONSIDER A RESOLUTION CREATING A BUSINESS IMPROVEMENT DISTRICT (BID) WITHIN THE CITY OF HELENA, MONTANA.

**Staff Report**    Budget Manager Robert Ricker reported on July 24, 2000 the City Commission passed Resolution #11542 which re-created the Business Improvement District (BID) for an additional ten years. That ten-year term has expired. In order for the BID to continue, the district must be re-created.

A petition signed by the owners of more than 60% of the area of the proposed district has been submitted to the city.

Before creating or expanding a district, the City Commission must pass a resolution of intention to do so, designating the boundaries of the district. This was completed on July 12, 2010.

Notice of passage of the resolution was published as provided in 7-1-2121, MCA and a copy of the notice was mailed to every owner of real property within the proposed district. Such owners were given the required 15 days from the date of the first publication of the notice to file written protest against the proposed district. The city received 9% opposition to the creation of the district.

**Public Testimony**    Mayor Pro Tem Cartwright declared the public portion of the hearing open and called for any persons wishing to address the Commission.

Lori Hampa-Chamberlain, Jackson Street; expressed concern that a residential area would be included in the district.

Peter Sullivan, 111 North Last Chance Gulch; spoke in support of the re-creation of the district.

Jim McHugh, Executive Director of BID; urged the Commission to support the renewal of the BID and spoke on how the BID is working to improve services to its members.

Randall Green, BID Board of Directors; spoke in support of the district.

Patricia Spencer, Chair of the BID Board of Directors; urged approval of the renewal of the district.

Greg Allen, 316, 318 and 320 N. Last Chance Gulch; expressed concern that the BID is joined together with Downtown Helena, Inc. and urged separation of the entities.

Blair Williams, downtown business owner; urged the Commission to table the renewal as she has concerns for shortcomings in the BID organization.

Madge Allen, Last Chance Gulch; asked if the city will be paying dues to the BID. Mayor Pro Tem Cartwright stated yes. Ms. Allen expressed concern for citizen tax dollars paying dues to the BID.

Blair Williams; expressed concern for the voting process to approve the BID.

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

Discussion

BID Director McHugh clarified the district will not include residential property. Manager Alles gave an overview of the city's participation in the BID.

Discussion was held on how the BID promotes downtown retailers. Director McHugh explained the difference between the BID and Downtown Helena, Inc. and how the organizations work together.

Mayor Pro Tem Cartwright asked how much money the BID raises annually. Director McHugh stated approximately \$200,000 and the budget is over \$300,000. He explained the cost per property and how revenue is generated.

Commissioners Ellison and Thweatt expressed concern for the BID's relationship with Downtown Helena, Inc. and downtown retailers. Commissioner Ellison thanked Director McHugh for his pledge to increase outreach to downtown property owners. Commissioner Thweatt spoke of the importance of community support for the downtown area. Commissioner Elsaesser encouraged property owners not feeling represented and/or supported by the BID to notify the City Commission.

Motion

**Commissioner Ellison moved approval of a resolution creating a Business Improvement District (BID) for a period of ten years.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19766**

- B. CONSIDER THE PRELIMINARY PLAT FOR A SUBDIVISION AMENDING THE SHOPKO MINOR SUBDIVISION CREATING THREE LOTS FROM 6.8 ACRES GENERALLY LOCATED NORTH OF CUSTER AVENUE, EAST OF MONTANA AVENUE AND WEST OF SANDERS STREET.

Staff Report

City Planner Kathy Macefield reported on Tuesday, July 20, 2010 the Consolidated Planning Board unanimously recommended conditional approval (6:0 vote) for a preliminary plat creating 3 lots (Lots 1A-1E1A, 1A-1E1B, and 1A-1E1C) from Lot 1A-1E1, Shopko Subdivision, Helena, Montana. Said approval is subject to the Findings of Fact and the conditions contained in the staff report of July 15, 2010 as amended by the memo of July 19, 2010.

City water, sewer and paved streets with curb and gutter already serve some of the property. Water and sewer has been installed to serve the new lots. Adequate wastewater treatment facilities must be provided to serve the proposed lots.

The proposed subdivision could facilitate the development of the northern portion of the Shopko Subdivision property that is located between commercial uses, which could encourage infill development for the beneficial concentration of commercial uses as a "node" in the vicinity. Allowing the subdivision would be consistent with efficient use of land, infrastructure, energy and resources. Infill mixed use development could encourage non-motorized traffic and reduce the amount of vehicle miles travelled (vmt). Ms. Macefield recommended conditional approval of the subdivision.

Discussion

Commissioner Thweatt asked for the difference between a public access easement and a street. Ms. Macefield explained the applicant would own the street, pay taxes on it and provide maintenance. Commissioner Thweatt asked if it would still function as a street in providing pedestrian and vehicular access. Ms. Macefield stated yes. Discussion was held on east and west access in the subdivision.

Public Testimony

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

Robert Schmidt, PEG Development; urged the Commission to support the subdivision. He indicated the existing wetlands on the southern portion of the property are man-made. Mr. Schmidt stated PEG Development is working to purchase sewer system capacity from Golden Estates and ROW from surrounding property owners for public access from east to west on Market Avenue.

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

Discussion

Mayor Pro Tem Cartwright asked if staff is in agreement with the applicant on the amount of sewer capacity needed. City Engineer Leland explained the city has determined there is not enough capacity available and the applicant hasn't submitted any information supporting their intent to secure the necessary capacity.

Motion

**Commissioner Ellison moved conditional approval of the preliminary plat for the Shopko Subdivision, creating 3 lots from Lot 1A-1E1, and to adopt the Findings of Fact and the conditions contained therein for property legally described in the Findings.**

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

- C. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP FOR THE CITY OF HELENA FOR A ZONE CHANGE FROM CLM (COMMERCIAL LIGHT MANUFACTURING) DISTRICT TO R-O (RESIDENTIAL-OFFICE) DISTRICT FOR PROPERTY GENERALLY LOCATED SOUTH OF REED AVENUE AND WEST OF GREEN MEADOW DRIVE.

Staff Report

City Planner Elroy Golemon reported on Tuesday, July 13, 2010, the Helena Zoning Commission held a public hearing on the proposed zone change and made no recommendation, (2:2 vote), with one abstention, for the adoption of an ordinance for a zone change from,



CLM District to an R-O District for property legally described in the attached staff report.

The proposed zone change from CLM to R-O District for the subject properties is consistent with the Montana Zone Change Criteria, Growth Policy and Zoning Ordinance, and is compatible with the surrounding land uses. Mr. Golemon recommended approval of the ordinance.

Public Testimony

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

Allen Bock, applicant; urged the Commission to support zone change and noted four citizens in attendance were also supportive of the proposal.

Zach Hampton, applicant; spoke in support of the zone change.

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

Discussion

Commissioner Cartwright asked Mr. Bock if he owned the property when the zoning was enacted. He responded he did not.

Commissioner Thweatt concurred with Zoning Commission member concerns and stated he would not support the proposal.

Commissioner Ellison asked Mr. Bock why he was surprised the property was zoned CLM. Mr. Bock explained he didn't check on the zoning of the property before purchase and assumed it was residential. He urged approval of the zone change. Discussion was then held on zoning related to property values.

Commissioner Elsaesser indicated he would like to hear more comment from the neighborhood before considering the zone change.

Commissioner Cartwright indicated he would support tabling the motion until all five Commission members are present. He commented it is too late in the building season to build houses this year so the proposal could be re-visited this winter. Commissioner Cartwright expressed hesitancy to give up CLM zoning in this area as there isn't a lot in town.

Motion

**Commissioner Ellison moved approval of first passage of an ordinance amending City of Helena Ordinance No. 2359 and amending the official zoning map, for a zone change from CLM (Commercial Light Manufacturing) District to an R-O (Residential Office) District for property legally described in the ordinance.**

Commissioner Elsaesser seconded the motion. Motion died 2-2 with Commissioners Cartwright and Thweatt voting no.

Motion

**Commissioner Elsaesser moved to table first passage of an ordinance amending City of Helena Ordinance No. 2359 and amending the official zoning map, for a zone change from CLM (Commercial Light Manufacturing) District to an R-O (Residential Office) District for property legally described in the ordinance to the call of the City Manager.**

Commissioner Ellison seconded the motion. Motion carried 3-1 with Commissioner Thweatt voting no.

**Public  
Communications**

PUBLIC COMMUNICATIONS

No public communications were given.

**Meetings of  
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is August 18, 2010 and the next Commission Meeting is August 23, 2010. There will be a Growth Policy Work Session on August 25, 2010.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 8:23 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission