

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
SEPTEMBER 26, 2016
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, September 26, 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 City Clerk Debbie Havens were present. Others present were Gary Spaeth 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 September 12, 2016 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Final passage of Ordinance No. 3222 establishing an R-U (Residential-Urban) Zoning District by amending Sections 11-2-2, 11-2-3 and 11-4-2(E) of Helena City Code to include the intent, the permitted uses, conditional uses, and uses not permitted and the district dimensional standards for the R-U (Residential-Urban) District. **Ordinance 3222**
- C. Final passage of Ordinance No. 3223 amending the Sign Uses for specified Districts in Section 11-23-10 of Helena City Code, R-O and PLI Districts and make the sign requirements for the R-U (Residential-Urban) District the same as the R-O District.
- D. Acceptance of the FY17 100% State of Montana funded Hazmat team grant in the amount of \$44,167. **Ordinance 3223**

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-D on the consent agenda. Commissioner Noonan seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Noonan recognized the good work being done by the Helena Food Collaborative. This effort has brought together a lot of partners to provide food for those in need. There is also an educational portion of the program. He also noted the Farmers Market supports the SNAP program by providing funding from their own funds for those who use cards at the market.

Commissioner Ellison reminded the citizens of Helena that political signs are not allowed in the public right of way. He asked candidates and homeowners to make sure any signs are on private

property. He also asked staff to follow-up with the candidates that currently have signs in the right of way, specifically on Gold Rush Avenue, Eleventh Avenue, California Street, and Broadway Street.

Manager Alles stated staff monitors the placement of political signs in the right of way and contacts the appropriate candidates. He suggested putting the information on Facebook and the city's web page.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Jodoin reported District Judge Cooney will hear oral arguments on October 4th regarding the Westside Annexation lawsuit.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Gary Spaeth reported the HCC regular monthly meeting is Wednesday, September 28th at 7:00 p.m.

Regular Items

REGULAR ITEMS:

- A. CONSIDER A SIDEWALK VARIANCE FOR 750 SHEPARD WAY

Staff Report

City Engineer Leland reported the property at 750 Shepard Way is adjacent to US Highway 12 Frontage Road/Tricia Street to the north which is MDT owned and is not constructed to city standards. It is paved but has no sidewalk or curb and gutter. The property is also adjacent to Shepard Way to the east which is City owned and is built to city standards which includes sidewalk. There is a building permit issued and construction has begun at 750 Shepard Way.

The owner of the property is requesting a sidewalk variance to defer the installation of sidewalk along US Highway 12 Frontage Road / Tricia Street until such time as the adjacent streets are brought up to City Standards and/or an SID is created.

There are no advantages noted with this proposal and the disadvantage would be sidewalks may not be installed with a building permit.

Engineer Leland noted staff does not have a recommendation and the Commission can approve, table, or deny a sidewalk variance to defer the installation of sidewalk along US Highway 12 Frontage Road / Tricia Street until such time as the adjacent streets are brought up to City Standards.

Discussion

Mayor Smith asked if the request is due to a slope adjacent to the property. Engineer Leland noted there is a ditch adjacent to the property and it would take some dirt work to make the sidewalk work. Construction of the building is underway and the applicant is requesting deferral until the Commission orders in the sidewalk or when there are improvements to the frontage road.

Commissioner Ellison referred to the properties to the west and east of the site and asked if they are in the city limits. Engineer Leland stated the property to the east is inside the city limits and the property to the west is not.

Commissioner Ellison noted if sidewalks are installed, it would abruptly come to an end since the property to the west is not inside the

city limits. He then asked City Attorney Jodoin if that could be a concern if the sidewalks are not extended. Attorney Jodoin stated he does not believe so as the property is not inside the city jurisdiction.

Commissioner Haladay referenced this request and then asked what happens when the adjacent property comes in with the same request due to no sidewalks being installed until a SID is created. At what point will sidewalks be installed; he did recognize the Commission can currently order the sidewalk in. At this time there is no reason to obtain a waiver of an SID due to the Commission's ability to order in sidewalks. Manager Alles noted an SID is a way to finance the sidewalks; however, the Commission can order sidewalks in .

Commissioner Noonan asked where the nearest sidewalk to the west would be located. Engineer Leland noted the nearest would be the trail MDT installed near Carter Drive. Commissioner Noonan noted there is a walking trail on the north side of the interstate.

Commissioner Haladay stated sidewalks are installed on the north/south sides of the property and asked what the reasoning was. Engineer Leland commented the owner thought the property would sell better if sidewalks were installed.

Public comment

Mayor Smith called for public comment. Dan Fallon, owner of McDantim Inc., addressed the Commission to explain there currently are easements adjacent to their property and if they are required to install the sidewalk, it would be a sidewalk that goes nowhere. At the current time, there is no safe way to build a sidewalk. It isn't the case they don't want to install a sidewalk, it just wouldn't be practical.

Motion

Commissioner Ellison moved approval of a sidewalk variance for 750 Shepard Way until the frontage road is built to city standards. Commissioner Noonan seconded the motion.

Commissioner Farris-Olsen stated he has the same concerns that variances will continue to be granted and no sidewalks will be installed. Due to these concerns, he will not support the variance.

Commissioner Haladay asked Engineer Leland to explain the state's jurisdiction on the right of way. Attorney Jodoin noted the city code states sidewalks are installed on adjacent rights of way; however, he does not know if MDT can stop sidewalks from being installed on their right of way. Commissioner Haladay stated he is concerned with approving the variance; however, he is also concerned with MDT's jurisdiction on the right of way. Commissioner Haladay stated he is interested in tabling the variance request to allow staff time to find out the city's jurisdiction and MDT's right of way.

Commissioner Haladay asked if this is tabled, how soon are the sidewalks scheduled to be installed. Engineer Leland noted the owner would wait for the occupancy permit to install the sidewalks; construction of the building is just beginning. The entire structure could be built and the sidewalk would be the final item to be installed. Commissioner Haladay asked staff to contact MDT to find out the city's jurisdiction.

Commissioner Ellison asked if a condition could be attached to the variance that the next development request would trigger the requirement to install the sidewalk.

Mayor Smith asked if the frontage road is on any list for improvements. Engineer Leland stated at this time, the frontage road it is a low priority.

Mayor Smith stated this is a complicated situation and noted the property to west may never be annexed. His concern is having sidewalks installed on this property and the property to the east but not to the west. Mayor Smith stated he is leaning toward approving the variance and is prepared to order in sidewalks when appropriate.

Substitute Motion

Commissioner Noonan moved to table the sidewalk variance for 750 Shepard Way to the call of the City Manager and to allow staff time to contact MDT regarding the city's jurisdiction on their right of way. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

- A. CONSIDER A RESOLUTION VACATING A PORTION OF CHARLIE RUSSELL DRIVE ADJACENT TO LOTS 2-4 IN THE SWANEY MINOR SUBDIVISION.

Staff Report

City Engineer Leland reported the City of Helena Parks Department and Kenneth and Elizabeth Eden, applicants, are requesting a resolution to vacate the cul-de-sac portion of Charlie Russell Drive adjacent to Lots 2-4 in the Swaney Minor Subdivision.

The City of Helena has entered into an agreement with the property owners of Lot 3 to swap for Lot 4. The square footage of the street to be vacated is approximately 7800. The square foot value for the street is \$3.04 per square foot. Lots 2 & 3, which will become City of Helena open space, with a total of 6305 square feet for a total cost of \$19,167.20. Lot 4 will be owned by Kenneth & Elizabeth Eden also has a total of 1495 square feet for a total of \$4,544.80. The approximate total calculated value to vacate the portion of the streets is \$23,685.82. The final survey will determine the total square footage and final cost of the vacation. City Code requires the transfer fee for the vacation. Both applicants have requested the City waive the fee.

This vacation will allow the City of Helena Parks Department to complete the last small section for the subject location contiguous with the adjacent open space land. It will eliminate Swaney Minor Subdivision final plat conditions which require improvement of the cul-de-sac and extension of water, wastewater and storm water infrastructure.

Engineer Leland recommended approval of the resolution to vacate a portion of Charlie Russell Drive adjacent to Lots 2-4 in the Swaney Minor Subdivision and the fees be waived.

Public Testimony

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

Craig Wright asked for clarification on access onto Lot 4; is this a driveway access.

Eric Irvin, adjacent property owner, noted the aerial photo is inaccurate and then asked how would the transfer of the property effect his cost for future street improvements.

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

Motion

Commissioner Noonan moved approval of the resolution to vacate a portion of Charlie Russell Drive adjacent to Lots 2-4 in the Swaney Minor Subdivision and to waive the fees in the amount of \$23,685.82. Commissioner Haladay seconded the motion.

Discussion

Commissioner Haladay asked if there is legal access to Lot 4 for a driveway to be installed. Engineer Leland noted Lot 4 has access for a driveway off of Charlie Russell Drive and Mount Helena Drive.

Commissioner Haladay noted this action will eliminate the requirement of the build out of Charlie Russell Drive. Attorney Jodoin noted the subdivision requires the improvement of Charlie Russell Drive; however, with the land swamp, if the right of way no longer exists, there is no need to improve Charlie Russell Drive. If all is approved, the city will aggregate the city owned lots.

Commissioner Haladay confirmed with this action, the cost of the street improvements will be eliminated. Attorney Jodoin concurred the lot lines are significantly off on the aerial map; however, there is a portion of Charlie Russell Drive that is not improved that is not a part of the Swaney Minor Subdivision.

Mayor Smith commented if all this happens, the city will own the lots and there will be no further build out of Charlie Russell Drive.

Commissioner Ellison asked if Mr. Irvin can be assured there will be no added expense by this action. Attorney Jodoin concurred.

Commissioner Ellison stated he would support waiving the fee requested by the applicants. Mayor Smith asked Commissioner Noonan if he is comfortable with waiving the fees. Commissioner Noonan asked for clarification on the fee waiver.

Engineer Leland explained the fee is established by the taxable value and the total is approximately \$23,685. If the fees are not waived, the Eden's will have to pay \$4,544.82 and city parks would pay \$19,167.20.

Commissioner Noonan stated his intent is to waive the fees.

Vote

All voted aye, motion carried. **Resolution 20306**

- B. CONSIDER A RESOLUTION TO ENTER INTO A LAND EXCHANGE AGREEMENT TO EXCHANGE LOT 3 FOR LOT 4 IN THE SWANEY MINOR SUBDIVISION.

Staff Report

City Attorney Jodoin reported the Commission approved Resolution of Intention 20281 on August 22, 2016. That resolution signified the Commission's intent to exchange with Kenneth and Elizabeth Eden Lot 4 for Lot 3 in the Swaney Minor Subdivision. The Prickly Pear Land Trust has signed a release of the open space deed restriction that is appurtenant to Lot 4. The required public notice of tonight's public hearing has been sent to all property owners within 300 feet and a legal ad was published in the Helena Independent Record on September 16 and 23, 2016.

By exchanging Lot 4 for Lot 3, the City would be able to aggregate Lots 1, 2, 3, and 5 into one larger tract and eliminate the need to install infrastructure. Four out of the five lots would be kept in an undeveloped state. The City would acquire additional open space that would be immediately adjacent to existing open space.

Attorney Jodoin recommended approval of a resolution to enter into a Land Exchange Agreement to exchange Lot 4 for Lot 3 in the Swaney Minor Subdivision.

Public Testimony

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

Tyler Weingardner stated his property borders Lot 4; originally he was concerned with the proposed land exchange. However, after researching the proposal, he and his wife approve of the proposed land swap. If this lot would ever go up for sale, they would like to have the first option to purchase.

Craig Wright, 1515 Mount Helena Drive, read a prepared statement into the record that outlined his concerns with drainage and snow removal from Charlie Russell Drive.

Dan Wirak, HOMAC Chair, spoke in support of the proposed land exchange. He noted snow removal is an issue.

Eric Irvin stated he made a significant investment to build adjacent to Lot 4. When he purchased the property, he was confident that all of these lots would continue to be open space.

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

Motion

Commissioner Noonan moved approval of a resolution to enter into a Land Exchange Agreement to Exchange Lot 3 for Lot 4 in the Swaney Minor Subdivision. Commissioner Farris-Olsen seconded the motion.

Commissioner Haladay asked Engineer Leland to address the drainage and snow removal concerns. Engineer Leland noted there are dead-end streets all over Helena and there are challenges to remove the snow during the winter. The city currently owns smaller trucks that will assist with this. Engineer Leland noted the city cannot have an easement on the city's own property; once the land exchange is finalized, the city will have an easement on Lot 4. With city code, the drainage has to be addressed through an easement.

Commissioner Noonan acknowledged the Eden's for their continued support to the city.

Vote

All voted aye, motion carried. **Resolution 20307**

C. CONSIDER FINAL PASSAGE OF ORDINANCE 3221 AUTHORIZING THE CITY COMMISSION TO APPROVE SORT-TERM LEASES OF REAL PROPERTY BY CONSENT AGENDA WITHOUT A PUBLIC HEARING BY AMENDING CHAPTER 4 OF TITLE 1 OF THE HELENA CITY CODE.

Staff Report

City Attorney Jodoin reported pursuant to Helena City Code § 1-4-17(A) the City is required to publish legal notice, notify adjacent property owners by mail, and hold a public hearing prior to being able to lease any real property in which the City has a legal or equitable interest. These public notice and hearing requirements must be met regardless of the value of the property, lease price, or duration of a particular lease term. The Helena City Code does not allow for any deviation from these requirements.

With the adoption of an ordinance that specifically authorizes the City Commission to approve leases of city property for a term of less than ten years ("short term leases") by consent agenda. Leases of city property for a term of over ten years ("long term leases") will still be subject to the public notice and hearing requirements.

This change will allow for routine leases of city property to be approved more quickly and with less expense to the city while still allowing for the City Commission's input. The proposed amendment will not foreclose the possibility of a full public notice and hearing process for a particular lease if the Commission deems it necessary. The Commission can always request that an item be removed from the consent agenda and a full public hearing be held.

For example, if § 1-4-17 is amended, a six year lease with an option to renew for an additional term will be considered a "short term lease" since the term of the lease is for six years. The renewal of such a lease will be subject to approval by the City Commission by consent agenda.

The proposed amendment will not change public notice and hearing requirements for sale or disposal of other city property covered by § 1-4-17. The advantage is short term leases of city property will be approved more quickly and with less expense to the city. The disadvantage will be adjacent property owners will not be specifically notified about leasing of some neighboring city property.

City Attorney Jodoin recommended approval of final passage of Ordinance 3221 authorizing the City Commission to approve short terms leases of real property by consent agenda without a public hearing by amending Chapter 4 of Title 1 of the Helena City Code.

Discussion

Commissioner Haladay asked if the city has leases with automatic renewals and as long as they are ten years or less, would they fall into this category. Attorney Jodoin concurred; however, staff will begin updating those leases to assure a lease term does not exceed more than ten years without review.

Public Testimony

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

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

Motion

Commissioner Ellison moved approval of final passage of Ordinance 3221 authorizing the City Commission to approve short terms leases of real property by consent agenda without a public hearing by amending Chapter 4 of Title 1 of the Helena City Code. Commissioner Haladay seconded the motion. All voted aye, motion carried. **Ordinance 3221**

D. CONSIDER A RESOLUTION LEVYING ASSESSMENTS FOR FISCAL YEAR 2017 FOR IMPROVEMENTS MADE TO PROPERTIES IN THE 2016 SIDEWALK IMPROVEMENT DISTRICT PROGRAM.

Staff Report

Administrative Services Director Glenn Jorgenson reported each year the City Commission must levy assessments on the Sidewalk Improvement Districts in order for those assessments to be placed on the upcoming tax bills. On August 22, 2016 the Commission passed the resolution for all sidewalk programs other than the 2016 program. Staff inadvertently missed adding the program to that resolution. All property owners participated in the program voluntarily. There were 35 participants in the 2016 program.

With the passage of the resolution, owners will be able to start paying off their interest free loans as agreed to in the contracts they signed.

Director Jorgenson recommended approval of a resolution levying assessments for improvement of sidewalks, curbs, gutters, and alley approaches for the 2016 sidewalk program in the City of Helena, Montana.

Public Testimony

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

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

Motion

Commissioner Farris-Olsen moved approval of a resolution levying assessments for improvement of sidewalks, curbs, gutters, and alley approaches for the 2016 sidewalk program in the City of Helena, Montana. Commissioner Noonan seconded the motion.

Commissioner Haladay noted he will abstain of voting.

Vote

Motion carried 4-0, motion carried. **Resolution 20308**

Public Communications

PUBLIC COMMUNICATIONS

No public communications were given.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is October 12, 2016 and the next Commission Meeting is October 17, 2016.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:20 p.m.

/S/ JAMES E. SMITH

Mayor

ATTEST:

/S/ DEBBIE HAVENS

Clerk of the Commission