

A G E N D A R E P O R T

DATE April 4, 2006

ITEM Resolution No. 9561, Intent to Annex, and Ordinance No. 2935 to Establish City Zoning for Parcel Mark Nos. 10 and 10B, Section 17, T20N, R4E

INITIATED BY City Administration

ACTION REQUESTED Commission Adopt Resolution No. 9561, which sets Public Hearing for May 2, 2006, and Accept Ordinance No. 2935 on First Reading and Set Hearing

PREPARED BY Bill Walters, Senior Planner

APPROVED & PRESENTED BY Benjamin Rangel, Planning Director

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RECOMMENDATION:

The City Planning Board has recommended the City Commission annex Parcel Mark Nos. 10 and 10B in Section 17, Township 20 North, Range 4 East, Cascade County, Montana, and the City Zoning Commission has recommended the City Commission apply a zoning classification of C-2 General commercial district, to same.

MOTIONS (Each motion to be separately considered):

“I move the City Commission adopt Resolution No. 9561.”

and

“I move the City Commission accept Ordinance No. 2935 on first reading and set a public hearing for May 2, 2006, to consider adoption of Ordinance No. 2935.”

SYNOPSIS:

Resolution No. 9561 sets a public hearing for May 2, 2006, to consider annexation of subject Parcel Mark Nos. 10 and 10B located along the south side of 10th Avenue South between 26th and 29th Streets South. Ordinance No. 2935 assigns a zoning classification of C-2 General commercial district to subject property upon annexation to the City.

BACKGROUND:

A portion of the block of land located along the south side of 10th Avenue South and between 26th and 29th Streets South has never been annexed to the City. The unincorporated enclave, comprising 2.0 acres, is entirely surrounded by the incorporated area of the City.

The unincorporated area consists of two parcels owned by Zollie Kelman and is legally described as Parcel Mark Nos. 10 & 10B, Section 17, Township 20 North, Range 4 East, Cascade County, Montana. Please refer to the attached vicinity zoning map.

The City Commission has expressed an interest in annexing unincorporated enclaves to the City. For some governmental entities and neighbors these types of unincorporated enclaves have been a source of confusion and inconsistent code application. An example is the fireworks issue where County requirements differ significantly from the City in the type of fireworks that can be sold, the time period during when they may sold and the type of fireworks that are allowed to be discharged. Equity issues also arise where property in the midst of an urban setting is not subject to the same code requirements or standards as surrounding properties when it comes to community decay, weed control, signage requirements, etc. These properties also benefit

from readily available public improvements, such as paved roadways, curb and gutter, and sidewalks which in many cases have been funded by taxpayers within the City.

According to Section 7-2-4501, MCA, a city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Further, Section 7-2-4502, MCA, provides that wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object.

Public infrastructure exists to serve the 2.0 acres being considered for annexation. The property is bordered on the north by 10th Avenue South which is improved with paving, curb and gutter and sidewalk. City water mains are located near the northwest and northeast corners of subject property and sanitary sewer is located near the southeast corner in 29th Street South.

Upon annexation, subject property will be subject to City assessments. The existing vehicle display and sales lot is a permitted use in the proposed C-2 General commercial district and would be allowed to continue following annexation. Fireworks stands could continue to operate from the site in accordance with City standards.

Attached is a communication dated February 28, 2006, from Steven Potts, attorney representing the property owner, Zollie Kelman, asking that the annexation process be postponed until a declaratory judgment can be decided. After reviewing Mr. Potts' letter and definitions and land use designations in the Unified Land Development Code, the City Attorney has directed staff to proceed with processing the annexation unless directed otherwise by a court of competent jurisdiction.

Also attached is a communication dated March 16, 2006, from Michael Maeder, Liberty Fireworks, Inc., essentially requesting any action to annex subject property not become effective until after July 4.

Subject Mark Nos. 10 & 10B are presently zoned under the Cascade County Zoning District as "B-2" General Business District. The surrounding incorporated property, as well as the entire frontage on 10th Avenue South, is zoned C-2 General commercial district. It is therefore being recommended subject Mark Nos. 10 & 10B be zoned upon annexation to the City as C-2 General commercial district.

Section 76-2-304 Montana Code Annotated lists the following criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the comprehensive plan;
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Designating subject property for commercial use is consistent with property abutting and served by 10th Avenue South, a principal arterial. Staff concludes all of the above mentioned zoning criteria are substantially met.

The City's new Unified Land Development Code (ULDC) also lists the following criteria to be considered in conjunction with annexation:

- 1) The subject property is contiguous to the existing city limits.
- 2) The proposed annexation is consistent with the city's growth policy.
- 3) The proposed annexation is consistent with applicable neighborhood plans, if any.
- 4) The proposed annexation is consistent with other planning documents adopted by the City Commission, including the river corridor plan, transportation plan, and sub-area plans.
- 5) The City has, or will have, the capacity to provide public services to the subject property.
- 6) The subject property has been or will be improved to City standards.
- 7) The owner(s) of the subject property will bear all the cost of improving the property to City standards and/or the owner(s) has signed an agreement waiving the right to protest the creation of a special improvement district created to pay, in whole or in part, any necessary improvement.
- 8) The subject property has been or will be surveyed and officially recorded with the County Clerk and Recorder.
- 9) The City will provide both water and sewer service to each of the uses in the subject property that may require potable water and wastewater treatment and disposal.
- 10) The subject property is not located in an area the City Commission has designated as unsuitable for annexation.
- 11) The subject property is not located in another city or town.
- 12) The subject property is not used in whole or in part for agricultural, mining, smelting, refining, transportation or any other industrial or manufacturing purpose incidental thereto.

Subject property is entirely surrounded by the incorporated area of the City, which has the capability and capacity to provide necessary public related services. Staff concludes all of the above mentioned annexation criteria are substantially met.

It has been an objective of the City Commission to address and eliminate wherever possible, enclaves that are completely surrounded by the incorporated area of the City. Each enclave has its own separate set of characteristics and issues. On a time available basis, staff has been directed, to continue processing these types of wholly surrounded annexations, with the more apparent and less involved ones being processed first.

The Planning Board/Zoning Commission on March 14, 2006, conducted a joint public hearing on the annexation and establishment of City zoning on subject Parcels Mark Nos. 10 & 10B. No proponents or opponents spoke at the public hearing. At the conclusion of the public hearing, the Planning Board passed a motion recommending the City Commission annex subject Parcel Mark Nos. 10 and 10B and the Zoning Commission passed a motion recommending subject Parcel Mark Nos. 10 and 10B be assigned a City zoning classification of C-2 General commercial district upon annexation.

Attach: Res. No. 9561

Ord. No. 2935

Vicinity/Zoning Map

Letter dated Feb 28, 2006, from Steven Potts

Letter dated March 16, 2006, from Michael Maeder, Liberty Fireworks, Inc.

cc: Zollie Kelman, PO Box 2651 GF 59403-2651

Dave Pierce, 2720 10th Ave So

Steve Potts, Attorney, 600 Central Plaza

Mike Maeder, 2407 Central Avenue West