

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
September 12, 2011
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, September 12, 2011 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 Lora Behlmer 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 August 22, 2011 were approved as submitted.

Appointments

APPOINTMENTS:

- A. Board of Adjustment, City/County Historic Preservation Commission, City/County Parks Board, City/County Planning Board, Zoning Commission, Helena International Affairs Council and Public Art Committee

Mayor Smith asked for Commission concurrence on the following appointments:

Board of Adjustment – Reappointment of Matt Dalton to a 2nd term and Bridget Holland to a first full term on the Board of Adjustment. Terms will begin upon appointment and expire October 1, 2014.

Historic Preservation Commission – Appointment of Roger Pederson as a professional representative to the City/County Historic Preservation Commission. This appointment is subject to County Commission concurrence. The unexpired term will begin upon appointment and expire June 30, 2013.

Parks Board – Reappointment of MC Beeby to a 2nd term on the City-County Parks Board. The term will begin upon appointment and expire September 30, 2014.

Planning Board – Appointment of Devin Cowan and Margaret D. Strachan to the City-County Planning Board. The unexpired term for Devin Cowan will begin upon appointment and expire September 1, 2013. The first term for Margaret Strachan will begin upon appointment and expire September 1, 2014.

Zoning Commission - Reappointment of Dan Casey to a 2nd term and Timothy Meldrum to a first full term on the Zoning Commission. Terms will begin upon appointment and expire September 30, 2014.

Note: the appointments below are joint recommendations from Helena Citizens Council Chair Jim McCormick and Mayor Smith.

Helena International Affairs Council (HIAC) – Appointment of Torry van Slyke to HIAC. First term will begin upon appointment and expire October 28, 2014.

Public Art Committee – Appointment of Ellen Bell to an expired term on the PAC as an Art Organization representative. Unexpired term will begin upon appointment and expire December 31, 2013.

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

Motion Commissioner Ellison moved approval of the appointments to the Board of Adjustment, City/County Historic Preservation Commission, City/County Parks Board, City/County Planning Board, Zoning Commission, Helena International Affairs Council and Public Art Committee as outlined above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Utility bill Insert request - Prickly Pear Land Trust
- C. A resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property (Trolley #3) **Res #19878**

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

Commissioner Cartwright asked item C be removed for discussion.

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

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

Item C Commissioner Cartwright spoke in support of the transfer of the trolley to Lewis & Clark County but recommended the City be allotted right of first refusal should the County ever desire to sell it. City Attorney Nielsen stated the Bill of Sale could be written to reflect the City of Helena has right of first refusal. Commissioners Ellison, Elsaesser and Thweatt concurred that the clause be contained in the Bill of Sale.

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

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

Bid Award

BID AWARD

- A. 2011 Water and Sewer Main Replacement, City Project #11-2

City Engineer Ryan Leland reported the 2011 Water and Sewer Main Replacement is a project to replace water and sewer main in 13th Street, sewer main in Beattie Street, water main in Coventry Court, water main in 7th Street and water main in Davis Street. The water mains are being replaced because they are undersized and leaking due to the corrosive soils. The sewer mains are being replaced because the mains are undersized and City staff is unable to maintain them. The City opened four bids for this project on August 9, 2011. Montana Underground Construction of Helena was the lowest responsible bidder with a bid of \$489,674.12.

Mr. Leland recommended awarding the 2011 Water and Sewer Main Replacement Project to the lowest responsible bidder, Montana Underground Construction.

Public Comment

Mayor Smith asked for public comment, none was received.

Discussion

Commissioner Ellison discussed the mention of the Sanders Street extension on the bid tabulation sheet included in the Commission packet. City Engineer Leland explained cost savings from water and sewer installation on the Sanders Street extension project were used to fund some of this project. Mayor Smith commented savings from the Sanders Street project were substantial.

Commissioner Cartwright referred to Coventry Court and asked when the main was constructed. Mr. Leland explained the development was constructed in 1985 via a Special Improvement District (SID) using ductile iron. The area has corrosive soil and lenses of ash and the infrastructure was installed before poly pipe was used; the current line is now starting to corrode. Commissioner Cartwright asked if more pipes in the area may break. Mr. Leland explained the city has already replaced several lines in the area and the proposed project will replace a substantial amount but there is still sporadic ductile iron piping in the area. Commissioner Cartwright stated he hopes the material the city is using to replace the mains will last more than 25 years.

Discussion was held on the city's leak detection program.

Motion

Commissioner Ellison moved to award the 2011 Water and Sewer Main Replacement, City Project #11-2, to the lowest, responsible bidder, Montana Underground Construction, in the amount of \$489,674.12. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Elsaesser announced Trash for Trees would be held October 1, 2011 and the next electronic waste recycling event will be held at Kmart on September 24, 2011.

Commissioner Cartwright spoke of citizens not watering and maintaining trees planted by Growing Friends on Walnut and at the republican headquarters in the Skelton Addition; some people are not willing to pay in the present to preserve the future.

He referred to the Caird Project and stated the apartments will cost \$220,000 a piece, which is considerably more than what single family homes are currently going for. If this is the real cost, the city will not be able to provide affordable housing for the elderly. Where does the funding come from? Commissioner Cartwright expressed suspicion that it comes from the set up of the program, both administrative

requirements and that it's funded mainly as a tax break to rich people to take care of poor people. He noted he is curious to see how that portions out and who it benefits more. The question to the Commission is how does it deal with the institutional arrangements, trees and rental properties, and housing and tax credits and still preserve trees and housing for the elderly and not spend so much money on people who don't seem so interested in the future. He reiterated the Commission needs to somehow deal more with the future than it is now.

Commissioner Ellison congratulated the Helena Brewers on completing their season. In visiting with Brewers Manager Paul Fetz, attendance was up 10-15% from last year.

Mayor Smith thanked Fire Chief Steve Larson and Police Chief Troy McGee for organizing an event memorializing the 10-year anniversary of September 11, 2001.

***Report of the City
Attorney***

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen reported he had completed a working draft of the distracted driving ordinance. City Manager Alles asked the Commission to provide him with any proposed amendments to the ordinance by the September 21st Administrative Meeting.

Attorney Nielsen gave the history of the City of Helena's water rights and updated the Commission on the very lengthy process of adjudication of the rights.

Commissioner Cartwright asked if a decision on the water rights would have any impact on current agreements for in-stream flow for Tenmile Creek. Attorney Nielsen stated it could.

Commissioners Elsaesser and Thweatt thanked Attorney Nielsen for his work on the distracted driving ordinance and the city's water rights case.

Mayor Smith asked if these rights were being considered on a basin-by-basin case? Attorney Nielsen stated yes and commented he doesn't anticipate it will be settled for a long time. He noted the final objector does have some junior water rights to Tenmile Creek. Mayor Smith asked the Commission be kept informed on the case on a regular basis.

Commissioner Cartwright asked for the name of the objector. Attorney Nielsen reported Mr. Andy Skinner.

***Report of the City
Manager***

REPORT OF THE CITY MANAGER

City Manager Alles spoke of recent layoffs in the Building Division; he assured the Commission and citizens of Helena that the division will continue to do its job and there will be no threat to the health and safety of buildings or building inspections.

Commissioner Cartwright asked for the city's policy related to the layoffs. Manager Alles stated per the personnel policy, the city provides employees 30 days notice. One employee was offered 30 days paid; the other will be afforded a job in another department. The third position was an "on call" position. Medical benefits were paid for through the end of the year.

***Report from the
Helena Citizens
Council***

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Lora Behlmer gave the final results of the HCC's cell phone survey. A written report will be provided to the Commission in the near future.

Ms. Behlmer asked City Planner Kathy Macefield to report on the Open Studios Tour held by the Public Art Committee. Ms. Macefield gave an overview of the event.

The next HCC meeting will be held on September 28, 2011 at 7:00 p.m. in City/County Building Room 326.

Regular Items

REGULAR ITEMS:

- A. CONSIDER A CURB CUT VARIANCE FOR 2294 DEERFIELD LANE

Staff Report

City Engineer Ryan Leland reported the property at 2294 Deerfield Lane is currently undeveloped. The current owners, Rocky Mountain Church of Christ, have submitted building plans and have obtained a building permit for a new church. They would like to install three curb cuts. City Code only allows for two curb cuts unless frontage exceeds 600 feet; the subject property frontage is 592 feet.

Mr. Leland noted staff does not have a recommendation on this proposal.

Discussion

Commissioner Cartwright asked if the eastern most entrance would compromise the adjacent property owner from having their allotted curb cuts. Mr. Leland stated no.

Public Comment

Mayor Smith asked for public comment.

Jim Ward, applicant; urged the Commission to support the proposed variance.

Motion

Commissioner Elsaesser moved approval of a variance to install a third curb cut on the property at 2294 Deerfield Lane.

Commissioner Cartwright seconded the motion. Motion carried 4-1, with Commissioner Thweatt voting no.

- B. CONSIDER A FINAL PLAT FOR A MINOR SUBDIVISION CREATING 5 LOTS FROM 1.7 ACRES IN OVERLOOK ESTATES LOCATED IN THE R-3 (RESIDENTIAL) DISTRICT.

City Planner Kathy Macefield reported on June 13, 2011 the City Commission conditionally approved the preliminary plat creating 5 lots ranging in size from 9,225 square feet (Lot 1E) to 27,127 square feet (Lot 1A), amending the recorded plat for Overlook Estates. Said approval was subject to the Findings of Fact and the conditions contained therein; these conditions have been completed.

Ms. Macefield recommended approval of the final plat as the proposed subdivision is located in Overlook Estates subdivision that was approved in 2006. As a result, this proposal could be considered infill development, and is consistent with the R-3 zoning requirements and the Growth Policy. Water, wastewater and paved streets are already in place to serve the area. Allowing the final subdivision plat would be consistent with efficient use of land, infrastructure, energy and resources. She noted infill development could encourage non-motorized traffic and reduce the amount of vehicle miles traveled (vmt).

- Public Comment Mayor Smith asked for public comment, none was received.
- Motion** Commissioner Ellison moved approval of the final plat for a minor subdivision creating five (5) lots from Lot 1, Block 1, Overlook Estates Subdivision. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.
- Public Hearings** PUBLIC HEARINGS:
A. CONSIDER THE PURCHASE AND INSTALLATION OF A SECURITY CAMERA SYSTEM AT MEMORIAL PARK AND DOWNTOWN PARKING GARAGES.
- Staff Report Parks & Recreation Director Amy Teegarden reported Helena is experiencing an increase of crime and vandalism in the City's parks and parking garages. A report generated by the City's risks and benefits manager, indicates that since 2003, approximately \$23,000 in claims were reported caused by theft or vandalism. This does not include various acts of vandalism that goes "unreported". Due to the level of vandalism and crime activity occurring, staff from the Parks & Recreation Department and the Parking Commission wish to "partner" by purchasing a FlashCAM security camera system. The use of security camera would be limited to specific locations or sites that have a demonstrated pattern of crime, especially in areas that are susceptible to graffiti/tagging and other acts of vandalism. The intent is that the security system would be a useful tool in prosecuting vandals and help deter future vandalism and tagging in high-prone areas.
- Staff is recommending the Parks Department and the Parking Commission "cost-share" the purchase and installation of one security camera system as a pilot project. The pilot camera would be used at the band shell in Memorial Park and in the parking garage where there have been multiple crimes. The Police Department would be responsible for the logistical operation of the system. They would provide feedback as to the ease of operation and effectiveness as a crime prevention and/or evidence gathering tool. Based on the results of the pilot project the decision to continue or increase use of security cameras would be made.
- The FlashCAM product is a motion activated digital camera system that downloads high-resolution photos to a laptop. The system can be programmed for specific audio messages and activation timings. The system is portable and can be used in multiple locations. Assistant Police Chief Dave Jeseritz researched the product and spoke to other community police departments that have successfully used the product and was encouraged by what he learned. The cost of the security camera system ranges between \$6,000 and \$7,500 depending upon features and discounts. The total cost would be shared 50/50 between the two departments. Costs associated with operations would be the responsibility of the Police Department.
- Director Teegarden recommended approval of the camera purchase and installation as they would be a useful tool in prosecuting vandals and help deter future vandalism and tagging in high-prone areas. The use of a security camera system is a proactive effort to help reduce direct and indirect costs associated with vandalism. Director Teegarden noted the system would be solar powered.

Discussion

Commissioner Thweatt asked how long the data on the cameras would be kept. Director Teegarden stated she was unsure, the cameras can only hold so much data so it would have to be downloaded weekly or bi-weekly. Commissioner Thweatt asked if there was nothing that happened at a location over that period of time, would there be a purpose to keeping the images? Director Teegarden stated no, they would be of no use and she would recommend the data be destroyed.

Commissioner Elsaesser asked what kind of audible signal the camera would project. Director Teegarden explained a recorded message can be programmed into the camera letting people know they are being recorded. Also, staff could set the camera to only record at certain times.

Commissioner Ellison asked how many times the new mural at Memorial Park has been vandalized. Director Teegarden explained there has been some graffiti applied by paint and marker; an anti-graffiti coating was applied to the mural which has helped. Costs related to the vandalism have been staff time.

Commissioner Cartwright asked for the range of the camera. Director Teegarden stated the camera's resolution is very high but she did not have the specific dimensions. Commissioner Cartwright asked for the range of a paintball gun. Director Teegarden responded she did not know.

