

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**January 9, 2012**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, January 9, 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, Acting City Attorney Thomas Jodoin 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 December 19, 2011 were approved as submitted.

***Presentations***

**PRESENTATIONS:**

**A. Confirmation of Probationary Firefighter Owen Koeppen**

Fire Chief J.R. Feucht introduced probationary Firefighter Owen Koeppen and gave his education and training history. Chief Feucht recommended his confirmation as Firefighter with the City of Helena.

Mr. Koeppen introduced his family members in attendance and expressed gratitude to work as a firefighter for the City of Helena.

Commissioners Ellison and Elsaesser thanked Mr. Koeppen for his desire to serve the citizens of Helena. Mayor Smith administered the Firefighter's Oath to Mr. Koeppen and welcomed him to the City of Helena Fire Department.

**B. Oath of Office – Helena Citizens Council (HCC)**

Mayor Smith administered the Oath of Office to the following HCC members in attendance: Janet Hess-Herbert, Tia Hunter, Scott Mincemoyer, Diane Papineau, Mary Christine DuVernay, Matthew Opedahl, Jim McCormick, Brian DeKiep, Kris Goss, Carol Montgomery Ellen Bell, Barbara Denowh, Randy Phillips, Roy Henry, Albert Clark, Marianne Rencher, M.C. Beeby, Abigail St. Lawrence, Ed Shaffer, Cynthia Forbes, John Forbes, Bob Habeck and Doug Hunsaker.

Mayor Smith and the Commission members thanked HCC members for their desire to serve on the council. HCC Chair Jim McCormick reported there would be a welcome potluck on January 11, 2012 at 6:00 p.m. in the lobby of the Placer Center, and the HCC's next regular meeting will be held January 25, 2012 at 7:00p.m. in City/County Building, Room 326.

***Consent Agenda***

**CONSENT AGENDA:**

- A. Claims**
- B. Final passage of Ordinance No. 3150 amending Title 11 of the Helena City Code, repealing Chapter 24, Landscaping and establishing a new Landscaping chapter**
- C. Utility bill insert – Helena Education Foundation**

D. Utility bill insert – Kay McKenna Youth Foundation

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

Commissioner Haque-Hausrath asked that item B be removed for further discussion.

**Motion**

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

**Item B**

FINAL PASSAGE OF ORDINANCE NO. 3150 AMENDING TITLE 11 OF THE HELENA CITY CODE, REPEALING CHAPTER 24, LANDSCAPING AND ESTABLISHING A NEW LANDSCAPING CHAPTER.

Commissioner Haque-Hausrath noted she intends to propose the following amendments to the ordinance:

**11-24-6: LANDSCAPING AND TREE PLOT STANDARDS:**

C. General landscaping, parking lot landscaping, and tree plots must contain no less than sixty percent (60%) organic or vegetative materials. If the general landscaping, parking lot landscaping, and tree plots contain organic or vegetative matter that consists entirely of plant species that have evolved in place over geologic time or occur naturally in Lewis and Clark County then those areas may contain less than sixty percent (60%) organic or vegetative material but must contain at least fifty percent (50%) organic or vegetative matter. The drip line of an average tree, bush, or shrub of that species at five (5) years of age may be used as minimum coverage in calculating coverage.

**11-24-8: MAINTENANCE:**

A. Landscaping and tree plots must be maintained to sustain healthy trees, bushes, ~~and~~ shrubs, and other vegetation.

B. Any tree, bush, ~~or~~ shrub, or other vegetation that is necessary to meet the minimum requirements of this chapter in a tree plot that is dead, diseased, or severely damaged must be removed and replaced with another tree, bush, ~~or~~ shrub, or other vegetation.

Commissioner Thweatt reported he would recommend the following amendments to the ordinance:

**THWEATT AMENDMENT #1:** Amend 11-24-4.A as follows: All parking lots, whether gravel or other surface, must have at least thirty square feet (30ft<sup>2</sup>) of landscaping per vehicle

parking space within the boundaries of the parking lot including no less than one tree for every ten (10) parking spaces. . . .

*Purpose: Requires minimum number of trees per parking space.*

**THWEATT AMENDMENT #3:** Amend 11-24-6.A as follows: A tree plot must, at a minimum, be the size and dimensions required by Section 7-10-25 of this code for tree wells. Plots for shrubs and bushes must, at a minimum, be suitable for a Class I tree well under this section.

*Purpose: Clarify: 7-10-25 discusses "tree wells." Specify size of plots for shrubs and bushes.*

**THWEATT AMENDMENT #4:** Amend 11-24-6.B as follows: Each tree plot must contain at least one (1) tree ~~bush, or shrub.~~

*Purpose: Clarify that tree plots must contain a tree and that bushes and shrubs can not be substituted for trees.*

**THWEATT AMENDMENT #7:** Amend 11-24-6.B as follows: If a bush or shrub is planted ~~instead of a tree,~~ the bush or shrub must be no less than three feet (3') in height when planted.

*Purpose: Clarify that bushes and shrubs do not substitute for trees.*

**THWEATT AMENDMENT #8:** Amend 11-24-6.C as follows: General landscaping, parking lot landscaping, and tree plots must contain coverage by no less than sixty percent (60%) organic or vegetative materials, AND INCLUDE NO LESS THAN 40% PERCENT COVERAGE BY GRASS, TREES, SHRUBS, BUSHES, OR OTHER VEGETATIVE MATERIAL.

*Purpose: Clarify and limit amount of mulch cover, i.e., require at least 40% vegetative cover.*

**THWEATT AMENDMENT #10:** Amend 11-24-6.C as follows:

The projected drip line for an average tree, bush, or shrub of that species at five (5) years of age may be used as a ~~minimum coverage in calculating coverage~~ in calculating minimum coverage.

*Purpose: Clarify.*

**THWEATT AMENDMENT #11:** Amend 11-24-7.A as follows:

A site plan showing the general landscaping, parking lot landscaping, and tree plots must be submitted for review and approval prior to ~~building construction for new buildings or changes in building size and installation of new parking lots or changes in the size of parking lots~~ constructing new buildings, changing building size, installing new parking lots, or changing the size of parking lots.

*Purpose: Clarify and improve grammar and readability.*

**THWEATT AMENDMENT #12:** Amend 11-24-6 as follows adding subsection D:

Any existing tree of twelve inches (12") diameter at breast height or more, except those of species not permitted in parkways under 7-10-23 of this code, must be retained and incorporated into the landscaping.

*Purpose: To require retention of existing large trees. Those species not permitted are box elder, cottonwoods, poplars, aspen, elms, silver maple, willows, and birch.*

Discussion

Commissioners Ellison and Elsaesser noted they would like more time to review the amendments before voting on them.

Motion

**Commissioner Ellison moved to table item B on the consent agenda to the call of the City Manager.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Public Comment

Mayor Smith asked for public comment.

Michael Hiel, 701 N. Rodney, owner of Gardenwerks Nursery; expressed concern that the proposed ordinance is hard to understand and urged the Commission to review the readability of the document. He asked the Commission to review recommendations provided in a report done in 1997 by Growing Friends of Helena.

Comment

Mayor Smith asked city staff to invite Mr. Hiel and Mr. Rick Casteel to any work sessions on the ordinance.

**Bid Award**

BID AWARD:

A. Guaranteed Maximum Price for MRTP Project

Staff Report

Community Facilities Director Gery Carpenter reported on May 11, 2011 the City Commission authorized the City Manager to negotiate a contract with Diamond Construction Inc. to provide services during the design of the MRTP Project and provide a Guaranteed Maximum Price (GMP) for the construction of that project. The design of that project is complete.

The project was split into three phases in case available funding could not complete the entire project. The three phases of the project in priority order are:

1. Construction of a cover over the Flocculation Tank which also includes a new head-works screening building,
2. Construction of a shop building and

3. Remodel of current second floor into a locker room and office.

Diamond Construction Inc. has provided a GMP for the first priority, the cover over the flocculation tank including a new head-works screening building of \$526,663.00. The current funding will only allow the completion of the first phase.

Director Carpenter recommended the City of Helena accept the GMP of \$526,663 from Diamond Construction for the construction of the cover over the flocculation tank including a new head-works screening building with a 5% contingency of \$27,000. The new head-works screening building is essential to interface with the Recycling Loop System Project. Covering the flocculation tank provides improved weather protection for the treatment process, increased efficiency of operation and the basis for future year round operation.

Discussion

Commissioner Haque-Hausrath referred to the bid specifications and asked why items 4 and 5, the insulated panels, were replaced with un-insulated panels. Director Carpenter explained a different construction process was used to get the price down. The insulated panels were originally contained in a higher price bracket; staff worked with the design team and contractor to redesign elements to fit the budget. Commissioner Haque-Hausrath asked if staff has looked at whether the change will have an impact at operating costs or result in increased energy costs. Director Carpenter explained that portion of the building isn't heated so it would not impact energy costs. The ceiling will be insulated and spray-on insulation can be added to the walls. The primary concern is to be able to move the dew-point out of this area of the facility so it doesn't rain inside of the building.

Mayor Smith asked for the definition of flocculation tank. Public Works Director John Rundquist explained when untreated water first comes into the treatment plant, chemicals are added to coagulate solids and impurities in the water and turn it into floc which then settles to the bottom of the tank and can be washed out.

Public Comment

Mayor Smith called for public comment; none was received.

Motion

**Commissioner Ellison moved approval of a contract with Diamond Construction Inc., for the construction of the cover over the flocculation tank including a new head-works screening building for a guaranteed maximum price of \$526,663.**

Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith and Commissioners Elsaesser, Ellison and Thweatt welcomed Commissioner Haque-Hausrath to the City Commission.

Commissioner Haque-Hausrath expressed excitement to sit on the City Commission and serve the citizens of Helena.

Commissioner Elsaesser reported the City has added two new recycling locations to its program; one by the old federal building and one in the old Dillards parking lot. He announced the next plastics drive will be held this coming weekend, January 13<sup>th</sup> - 16<sup>th</sup> and the City will hold its first electronics waste collection on January 18<sup>th</sup>.

Commissioner Thweatt expressed sorrow in tabling the landscaping ordinance. He noted the city is currently working on

revisions to the subdivision regulations and parking ordinance and encouraged public comment on all three items.

Commissioner Ellison thanked the Independent Record and City's Public Works Department for providing public education on the distracted driving ordinance. Mayor Smith concurred with Commissioner Ellison's comments.

***Report of the City Attorney***

**REPORT OF THE CITY ATTORNEY**

Commissioner Thweatt asked if a ruling had been issued on the City's water rights case. Attorney Jodoin and Manager Alles stated they were not aware of any new ruling. Attorney Jodoin noted the case is still in front of the Water Master and hasn't reached the Water Court yet.

***Report of the City Manager***

**REPORT OF THE CITY MANAGER**

City Manager Alles recognized Steve Utick, former Infrastructure Manager for the Lewis & Clark County/City of Helena IT & S Department and listed some of his accomplishments. He announced Mr. Utick recently resigned from the IT & S Department after 16 years and thanked him for his service.

Mr. Utick introduced his family members in attendance and expressed excitement for this period of change in his career.

The Commission thanked and recognized Mr. Utick for his service to the City of Helena and Lewis & Clark County.

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

**REPORT FROM THE HELENA CITIZENS COUNCIL**

No report was given.

***Public Hearings***

**PUBLIC HEARINGS:**

- A. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW NEW CONSTRUCTION OF A 2-STORY 4-PLEX IN A R-2 (RESIDENTIAL) DISTRICT, 1836 MISSOULA AVENUE.

**Staff Report**

City Planner Elroy Golemon reported on Tuesday, December 13, 2011 the Helena Zoning Commission unanimously recommended APPROVAL (4:0) for a Conditional Use Permit (CUP) to allow new construction of a 2-story 4-plex on 2 contiguous lots located in a R-2 (Residential) District for property legally described as Lots 11 and 12, Block 75, Northern Pacific Addition, Helena, Montana; with a property address of 1836 Missoula Avenue. This approval is subject to two conditions stated in the resolution.

With this proposal, the 4-plex would be constructed with 2 dwelling units located on each lot; the building setbacks, lot coverage and building height would comply with the zoning requirements of the R-2 District. The R-2 District allows up to 2 dwelling units to be constructed on a single lot as a permitted use, and allows multiple dwelling units to be constructed with a CUP. Chapter 3 of the Zoning Ordinance states "...conditional uses are, in a general sense, considered permitted uses in particular use districts and zones". Therefore, the policy has determined this use is conditionally permitted as long as the CUP standards of the chapter are met.

Planner Golemon recommended approval of the CUP as development of the property could be interpreted as infill development which uses existing city infrastructure. The proposed 4-plex is consistent

with the CUP criteria, subject to the conditions stated in the resolution. She noted infill development could encourage non-motorized traffic and reduce the amount of vehicle miles travelled (VMT).

Discussion

Commissioner Elsaesser asked for the location of the sidewalks to be installed. Mr. Golemon referred the question to the applicant.

Mayor Smith asked if the applicant could build two duplexes by right on the property. Mr. Golemon stated yes.

Public Testimony

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

Susan Austed, 1802 Missoula Avenue; noted she was also representing her neighbor Sherri McDonald at 1808 Missoula Avenue. She expressed concern for devaluation in property values, increased traffic, fire safety, water runoff and the location of a commercial building within the existing residential neighborhood. She recommended the Commission members recuse themselves from this decision if they are developers, landlords or contractors.

Sandra Kokruda, applicant; noted there is an existing sidewalk across the street from the property, but no sidewalk on the subject property. She explained the reason they desire to build a 4-plex is because it will result in more space in between the proposed housing and existing house adjacent to the proposal.

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

Motion

**Commissioner Ellison moved approval of a resolution granting a CUP to allow new construction of a 2-story 4-plex in a R-2 (Residential) District for property legally described and subject to the conditions contained in the resolution.** Commissioner Thweatt seconded the motion.

Discussion

Commissioner Elsaesser noted he would be voting against the proposal as he believes the CUP is not fully evaluating the general welfare of the neighborhood. He noted he feels the proposal is sort of a foregone conclusion since the applicant can build two duplexes by right and expressed concern that the applicant desires to build the 4-plex facing the alleyway instead of the street.

Commissioner Ellison noted he visited the site and would be voting in support of the proposal as he believes the CUP will not significantly increase risk to health, safety and/or general welfare or impair peaceful use of existing property. He stated there will not be any more additional traffic than there would be if two duplexes were built by right and added there are existing multi-family dwellings and other uses, such as a church, just down the street on Missoula Avenue. He noted there would be more landscaping with the CUP than there would be if duplexes were built. He commented he feels it is a reasonable proposal.

Commissioner Haque-Hausrath concurred with Commissioner Ellison's comments and indicated she would vote in support of the CUP. She assured the neighbors in opposition to the proposal they have been heard and urged the applicant to ameliorate any flooding concerns. She stated for the record that there is a small rental unit in her home; however, she does not believe this is a conflict of interest and does not need to recuse herself from voting on the proposal.

Commissioner Elsaesser asked if sidewalks will be required to be installed. Mr. Golemon stated city policy is sidewalk installation is required when new construction occurs. Commissioner Elsaesser noted according to the site plan, access would be entirely from the alleyway. Attorney Jodoin stated there is no requirement in code to provide a connection from the front door and the sidewalk.

Ms. Kokruda, applicant; stated a pedestrian gate would probably be installed on the property for ease of use but there are no plans to provide sidewalk access from the proposed building to Missoula Avenue. She noted there is no sidewalk on that entire side of the street so if one is required to be installed it would only be two lots long.

Commissioner Elsaesser reiterated he would not vote in support of the CUP as it shouldn't be located in a single-family residential neighborhood and will create issues with connectivity.

Commissioner Thweatt agreed with Commissioner Elsaesser's concerns regarding locating the front of the building facing the alley; however, he does not believe there will be increased traffic above what two duplexes would create and this type of housing is needed in Helena according to the city's Housing Needs Survey. He indicated he would vote in support of the proposal.

Mayor Smith stated if the Commission desires buildings always face the street it should be written into code. He commented he does not believe this CUP violates any of the review criteria and should be approved.

Mayor Smith and Commissioner Ellison commented they did not see approval of the proposal as a foregone conclusion.

**Vote**

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

**Public  
Communications**

**PUBLIC COMMUNICATIONS**

No public communications were given.

**Meetings of  
Interest**

**MEETINGS OF INTEREST**

The next Administrative Meeting is January 25, 2012 and the next Commission Meeting is January 30, 2012.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 7:41 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission