

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 7, 2015
6:00 P.M.

- Time & Place*** A regular City Commission meeting was held on Monday, December 7, 2015 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, Haladay and Haque-Hausrath were present. Also Acting City Manager Sharon Haugen; City Attorney Thomas Jodoin; and City Clerk Debbie Havens were present. Others present were Dick Sloan 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 23, 2015 were approved as submitted.
- Consent Agenda*** CONSENT AGENDA:
A. Claims

Acting City Manager Haugen recommended approval of the claims.
- Public comment Mayor Smith asked for public comment, none was received.
- Motion*** **Commissioner Ellison moved approval of items A, Claims on the consent agenda.** Commissioner Haladay seconded the motion. All voted aye, motion carried.
- Bid Award*** BID AWARD:
A. Joslyn Street Path, City Project No. 14-23 (CTEP Project UPN 8867)
- Staff Report*** City Engineer Ryan Leland reported the proposed trail will be located mainly on railroad right-of-way (ROW) or on City right-of-way. This phase of the proposed trail will begin at Centennial Trail and Railroad ROW intersection just east of Joslyn Street. It will continue along the abandoned railroad spur through an easement acquired from the current property owner. The trail will then cross Country Club Avenue and continue to Montana Wild/Spring Meadow Park.
The City of Helena opened four bids on October 27, 2015 with the lowest responsible bidder being JAG Grading & Paving of Missoula Montana. JAG submitted a bid of \$364,000 for the base bid and 4 additive alternates. The base bid is the path between Joslyn Street and Spring Meadow Lake (\$218,689.50), Alternate 1 is the path from Spring Meadow to Montana Wild (\$41,962.50), Alternate 2 is the path from Joslyn east to the railroad right-of-way (\$39,374), Alternate 3 is lighting along the path (\$29,000), and Alternate 4 is a split rail fence along the trail (\$34,974).
The project will be funded by CTEP funds from both the City of Helena and Lewis & Clark County. The total identified funding for the

project is \$453,944, \$393,025 from CTEP with a required match of \$60,919. The City has budgeted \$42,273 of the match. The Commission previously signed a \$99,195 engineering contract with DOWL, leaving \$354,749 of CTEP and the required match for construction of the path. The City and County commissions have directed staff to award the base bid and all additive alternates and are in discussion on where the additional \$83,000 will come from.

The project will enhance pedestrian safety and connectivity in the area.

Engineer Leland recommended awarding the Joslyn Street Path, City Project #14-23 to the lowest responsible bidder JAG Grading & Paving to include the base bid and Alternates 1, 2, 3 and 4 in the amount of \$364,000.00 and the associated \$83,000 budget amendment.

Discussion

Commissioner Haque-Hausrath asked with the county agreeing to pay the additional money, allows for Alternative 3 and 4 to be completed. Engineer Leland concurred.

Commissioner Elsaesser noted there are four parcels of land and asked staff to explain the ownership and status of the rights-of-way. Engineer Leland explained the county was successful in obtaining the right-of-way from the Lee Reynolds Trust and purchased property from the other adjacent property owners.

Commissioner Haladay asked if the commission needs to approve the \$83,000 budget amendment, due to the county contributing additional funding. Engineer Leland stated no formal budget amendment is necessary.

Public comment

Mayor Smith asked for public comment, none was received.

Discussion

Commissioner Ellison stated it looks like a very competitive bid and a very good gesture for Lewis & County for agreeing to pay the \$83,000; he thanked them for doing so. Commissioner Elsaesser concurred and also thanked city and county staff and the many other partners involved in getting this project moved forward.

Motion

Commissioner Elsaesser moved to award the bid for the Joslyn Street Path, City Project #14-23 to the lowest responsible bidder JAG Grading & Paving to include the base bid and Alternates 1, 2, 3 and 4 in the amount of \$364,000.00. Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

B. Joslyn/Country Club Intersection Improvements, City Project #14-26

Staff Report

City Engineer Leland reported the intersection, in its current configuration, is non-traditional in nature. The roadway surface is deteriorating and the geometrics need modification to accommodate all users. This project was identified in the recently adopted Greater Helena Transportation Plan.

On October 27, 2015 the City of Helena received and opened three bids for the Joslyn/Country Club Intersection redesign going to a 4-way stop. Mockel Precast & Excavating was the lowest responsible bidder for the base bid with a submitted bid in the amount of \$166,491.83. The base bid is the general reconstruction of the intersection to a 4-way stop; the bid for Additive Alternate 1, ADA ramps

at all the corners, was \$23,246.94; and the bid for Additive Alternate 2, intersection lighting, was \$25,472.50.

The proposed improvements will enhance safety for all users of the intersection.

Engineer Leland recommended awarding the Joslyn/Country Club Intersection Improvements, City Project No.14-26; base bid only, to the lowest responsible bidder Mockel Precast & Excavating in the amount of \$166,491.83. City Manager Alles has approved the associated budget amendment for \$73,000 from gas tax.

Discussion

Commissioner Haladay noted the commission originally chose the four-way stop due to the costs being much lower than other options. However, the costs have substantially increased and he asked for an explanation. Engineer Leland explained there is more earth work that will need to be completed to re-contour the intersection.

Commissioner Haladay stated ultimately, the best decision would be a round-about for this intersection. Will the work being done now, accommodate any future round-about. Engineer Leland stated some of the work could be translated to the round-about; however, not all of it.

Commissioner Elsaesser asked if it would be fair to say the part of the difference in costs is the curb and gutter installation and the difference in the city and county standards. Engineer Leland commented the installation of curb and gutter could be a factor in the cost increase. The intersection required more curb and gutter to assure traffic would stay in the appropriate lanes. There is no slip lane for the intersection; however, there is a large turning radius for larger vehicles.

Commissioner Haque-Hausrath asked if there is any plan to install signs notifying travelers on the change in the intersection. Engineer Leland stated staff is required to put warning signs up when there is any change to an intersection.

Commissioner Elsaesser noted this intersection had been identified as a dangerous intersection and he believes the four-way stop will clear up the safety issues and will improve traffic flow for the area.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Haque-Hausrath moved to award the Joslyn/Country Club Intersection Improvements, City Project No.14-26; base bid only, to the lowest responsible bidder Mockel Precast & Excavating in the amount of \$166,491.83. Commissioner Ellison seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Haladay noted he will be out of town on December 14th and then spoke on the proposed tax abatement the commission will consider for Pioneer Aerostructures. Commissioner Haladay stated he has had several ex parte communications with citizens whose comments have been skeptical and negative on the proposal.

Commissioner Haladay stated his position on this request is the same as last time Pioneer Aerostructures applied for tax abatement; there is not enough information provided to the commission and is unquantifiable. He would not support the tax abatement; however, if there is support, he would attach a "claw back" clause. What types of jobs are being created; currently, there is no metric to compare what is

happening versus what is being proposed. He also spoke of requesting additional financial documents during the term of the abatement.

Commissioner Haladay recommended the commission require the sale of company claw back clause. The last time Summit was given an abatement; the company was sold and the jobs left the area and left Montana. Which means the city's abatement to that company went away. He would attach the claw back to the term of the abatement. He also recommended the city begin collecting data to quantify what was received in return for the tax abatement.

Commissioner Elsaesser stated he chaired a few meetings last week. At the TCC meeting, there was a very productive discussion and the decision was made to postpone making any recommendation for the expenditure of urban funds until after January 2016.

It was a good administrative meeting. He then thanked Lewis & Clark County for bringing forward their Growth Policy at the joint work session. The county commission is prepared it this week. He also complimented the city's street department on how they have been dealing with ADA corners when plowing snow.

Mayor Smith recognized today as being the 74th Anniversary of Pearl Harbor Day.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Jodoin reported he has been working closely with the League of Cities and Towns to contract with Chris Tweeten to prepare an amicus brief in support for the First Judicial District Court decision on exempt well regulation.

The final brief on the water rights case is due to Judge Tucker by Thursday, December 17, 2015. A copy of the brief will be given to the commission.

Report of the City Manager

REPORT OF THE CITY MANAGER

Acting City Manager Haugen reminded everyone to remove any remaining snow and ice from their sidewalks.

Report from the Helena Citizens

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Dick Sloan updated the commission on what the Relevance Committee has accomplished over the last several months. Items of accomplishments include – developing a more focused HCC agenda; having a standard HCC liaison attend the city commission meetings; outreach efforts continue; looking at changing the HCC by-laws for several recommendations; and encouraging HCC members to attend and represent the HCC on city and possibly county boards.

Mayor Smith, on behalf of the commission, thanked Mr. Sloan for the report and for the HCC members working on the Relevance Committee.

Regular Items

REGULAR ITEMS:

- A. CONSIDER THE PURCHASE OF LEHRKIND PROPERTIES; GENERALLY LOCATED ON THE 1200 BLOCK OF EWING STREET.

Staff Report

Community Facilities Director Gery Carpenter reported the Parks Maintenance Division and the Open Lands Division are in need of a facility that would provide larger office space, shop space and interior and exterior storage space. This facility should be located in close

proximity to one or more of the larger parks. The Utility Division needs and has budgeted for a storage garage at their location on Custer Avenue.

A buy-sell agreement ("Agreement") was entered into between the owner of the 1209 and 1229 North Ewing Street ("PHROG, LLC") and the city on September 28, 2015. Conditions of that agreement included city commission approval, approval of findings of conditions, and approval of findings of a phase I environmental site assessment.

Section 1-4-15, Helena City Code requires two independent appraisals be conducted if the purchase price of the property is more than \$500,000. Since the purchase price is \$1,100,000, two appraisals are required unless the commission finds that a second appraisal will prevent the purchase from occurring or not in the best interests of the city.

An appraisal was completed by Elkhorn Appraisal Services. That analysis concluded that the market value of the property, as of November 9, 2015 was \$1,100,000.

The approval of the purchase of the Lehrkind properties on the 1200 block of Ewing Street will provide separation in the 18,928 square foot warehouse to allow 8,000 square feet for the Police Department and 10,928 square feet including 2,200 square feet of office space and office storage for the Parks Maintenance Division. The Parks Maintenance Division along with the Open Lands Division will also occupy the 6,000 square foot building to the north. The Police Department and the Parks Maintenance Division will share in the use of the lot to the east of the buildings. The property to the north of the buildings will be used for a storm water retention pond. The Police Department will vacate a storage garage at the Utilities campus which will then be occupied by the Utilities Division.

Director Carpenter recommended the commission waive the requirement for a second independent appraisal by finding that such a second appraisal is not in the best interests of the city and to approve the purchase of the 1209 and 1229 North Ewing from PHROG, LLC, as described in the attached Buy-Sell Agreement in the amount of \$1,100,000.00.

Comment

Mayor Smith asked if the structural engineering report indicated any seismic issues. Director Carpenter stated none were noted. Commissioner Haque-Hausrath asked who did the environmental site inspection. Director Carpenter stated Tetra-Tech.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Ellison moved to waive the requirement for a second independent appraisal by finding that such a second appraisal is not in the best interests of the city. Commissioner Haladay seconded the motion. All voted aye, motion carried.

Motion

Commissioner Ellison moved to approve the purchase of the properties at 1209 and 1229 North Ewing from PHROG, LLC, as described in the Buy-Sell Agreement in the amount of \$1,100,000.00. Commissioner Haladay seconded the motion.

Commissioner Elsaesser spoke in support of the purchase of this building. This is a unique opportunity and is fiscally responsible to purchase the building.

Commissioner Ellison concurred and noted this purchase is more than justified and many city departments will benefit from the purchase.

Commissioner Haque-Hausrath asked if the commission approves the buy-sell, will it be completed before the snap shot of the TIF District. Acting City Manager Haugen stated the purchase will be completed by the end of the year.

Vote All voted aye, motion carried.

B. CONSIDER A SIDEWALK VARIANCE FOR 735 SOUTH BEATTIE STREET.

Staff Report

City Engineer Leland reported the property at 735 S. Beattie Street is currently being developed as a single family home. The adjacent streets are not built to City Standards. Beattie Street is unpaved with no curb and gutter and Iowa Street is undeveloped.

The owners of the property, Nicholas Sovner and Cheri Thornton, are requesting a sidewalk variance to defer the installation of sidewalks, drive approach, double ADA ramp, curb and gutter until Beattie Streets and/or Iowa Street are constructed to City Standards.

Engineer Leland recommended the commission approve, table or deny deferring the installation of sidewalks, drive approach, double ADA ramp, curbs and gutters for the property at 735 S. Beattie Street until such time the streets are constructed to City Standards.

Discussion

Commissioner Elsaesser stated in the past, the commission has added language where the streets are constructed to city standards and/or until adjacent sidewalks are installed. Engineer Leland stated the language could be added; the commission could also order in sidewalks at any time.

Mayor Smith asked where in the Capital Improvement Program Beattie Street is. Engineer Leland noted Beattie Street is not on a priority list to bring it up to city standards.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Elsaesser moved approval of deferring the installation of sidewalks, drive approach, double ADA ramp, curbs and gutters for the property at 735 S. Beattie Street until such time the streets are constructed to City Standards. Commissioner Haque-Hausrath seconded the motion.

Amendment

Commissioner Elsaesser moved to add the following language after City Standards "or adjacent sidewalk or public path is installed". Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

Discussion

Commissioner Haque-Hausrath spoke in support of the variance request; although she strongly supports installing sidewalks.

Commissioner Ellison concurred with the motion and amendment.

Commissioner Elsaesser stated he too does not like to approve sidewalk variances; however, the property owners have worked with the city on access to the trail. This motion with the amendment is important and a good model for the commission to follow.

Mayor Smith stated he is struggling with the request; however, this particular request seems reasonable

Vote

All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

- A. CONSIDER A VARIANCE FROM SECTION 11-4-2(E) OF HELENA CITY CODE TO EXCEED THE 60-FOOT HEIGHT LIMITATION FOR STRUCTURES LOCATED IN A CLM (COMMERCIAL LIGHT MANUFACTURING) DISTRICT TO ALLOW FOR AN INCREASE IN HEIGHT FOR AN EXISTING 60-FOOT COMMUNICATIONS TOWER; FOR PROPERTY LEGALLY DESCRIBED AS A PORTION OF LOT 1 NORTH OF TRACT R-1, ALL OF LOTS 2 & 3 AND THE SOUTH 44 FEET OF LOT 4 IN BLOCK 4 OF THE GRAND AVENUE ADDITION, HELENA, MONTANA.

Staff Report

Zoning Officer Golemon reported Montana Internet Corporation is requesting a variance to exceed the 60-foot maximum height limitation of the CLM District to allow for a 10-foot increase in height to the existing 60-foot communications tower located at 1424 National Avenue.

Montana Internet Corporation states their wireless internet expansion project is intended to serve the Helena Ice Place and that the additional 10 feet in tower height is because the existing 60-foot communications tower is full.

Since the variance request is to exceed the height limitation for a tower, the City Commission, in accordance with Section 11-5-3(A) of City Code, is the governing body with the authority to consider height variances for towers.

According to Montana Internet Corporation the proposed variance would allow for more space on the existing communications to support an expansion of their internet services to the Helena Ice Palace.

Zoning Officer Golemon reviewed the evaluation staff conducts when bringing a variance forward for the height limitation for structures located in a CLM District. He also reviewed Board of Adjustment variance review criteria: Factors.

Zoning Officer Golemon recommend the commission move to approve, table, or deny a variance from Section 11-4-2(E) of Helena City Code to exceed the 60-foot height limitation for structures located in a CLM (Commercial Light Manufacturing) District to allow for a 10-foot increase in light of an existing 60-foot communications tower, with recommended conditions; for property legally described in the staff report.

Discussion

Commissioner Elsaesser asked if this variance would be similar to the variance granted to NorthWestern Energy several years ago. Zoning Officer Golemon stated yes.

Commissioner Haque-Hausrath asked if the adjacent property owners were notified of the request. Zoning Officer Golemon noted the adjacent property owners received a letter of notification.

Commissioner Elsaesser stated he will support the variance. Mayor Smith stated he too will support the motion and noted he has been a customer of Montana Internet for many years.

Commissioner Haque-Hausrath stated she too intends to support the variance request.

Public Testimony

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

Steve Utick, Vice President of Montana Internet, spoke in support of the variance request.

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

Motion

Commissioner Haladay moved approval of a variance from Section 11-4-2(E) of Helena City Code to exceed the 60-foot height limitation for structures located in a CLM (Commercial Light Manufacturing) District to allow for a 10-foot increase in light of an existing 60-foot communications tower, with recommended conditions; for property legally described in attached staff report.

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

- B. CONSIDER A VARIANCE FROM SECTION 11-4-2(E) OF HELENA CITY CODE TO EXCEED THE 42-FOOT HEIGHT LIMITATION FOR STRUCTURES LOCATED IN A B-2 (GENERAL COMMERCIAL) DISTRICT TO ACCOMMODATE CONSTRUCTION OF A NEW COMMUNICATIONS TOWER; FOR PROPERTY LEGALY DESCRIBED AS LOT 2A-1B IN BLOCK 2 OF SLEEPING GIANT AMENDED INDUSTRIAL PARK SUBDIVISION, HELENA, MONTANA; PER COS #3006117E; WITH A PROPERTY ADDRESS OF 400 LOLA STREET.

Staff Report

Zoning Officer Golemon reported Montana Internet Corporation is requesting a variance to exceed the 42-foot maximum height limitation of the B-2 District by an additional 28 feet to construct a new communications tower at 400 Lola Street. Montana Internet Corporation further states the additional 28 feet in tower height is needed to mitigate the reflectivity issues caused by the Ice Palace roof and improve broadband internet service in the neighborhood.

Since the variance request is to exceed the height limitation for construction of a tower, the City Commission, in accordance with Section 11-5-3(A) of City Code, is the governing body with the authority to consider height variances for towers.

There was one phone call asked where the location of the tower would be. No other public comment has been received.

Zoning Officer Golemon recommended the commission approve, table or deny a variance from Section 11-4-2(E) of Helena City Code to exceed the 42-foot height limitation for structures located in a B-2 (General Commercial) District by an additional 28 feet to accommodate construction of a new 70-foot communications tower, with recommended conditions; for property legally described in the staff report.

Discussion

Commissioner Haque-Hausrath asked if the adjacent property owners were notified. Zoning Officer Golemon stated yes. She then

spoke in support of the proposal. Commissioner Elsaesser concurred with the proposal and noted there were no opponents to the proposal.

Public Testimony

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

Steve Utick, Vice President of Montana Internet, spoke in support of the variance. He also spoke of the need for additional band width for the area.

Charles Siefert, CEO of Montana Internet, spoke in support of the variance and noted with the improvements, it will provide better service to their customers.

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

Motion

Commissioner Ellison moved approval of a variance from Section 11-4-2(E) of Helena City Code to exceed the 42-foot height limitation for structures located in a B-2 (General Commercial) District by an additional 28 feet to accommodate construction of a new 70-foot communications tower, with recommended conditions; for property legally described in the attached staff report.

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

- C. CONSIDER A RESOLUTION VACATING THE FULL WIDTH OF THE DODGE AVENUE RIGHT-OF-WAY BETWEEN LOT 5 IN BLOCK 7 AND LOTS 7 AND 8 IN BLOCK 8, ALL IN THE GRAND AVENUE ADDITION.

Staff Report

City Engineer Leland reported Max Pigman, owner of Lewis & Clark Brewing Company, applicant, is requesting a resolution of intention to vacate the full width of Dodge Avenue right-of-way between Lots 1-5 in Block 7 and Lots 7-9 in Block 8, all in the Grand Avenue Addition.

The vacation will make way for the construction and expansion of a new building that would attach to the two existing buildings, allowing the brewery to expand its brewery operation within the City of Helena. The square footage of the alley to be vacated is 3,000 square feet. The square foot value for the east half of the street is \$4.78 per square foot and the south half of the street is \$5.15 per square foot. The approximate total calculated value to vacate the portion of alley is \$15,000.00. The required survey by the applicant will determine the total square footage and final cost of the vacation.

Staff recommended the following conditions:

The Helena Fire Department (HFD) would accept an alternative means of providing legal and physical emergency access as established in 503.1.1 of the International Fire Code to enable the vacation and joining of the buildings on Dodge Avenue at railroad property as follows:

1. Current access to the north side of the building is provided. A 12 foot wide gravel access is provided from North Montana Avenue to the location of the proposed new structure that is to connect the existing buildings. A gravel turnaround is provided near the end of this access. Both the roadway and the turnaround are maintained and kept clear of snow in the wintertime.

2. The existing old Agri Feeds building and the proposed building have fire sprinklers.

3. Existing Lewis & Clark Brewing, old Agri Feeds building and the proposed building have early warning devices installed throughout. These devices include smoke detection, heat detection, or other devices that provide early warning and approved by the Fire Marshal.

Engineer Leland recommended approval of the resolution vacating the full width of the Dodge Avenue right-of-way between Lot 5 in Block 7 and Lots 7 and 8 in Block 8, all in the Grand Avenue Addition, subject to the conditions outlined above.

Discussion Commissioner Ellison thanked staff for answering his questions from the December 2nd administrative meeting.

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

Max Pigman, owner of Lewis & Clark Brewery, spoke in support of the vacation of Dodge Avenue. He gave an overview of the future plans for the expansion of the business.

Gary Perissi, spoke in support of the vacation of Dodge Avenue.

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

Motion **Commissioner Haque-Hausrath moved approval of the resolution vacating the full width of the Dodge Avenue right-of-way between Lot 5 in Block 7 and Lots 7 and 8 in Block 8, all in the Grand Avenue Addition, subject to the conditions outlined above.**
Commissioner Haladay seconded the motion. All voted aye, motion carried. **Resolution 20226**

Public Communications PUBLIC COMMUNICATIONS
None were received.

Meetings of Interest MEETINGS OF INTEREST
The next Commission Meeting is December 14, 2015. The next administrative meeting is January 6, 2016 and the next Joint Work Session is January 7, 2016.

Adjournment There being no further business to come before the Commission, the meeting was adjourned at 7:25 p.m.

/S/ JAMES E. SMITH
Mayor James E. Smith

ATTEST:

/S/ DEBBIE HAVENS
Clerk of the Commission