Public Testimony

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

Nicky Zupanic, ACLU of Montana; expressed concern for citizen privacy related to the proposal and asked that the following protocols be put in place related to the use of the cameras: pictures be retained for no longer than 7 days; only the police department would have access to the photos; cameras only be positioned to record public areas; signage be posted notifying people they are being recorded; if the program is expanded, the city provide a list to citizens of where the cameras are located; and, at the end of the pilot program city staff provide a report on the effectiveness of the program. Ms. Zupanic noted some people feel it is creepy that photos could be taken of citizens in public places.

Jim McHugh, Director of Helena Parking Commission; urged the Commission to approve the pilot program and discussed the cost of vandalism to downtown facilities.

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

Discussion

Commissioner Elsaesser asked if the footage from the camera would be discoverable and if there is a duty to inform the public they are being recorded. City Attorney Nielsen stated he does believe in the case of litigation the footage would be discoverable. Commissioner Elsaesser asked for the proposed length of the trial program. Director Teegarden stated one year.

Commissioner Cartwright thanked staff for addressing concerns raised by various Commissioners. He noted most private facilities film you now; the concern is a public entity doing it. He sympathizes with the problems going on the parks and parking garages but still wonders from a policing standpoint, what happens when you install these cameras. He referred to England and questioned the long-term efficacy of it. Practically, his major concern is the city's policy on the program and

recommended the city have a concrete policy for the proposal before it is approved.

Commissioner Thweatt recommended the city adopt a policy limiting the duration of time for which the data is kept; and limit access to the data to Helena law enforcement for the specific purpose of correcting crimes that have occurred at the sites. He asked for Commission concurrence with these recommendations and to have policy be directed accordingly.

Motion

Commissioner Elsaesser moved to table the proposal for the City Parks & Recreation Department and the Parking Commission to partner on the purchase and use of a security camera system to be located in specific park and parking garage sites that have a demonstrated pattern of vandalism to the call of the City Manager. Commissioner Cartwright seconded the motion.

Discussion

Commissioner Cartwright stated he is in favor of tabling the proposal but he would like it dealt with quickly.

Commissioner Ellison indicated he would not support the tabling motion as the Commission needs to move forward with the proposal.

Mayor Smith noted this issue is troubling. He commented the Commission discussed the proposal during budget discussions and set it aside pending a policy discussion; that discussion has not happened. He does not believe it violates the City's Patriot Act Resolution. Mayor Smith noted he would prefer to move forward with the pilot program and indicated he would not support the tabling motion.

Vote

Motion failed 2-3 with Mayor Smith and Commissioners Thweatt and Ellison voting no.

Amendment

Commissioner Ellison moved to approve the proposal for the City Parks & Recreation Department and the Parking Commission to partner on the purchase and use of a security camera system to be located in specific park and parking garage sites that have a demonstrated pattern of vandalism with the following limitations: 1. The pilot project to last not longer than 1 calendar year; 2. Access to the photographs that are taken be limited to the Helena Police Department; and 3. The data to be retained not longer than 30 days if there is no evidence of criminal activity on said photographs. Commissioner Thweatt seconded the motion.

Discussion

Commissioner Elsaesser spoke in support of tabling the proposal until there is clear policy on the matter and indicated he would not vote in support of the amendments.

Commissioner Cartwright recommended an amendment to the motion requiring a report be given to staff on the effectiveness of the program. City Manager Alles noted he would provide the Commission with a report if it's the Commission's desire; it doesn't need to be included in the motion.

Commissioner Cartwright asked for the specified camera sites. Director Teegarden explained the cameras would be limited to Memorial Park; specifically the bandshell and perhaps the veteran's memorial. Director McHugh noted the cameras would be located in specifically the 15th Street Parking Garage, although there are problems with many

facilities. Commissioner Cartwright stated while he doesn't doubt the cameras will be effective in the short run he will be interested in discussing how they would work in the long run. He reiterated he is leery of this being a solution.

Commissioner Ellison noted his motion stated parking garage "sites" meaning more than one site.

Commissioner Elsaesser stated he entirely trusts the Helena Police Department, he just believes the issue should be vetted further.

Vote

Motion carried 3-2 with Commissioners Elsaesser and Cartwright voting no.

**Public
Communications**

PUBLIC COMMUNICATIONS

Commissioner Elsaesser wished Mayor Smith and Commissioner Ellison well on their trip to Florida to visit the USS Helena.

**Meetings of
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is September 21, 2011 and the next Commission Meeting is September 26, 2011.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:45 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission