

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
January 28, 2013
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, January 28, 2013 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 Hindoién and Deputy City Clerk Robyn Brown were present. Others present were Cyndi Forbes 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 January 14, 2013 were approved as submitted.

Presentation

PRESENTATION:

A. State of the City Address

Mayor Smith presented the 2013 State of the City Address. A copy of the address is included in the Commission Packet as part of the official record.

Board Appointments

BOARD APPOINTMENTS:

A. Civic Center Board

Mayor Smith asked for Commission concurrence on the following board appointments:

Civic Center Board - Reappointment of the following Civic Center Board members: John Cameron, James Crider, Sherry O'Donnell, Skip Hatveldt, Jeannie Pullin and Craig Wilkerson. Terms will expire March 1, 2016.

Motion

Commissioner Ellison moved approval the reappointments to the Civic Center Board as listed above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

A. Claims

B. Consider a resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property. **Res #19983**

C. Consider a resolution authorizing receipt and allocation of certain grant funds and certifying the Director of Community Development as the Environmental Certifying Officer Attendant to the Westmont Inc. "Ron's Place" Project. **Res #19984**

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
Commissioners Elsaesser, Ellison, Haque-Hausrath and Thweatt thanked Mayor Smith for his State of the City Address.
Commissioner Elsaesser spoke about the importance of protecting the Tenmile Watershed and commended the Helena Police Department for their work on a recent copper theft.
- Report of the City Attorney** REPORT OF THE CITY ATTORNEY
No report was given.
- Report of the City Manager** REPORT OF THE CITY MANAGER
Manager Alles reported the Fire Department is working on a \$100,000 homeland security grant to implement a blue card command training program.
- Report from the Helena Citizens Council** REPORT FROM THE HELENA CITIZENS COUNCIL
HCC member Cyndi Forbes reported at the January 23, 2012 HCC Meeting the following officers were elected: Chair – Andres Haladay, Vice-Chair – Janet Hess-Herbert, Treasurer – John Forbes and Secretary - Diane Papineau.
Ms. Forbes reported the Council is developing a work plan for 2013 and noted all districts have received complaints from constituents regarding snow and ice removal.
- Public Hearings** PUBLIC HEARINGS:
A. CONSIDER 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 B-2 (GENERAL COMMERCIAL) DISTRICT.
- Staff Report** City Planner Elroy Golemon reported on Tuesday, December 11, 2012, the Helena Zoning Commission held a public hearing on the proposed zone change and recommended unanimous approval (3:0 vote) for the adoption of an ordinance for a zone change from a CLM (Commercial Light Manufacturing) District to a B-2 (General Commercial) District for property legally described as Lots B, C-1, C-2, D, and E in the Dahl Marshall Tract; Lot 1 (also known as Tract T, adjacent to the Dahl Marshall Tract); and Blocks 11, 13, and 14, and Lots 13, 14, and 15 in Block 15, in the Hershfield Addition, all in the City of Helena, Montana.
The applicant desires to obtain approval for the proposed zone change for twenty-four (24) parcels of land containing a mix of undeveloped land and commercial uses; generally located east of North Montana Avenue, north of Birch Street, and west of North Sanders Street.
Mr. Golemon recommended approval of the zone change as the proposed B-2 District would allow a greater variety of compatible mixed uses than currently permitted with the existing CLM zoning district. In addition, the proposed B-2 District zoning would be more consistent with the commercial land use designation and mixed use concept of the Growth Policy. The proposed B-2 District could help create a coordinated

development pattern that is unified, functional and efficient. The Land Use chapter of the 2011 Growth Policy describes how the community can benefit from both infill and redevelopment by providing opportunities for mixed-use development to reduce the need for automobiles, encourage walking, and save energy by better utilizing existing resources; conserving land, energy, and infrastructure; and minimizing the potential for sprawl.

Discussion

Commissioner Haque-Hausrath expressed concern for the current use of a portion of the property as a vehicle repair shop, which could've contaminated the property. She asked if there is a provision per City Code to require notification of the possibility of contamination before a residential use or daycare, for example, could be built on the property if the zoning were changed. Manager Alles explained there is nothing in City Code that would require notification as described by Commissioner Haque-Hausrath. He noted those hazards follow the property on the deed. Commissioner Haque-Hausrath again expressed concern for changing the zoning to a designation that more readily allows housing and daycare-type uses. She indicated she would like to ensure there is more than the deed to check the property and spoke of her experience as an attorney for contaminated site cleanup with the Department of Environmental Quality. She noted she is not comfortable with the proposal if there is not another way to check for contamination on the property.

Commissioner Elsaesser asked how stormwater would be addressed in the area. Mr. Golemon noted the applicant would be able to answer that question during public testimony.

Public Testimony

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

Ardine Bjerke, 545 South Harris, applicant; stated financial institutions require properties proposed for purchase be tested for hazardous contamination before they will authorize financing be provided. This is required for every property, not just areas that could've been exposed to contamination by past uses. He spoke in support of the zone change and encouraged the Commission to vote in favor of the proposal.

Susan Bjerke, 545 South Harris, applicant; urged the Commission to vote in support of the zone change and explained a stormwater plan would be required with the issuance of a building permit.

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

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 B-2 (General Commercial) District for property legally described in the Ordinance. Commissioner Elsaesser seconded the motion.

Commissioner Haque-Hausrath referred to Mr. Bjerke's testimony and noted that testing for contamination is not required if a project is self-financed or if the project is solely residential.

Amendment

Commissioner Haque-Hausrath moved to condition approval of the zone change on the applicant conducting a Phase 1

Environmental Site Assessment of the property, and Phase 2 Environmental Assessment, if necessary. Commissioner Ellison seconded the motion.

Discussion

Commissioner Ellison commented he believes the zone change would be good for the neighborhood and that if there were concerns over contamination of the property, it would've been addressed by staff before being brought forward tonight. He noted he is comfortable moving forward with the proposal without Commissioner Haque-Hausrath's amendment.

Commissioner Elsaesser asked if the Commission can place the proposed condition on the zone change. Attorney Hindoi stated he does not believe so. Commissioner Elsaesser indicated he would not support the amendment.

Commissioner Haque-Hausrath requested the Commission be provided with more information on their authority to ensure residential uses/daycares are not built on contaminated sites before second passage of the ordinance on February 11th.

Amendment

Commissioner Haque-Hausrath withdrew her amendment.

Vote

Motion carried 4-1, with Commissioner Haque-Hausrath voting no. **Ord #3171**

B. CONSIDER 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.

Staff Report

City Planner Dustin Ramoie reported the applicants/property owners are requesting a zone change from CLM (Commercial Light Manufacturing) District to R-O (Residential Office) District for ten (10) lots containing a residential dwelling. The property is legally described as Lots 8 through 17 in Block 5 of the Woodlawn Park Subdivision, Helena, Montana with property addresses of 115 and 117 Reed Avenue. The applicants are requesting the zone change to provide consistent zoning with the properties located to the north of the subject property and to facilitate new residential development. The subject property is located in "Mixed Use Area A" which allows for a mix of commercial, residential, open space, public institutions, as well as other uses. The Helena Zoning Commission held a public hearing on the proposal on December 11, 2012. They unanimously (3-0) recommended approval of the zone change. According to MCA 76-2-305, a super majority vote would be needed if 25% or more of the adjacent properties protest the zone change. One protest letter has been received constituting a protest rate of 11%, which is well below the 25% threshold for a super majority vote for approval.

Mr. Ramoie recommended approval of the zone change from CLM (Commercial Light Manufacturing) to R-O (Residential Office) as it will meet goals and policies of the 2011 Growth Policy in regards to mixed use, infill development, and more compact higher density development. Redevelopment of the property will also allow for more efficient use of city services such as water, wastewater, and emergency services.

Discussion

Commissioner Ellison referred to the one letter in opposition of the proposal included in the Commission packet and then Mr. Murray's verbal testimony in opposition at the Zoning Commission meeting. He asked Mr. Ramoie to clarify if the Commission is looking at a proposal with only one party in opposition. Mr. Ramoie explained state law requires written protest be considered when deciding whether a super majority vote is required.

Public Testimony

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

Gabe Nistler, applicant; urged the Commission to approve the zone change.

Alan Bock, 1940 University Street; spoke in support of the zone change.

Zack Hampton, Reed Avenue, spoke in support of the proposal.

Nina Creach, Reed Avenue; spoke in favor of the proposal.

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

Comment

Commissioner Haque-Hausrath noted there haven't been any past uses on the property that could've caused contamination and indicated she would support the zone change. Commissioner Ellison stated he believes residential development would fit well in the area and noted he too would support the proposal.

Motion

Commissioner Thweatt 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 R-O (Residential Office) District for property that is legally described Lots 8 through 17 in Block 5 of the Woodlawn Park Subdivision, Helena, Montana with property addresses of 115 and 117 Reed Avenue.

Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried. **Ord #3172**

Public Communications

PUBLIC COMMUNICATIONS

No public communications were given.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is February 6, 2013 and the next Commission Meeting is February 11, 2013. The next City/County Joint Work Session is February 7, 2013.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:14 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission