

**CITY OF HELENA  
REGULAR CITY COMMISSION MEETING  
May 21, 2012  
6:00 P.M.**

- Time & Place*** A regular City Commission meeting was held on Monday, May 21, 2012 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 Elsaesser, Ellison, Thweatt and Haque-Hausrath were present. City Manager Ron Alles, City Attorney Jeff Hindoien and Deputy City Clerk Robyn Brown were present.
- 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 7, 2012 were approved as submitted.
- Proclamations*** PROCLAMATIONS:  
A. Better Hearing Month  
  
Mayor Smith read the proclamation designating May 2012 as Better Hearing Month. Dr. Hillary Carter accepted the proclamation and spoke on the issue of hearing loss.  
  
B. Buddy Poppy Month  
  
Mayor Smith read the proclamation designating May 25-31, 2012 as Buddy Poppy Week in the City of Helena. Veterans of Foreign Wars Post No. 1116 Commander Tom Pouliot and Ladies Auxiliary President Shirley Pouliot accepted the proclamation and spoke of the history and importance of buddy poppies.
- Board Appointments*** BOARD APPOINTMENTS:  
A. Tourism Business Improvement District (TBID)  
  
Mayor Smith asked for concurrence on the following board appointment:  
  
TBID – Appointment of Crystal Thorpe to the TBID; term will begin upon appointment and expire April 20, 2016.
- Public comment Mayor Smith asked for public comment, none was received.
- Discussion Commissioner Elsaesser commended the TBID's annual plan.
- Motion** Commissioner Ellison moved approval of the appointment to the TBID as outlined above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Consent Agenda**

CONSENT AGENDA:

- A. Claims
- B. Acceptance of the April 2012 pledged collateral report
- C. A resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property **Res #19912**

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

Public comment

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Elsaesser moved approval of items A through C on the consent agenda.** Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith commended city staff for participating in Spirit of Service day. He listed the staff that volunteered and thanked them for their hard work.

Commissioner Thweatt referred to a draft letter regarding concern over several proposed coal ports in Washington and Oregon and increased coal traffic through Montana, including Helena. He noted the Corp is required to consider indirect effects due to the coal ports and explained the intent of letter. He clarified a programmatic Environmental Impact Study (PEIS) is not required by the Army Corp of Engineers.

City Attorney Hindoien concurred a PEIS is not required and explained the various ways the Corp may address the city's concerns.

Public comment

Mayor Smith asked for public comment.

Dan Sloat, East Helena; asked if the City had involved the County Commission in the letter.

Mr. Hernandez, Sleeping Giant Citizens Council; spoke in support of the letter.

**Motion**

~~**Commissioner Thweatt moved approval for the City Commission to send a letter to the Army Corp of Engineers regarding various coal ports being proposed in Oregon and Washington requesting the effects to Helena, Montana be considered.**~~ Commissioner Haque-Hausrath seconded the motion. The motion was withdrawn.

**Motion**

**Commissioner Thweatt moved approval to place consideration of a letter to the Army Corp of Engineers regarding various coal ports being proposed in Oregon and Washington on the June 4, 2012 City Commission Meeting agenda.** Commissioner Haque-Hausrath seconded the motion.

Commissioner Haque-Hausrath asked audience members in support of the proposed letter to stand up.

Mayor Smith stated it is not known whether the Lewis & Clark County Commissioners had been approached to write a similar letter.

**Vote**

Motion carried 4-1, with Commissioner Ellison voting no.

Commissioner Ellison referred to an award received by the Lewis & Clark County/City of Helena GIS Department and commended staff for their work.

He spoke of a NMTAC seminar held today and reported Helena ranks #1 in those who commute by biking, and #3 for those who commute by walking.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney Jeff Hindoiien spoke of his first week of employment as City Attorney and thanked staff for being very helpful and welcoming as he begins his service with the City of Helena.

**Report of the City Manager**

REPORT OF THE CITY MANAGER

City Manager Alles reported the city's deer program has contributed 3400 pounds of meat to Helena Food Share.

He noted the City Commission had recently authorized the purchase of solar powered speed signs. Those signs will be located at Bryant School, Jefferson School, Benton Avenue by the Civic Center and Country Club Avenue.

Manager Alles announced MBAC Executive Director Terry Myhre is retiring and thanked him for his work at MBAC and in the Helena community.

Mr. Myhre spoke of his adoration for the Helena community and thanked the Commission for the recognition. Mayor Smith and Commissioners Ellison and Elsaesser thanked Mr. Myhre for his work.

**Report from the Helena Citizens Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

No report was given.

**Regular Items**

REGULAR ITEMS:

A. CONSIDER A RESOLUTION ANNEXING INTO THE CITY OF HELENA LOTS 7 & 8 IN BLOCK 189 OF THE BRADFORD ADDITION, AND THE ADJACENT ALLEY RIGHT-OF-WAY.

**Staff Report**

City Planner Dustin Ramoie reported the applicant wishes to annex this property to attain water, wastewater, and other city services and to utilize the property with an R-2 (Residential) zoning designation for the existing dwelling on the property. At the April 23, 2012 City Commission Meeting, a resolution of intention to annex with conditions was passed unanimously (4-0).

Conditions of annexation have been met by the applicant who has signed a development agreement. The subject property was pre-zoned to the R-2 (Residential) District by the Helena City Commission on August 18, 2003.

Mr. Ramoie recommended approval of annexation of the property as it would allow the applicant to utilize the existing dwelling as a residential use and will provide the property with all city services which in turn eliminates the need for an individual well and septic.

**Public comment**

Mayor Smith called for public comment; none was received.

**Motion**

**Commissioner Ellison moved approval of a resolution annexing into the City of Helena Lots 7 and 8 in Block 189 of the Bradford Addition, Lewis & Clark County, Montana; and the**

**adjacent alley between LeGrande Cannon Boulevard and University Street rights-of-way.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19913**

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER A RESOLUTION VACATING THE FULL WIDTH OF AN ALLEY BETWEEN LOTS 1-36 IN BLOCK 1 OF THE COURT HOUSE ADDITION TO THE CITY OF HELENA.

**Staff Report**

City Engineer Ryan Leland reported David Jackson, owner of the property adjacent to an unimproved alley right-of-way, submitted an application to vacate the full width of the alley between Lots 1-36 in Block 1 of the Court House Addition. The alley and adjacent lots are currently undeveloped. The property is served by Rhode Island Street which was constructed to City Standards with the Crestview Subdivision to the south. The property immediately to the north, east and west of the site are City properties and unimproved public rights-of-way managed as open space.

The site is part of the original plat for the Helena townsite. The original plat did not consider topographic constraints in the layout of street and alleyway rights-of-way which sometimes creates difficulties for both the new development and access to adjacent properties. Staff and the developers generally work together to assure that public rights-of-way make sense relative to access and topographic constraints. This can include lot line relocations, trading, and vacations.

The applicant is requesting vacation of the full width of the alley to develop the lots ultimately with five single family residences. All utility service providers have been contacted and there were no objections. However, City staff suggested trading the square footage of the alley for an additional 30-feet of Hoback right-of-way (ROW) on the east side of the property. This might be appropriate if a street were ever to be constructed to access City properties to the north. The applicant prefers to engage in a simple vacation rather than a trade. The square footage of the alley to be vacated is 7,288 with the square foot value averaging \$1.42 from the State of Montana Department of Revenue. Therefore, the total fee for vacation would be \$10,348.96.

Mr. Leland noted this vacation will facilitate residential in-fill development which will add to the taxable value of existing annexed lots. The new development will include connection to City water and wastewater systems for appropriate and sustainable health, and environmental safeguards.

**Discussion**

Commissioner Haque-Hausrath asked if the city has any interest in the subject ROW. Mr. Leland stated all departments were asked and he received no objections to the ROW vacation.

**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 Thweatt moved approval of a resolution to vacate the full width of the alley between Lots 1-36 in Block 1 of the**

**Court House Addition to the City of Helena.** Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #19915**

B. CONSIDER A RESOLUTION VACATING NICOLE COURT BETWEEN LOT 6 IN BLOCK 2 AND LOT 1 IN BLOCK 4 OF THE INTERCITY COMMERCIAL SUBDIVISION.

Staff Report

Mr. Leland reported Michael Ruppert, CEO of Boyd Andrew Community Services, has submitted an application to vacate Nicole Court between Lot 6 in Block 2 and Lot 1 in Block 4 of the Intercity Commercial Subdivision. Nicole Court is platted but undeveloped with an existing 8" sewer main located within the right-of-way (ROW). The street was platted in case access across the railroad tracks was needed for conductivity to a possible future subdivision and allows access to maintain the sewer main.

City staff has requested comment from the public and private utilities, as well as other City Departments, and received one objection to the vacation. The objection was from Northwestern Energy because of a two-inch gas main located within the ROW. The applicant has reached an agreement with Northwestern to relocate the gas main and Northwestern has no further objection. In addition to relocating the gas main, a 20-foot utility easement will be provided to the City to allow maintenance of the existing 8" sewer main within Nicole Court. If the applicant develops the site with a new building the sewer main will be relocated at that time. The applicant is requesting the subject property be vacated and deeded to the applicant. The square footage of Nicole Court to be vacated is 12,545. The adjacent land values averaged from \$2.75 to \$3.02 per square foot with a calculated fee of \$36,255.05. He noted the applicant has indicated he would be requesting the fee be waived since this is a non-profit organization.

Mr. Leland noted the proposed street vacation will combine lots for future building for Boyd Andrew Community Services and recommended approval of the resolution.

Discussion

Commissioner Ellison disclosed he serves on the Pre-Release Screening Committee for Boyd Andrew Services.

Public Testimony

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

Mike Rupert, CEO of Boyd Andrew Services and Boyd Andrew Management Services; explained why the vacation is being proposed and requested the Commission waive the fee for the vacation.

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

Motion

**Commissioner Elsaesser moved approval of a resolution to vacate Nicole Court between Lots 6 in Block 2 and Lot 1 in Block 4 of the Intercity Commercial Subdivision.** Commissioner Haque-Hausrath seconded the motion.

Discussion

Commissioner Ellison asked for the precedent in waiving the fee for non-profits. City Manager Alles stated fees have been waived in the past for non-profit or quasi-governmental entities.

Vote

All voted aye, motion carried. **Res #19915**

**Motion** **Commissioner Ellison moved approval to waive the calculated fee of \$36,255.05 associated with the vacation of Nicole Court between Lots 6 in Block 2 and Lot 1 in Block 4 of the Intercity Commercial Subdivision.** Commissioner Elsaesser seconded the motion.

**Discussion** Commissioner Thweatt asked what services Boyd Andrew provides. Mr. Rupert explained the services performed and the budget of the programs. Commissioner Haque-Hausrath expressed concern for deciding whether or not to waive fees for vacations of land on an ad hoc basis and stated there should be a policy for waiving fees for non-profits. Mayor Smith and Commissioner Thweatt concurred with Commissioner Haque-Hausrath's comments. Commissioner Elsaesser indicated he would support the motion to waive the fees. Commissioner Ellison stated he believes waiving the fee is justified for this proposal and concurred a policy is needed.

**Motion** **Commissioner Ellison moved to table waiving the calculated fee of \$36,255.05 associated with the vacation of Nicole Court between Lots 6 in Block 2 and Lot 1 in Block 4 of the Intercity Commercial Subdivision to the call of the City Manager.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

- C. CONSIDER A MAJOR SUBDIVISION FOR RENT OR LEASE TO ALLOW 33 DWELLING UNITS IN 11 BUILDINGS ON A SINGLE LOT LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT REFERRED TO AS RIVER ROCK RESIDENCE SUBDIVISION.

**Staff Report** City Planner Kathy Macefield reported on Tuesday, April 17, 2011 the Lewis and Clark/City of Helena Consolidated Planning Board unanimously recommended approval (5:0) for a major subdivision for lease or rent for multiple buildings on a single lot located in the B-2 (General Commercial) District. Locating multiple dwelling units on the same lot is a permitted use in the B-2 District.

This proposal includes locating multiple buildings on a single lot for lease or rent so subdivision review is required as determined by a recent Montana Supreme Court decision and a recent Attorney General's opinion. Since more than 5 buildings are proposed, this subdivision is being reviewed as a major subdivision requiring public hearings before the Planning Board and City Commission. Subdivision review would not have been required if all of the dwelling units were located in a single building instead of in multiple buildings or on multiple lots.

Ms. Macefield recommended approval of the preliminary site plan as the proposed subdivision is planned to address a housing need for older persons with low and moderate incomes if this subdivision is approved as proposed. The subject property is located in the vicinity of commercial uses located to the east which could encourage non-motorized traffic and reduce the amount of vehicle miles travelled (vmt).

**Discussion** Commissioner Haque-Hausrath noted Planning Board member Johnson had expressed concern for pedestrian safety. Ms. Macefield explained when a lot is developed the sidewalks are required at the time

of the building permit. Over time, as this area is developed, sidewalks will be installed and connectivity will occur.

Commissioner Thweatt asked if the owner is bound to the site plan they submit when they request final plat approval or if it can be changed. Ms. Macefield stated staff's review is done based on what has been submitted so there is an understanding that the property will be developed based on the site plan. There is no condition requiring they develop as shown on the site plan.

Public Testimony

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

Jeff Larson, Larson Civil Engineering, representing RMDC; urged the Commission to approve the subdivision and noted they are in compliance with all of the conditions for approval.

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

Motion

**Commissioner Ellison moved conditional approval of the preliminary site plan for a major subdivision for lease or rent for multiple buildings on a single lot located in the B-2 (General Commercial) District subject to the conditions contained in the Findings of Fact and for property described therein.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

- D. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN ASSISTED LIVING FACILITY WITH UP TO 72 UNITS TO BE LOCATED IN AN R-3 (RESIDENTIAL) DISTRICT.

Staff Report

Zoning Officer Elroy Golemon reported the applicant is proposing to construct a 56,380 square foot single story assisted living facility with 72 units at full build-out in an R-3 (Residential) District. Thirty nine (39) of the proposed units are to be constructed during the first phase of development. The remaining thirty three (33) units will be constructed during subsequent phases. A Conditional Use Permit (CUP) is required to establish an assisted living facility housing 13 or more residents in an R-3 District.

The assisted living facility will be licensed by Montana Department of Public Health and Human Services. The facility will provide 24-hour care 7 days a week and will be continually staffed by 15 to 17 full time employees and 8 to 10 part time employees at full staff level.

On Tuesday, April 10, 2012, the Helena Zoning Commission unanimously recommended approval (5:0 vote) of a resolution granting a Conditional Use Permit (CUP) to allow an assisted living facility with up to 72 units to be located in an R-3 (Residential) District; subject to the following conditions: No direct vehicular access allowed from Lot 1-A-1 onto Green Meadow Drive and a building permit must be obtained within one year from the date of approval of the CUP.

Mr. Golemon recommended approval of the proposal as the proposed conditional 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 the development of a vacant lot located in an R-3 District.

Discussion

Commissioner Haque-Hausrath asked if the city's zoning ordinance would accommodate a possible alternate development of 184 dwelling units as noted in the staff report. Mr. Golemon stated yes.

Commissioner Thweatt asked if there is pedestrian connectivity surrounding the property. Mr. Golemon stated sidewalks would be installed with the building permit and explained the connectivity per lot surrounding the property.

Public Testimony

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

Byron Stahly, Stahly Engineering, representing the applicant; spoke in support of the proposal.

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

Motion

**Commissioner Elsaesser moved approval of a resolution granting a Conditional Use Permit (CUP) to allow an assisted living facility with up to 72 units to be located in an R-3 (Residential) District; subject to the following conditions: No direct vehicular access allowed from Lot 1-A-1 onto Green Meadow Drive and a building permit must be obtained within one year from the date of approval of the CUP for property legally described in the resolution.**

Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #19916**

***Public Communications***

PUBLIC COMMUNICATIONS

No public communications were given.

***Meetings of Interest***

MEETINGS OF INTEREST

The next Budget Work Session is Wednesday, May 23, 2012, Administrative Meeting is Wednesday, May 30, 2012 and the next Commission Meeting is Monday, June 4, 2012.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 8:01 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission