

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
JANUARY 9, 2017
6:00 P.M.**

Time & Place A regular City Commission meeting was held on Monday, January 9, 2017 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 meetings of December 19, 2016 and were approved as amended.

Presentation PRESENTATION:

A. Confirmation of Probationary Police Officers Brady Gray, Eric Koester, and Britney Bergh

Police Chief McGee introduced Officers Brady Gray, Eric Koester and Britney Bergh and gave a summary of their backgrounds. Chief McGee recommended Officers Gray, Koester and Bergh be confirmed.

Officer Gray addressed the commission and introduced her fiancé Martin Whitaker and thanked Chief McGee and command staff for the opportunity to serve on the on the Helena Police Department.

Officer Koester addressed the commission and introduced his wife Sarah. He also thanked Chief McGee and the command staff for the opportunity to serve on the Helena Police Department.

Officer Bergh addressed the commission and thanked her family for the support to become a police officer. She also thanked Chief McGee and the command staff for the opportunity to serve on the Helena Police Department.

Discussion Mayor Smith recognized and thanked Officers Gray, Koester and Bergh for their service to the Helena Police Department.

Commissioner Ellison congratulated the three officers and thanked them for their service. He recognized the command staff of the Helena Police Department.

Commissioner Noonan also expressed his appreciation to the officers and noted there is always support for police officers.

Public Comment Mayor Smith called for public comment, none was received.

Motion Commissioner Haladay moved the confirmation of Police Officers Brady Gray, Eric Koester and Britney Bergh. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried.

Board Appointments BOARD APPOINTMENTS:

A. City Zoning Commission

Mayor Smith recommended the following appointments:

Appointment of Jerin Borrego (alternate member) to an unexpired term on the Zoning Commission. Term will begin upon appointment and expired September 30, 2017.

Appointment of Ada Montaque as the alternate member to an unexpired term on the Zoning Commission. Term will begin upon appointment and expire September 30, 2019.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Haladay moved approval of the appointment to the Zoning Commission as outlined above. Commissioner Noonan seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

A. Claims

B. Amendment to the Green Meadow Subdivision Agreement for Satisfaction of Annexation Conditions changing the date December 15, 2016 to June 15, 2017 in Item 7 Subdivision; and clarifying that final occupancy permits will not be issued until the Green Meadow Minor Subdivision final plat is filed

C. Interlocal Agreement for Management of Solid Waste Operations for Lewis & Clark County

D. Acceptance of a Cooperative Forestry Assistance Grant administered by the Montana Department of Natural Resources and Conservation (DNRC) to complete 120 acres of forest health restoration work within Helena's Open Lands System

Manager Alles recommended approval of the claims and consent agenda.

Commissioner Ellison requested further discussion on Item B on the consent agenda and thanked Commissioner Haladay for bringing it up at the January 4th administrative meeting. .

B. Amendment to the Green Meadow Subdivision Agreement for Satisfaction of Annexation Conditions changing the date December 15, 2016 to June 15, 2017 in Item 7 Subdivision; and clarifying that final occupancy permits will not be issued until the Green Meadow Minor Subdivision final plat is filed

Discussion

Commissioner Ellison stated his concern is the commission has seen the Green Meadow Subdivision about four times this past year. It seems like the conditions keep changing and the commission is being asked for an extension or delay; things seem to be out of sequence for a normal construction project. He then asked Manager Alles if he anticipates this coming back before the commission again before the final plat is filed; which is June 15, 2017.

City Manager Alles noted the commission will see this again as it will require commission approval on a couple more items to include the final plat and amendments the subdivision conditions.

Commissioner Ellison stated he is concerned with this and asked for further discussion at an upcoming administrative meeting.

Commissioner Haladay asked when this was originally discussed, there was concern expressed regarding final occupancy prior

to final plat approval and the applicant not having access off of Green Meadow Drive.

Attorney Jodoin noted the applicant requested the extension for filing the final plat; originally that was to be completed by December 15, 2016; however, the date is now June 15, 2017. The applicant has received approval for above ground construction and his concern is the apartments will be ready for occupancy prior to the final plat conditions being completed.

Attorney Jodoin stated he has added language to the agreement that will assure the final plat is filed prior to occupancy of any building.

C. Interlocal Agreement for Management of Solid Waste Operations for Lewis and Clark County.

Commissioner Haladay asked what was the agreed to amount the county would pay the city the original agreement versus the final costs. Manager Alles stated the original agreement was for \$75,000. The new agreement has additional responsibilities for the city; in addition there is a full-time city employee stationed at the landfill. The current MOU is for \$125,000.

Public Comment

Mayor Smith called for public comment on any item on the consent agenda, 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.

Bid Awards

BID AWARDS:

- A. One (1) new 2017 Conventional or Tilt Cab and Chassis Roll-Off Container Truck with Hook Lift Hoist System - Wastewater Treatment Division

Staff Report

Wastewater Treatment Supervisor Mark Fitzwater reported seven bids were received and opened for one (1) New 2017 Conventional or Tilt, Cab and Chassis Roll-Off Container Truck with hook lift hoist system for the Wastewater Treatment Division. This piece of equipment will replace Unit #478, a 1996 Ford LTL 9000 Roll-Off truck, and is a scheduled replacement. The low bidder was Rocky Mountain Truck Center with a bid of \$166,708.00 for a 2018 Freightliner M2112. The unit meets bid specs and is considered a reasonable bid. We did not offer a trade in value for Unit #478, as we will receive a better price by selling the vehicles through a surplus sale process. The FY17 budget appropriation for this unit is \$220,000.00.

Supervisor Fitzwater recommended approval of the bid award as the purchase of this unit will allow the City to continue to upgrade its Wastewater Treatment Division fleet providing reliable equipment and reducing maintenance costs.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Haladay moved approval of the bid award to Rocky Mountain Truck Center for One (1) New 2017 Conventional or Tilt, Cab and Chassis Roll-Off Container Truck with Hook Lift Hoist System for the Wastewater Treatment Division in the amount of \$166,708.00. Commissioner Ellison seconded the motion. All voted aye, motion carried.

B. Quiet Zone Phase II, City of Helena Project #15-31

Staff Report

City Engineer Ryan Leland reported the City of Helena is generally bisected by the railroad tracks and currently has seven railroad crossings within the City limits. The City studied the feasibility of establishing a Quiet Zone to reduce the number of horn blasts from transiting trains. Upon recommendation of this study the City hired consultant KLJ to design and bid the Quiet Zone Phase II for construction.

The City of Helena first bid the Quiet Zone in July 2016 and received only one bid. That bid was considered too expensive and the City Commission rejected all bids and decided to re-bid the project this fall. On Nov.15, 2016 the City of Helena, through our consultant KLJ, received two bids for the Quiet Zone Phase II.

The consultant, MDT, and MRL all recommend that if the City of Helena is going to establish a quiet zone, then all the crossings should have a safety measure installed. However based on discussions with the Commission on the November 30, 2016, and December 14th, 2016 Administration Meetings initial direction was that the Commission would likely award the base bid and Alternate No. 1 and not award Alternates no. 3 or 4.

The proposal under consideration is to awarding the Quiet Zone Phase II to Missouri River Contractors which submitted the lowest responsible bid for the base bid and Alternate No. 1 in the amount of \$574,925.10. The total remaining budget for construction is \$425,200.00. The estimated budget balance, including testing & contingencies, has a budget shortfall of \$207,220.00

This project would reduce, but not eliminate, the number of horn blasts by transiting trains. A disadvantage to this proposal is that expending City funds on a project that may come under review in the near future and lose the Quiet Zone designation or require additional funds to bring the Quiet Zone into compliance.

