

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**November 15, 2010**  
**6:00 P.M.**

- Time & Place*** A regular City Commission meeting was held on Monday, November 15, 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 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 November 1, 2010 were approved as submitted.
- Consent Agenda*** CONSENT AGENDA:  
A. Claims  
B. Final passage of Ordinance No. 3140 pre-zoning to PLI (Public Lands & Institutions) District prior to annexation a developed tract of land containing approximately 2.34 acres generally located south of Stuart Street and east of Granite Avenue with a property address of 2450 Flowerree Street  
C. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Res #19789**
- City Manager Ron Alles recommended approval of the claims and the consent agenda.
- Commissioner Elsaesser asked item B be removed for further discussion.
- Public Comment** Mayor Smith asked for public comment, none was received.
- Motion** **Commissioner Elsaesser moved approval of items A and C on the consent agenda.** Commissioner Ellison seconded the motion. All voted aye, motion carried.
- Item B*** B. Final passage of Ordinance No. 3140 pre-zoning to PLI (Public Lands & Institutions) District prior to annexation a developed tract of land containing approximately 2.34 acres generally located south of Stuart Street and east of Granite Avenue with a property address of 2450 Flowerree Street.
- Discussion** Commissioner Elsaesser expressed concern for the proposed zoning designation of PLI (Public Lands & Institutions) District adjacent to a residential neighborhood.

**Motion**

**Commissioner Ellison moved approval of item B on the consent agenda.** Commissioner Cartwright seconded the motion. Motion carried 4-1, with Commissioner Elsaesser voting no. **Ord #3140**

**Communications**

**COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS**

Commissioner Ellison congratulated the Helena High School girls volleyball team on their recent championship win.

Commissioner Elsaesser thanked the community for decorating the city for the upcoming holiday season. He discussed the Custer Avenue Interchange project and stated he is pleased with the planning and progress.

Commissioner Cartwright referred to the quote, "there is nothing certain but death and taxes" and discussed the cynicism behind the phrase. He commented on city taxes and taxes in general and urged governments to be responsible when setting and/or cutting taxes. Mayor Smith spoke in support of setting taxes at the level the future requires.

Commissioner Cartwright announced Mayor Smith's birthday and wished him well. Mayor Smith thanked everyone for the birthday wishes.

**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**

No report was given.

**Annexation– 2450 Flowerree Street**

CONSIDER A RESOLUTION OF ANNEXATION FOR BLOCK 1 OF THE HIGHLAND PARK ADDITION AND THE FULL WIDTH OF THE ADJACENT GRANITE AVENUE, STUART STREET AND FLOWERREE STREET RIGHTS-OF-WAY, ALL LOCATED IN LEWIS AND CLARK COUNTY, INTO THE CITY OF HELENA, MONTANA.

**Staff Report**

City Planner Dustin Ramoie reported the applicant has petitioned for annexation of the Neighborhood Assembly of God church. A resolution of intention to annex was passed by the City Commission at its October 18, 2010 Commission Meeting and an ordinance pre-zoning the property to PLI District was finally approved on the consent agenda at tonight's meeting. The applicant is proposing an expansion of their building which will require city water to meet fire flows. The building expansion will include hooking into the City of Helena wastewater system as well.

Mr. Ramoie recommended approval of the proposed resolution, as annexation of the Neighborhood Assembly of God Church will remove a property off of a private well and eventually remove them from their private septic field, and bring them online with City of Helena Water and Wastewater services, which will help with water quality issues. Annexation will also require the waiver of any future SIDs as well as require future improvements in the area such as roads, sidewalks and meeting all zoning requirements as outlined with a Development Agreement as well as the current zoning ordinance. Annexation of this

property will help consolidate some energy usage since the property will be on city water and wastewater in the future.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Ellison moved approval for a resolution annexing Block 1 of the Highland Park Addition, Helena, MT, and the full width of the adjacent Granite Avenue, Stuart Street and Flowerree Street right-of-way.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19790**

***Annexation– 3580  
N. Benton Avenue***

CONSIDER A RESOLUTION OF ANNEXATION FOR 18.47 ACRES LEGALLY DESCRIBED AS LOT 6A PER COS #3189453 AND THE FULL WIDTH OF THE ADJACENT GREEN MEADOW DRIVE RIGHT-OF-WAY, ALL LOCATED IN LEWIS AND CLARK COUNTY, INTO THE CITY OF HELENA, MONTANA.

Staff Report

City Planner Kathy Macefield reported the current applicant, Our Redeemers Lutheran Church, has submitted a request for annexation by petition. No public hearing is required. The 18.470-acre property was rezoned as R-2 (Residential), B-1 (Neighborhood Business), and PLI (Public Lands and Institutions) Districts by Ordinance No. 3125 in June 2010. The Our Redeemers Subdivision preliminary plat for this property was approved in July 2010 and the final plat for this subdivision will be submitted at a future date.

This same property was included in Resolution of Intention to Annex, Resolution No. 11730 in February 2002 as part of the Crystal Springs Subdivision, and was owned by a different property owner than the current applicant. Resolution No. 11730 requires taxes and assessments to be paid and current; this requirement has been satisfied.

Montana law requires annexing the adjacent right-of-way (ROW) when a property is annexed. As a result, the adjacent portion of the 100-foot wide (estimated width) Green Meadow Drive ROW for a length of 633.61 feet would also be annexed. The adjacent portion of Benton Avenue ROW was annexed in 2008 with Resolution #19602 and has been constructed to city standards.

Ms. Macefield recommended approval of the resolution as the proposed annexation is adjacent to the city on the south and north sides; water and sewer mains have been installed in Benton Avenue. Therefore, annexing 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 and the 2001 Helena Growth Policy. This infill development could encourage non-motorized transportation and reduce the amount of vehicle miles travelled (vmt).

Discussion

Commissioner Ellison asked if the proposed annexation would be consistent with the updated draft growth policy currently under review by the Commission. Ms. Macefield stated yes.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Elsaesser moved approval for a resolution annexing 18.470 acres to the City of Helena as an unsubdivided tract of land and the adjacent Green Meadow Drive right-of-way as**

**legally described in the resolution.** Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #19791**

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING TITLE 1 OF THE HELENA CITY CODE (GENERAL PROVISIONS) BY ADDING A NEW CHAPTER 7 ENTITLED HAZARDOUS MATERIALS INCIDENT COST RECOVERY.

Staff Report

Assistant Fire Chief J.R. Feucht reported the City of Helena does not have legal authority or methodology for hazmat incident cost recovery. Currently, the citizens are financially responsible for the expense incurred while protecting our environment and the public's health from dangerous chemicals which are either used in our community or which pass through Helena.

Staff is recommending adoption of a reimbursement methodology to allow the City of Helena Fire Department to bill the responsible party for technical level operations (offensive) actions necessary to mitigate the incident to protect health and the environment.

Approval of first passage of the proposed ordinance will ensure the citizens of Helena are not financially responsible for the expenses incurred when providing hazmat services.

Discussion

Commissioner Cartwright reiterated the ordinance will help in dealing with insurance companies so the citizens of Helena do not have to pay the costs. Assistant Chief Feucht concurred.

Public Testimony

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

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

Motion

**Commissioner Ellison moved approval for first passage of an ordinance providing reimbursement methodology to bill responsible parties for hazmat cost recovery.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3141**

- B. CONSIDER A RESOLUTION VACATING A PORTION OF ALEXANDER AVENUE AND A PORTION OF THE ALLEY RIGHT-OF-WAY, BOTH IN THE WOODLAWN PARK ADDITION TO THE CITY OF HELENA.

Staff Report

City Engineer Ryan Leland reported Alexander Avenue is located in the Woodlawn Subdivision and was recently annexed into the City of Helena. Alexander Avenue and the above referenced alley are undeveloped and the owner of Lot 1, Colleen Hansen, has a barn and a mobile home on the right-of-way (ROW). Mrs. Hansen and her brother, the previous owner, had tried for years to get the ROW vacated when it was in the county. At one time the County Commission approved the vacation but the correct documents were not filed in time, so the Commission approval expired.

The owner is requesting to vacate the ROW in order to get ownership of the property where the buildings are located. The Lewis &

Clark County Fairgrounds is also adjacent to Alexander Avenue and has no objection to the vacation.

The Department of Revenue values the adjacent property at \$11.56 per square foot. However there are some discrepancies with the value of other properties in the area. The property values range from \$14.78 to \$1.37 with an average of \$4.57 per square foot. If the entire ROW is vacated the City fee would range from \$52,690.48 (\$11.56/ft<sup>2</sup>) to \$6,244.66 (\$1.37/ft<sup>2</sup>) with the average at \$20,830.06. The total square footage of the requested vacation is 4,558 ft<sup>2</sup>.

Mr. Leland recommended approval of the vacation as it will allow the owners of the existing building to own the property.

Discussion

Commissioner Cartwright asked if there would've been a fee for the vacation if it were vacated in Lewis & Clark County. Mr. Leland stated no. Commissioner Cartwright asked if the applicant has been paying taxes on the property. Mr. Leland stated he was unsure.

Public Testimony

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

Dennis Clancy, applicant; thanked the Commission for considering the vacation. He noted the taxes paid on the property do not include the 30-feet proposed to be vacated.

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

Motion

**Commissioner Ellison moved approval of a resolution vacating the portion of Alexander Avenue adjacent to Lot 1 in Block 7 and the portion of the alley between Lot 1 and Lot 48 in Block 7 of the Woodlawn Park Addition.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19792**

Discussion

Commissioner Cartwright stated historically the city does not waive the vacation fee unless the applicant has been paying taxes on the property; however, this applicant would not have had to pay a fee if the vacation would've been completed through the county.

Mayor Smith and Commissioners Ellison and Elsaesser stated they would support waiving the fee. City Manager Alles recommended waiving the fee. Commissioner Cartwright stated the circumstances surrounding the proposed vacation warrant waiver of the fee.

Motion

**Commissioner Elsaesser moved to waive the fee associated with the vacation.** Commissioner Ellison seconded the motion. All voted aye, motion carried.

- C. CONSIDER A RESOLUTION OF INTENTION TO CREATE A LANDFILL MONITORING AND MAINTENANCE DISTRICT AND SET A 2ND PUBLIC HEARING FOR DECEMBER 20, 2010.

Staff Report

Assistant Public Works Director Phil Hauck reported a city-wide special landfill monitoring and maintenance district is needed to control, attend to, maintain, monitor, protect, and care for the former city landfill that was closed officially on January 27, 2000, and is located under or adjacent to what is now known as Centennial Park.

MCA 7-11-1007(1) requires the city to hold a public hearing prior to the passage of a resolution of intent to create a new special district.

The initial annual assessments will be:

- A. For each residential lot, parcel, or condominium unit, and vacant lot:  
\$6.00 per lot, parcel, or unit.
- B. For each commercial lot or parcel:
  - 1. \$15.00 per lot or parcel having an impervious area of less than 10,000 square feet;
  - 2. \$35.00 per lot or parcel having an impervious area of 10,000 square feet or more, but less than 50,000 square feet;
  - 3. \$60.00 per lot or parcel having an impervious area of 50,000 square feet or more, but less than 100,000 square feet;
  - 4. \$90.00 per lot or parcel having an impervious area of 100,000 square feet or more, but less than 250,000 square feet; and
  - 5. \$125.00 per lot or parcel having an impervious area of 250,000 square feet or more.

Creation of the proposed district would create a sustainable program which will address the current situation, and assessments would be paid by all benefitted city residents and businesses.

#### Discussion

Commissioner Cartwright emphasized this monitoring process currently exists and is currently being paid for by the commercial and residential solid waste operation. The proposed resolution will charge city residents that are not city solid waste customers. He spoke in support of all beneficiaries of the waste dump paying for the monitoring process. Assistant Director Hauck concurred with Commissioner Cartwright's comments.

Commissioner Elsaesser referred to the current contract for monitoring the landfill and asked for its term. Assistant Director Hauck explained the city goes out for Request for Proposals (RFP) for the monitoring contract every five years.

Mayor Smith asked if it's possible the city may reduce its solid waste assessment if the creation of this district is successful. Assistant Director Hauck concurred.

#### Public Testimony

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

Commissioner Elsaesser referenced an email from Deanne Moore in opposition to the district. This email is included in the Commission packet as part of the official record.

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

#### Motion

**Commissioner Elsaesser moved approval of a resolution of intention to create a Special District for Landfill Monitoring and Maintenance and set a public hearing date for December 20, 2010.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19793**

- D. CONSIDER A RESOLUTION OF INTENTION TO CREATE AN URBAN FOREST MANAGEMENT DISTRICT AND SET A 2ND PUBLIC HEARING FOR DECEMBER 20, 2010.

Staff Report

Parks & Recreation Department Director Amy Teegarden reported in the mid-1990s the City of Helena created a Tree Maintenance District with a \$10 per lot or parcel annual assessment rate. That district has provided valuable funding for tree maintenance in the City, but is not flexible enough to accommodate the need for an expanded urban forestry program, and has no provision for inflation. MCA 7-11-1007(1) requires the City to hold a public hearing prior to the passage of a resolution of intent to create a new special district.

The initial annual assessment of \$20 per lot or parcel, starting with the 2011 tax bill, will replace the annual assessment of \$10 for the existing Tree Maintenance District. The proposed Resolution of Intent to Create an Urban Forest Management District would replace the existing Tree Maintenance District.

The purpose is to create a sustainable program including expanding the staffing organization to include:

- professional leadership from an urban forester;
- additional tree maintenance staff -- trained and certified in the latest industry standards;
- increased operational and capital funding for tree maintenance and planting efforts; and
- community outreach and education.

Director Teegarden recommended approval of the resolution of intention to facilitate the city's ongoing commitment to maintain, enhance, and preserve Helena's tree canopy, as outlined in the Urban Forest Management Plan.

Discussion

Commissioner Thweatt referred to the recommendation for an urban forester versus an arborist. Director Teegarden explained the State of Montana's Forestry Office recommended an urban forester as the position could provide more program direction and would also be a certified arborist. Staff anticipates Helena's program would be similar to what other large Montana cities have. Further discussion was held on the cost of staffing the program and the benefit of working with the State's Forestry Office.

Commissioner Elsaesser asked for the total cost of the tree inventory. Director Teegarden explained the grant from the Department of Natural Resources and Conservation (DNRC) was \$10,000 and the city's contribution was \$15,000. It included tree-tracking software, hardware and personnel costs/staff time. Commissioner Elsaesser asked for the city's liability related to trees in the ROW. City Attorney Nielsen explained the liability and exposure to the city would depend on factors such as the city's knowledge of danger and failure to remediate. Commissioner Elsaesser asked what trees the program would focus on. Director Teegarden stated city trees on ROW and boulevards, park trees and trees on city property. Triage would begin on trees located in high-risk areas.

Commissioner Cartwright spoke in support of dissolving the current Tree Maintenance District at the end of the current fiscal year if the proposed Urban Forest Management District is successful.

Public Testimony

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

James Driggers, 1520 Peosta; spoke in support of the district.

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

Discussion

Commissioner Ellison expressed concerns related to the district but indicated he would vote for the resolution of intention in order to begin the process for the public to support or protest its creation.

Commissioner Elsaesser stated he has equity issues with the proposal as the entire community will not be served equally by the district.

Commissioner Cartwright spoke to the issue of equity and commented there is a real community benefit to implementing this district. He indicated he would support its creation.

Motion

**Commissioner Ellison moved approval for a resolution of intention to create an Urban Forest Management District and set a public hearing date for December 20, 2010.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19794**

**Public Communications**

PUBLIC COMMUNICATIONS

No public communications were given.

**Meetings of Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is December 1, 2010 and the next Commission Meeting is December 6, 2010. Growth Policy Work Sessions will be held on November 17 and 22, 2010. The next Joint Work Session is December 2, 2010.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 7:23 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission