

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
March 21, 2016
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, March 21, 2016 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 Ellison, Haladay, Noonan and Farris-Olsen were present. City Manager Ron Alles, City Attorney Thomas Jodoin and Deputy City Clerk Robyn Brown were present. Others present were Eric Kiltz 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 March 7, 2016 were approved as submitted.

Proclamation PROCLAMATION:
A. American Red Cross Month

Mayor Smith read the proclamation designating March 2016 as "American Red Cross Month" in the City of Helena. Red Cross representative Sue Hawthorne accepted the proclamation and thanked Mayor Smith for recognizing the work of the organization with its issuance. She introduced Red Cross staff and volunteers in attendance and discussed the many ways the organization provides assistance to those in need.

Commissioner Ellison commended the work of the Red Cross, and remarked he is especially grateful for how much they do for those serving in the United States military. Mayor Smith concurred with Commissioner Ellison's comments and thanked everyone involved with the organization on behalf of the Commission for the service they provide.

Board Appointments BOARD APPOINTMENTS:
A. Civic Center Board, Helena Housing Authority, Tourism Business Improvement District & Transportation Coordinating Committee

Mayor Smith recommended the following board appointments:

Civic Center Board - Appointment of Steve Crider and Glenda Seipp to unexpired terms on the Civic Center Board. Terms will begin upon appointment and expire March 2, 2019.

Helena Housing Authority (HHA) - Appointment of Sherri Downing to an unexpired term on the Helena Housing Authority. Term will begin upon appointment and expire August 1, 2017.

Tourism Business Improvement District (TBID) - Reappointment of Jim Tucker to a second term on the TBID. Term will begin upon appointment and expire April 20, 2020.

Transportation Coordinating Committee (TCC) - Reappointment of Melinda Barnes to a third term on the TCC. Term will begin upon appointment and expire December 31, 2017.

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

Motion Commissioner Haladay moved approval of the appointments to the Civic Center Board, HHA, TBID and TCC as outlined above. Commissioner Ellison seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. First passage of an ordinance amending Section 1-4-18 of Helena City Code to provide for City Manager disposition of surplus personal property worth less than \$5,000. **Ord #3218**
C. Resolution of intention to amend Resolution No. 20226 to include vacation of the Dodge Avenue Right-of-Way between Lots 4 in Block 7 and Lot 9 in Block 8 of the Grand Avenue Addition. **Res #20236**
D. Final passage of Ordinance #3217 pre-zoning to R-2 (Residential) District and upon annexation amending the Official Zoning Map for the city of Helena for property legally described as Lots 7-10 in Block 195 of the Ames Addition, Helena, Montana. **Ord #3217**

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 Ellison moved approval of items A through D on the consent agenda. Commissioner Noonan seconded the motion. All voted aye, motion carried.

Bid Awards BID AWARDS:
A. Ten Mile Water Treatment Plant Contact Adsorption Clarifier (CAC) Rebuild Materials, City Project #16-5

Staff Report City Engineer Ryan Leland reported currently there are four contact adsorption clarifiers located at the Ten Mile Water Treatment Plant (TMTP).
The contact adsorption clarifiers (CACs) function to provide the coagulation, flocculation and clarification processes for the treatment of raw water entering the 10 Mile WTP. The CACs contain plastic bead media used to remove solids from raw water. The CACs were built in 1989 and require rebuilding to continue operating in the treatment system at TMTP. Rebuilding of the CACs requires replacement of the plastic media, retainer screens and various hardware, gaskets and nozzles used for periodic cleaning of the media. The CACs have reached and exceeded their design life of twenty years, and in order for TMTP to continue treating drinking water in the manner in which it was designed, the CAC units must be rebuilt to factory specifications. The CACs will be rebuilt using the materials procured with this contract and using City of

Helena Water Treatment staff.

The City received one bid. The apparent low bidder for the project was WesTech Engineering Inc. of Salt Lake City, Utah with a quote of \$355,190.00.

Engineer Leland recommended approval of the proposed bid award in order to enhance public safety and hygiene by providing for the ongoing effective treatment of potable water for firefighting and consumptive uses in the City of Helena. Significant cost savings will be realized by using City of Helena employee labor to rebuild the contact adsorption clarifiers.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Haladay moved approval to award the bid for the Ten Mile Water Treatment Plant Contact Adsorption Clarifier (CAC) Rebuild Materials, City Project #16-5 to the lowest responsible bidder, WesTech Engineering, Inc., in the amount of \$355,190.00. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried.

B. Professional Services Agreement for the Wastewater Treatment Plant Groundwater Discharge Design

Staff Report

Engineer Leland reported the Montana Department of Environmental Quality (MDEQ) will be issuing a new surface water discharge permit for the City of Helena's Wastewater Treatment Plant. The new surface water permit for the City of Helena will require extremely low nutrient and metal levels in the effluent that possibly will require a major upgrade to the treatment plant. The upgrade could exceed a \$100 million dollars. City staff has been looking at alternatives to discharge the wastewater effluent, such as the Helena Area Irrigation Channel or discharge to groundwater. The idea of discharge to the irrigation channel, which has several benefits, has received opposition from some of the valley residents and MDEQ. Also, City staff hired Morrison Maierle, Inc. to complete a preliminary investigation to see if a groundwater discharge is a viable option to dispose of the wastewater effluent. The preliminary investigation indicated that groundwater discharge is a viable option to dispose of wastewater effluent in both quality and quantity.

Based on the investigation the City went out for a Request for Qualifications (RFQ) to design a pilot project to infiltrate the wastewater effluent. The City of Helena received two (2) RFQs and selected Morrison Maierle, Inc. to design the pilot project.

Engineer Leland recommended approval of a Professional Services Agreement with Morrison Maierle, Inc. to design a pilot project to infiltrate Helena's wastewater effluent into the ground on City controlled property without a major upgrade to the treatment plant. The infiltration area will also be developed into an eco park. The eco park will be developed with landscaping, trails, and wildlife watching area for the benefit of the public. City staff and Morrison Maierle negotiated a design contract in the amount of \$99,881.

Discussion

Commissioner Farris-Olsen asked why the budgeted amount for this agreement was increased from \$100,000 to \$117,000, per the staff report contained in the meeting packet. Engineer Leland stated

\$117,000 was the amount budgeted for the contract; he erroneously reported \$100,000 and the correct amount was identified through the budget office.

Commissioner Farris-Olsen referred to statements contained on page 41 of the Commission packet indicating the City's sewer rates are too low to qualify for grant funding and asked for more information. Engineer Leland explained most grant programs require that a City's rates be at a minimum level in relation to its median income; the City of Helena's rates are too low to qualify for grant funding.

Commissioner Ellison expressed confusion and frustration as to why the City is punished by being disqualified for grant funds for conscientiously charging lower than average rates for wastewater services to Helena's ratepayers.

Public comment Mayor Smith called for public comment; none was received.

Motion **Commissioner Farris-Olsen moved approval of a Professional Services Agreement with Morrison Maierle Inc., in the amount of \$99,881 for the design of a eco park to discharge the City of Helena's wastewater effluent.** Commissioner Haladay seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Noonan stated Lewis & Clark Library Director Judy Hart is retiring and commended her excellent work at the Library and service to the citizens of Helena and surrounding communities through implementation of outstanding and innovative programs, such as the bookmobile, during her tenure. He wished her well in retirement and thanked her for all she did for the community through her position as Executive Director. Commissioner Noonan also welcomed the Library's new Executive Director, Jon Finn.

Report of the City Attorney REPORT OF THE CITY ATTORNEY

City Attorney Jodoin announced the Human Rights Bureau investigator had issued a determination that found the City did not violate human rights or retaliate against the Montana Independent Living Project (MILP) or its Director Mr. Bob Maffit in regards to the complaint of retaliation and discrimination the organization and Mr. Maffit filed against the City. He gave an overview of the initial complaint and the investigator's findings.

However, the investigator's report did find that Mr. Maffit had raised a prima facie case of retaliation; to which Attorney Jodoin expressed disagreement with. Mr. Maffit has until Friday, March 25th to file an appeal/objection to the findings or 90 days to file an objection in District Court. Attorney Jodoin commented he hopes a civil suit is not filed, as the complaint has already cost his office a tremendous amount of staff time defending the City in the subject complaint.

Commissioner Haladay thanked City Attorney Jodoin for his work on the issue and stated he too disagrees with the investigator's findings regarding a prima facie case.

Commissioner Ellison commended Attorney Jodoin and City Attorney's Office staff for the exhaustive amount of work they did on the case. He stated MILP is one entity represented on the Transportation Advisory Council (TAC) out of approximately thirty (30) other non-profit organizations. The Commission listens to the recommendations of the

TAC, in addition to other elements of the community, and tries to make the best decisions for HATS services based on those recommendations and the funding available for the program. He added he is gratified by the investigator's findings.

Commissioner Haladay stated in the future when the TAC provides its recommendations on the HATS program budget and services, the Commission no longer needs to hold any discussion on the weight of the recommendations and the TAC's priority rankings as though they are some form of advisory board whose recommendations are binding or should receive some deference by the Commission during consideration of the annual budget. The TAC should be treated as nothing other than an outside entity hopefully providing good recommendations to the Commission on HATS operations and funding requests/capital needs to better serve the City of Helena.

Attorney Jodoin concurred with Commissioner Haladay and discussed the need to engage the TAC regarding better processes and structure in their charge.

Commissioner Noonan commented he found the Human Rights Complaint difficult and clouding in very important discussions regarding the HATS program. Now that a decision has been rendered he hopes it will allow for more productive work toward solving the issues involved with improving such an important service to the community.

Attorney Jodoin stated he would notify the Commission if an appeal or suit is filed and thanked Deputy City Attorney Iryna O'Connell for her work defending the City in the complaint.

Report of the City Manager

REPORT OF THE CITY MANAGER

Manager Alles announced City street crews will be working to grade alleys in various areas of the City over the next week. Street Department staff continues to work on potholes; he encouraged citizens to report them to the City and reminded the Commission of his annual goal to report the presence of zero potholes within the City of Helena.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC District 2 member Eric Kiltz gave an overview of current efforts by the Council to identify issues of concern in Helena.

Regular Items

REGULAR ITEMS:

- A. **CONSIDER A RESOLUTION OF INTENTION TO AMEND THE FEES CHARGED FOR FULFILLMENT OF PUBLIC INFORMATION REQUESTS.**

Staff Report

City Attorney Jodoin reported Resolution No. 19214, passed on May 9, 2005, established the current fee structure for fulfilling requests for public information. In 2015 the state law governing the fees that may be imposed by a public agency was amended to allow a local government to recoup the actual costs of production of public information (§ 2-6-1006, MCA). The current labor charge of \$11.54 per hour does not accurately represent the costs to produce public information. This is especially true with regard to production of electronic mail as those requests require the involvement of IT staff and an attorney in the City Attorney's office.

Attorney Jodoin recommended amending the fees charged by the City for fulfilling public records by repealing Resolution No. 19214 and adopting a new fee structure that reflects the actual costs of

production of public information. He noted approval of the resolution of intention would set the date of the public hearing for April 25, 2016.

Discussion

Commissioner Farris-Olsen commented while he feels this proposal makes sense, he is concerned about the possibility that requests for information allowed by constitutional right could become cost prohibitive. He asked if the term "actual costs" is defined in State Statute. Attorney Jodoin stated he would confirm that it is and let the Commission know.

Commissioner Haladay asked if any consideration had been given to the process for requests from parties under financial hardship. Attorney Jodoin explained most cities have an informal and discretionary dominimus policy where they do not charge for quick fulfillments that do not warrant the fee.

Commissioner Haladay recommended language be included in the resolution requiring individuals be informed upfront as to the estimated cost and okay the fee prior to the search being performed. Attorney Jodoin stated City staff would be educated on compliance with the resolution, including notification of estimated cost and ensuring the requestor agrees to the charges before fulfilling the requests.

Commissioners Farris-Olsen, Noonan and Ellison concurred with the addition of language regarding advanced fee notification and acceptance of the anticipated cost prior to City staff performing any work on information requests.

Mayor Smith requested this resolution be discussed at an Administrative Meeting prior to the public hearing on April 25th in order to review/vet the language recommended for inclusion in the resolution after staff has written the amendment. Manager Alles acknowledged he would add it to an Administrative Meeting agenda.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Ellison moved approval for a resolution of intention to establish fees to recoup the actual costs of fulfilling public information requests, repeal Resolution No. 19214, and set a public hearing date of April 25, 2016. Commissioner Haladay seconded the motion. All voted aye, motion carried. **Res #20237**

- B. CONSIDER A RESOLUTION OF INTENTION TO VACATE AND EXTINGUISH THE PUBLIC ACCESS COMPONENT OF THE 30 –FOOT WIDE EASEMENT ACROSS TRACT A-3 AS SHOWN ON CERTIFICATE OF SURVEY NO. 3135024

Staff Report

Attorney Jodoin reported Tract A-3 is generally located south of Mount Helena Drive and adjacent to City-owned open space property. As shown on Certificate of Survey No 3135024, filed in August of 2007, Tract A-3 was created as part of the reconfiguration of two "remainder" lots of the Forrest Estates Subdivision. That reconfiguration also dedicated Tract A-1 to the City of Helena in order that a water reservoir could be built upon it. Certificate of Survey No 3135024 was filed without review or approval by the City.

That certificate of survey dedicated a "New 30' wide Public Access and Underground Utility Easement" over the "panhandle" portion of Tract A-3. That 30' wide easement extended south across Tract A-2 and ultimately to the reservoir property (Tract A-1). The dedication

language on the certificate of survey states that “the lands shown on this plat as being dedicated to the use of public, including streets, easements and other public improvements, are hereby dedicated, granted and donated to the public and the city of Helena for such use.” The 30’ wide “public” access easement is the sole City vehicular access to the Westside Reservoir that is located on Tract A-1. The certificate of survey contains no signature block for City review and acceptance of the public access easement dedication.

Tract A-3 was subsequently purchased by Craig Wright who was under the impression that the “public” access component of the easement on his property was eliminated by the seller of the property. This elimination was ostensibly effected by a “correction affidavit” filed by the surveyor who prepared the certificate of survey. The “correction affidavit” clarified the easement was not intended for public access. Before and after that affidavit was filed, it was and has been the City Attorney’s opinion that the “correction affidavit” would not be legally sufficient to extinguish the public’s right to access on the 30’ easement. Further, Tract A-2 has also been sold and the property owner has enquired about the “public” nature of the access easement.

The Parks and Recreation Department has worked with Mr. Wright to relocate a trail away from his property to reduce conflict between recreation users’ animals and Mr. Wright’s pets. Members of the public still drive on Mr. Wright’s driveway (and thus the City’s water tank access) and access City open space from his property. Further, the broad, unfettered nature of “public” access is somewhat problematic and inconsistent with the City’s access to the reservoir. The easement grant contains no restrictions and public vehicular access to the water tank is technically permitted. The City would have no way to remove a vehicle that blocks City access to the reservoir.

Mr. Wright now asks the City Commission to eliminate the public’s right to access on the 30’ easement across his property. If the public access component of the easement is vacated and extinguished. Mr. Wright would convey an easement to the City to reconfirm the City’s right to access the same easement for utility and vehicular access to the reservoir.

Attorney Jodoin reported staff had no recommendation on the request.

Discussion

Commissioner Haladay asked if foot traffic and bike traffic would be unimpeded if the Commission approved this proposal. Attorney Jodoin agreed and discussed issues surrounding current vehicular use of the access.

Commissioner Ellison referred to the City’s access road to the water tank and requested additional information on the criteria separating the City’s access road from the public ROW. Attorney Jodoin read the language from the survey and explained the City did not review or approve the COS, it was filed without City knowledge. He noted in bringing this proposal forward, he requested Mr. Wright reconfirm the City’s right to vehicular access to the easement for access to the reservoir. Commissioner Ellison asked if the Commission were to approve the proposed resolution of intention, would it mean an affirmative act by the landowner to confirm the City’s right to retain vehicular access to the water tank. Attorney Jodoin stated it would set the conditions for final decision by passage of the resolution and he

believes Mr. Wright's understands it would be in his best interest to reconfirm the City's' rights as requested.

Public comment

Mayor Smith called for public comment.

Jon Saunders, adjacent property owner; spoke in opposition to the public access easement being removed as it could severely limit their access to their own property, which they have enjoyed unimpeded since 1980.

Bob Seliskar, representing his mother who is the owner of Tract A-2; spoke in opposition to the proposal.

Craig Wright, applicant; indicated he was not aware the easement was public when he purchased the property; he was assured it was solely for City's use to access the water tank. He provided the history behind his purchase of the lot and the reasons for his request to extinguish public access.

Andy Cottrell, 1350 Mount Helena Drive; spoke in opposition to the proposal.

Discussion

Thorough discussion was held regarding the amount of pedestrian, bike and vehicular traffic using the easement, parking enforcement, and differing opinions regarding the problems created by the easement between the adjacent/affected property owners in the area.

Attorney Jodoin acknowledged disagreement over this proposal between the adjacent property owners and commented he has been very apprehensive to become involved in this issue and only brought it forward out of fairness to Mr. Wright.

Motion

Commissioner Haladay moved denial of a resolution of intention to vacate and extinguish the public access component of the "30' wide Public Access and Underground Utility Easement" across Tracts A-2 and A-3 as shown on Certificate of Survey No. 3135024. Commissioner Farris-Olsen seconded the motion.

Comment

Commissioner Ellison stated he was hoping this would be approved so a public hearing could be held and the Commission would be able to hear the public's view on the issue.

Commissioner Haladay commented the City is being dragged into what is essentially a fight between neighbors and should not become involved in a situation where the affected parties have no desire to work together on a meaningful solution that will work for everyone.

Commissioner Farris-Olsen concurred with Commissioner Haladay's comments and expressed concern over the City eliminating an access to Mount Helena that has existed for at least thirty years.

Mayor Smith and Commissioner Noonan agreed with Commissioner Haladay and Farris-Olsen's recommendations for denial of the proposal and indicated they too would vote in opposition to vacate and extinguish the existing public access.

Vote

All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO B-2 (COMMERCIAL) DISTRICT AND AMENDING THE OFFICIAL ZONING MAP FOR THE CITY OF HELENA

FOR A 5-ACRE PORTION OF TRACT B-1-A COS#3207070,
AS MORE PARTICULARLY DESCRIBED IN THE
ASSOCIATED METES AND BOUNDS DESCRIPTION IN
LEWIS AND CLARK COUNTY, PRIOR TO ANNEXATION INTO
THE CITY OF HELENA, MONTANA.

Staff Report

Senior Planner Dustin Ramoie reported the applicant is proposing this pre-zoning and annexation to provide all city services for the future development of the 5-acre portion of the property. City ordinance requires property to be pre-zoned prior to annexation. Current land uses in the area include but are not limited to commercial and a cemetery. This pre-zoning would become effective upon annexation.

The applicant is only proposing pre-zoning the described 5-acre portion of the larger 50 acre property. This analysis is limited to pre-zoning of this 5-acre portion of the property. The Helena Zoning Commission held a public hearing on this proposal on March 8, 2016. After the staff report was completed and the public meeting was advertised, staff received comments from Montana Department of Transportation further highlighting existing traffic issues. It has always been the preference of the City to consider both the pre-zoning and resolution of intention to annex at the same time. The result of the discussion was a 2-2 tie vote resulting as no recommendation being made by the Zoning Commission. Because of the issues that arose during the Zoning Commission hearing, as well as other issues that have been identified, staff feels that it is in the best interest of the City and the applicant to table the public hearing for the pre-zoning and to help better address how the issues identified may be addressed through the annexation process and to work with the applicant to identify solutions. Staff is recommending that the pre-zoning case be brought forward with the consideration of Resolution of Intent to Annex and therefore should be scheduled at the call of the City Manager instead of continuing to the next City Commission meeting. If these issues can be resolved, it may be possible to consider this at the first meeting in April.

Discussion

Commissioner Haladay asked for clarification of whether the applicant supports tabling first passage of the proposed ordinance. Planner Ramoie explained while they would prefer to bring the pre-zoning and annexation forward for Commission consideration as one proposal, they would also be agreeable with consideration of the pre-zoning only at this time, in order to move the project forward.

Commissioner Haladay asked why staff feels it is important to bring the proposal forward as an annexation/zoning package, when the Commission often considers pre-zoning proposals as stand alone items. He indicated the proposed B-2 zoning designation is appropriate for the area and makes sense.

Discussion was held on staff's recommendation to table the pre-zoning.

Public Testimony

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

Greg Wirth, representing the applicant; stated while not instigated by the applicant, they are in support of City staff's recommendation to table first passage of the proposed ordinance. He noted their desire is to have their proposal considered in the best environment possible.

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

Motion **Commissioner Ellison moved to table first passage of an ordinance to the call of the City Manager.** Commissioner Noonan seconded the motion.

Comment Commissioner Haladay indicated he would not support tabling first passage of the ordinance as he feels B-2 is the obvious zoning designation for the property and should be approved by the Commission instead of taking up time on another meeting agenda. He noted there are several issues related to other aspects of the development that will require thorough review and discussion during consideration by the Commission.

Vote Motion carried 4-1, with Commissioner Haladay voting no.

Public Communications PUBLIC COMMUNICATIONS
No public communications were given.

Meetings of Interest MEETINGS OF INTEREST
The next Administrative Meeting is April 6, 2016 and the next Commission Meeting is April 11, 2016. The Joint City/County Commission Budget Work Session will be held on April 7, 2016.

Adjournment There being no further business to come before the Commission, the meeting was adjourned at 8:05 p.m.

/S/ JAMES E. SMITH
Mayor

ATTEST:

/S/ DEBBIE HAVENS
Clerk of the Commission