Discussion

Commissioner Haladay referenced the improvements to the five respective crossings and asked if they are all contained in the city right of way. Engineer Leland stated the Montana Avenue crossing is controlled by MDT. The city received approval for any improvements to the crossing; however, the city would be responsible for paying for the improvements for the quiet zone. In addition, any improvements to the crossing both MRL and BNSF would have to approve.

Commissioner Haladay asked Manager Alles if the city has a street improvement fund contained in the Street Maintenance District. Manager Alles concurred and noted the street improvement fund has been in existence for one-year. Commissioner Haladay then asked any funds expended out of the street maintenance fund be used for general purposes, i.e. park trails. Manager Alles stated any project has to be in the city right of way to use those funds. Commissioner Haladay then asked if the funds could be used for a roof on the fire station, for police radios or vehicles for the parks department. Manager Alles stated the funds cannot pay for general fund purposes and only be used for street improvement purposes.

Commissioner Haladay clarified if the commission chooses to pay for any portion of the quiet zone solely out of the street improvement fund; it would not take away from the general funds. Those funds are designated for street improvement projects.

Commissioner Ellison asked if the protested taxes had been paid timely, where would the funding gone. Manager Alles stated the funding

would have gone into the tax levy funds; primarily the general fund operations. Commissioner Ellison stated the commission set aside \$250,000 in 2015 for the quiet zone and then raised it to \$500,000; this funding would have gone primarily to the Police, Fire and Park Departments. Manager Alles concurred.

Mayor Smith thanked Engineer Leland for the staff report. He then asked Manager Alles if his recommendation remains to award the base bid and all of the alternates or not do any. Manager Alles stated what formed his recommendation was discussion with the consultant, staff, MRL and MDT. That has been their recommendation. The commission can separate the base bid and alternates. Staff has expressed concern the follow-up in the years to come if all of the improvements are not done now, the city will essentially end up doing them.

Public comment

Mayor Smith asked for public comment. The following persons addressed the commission in support of the quiet zone: Kathy VanHook, Chelsea Rice, Nick Dimitro, Linda Gryzen, Dan Hill, Eric Resenberger.

Sean Logan spoke in opposition to the quiet zone.

Discussion

Commissioner Haladay referenced page 57 of the commission packet and noted the total funds budgeted for the quiet zone is \$500,000; he then asked if those funds are from the protested tax settlement. Manager Alles concurred. Commissioner Haladay noted \$74,800 has been expended, leaving a balance of \$425,200. If the commission chose to take the \$425,200 balance and put it back into the general fund, those funds would be available for general purpose expenditures if it had not be protested by Charter. Manager Alles concurred and noted the funding could also be put in the 440 Fund.

Commissioner Haladay stated the commission could opt to do that and pay for the quiet zone with street improvement funds. Manager Alles noted the commission did not establish the construction piece of the street maintenance until last year; there is a certain percentage of the rate increase that goes to the street improvement fund. Staff has identified several street projects that they would propose to bond for using those funds to pay for the bonds. The commission could decide to take out bonds to complete the quiet zone and use the street maintenance funds to pay for it; there would not be enough funding in the construction piece to pay for the quiet zone.

Commissioner Haladay noted on November 30th the commission discussed removing Airport Road (estimated at \$2 million dollars) as a project. Those funds could pay for the entire quiet zone and Front Street improvements and still have funding. Manager Alles stated he cannot recall the total dollar amount of construction projects and concurred projects could be removed and re-prioritized.

Commissioner Haladay summarized the commission could withdraw the entire amount of the protested taxes and put in the general fund or 440 fund and then pay for the entire quiet zone project out of the street improvement fund. Manager Alles stated yes.

Motion

Commissioner Ellison moved to reject the Quiet Zone Phase II, City Project #15-31 to the lowest responsible bidder, Missouri River Contractors, to include the base bid and Alternate No. 1 in the amount of \$574,925.10 and the associated budget amendment.

Motion died for a lack of a second.

- Motion** **Commissioner Farris-Olsen move to award the Quiet Zone Phase II, City Project #15-31 to the lowest responsible bidder, Missouri River Contractors, to include the base bid and Alternate No. 1 in the amount of \$574,925.10 and the associated budget amendment.** Commissioner Haladay seconded the motion.
- Discussion**
- Commissioner Haladay stated if the motion passes, he is comfortable moving the protested taxes to the general fund or the 440 fund and pay for the quiet zone project from the street maintenance fund, which cannot be used for general fund purposes. He again emphasized, he will not support the improvements to Airport Road and noted there are funds available to pay for the quiet zone. It should not be a debate on the funding source. He is comfortable with the base bid and alternate one.
- Commissioner Farris-Olsen stated the vast majority of those who testified support the quiet zone; citizens are impacted by the noise pollution.
- Commissioner Noonan stated he spent most of the holiday season going back and forth on this issue due to the impact of the train horns and also concerned on the amount of money that is needed and if there was going to be a sufficient answer. He heard testimony tonight that persuaded him to support the quiet zone. The reference of the TIF district and its success is important.
- Commissioner Noonan asked if the motion would include the funding options offered by Commissioner Haladay.
- Commissioner Haladay stated he believes the commission can award the bid and staff can bring back the funding package, per the discussion tonight.
- Mayor Smith stated he is still persuaded by the recommendation of the Manager Alles, either do the entire quiet zone or do nothing.
- Vote** ***Motion carried 3-2 with Commissioner Ellison and Mayor Smith voting no.***
- Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
- Mayor Smith asked how the snow removal is doing. Manager Alles stated all is well, there are a few bumps every once in a while due to equipment breakdown.
- Report of the City Attorney** REPORT OF THE CITY ATTORNEY
- Attorney Jodoin reported Judge Cooney did grant the motion to remove the individual commission members from the Westside lawsuit. He is still waiting to see what Judge McMahon will do and may have to ask for a status conference.
- Report of the City Manager** REPORT OF THE CITY MANAGER
- Manager Alles reported the hearing on the city's TSEP grant is scheduled for Tuesday, January 17th. The city will be represented at the hearing.
- Report from the Helena Citizens** REPORT FROM THE HELENA CITIZENS COUNCIL
- HCC Chair Spaeth thanked the commission for receiving the HCC's report at the January 4th administrative meeting. He then thanked city staff for the snow plowing efforts that are taking place. Manager Alles will give a presentation on the city budget on Wednesday, January 11th.

- PUBLIC HEARINGS** PUBLIC HEARINGS:
- A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3224 AMENDING SECTION 1-8-4 OF THE HELENA CITY CODE, TO PROHIBIT DISCRIMINATION IN PUBLIC ACCOMMODATIONS WHERE USERS ORDINARILY APPEAR IN THE NUDE.
- Staff Report
- City Manager Alles reported Chapter 8 of Title 1 of the Helena City Code prohibits the discrimination against individuals in employment, public accommodations and housing.
- Section 1-8-4 contains the prohibition against discrimination in public accommodations. That section also contains an exemption for certain public accommodations where users ordinarily appear in the nude. Under this exemption a place of public accommodation may require individuals to use the facilities designated for their anatomical gender.
- Final passage of the proposed amendment would eliminate a section of city code that permits discrimination based on gender identity. The ordinance would be effective on February 9, 2017, 30-days after final passage.
- Public testimony
- Mayor Smith opened the public hearing and called for any persons wishing to provide testimony.
- The following persons appeared before the commission in support of the ordinance amendment: Shawn Reagor, Gender Expansion Project, Bree Sutherland, Jessica Lahr – Outreach Coordinator with Montana Coalition Against Domestic and Sexual Violence (MCADSV), Ki-Ai Christiansen, YWCA Helena, Meagan Aspinwall, Chelsea Rice, Linda Grysen, Eleanor Smith, Ashley Makowski, Rebecca Skelton, SK Rossi, ACLU of Montana, Jennifer Hill-Hart, Sandy Oitzinger, Jacob Kuntz, Helena Area for Habitat for Humanity, Carol Neil, Katie Whearatey, Gary Spaeth, Tricia Rummel, Caitlin Carroll, Elena Johnson, Ashley Moon, John Ilgenfritz, Tom Gososh, Kim Abbott, Kim Leighton, PRIDE, Andrea Trusseau, Montana Chapter of Social Workers, and Susan Hawthorne.
- The following persons appeared before the commission in opposition of the ordinance amendment: Rose Casey, Colleen Grass, Ginny English, Jennifer Conroy, Michael Pargas, Rich Roil, Jerry Hamlin, Donna Elford, Christie Williams, Bob Leach, Phillip Fingar, Ken Goetz and Connie House.
- There being no further testimony, Mayor Smith closed the public hearing. Mayor Smith thanked all that testified for their comments and courtesy to others.
- Motion** Commissioner Farris-Olsen moved approval of final passage of Ordinance No. 3224 amending Section 1-8-4 of the Helena City Code to prohibit discrimination in public accommodations where users ordinarily appear in the nude. Commissioner Noonan seconded the motion.
- Discussion
- Commissioner Farris-Olsen also thanked those who addressed the commission. He then spoke of the two views of the ordinance, one of fear and one of discrimination and the need of respect.
- Commissioner Noonan stated tonight's discussion reminded him of a major discussion that he was involved with regarding the fear that a sexual preference tied someone with doing terrible things and how a person should be treated. He also spoke of his involvement with bringing

the AIDS Quilt to Helena in the early 90's. He will not be persuaded by the fears expressed tonight and will be persuaded by the beauty of all persons.

Vote

Motion carried 3-2 with Commissioner Ellison and Mayor Smith voting no. Ord #3224

- B. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3225 AMENDING THE BOUNDARIES OF THE RAILROAD URBAN RENEWAL DISTRICT BY AMENDING ORDINANCE NO. 3214.

Staff Report

Community Development Director Sharon Haugen reported the Department of Revenue has indicated to the City of Helena that a boundary for an Urban Renewal District cannot bisect a tract of record in the establishment of that boundary. The DOR made that determination when the City of Helena asked them to review the boundary and other documentation for the establishment of the Railroad Urban Renewal District. The City provided that information so that City staff could obtain a complete list of properties that would be affected by the district (real, personal, centrally assessed etc.) The State has asked the City to remove the tract of land shown in the attached exhibit or include the parcel in its entirety. After review, City staff is recommending that the parcel of land be removed from the boundary and that will allow DOR to complete the property lists and the certification.

The parcel to be excluded is owned by the City of Helena and as such its removal will not affect the base for the tax increment district, since the property is not taxed and therefore any increase in value will not produce any increment

The removal of the tract will accommodate DOR's review of the Railroad URD and its plan and will clarify that the boundary will be adjusted to accommodate DOR guidance concerning the establishment of the URD. It may also better accommodate the certification of the District from DOR's perspective.

The removal of the parcel may limit how tax increment money may be used on the property, if no direct link between the expenditures of the funds on this tract of land and benefits to the URD can be established. Since the parcel contains portions of Centennial Trail, the link between the two should be easily established.

Public testimony

Mayor Smith opened the public hearing and called for any persons wishing to provide testimony. 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 No. 3225 amending the boundaries of the Railroad Urban Renewal District by amending Ordinance No. 3214. Commissioner Haladay seconded the motion. All voted aye, motion carried. **Ord #3225**

Commissioner Haladay clarified regardless of adjusting the boundary, improvements to Centennial Trail, which runs through the district, would be justified by using TIF funds.

Public Communications

PUBLIC COMMUNICATIONS

No public communications were given.

***Meetings of
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is January 18, 2017 and the next Commission Meeting is January 23, 2017. The ADA Committee meeting is scheduled for January 17th at 1:30 p.m. in Room 426.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:10 p.m.

Mayor

ATTEST:

Clerk of the Commission