

**Minutes**  
**Zoning Commission Meeting**  
**April 12, 2022, 6:00 p.m.**  
**Via ZOOM Virtual Platform and in Commission Chambers**

**Commission Members Present:**

Rebecca Harbage, *Chair*  
Alyssa Sorenson  
Nicole Anderson  
Kim Wilson

**Members of the Public Present:**

John E Andrew, 312 Ming Place  
Matt Schmechel, 19 S Last Chance Gulch  
Amy Barrett, 518 N Davis  
Savanna Barrett, 25 S Last Chance Gulch  
Angie Wagenhals, 332 S. Park Ave  
Ben Tintinger, 61 S. Benton Ave  
Doug Greenman, 2210 Dodge Ave.  
Laura Morrow, 2300 National Ave  
HCTV  
Madalyn Quinlan  
Kim Buell Clouse, 2303 National Ave  
Paul Feuerstein  
Walt Wagenhals, 1545 Williamsburg Rd  
Brandon DeMars, 415 ½ N Ewing St  
Scott Harris, 1050 E. Lewis  
Matt Peterson, 309 Holter St  
Carley  
Brian Garrity  
Stuart  
Jake Brown, 201 N Warren  
Kevin Ward, 518 Breckenridge  
Lee Schubert  
Laura Gerlach, 528 N. Warren  
M'Liss  
Piper Lynch  
Sean Michael Graves  
Rob Freistadt  
Jan Lombardi, 62 S Last Chance  
John Metropolis, 759 S. California St  
Colleen Martin, 518 Breckenridge

**Staff Present:**

Michael Alvarez, Planner II  
April Sparks, Administrative Assistant III  
Lucy Morel-Gengler, Planner

<b><u>Topic</u></b>	<b><u>Time</u></b>	<b><u>Description</u></b>
<i>Call to Order &amp; Staff Introduction</i>	(0:00:08)	Meeting began at about 6:00 pm with a brief introduction.
<i>Approval of Minutes</i>	(0:02:09)	Minutes from March 2, 2022, meeting were approved without discussion.

**Public Hearing:  
Item 1**

**(0:04:36)**

Mr. Alvarez presented a power point staff report on his findings regarding the public hearing item: a Resolution granting a Conditional Use Permit to allow a casino use in the Downtown (DT) Zoning District for property legally described as Parcel 22 of the FIRST SUBDIVISION of LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA, Lewis and Clark County, Montana, AND Lot 23A as shown on Amended Plat of Lot 23 of the FIRST SUBDIVISION of LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA MONTANA, as shown on the amended plat filed under Document Number 443830/B, records of Lewis and Clark County, Montana.

**(0:11:55)**

Staff is recommending **Approval** of a resolution granting a Conditional Use Permit to allow a casino use in the Downtown (DT) Zoning District for property legally described as Parcel 22 of the FIRST SUBDIVISION of LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA, Lewis and Clark County, Montana. AND Lot 23A as shown on Amended Plat of Lot 23 of the FIRST SUBDIVISION OF THE LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA MONTANA, as shown on the amended plat filed under Document Number 443830-B, records of Lewis and Clark County, Montana.

1. Gambling machines be restricted to the “Gaming Area” as defined in the site plan submitted and not visible from the walking mall, save for the existing sports book machine located near the entrance to the original Windbag Saloon.
2. That devoted table games be restricted to the former Ghost Art Gallery space (21 S Last Chance Gulch).
3. Gaming machines volume be reduced to a level so that they cannot be heard if standing on the walking mall or in adjacent buildings if standing 2 feet away from the wall inside that space.
4. The word “Casino” not be used in signage on the face of the building.
5. A “No-Smoking” sign be placed near the entrance of the casino on the outside of the building.
6. All conditions must be met within one year of CUP approval, as per Section 11-3-5(D) of the Helena City Code.

**Questions for Staff  
by the Commission**

**(0:13:46)**

Mr. Wilson asked Mr. Alvarez about the second condition, and to define the term “devoted table games” and if that use would be allowed all the way to the front of the space making it visible from the street. Mr. Alvarez stated the intent is to keep gambling machines restricted to the “gaming area” and the plans do not have devoted gaming tables in the front. Mr. Alvarez wanted to build in flexibility if the space evolves over time. Mr. Alvarez wanted to prevent the entire Windbag Saloon from having card games. Mr. Wilson stated that his understanding that it would be like the room in the Rialto that is devoted to card games further north on Last Chance Gulch. Mr. Alvarez stated he was unfamiliar with the

Rialto, but Chair Harbage confirmed Mr. Wilson's assumption. Chair Harbage asked Mr. Alvarez for confirmation that table games were not included in the proposal as it was presented but it is potential future use. Mr. Alvarez confirmed that.

*(0:15:26)* Mr. Wilson asked in going to a casino designation it would include both machines and table games. Mr. Alvarez confirmed this. Mr. Wilson asked if the application had specified that they will be using gaming tables. Mr. Alvarez confirmed this. Mr. Wilson asked if once this CUP is approved that they or a subsequent owner could use gaming tables. Mr. Alvarez confirmed this.

*(0:16:09)* Ms. Sorenson asked if the neighboring tenant would be able to hear the gaming machines from their side of the shared wall. Mr. Alvarez stated that it is not anticipated that they would, but the third condition was put in to reduce the chance that they would be heard from the neighboring properties or from the walking mall.

*(0:16:54)* Chair Harbage asked about the fourth condition that the word "Casino" will not be used on signage, and while it was stated in the application that they would not use that wording, does the city have the ability to regulate the content of signs. Ms. Morrell-Gengler stated that as it was part of the application, staff and the Commission may want to look at re-wording that condition to reflect it was stated by the applicant in their application. Chair Harbage stated that perhaps it would be advisable to have the City Attorney review the condition, and that in the application materials something was mentioned about flashing lights on the building, but nothing regarding lights was mentioned in the conditions. Mr. Alvarez stated that issue is addressed under glare and that the downtown signage standards are covering all of that, they do not allow for exposed bulbs, and most of this is not permitted under the downtown sign code.

*(0:19:12)* Mr. Wilson asked about comments about the infrastructure in the area, and the family friendly aspect of the area, and if those public uses are recognized as features of downtown that the city puts a value in. Mr. Alvarez replied that they are, and that the Downtown Neighborhood Plan asks that the downtown area be considered the "Face of the City." There are other casinos, such as the Rialto, which have children playing in front of them. While, based upon public comment, we don't want to be advertising the city as a "City of casinos", Mr. Alvarez thought that it was fairly well restricted with the restrictions on signage and the placement of the machines.

*(0:21:42)* Chair Harbage asked about a time last summer that the city approved consumption of alcohol outside of establishments on the walking mall. Mr. Alvarez stated he was not aware of that. Mr. Wilson suggested that had been for Pride week.

*(0:22:53)* Ms. Sorenson asked if the effects of the conditions prove to be ineffective, such as the no smoking sign, what is the recourse for

enforcement. Mr. Alvarez stated that smoking on the walking mall is not permitted already, so that is already an enforcement issue. The hope is that this re-enforces things with the addition of a no smoking sign. Ms. Sorenson stated she assumes there is the belief that the addition of the casino use will contribute to the smoking problem otherwise there would not be a condition to add a no smoking sign. Mr. Alvarez confirmed that assumption. Ms. Sorenson then asked if the no smoking sign has no effect, what is the recourse. Mr. Alvarez stated we need to limit the conditions to what is enforceable to the business. The city can enforce that there is a sign, we cannot tie to a conditional use permit the behavior of patrons. Chair Harbage compared this to the situation with the Sapphire Bar, where it became apparent there were some bad actors that were possibly patrons and they had permission to use an outdoor space which was taken away when it became apparent it was being abused. What we want to avoid is a situation where we approve something where the patrons then become to be seen as a blight on the walking mall and then it becomes a law enforcement issue. There were comments addressing issues that come up with drunk patrons, such as vomit on stairs, and the commission should avoid appearing to approve that type of behavior. Mr. Alvarez stated that Windbag Saloon is already a tavern, and the space has already been purchased and they are already putting a bar into the space which they are allowed to do by right. When setting the conditions, it is difficult to separate these things which are permitted by right, the bar use, which is what we would associate with most of this bad behavior cited in public comment, from the casino use.

*(0:28:15)* Chair Harbage asked if the city code definition of casino and the 5-gambling machine threshold is based on state law or if it is determined by the city. It was determined that needed to be researched before being answered. Chair Harbage stated a lot of her indecision goes to the question of the difference between the impact of 5 or 6 gambling machines, and therefore she would like to know who is responsible for this threshold. Mr. Alvarez stated without the CUP, by right they are allowed to put 5 gaming machines in the window. Mr. Wilson asked if the existing Windbag Saloon have 5 gaming machines. Mr. Alvarez stated the only machine he has seen in the existing business is a sports betting machine. Mr. Wilson asked if that counts towards the 5 machines. Mr. Alvarez stated that his impression is that it would, as it is a machine used for gambling. Mr. Wilson asked if each side of the business could have 5 machines by right. Mr. Alvarez stated that the two spaces are sharing one license, so it would be 5 machines total for both spaces. Mr. Wilson asked to confirm that there would be no restriction on the location of those 5 machines that could be had by right. Mr. Alvarez confirmed that. Ms. Sorenson asked if a CUP were permitted then 5 machines could still be installed wherever they choose in the existing space. Mr. Alvarez stated that as both spaces would be under one license that all gaming machines except for the existing sports book machine would be confined to the gaming area under the CUP. Mr. Alvarez

further explained with the granting of the CUP, the Windbag Saloon would lose its designation of tavern and be considered a casino and all gaming machines would be relegated to the gaming room.

***Applicant Addressed  
the Commission*** (0:32:37)

Ben Tintinger, Mosaic Architecture, the representative for the applicant presented on the proposed expansion of Windbag Saloon, named Windbag Next Door. He stated the intent of the project was to create a new, more upscale bar, and include the gaming machines like what Silver Star Steakhouse and Brewhouse Downstairs have and did not anticipate the backlash to the proposal. Mr. Tintinger stated that the main concerns stated during his meetings with neighboring business owners were regarding the perception of the clientele. He discussed changes that were made from the original submittal and the process of arriving at the conditions they proposed in their application. Mr. Tintinger stated that there is no intention to have card tables and the thought was to not limit future owners of the space, the current owner intends to have any gaming in the back of the space. Mr. Tintinger also addressed the concerns about this use not fitting with the family friendly nature of the area, pointing out the activity farther north on the walking mall the previous weekend with Ten Mile Creek Brewery, Hawthorne wine shop, the Rialto, and Big Dipper and the large number of families with children in the crowd of hundreds enjoying the area. Mr. Tintinger stated he feels this expansion is going to help downtown by bringing more people to downtown.

***Questions for the  
Applicant*** (0:44:35)

Ms. Anderson asked Mr. Tintinger to clarify the operating hours for the expansion. Mr. Tintinger confirmed that the intent is for the hours to match those of the existing business.

(45:08)

Mr. Wilson asked about the sound proofing issue, and that the distance from the gaming area to the front entrance is anticipated to be far enough so the sound of the machines will not carry. Mr. Tintinger stated that gaming area is far enough back from the front door that they will not be heard, and the area will be screened so they will not be seen from the street either.

(0:46:25)

Chair Harbage asked about the statement that the intent was not to have a casino and if the project would move forward without the gaming machines. Mr. Tintinger confirmed that the project would move forward without the CUP.

***Public Comment*** (0:48:03)

Amy Barrett, 518 N. Davis St, stated she was co-owner of the neighboring business, Lasso the Moon. Ms. Barrett stated her opposition to the CUP based upon objections to alcohol and gambling being contrary to the family nature of her business. Ms. Barrett outlined existing issues with patrons of the Windbag Saloon, including smoking and parents sending unattended children to her business while waiting for service. Ms. Barrett also made a statement about the need of more retail on the ground floor. She also raised concerns about the proximity to a space used for religious worship services and a daycare facility.

- (0:51:44)** Savanna Barrett, 25 S Last Chance Gulch, stated her opposition to the CUP, based upon the proximity to a church, library, toy store, dentist, and an addiction counseling center. Ms. Barrett spoke at length about the issue of gambling addiction and the concern that the casino use would be permanent if the CUP was approved.
- (0:54:34)** Matt Schmechel, 19 S Last Chance Gulch, the applicant, wanted to add that he thinks that the resubmittal took previous concerns into account, and went beyond what was required, and the intention is to be good actors within the community and want to be part of a bright, vibrant downtown community, and will do their best to enforce the no smoking policy and minimize any type of public intoxication.
- (0:56:09)** Angie Wagenhals, 332 S Park, stated her support of the proposal as she feels it would be a beneficial addition to the walking mall and would make Helena more attractive for young professionals. Ms. Wagenhal stated that some of comments have unfairly associated gambling with bad behavior.
- (0:57:40)** Matt Peterson, 309 Holter St, stated his support for the proposal as it takes into concerns people have.
- (0:59:30)** Walt Wagenhals, 1545 Williamsburg Rd, stated his support for the proposal as the gaming element is a minor aspect of the expansion and concerns have been addressed in the design. Mr. Wagenhals pointed out that not all people who enjoy gaming are addicted to gaming and electronic gaming is incorporated into many businesses throughout the state. Mr. Wagenhals also stated that there will be a benefit in the increase in tax funds to the city. Additionally, the aesthetic and atmospheric aspects will add to the tribute to Helena's history already featured in the area.
- (1:03:14)** Kevin Ward, 518 Breckenridge, stated his support for the proposal noting his observation of an aversion for change in the area highlighting the COVID-19 pandemic and changes that happened then. He stated his feeling that the proposal was well thought out and took into consideration the concerns of neighboring business owners.
- (1:05:07)** Laura Gerlach, 528 N. Warren, stated she had concerns that the casino designation would not be family friendly, and that the concerns and experiences of the owners of Lasso the Moon both now, and that you cannot guarantee the standards of your clientele, and for these reasons opposes the CUP.
- (1:06:43)** Scott Harris, 1050 E Lewis, stated his support for the proposal, as a casino does not draw more people that consume alcohol as opposed to a bar. Casino is an environment for a person to enjoy gambling activities, and alcohol is not an effect of that.

- (1:07:33) Jake Brown, 201 N. Warren, stated his support for the proposal. He stated he spends a lot of time on the walking mall after work with his fiancée. The business will add a lot of richness to the community and walking mall, as well as attract more young professionals to Helena. Mr. Brown also urged the city not to approve or deny permits based upon perceptions of perceived clientele and it is a slippery slope.
- (1:08:47) Colleen Martin, 518 Breckenridge St, stated her support for the proposal and that intention of the applicant shown through the thoughtful plans considering feedback from the community while also trying to create a desirable place for young professionals to get together through a high-end bar is deserving as the casino element is part of the plan, but not the plan. The proposal would be a fun and exciting addition to the city.
- (1:10:33) Brandon DeMars, 415 ½ N Ewing St, stated his support for the CUP, as it is a good thing for the walking mall to have more entertainment options within walking distance to residential areas.
- (1:11:21) John Metropolis [*possible wrong spelling*], 759 S. California St, stated his support for the proposal, and the plans remember the past but look forward to a vibrant future. He also stated that insinuating that the clientele will be unsavory based upon their desire to go into a casino is shallow and prejudice. It is a slippery slope to profile people based upon their pastime. Helena is continuing to grow and it's important to grow entertainment opportunities.
- (1:12:44) Rob Friestadt via chat asked why a CUP was necessary and stated his support for the expansion of the Windbag but felt that electronic gambling was a detriment to the state.
- (1:13:05) Jan Lombardi, 62 S Last Chance Gulch, stated her concern over lack of communication with her as a neighbor to the business. She stated she does not equate casinos with entertainment, and while she is not entirely opposed, but would like more information on the proposal and what it means for the area and the city.
- (1:15:43) With no additional comment, public comment on this item was closed.

***Commission  
Discussion, Motion  
and Vote***

- (1:15:56) Ms. Sorenson stated that she wanted the Zoning Commission to bring the discussion about to the subject of the CUP and set aside the issues surrounding the bar use, which is allowed by right.
- (1:17:26) Ms. Anderson motioned to **not recommend approval** of a resolution granting a Conditional Use Permit to allow a casino use in the Downtown (DT) Zoning District for property legally described as Parcel 22 of the FIRST SUBDIVISION of LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA, Lewis and Clark County, Montana. AND Lot 23A as shown on Amended Plat of Lot 23 of the FIRST SUBDIVISION OF THE LAST CHANCE REVISION OF A

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1. Gambling machines be restricted to the “Gaming Area” as defined in the site plan submitted and not visible from the walking mall, save for the existing sports book machine located near the entrance to the original Windbag Saloon.
2. That devoted table games be restricted to the former Ghost Art Gallery space (21 S Last Chance Gulch).
3. Gaming machines volume be reduced to a level so that they cannot be heard if standing on the walking mall or in adjacent buildings if standing 2 feet away from the wall inside that space.
4. The word “Casino” not be used in signage on the face of the building.
5. A “No-Smoking” sign be placed near the entrance of the casino on the outside of the building.
6. All conditions must be met within one year of CUP approval, as per Section 11-3-5(D) of the Helena City Code.

Ms. Sorenson seconded the motion.

(1:18:20) Ms. Anderson stated she agrees that the proposals images paint an excellent picture of what it could look like and how it could bring people downtown, and that is what she thinks the comments in support are addressing, however she does not think it is appropriate to allow for the casino use in the location given the comments that have been heard.

(1:18:52) Ms. Sorenson stated that she was trying to think about the effects of casinos as opposed to bars and what research is out there about their effects. In regard to section 11-3-4 A 2, adversely impact the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; it is a difficult read, but one thing that stood out the adverse economic impacts of casinos are more likely to be seen in more dense, urban, and (*inaudible*) areas and which the walking mall and core downtown area of Helena would be most adversely potentially impacted by casino use, so if there is anywhere in Helena the Zoning Commission can say no to casino use it is here, specifically on the southernmost portion of the walking mall, as this where the majority of wall to wall retail locations exist. While the new plans are an improvement upon the original proposal, and a lot of her worst concerns were mitigated, but it is difficult when the city has decided to designate casino use as over 5 machines, if we say yes here how do we define casino use is inappropriate in the future. And this the area of town she feels would be most negatively impacted by casino use.

(1:20:58) Mr. Wilson stated he is torn on this case as he is generally against casinos. He stated the concerns the commission has heard are how does this affect families with children, how does this affect the



ambiance of the walking mall. Mr. Tintinger made a good point in speaking about the previous weekend on the other block of the walking mall and noted that the casino in the Rialto is bracketed by the ice cream shop and the Parrot, with two more bars and a restaurant in the middle, and that the block is vibrant because of the mix of use. Mr. Wilson also pointed out the block the Windbag is on is changing with the closing of The Panhandler and a new restaurant possibly going into that space, and that nothing is static when it comes to retail businesses in Helena. Mr. Wilson sympathizes with the retail owners on the block as this block other than the Windbag has had a different ambiance than the north block, which has been a bit more by design and due to pandemic changes has been more wide open as opposed to the south block which is much more sedate a quiet and more suited to families. Mr. Wilson echoed Chair Harbage's comment that the difference between 5 machines sitting in the window versus 10-15 machines sitting hidden in a back room isn't that big. The other item is that a lot of the impacts and concerns from existing business owners have as much to do with alcohol consumption as they have to do with gambling. The fact that there are 10 machines hidden in the back room and yet people will be sitting outside on a hot summer day drinking until late in the night, he's not sure the casino piece of that is going to add to that, but he also comes back to section 11-3-4 A 2, that includes by definition the Lasso the Moon folks and the Dunphy block people, but it also includes the public infrastructure that steers families into this block. Mr. Wilson stated he was torn and wanted to hear further discussion.

(1:24:52) Chair Harbage also stated she was torn and would echo many of Mr. Wilson's comments. The factors that will go into her decision are as follows: does she think personally Helena has too many casinos already, yes; does she agree with some of the commenters that gambling can be a public health concern, and public health is one of the concerns the commission has to look at, yes gambling can be a public health issue; does she agree downtown is intended to be the face of what we want for the city of Helena, yes that is what we have in our minds when we think about downtown. However, does she think that the 15 machines hidden in the back of this proposed bar, which sounds like it will be moved forward with or without this CUP, will destroy the walking mall or negatively impact downtown, she does not think it will. The zoning commission has a lot of discretion in making this decision and the city code says that conditional use permits may be granted only upon a finding supported by substantial credible evidence, so that may suggest that the commission can say no if they want to. Chair Harbage does agree with some of commenters that it is distasteful to criticize the proposal based upon perceptions of the type of clientele that it may attract, and she would also like to echo Mr. Wilson's comment that some of the comments would go just as well with a new bar being proposed on the walking mall, there are some legal vices that are legal in the state: gambling, alcohol, marijuana, among others. The commission is meeting here tonight to consider the application and determine if it fits within the city

code. For Chair Harbage, if the commission wants to protect the walking mall from casinos period, this is not the way to do it, deciding no on this CUP. If the commission or the city wants to protect the walking mall from casinos, we can make casino use not permitted in downtown. Do the conditions proposed by the staff get the commission to the bar of granting a CUP for a casino use or is it gambling in general that the commission disagrees with, in essence the commission would be putting a condition of no gambling in order for this to be approved. Is there any way the commission can apply conditions and approve the CUP if it is gambling? If the issue is gambling in general, then we should simply have casinos not permitted in downtown, as Ms. Sorenson said, how would you ever say no to another one if you said yes here. And if this is granted then it would be grandfathered in, so if later the city decides, no we don't want casinos in downtown, this would potentially be adding one more for as long as this property is the same use.

*(1:29:10)* Ms. Anderson asked if that is if you do add a condition that gambling is not allowed on the walking mall, which is not technically on the table. Chair Harbage stated that is correct, but the way to address whether we want casinos in downtown is to make them not permitted in downtown zoning, but not through this.

*(1:29:35)* Ms. Sorenson asked how and if the commission could move something like that forward, or if that must go through City Commission. Chair Harbage replied it is both, as the Zoning Commission is advisory to the City Commission. The Zoning Commission can amend land uses and in which zones they are permitted, not permitted, or conditionally permitted, and there is a current amendment to the table with the City Attorney for approval, so that is a process the commission could revisit and then send to the City Commission for adoption. Ms. Anderson asked if voting against the motion that was made would automatically adopt the conditions being proposed. Chair Harbage replied that she was going to ask Ms. Anderson about her motion, as she moved to not recommend approval. Mr. Wilson stated that if the current motion is voted down then there would need to be a new motion to recommend approval with those conditions. Mr. Alvarez stated that is correct. Ms. Sorenson asked if it is possible to amend the conditions to exclude the condition for the addition of gaming tables in the future, and if the applicant wants to add them, they will need to apply for an additional CUP at that time. Mr. Alvarez stated the report is a draft and the commission can change any of the conditions they want in this meeting.

*(1:31:46)* Mr. Wilson asked Mr. Alvarez that his assumption was that if this is approved for a casino CUP it would allow for any casino use, but Mr. Alvarez is saying that if the commission approves this particular CUP with conditions such as no table games allowed, that's something they could do. Mr. Alvarez stated that the conditions approved with the CUP would also apply "forever" and

if approved as it is there would only ever be 500 square feet of casino space allowed. Mr. Wilson wanted to clarify for the public in attendance that the Zoning Commission is advisory, so they are voting to make a recommendation to the City Commission, they make the ultimate decision. Ms. Anderson asked if her original motion needed to be voted down before any revisions could be made. Mr. Alvarez confirmed that. Mr. Wilson suggested Ms. Anderson could withdraw her motion. Ms. Morell-Gengler confirmed the motion can be withdrawn. Ms. Anderson withdrew her motion, in order to make a new revised motion.

(1:33:54) Chair Harbage confirmed the motion was withdrawn, asked for a new motion, or additional discussion on conditions. Mr. Wilson proposed a condition, to remove the proposed second condition and replace it with one that restricts gaming to machines as defined in the code, and not to allow table games in the CUP in this space. Ms. Sorenson stated that she would personally like to simply restrict all gambling activity to the 500 square feet area currently designated in the plans for the gaming machines. Mr. Wilson stated he would be fine with that condition. Chair Harbage suggested that this would remove the currently proposed second condition entirely and amend the first condition to say “Gambling machines and table games” or is gambling defined in city code. Ms. Morell-Gengler suggested the commission make it as broad as possible, “Any gambling activities as permitted by the term casino.” Mr. Wilson asked where in the material is the definition of casino. Chair Harbage stated it was on page 3 of the staff report. Chair Harbage read the code definition of Casino, so amend condition one to read “Gambling activities be restricted to”. Mr. Wilson suggested “Gambling activities as permitted under the definition of Casino”. Chair Harbage asked if there are any gambling activities allowed that are not under the definition of casino. Ms. Morell-Gengler stated she thinks that the five gaming machines would be allowed outside of the definition of casino. Ms. Sorenson asked then if they would not be able to restrict that. Ms. Morell-Gengler said that is correct as they are permitted by right. Ms. Sorenson then stated that was her clarifying question earlier. Mr. Wilson asked if they move to approve the CUP and allow gaming as allowed under the casino designation per city code in the back room then they are not restricted to five machines, they can have 6 or more or table games. Mr. Alvarez stated that with the definition of a casino all gambling activity may be restricted to the gaming area, and that using “gambling activity” is the broadest net. Chair Harbage would also like to see the 4<sup>th</sup> condition reworded to it is not the city telling them what they can and cannot say on their sign, and perhaps the city attorney’s office can reword that condition. Mr. Alvarez pointed out that the conditions had already been reviewed by the city attorney, and Ms. Morell-Gengler suggested adding clarifying language that the condition is requiring the applicant to adhere to they have proposed for signage. Ms. Anderson stated she agrees with the intent of the condition.

(1:41:38) Mr. Wilson motioned to **recommend approval** of a resolution granting a Conditional Use Permit to allow a casino use in the Downtown (DT) Zoning District for property legally described as Parcel 22 of the FIRST SUBDIVISION of LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA, Lewis and Clark County, Montana. AND Lot 23A as shown on Amended Plat of Lot 23 of the FIRST SUBDIVISION OF THE LAST CHANCE REVISION OF A PORTION OF THE ORIGINAL TOWNSITE OF HELENA MONTANA, as shown on the amended plat filed under Document Number 443830-B, records of Lewis and Clark County, Montana.

1. All gambling activity as allowed under the definition in the Helena City Code be restricted to the “Gaming Area” as defined in the site plan submitted and not visible from the walking mall, save for the existing sports book machine located near the entrance to the original Windbag Saloon.
2. Gaming machines volume be reduced to a level so that they cannot be heard if standing on the walking mall or in adjacent buildings if standing 2 feet away from the wall inside that space.
3. The word “Casino” not be used in signage on the face of the building.
4. A “No-Smoking” sign be placed near the entrance of the casino on the outside of the building.
5. All conditions must be met within one year of CUP approval, as per Section 11-3-5(D) of the Helena City Code.

Ms. Anderson seconded the motion.

(1:43:56) Mr. Wilson stated that he finally came down on this is that, with the point about the north block of the walking mall is well taken, you have all those uses side by side including a fairly significant family and children nexus there and it seems to work and has created one of the best spaces in Helena. This block will be different, but to him to balkanize downtown and say one block can have casinos side by side with children activity and the next one can't, is taking things too far. As Mr. Wilson does not like casinos, he is reluctant to make the motion, but he will support it.

(1:45:05) Chair Harbage stated she thought about downtown and the walking mall specifically quite a bit on this proposal, and she has lived in Helena since 2008 and the walking mall has changed a lot over that course of time and when she thinks about it she thinks about looking down the walking mall from the north end and the new businesses that have drawn more foot traffic into the walking mall they are Big Dipper, Hawthorne, Ten Mile, Windbag, Luca's; and thinking of those as a group the trend is restaurant, food, and bar uses. Chair Harbage made note that she typically does not enter the walking mall from the south end and the playground as she does not have small children. She noted it does seem as though the vibrancy has been driven with the addition of the food, and bar uses, and this does seem consistent with that. She appreciates that applicant withdrawing their initial application and gave the commission additional information to help address conditions in

city code, and that she would be supporting the motion.

(1:47:02) Ms. Sorenson stated Chair Harbage was the one that got her on board with the stated conditions, and conditional use, if there is absolutely no condition that can be placed upon it other than no gambling perhaps the issue is not the application it is the zoning. She is reluctant and does not think there should be a casino on the walking mall, and that it does not fit with the downtown plan. She does not think slot machines are eclectic, that they are common. These are her personal feelings about it that it doesn't fit with the downtown plan and what we want to do with the downtown, but she also thinks that it is not fair to private property owners if it is not made clear with zoning what we expect people to be able to do with their property, so that is something the commission needs to talk about more. The conditions put in place with the new application do seem to address the most pressing concerns people had regarding the aesthetic and feel of the walking mall, and the separation of the gambling and lounge, as gambling has fewer benefits of other vices. Ms. Sorenson plans on supporting the CUP. Chair Harbage wanted to clarify it is a conditional use permit and code says it may be granted by the city commission only on a finding, and that suggests that even if we make a finding the standards are met it may be granted so you have discretion in how you vote.

(1:50:00) A vote was taken on the motion, and the motion passed unanimously (4:0). This item will be heard by the city commission Monday, May 9.

(1:50:40) There was a break requested before starting the second hearing and granted.

**Public Hearing:  
Item 2**

(1:55:41) Ms. Alvarez presented a power point staff report on his findings regarding the public hearing item: Consider a Resolution granting a Conditional Use Permit to allow a worship facility use in the (R-3) Residential Zoning District for a property with a legal description of Lots 1, 2, 3, 4, 5, and 6, and Lots Seven (7) and Eight (8), and Lots 9, 10, 11, and 12 of Block 33 of the Grand Avenue Addition to the City of Helena, Lewis and Clark County, Montana.

(2:03:21) Staff is recommending **Approval** of a resolution granting a Conditional Use Permit to allow a Conditional Use Permit to allow a worship facility use in the (R-3) Residential Zoning District for a property with a legal description of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in Block 33 of the Grand Avenue Addition to the City of Helena, Lewis and Clark County, Montana, Together with the vacated alley adjacent to lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 33 as vacated by ordinance no. 2080. The property generally occupies the entirety of the block bordered by Elm St on the north side, Dodge Ave on the east side, Cedar St on the south side, and National Ave on the west side

With the following conditions:

1. A building permit must be submitted for within one (1) year.
2. All conditions must be met within one year of CUP approval, as per Section 11-3-9 of the Helena City Code.

***Questions for Staff  
by the Commission***

- (2:03:59) Chair Harbage asked if her understanding if the CUP were not approved, they would not be able to expand or remodel this as it is essentially a grandfathered in non-conforming use was correct. Mr. Alvarez asked for clarification of the question. Chair Harbage stated that she thought Mr. Alvarez stated worship facilities previously did not need a CUP to be in R-3, but now they are being required to come into compliance through a CUP because worship facilities now require a CUP to exist in R-3, so that's because they are remodeling and expanding. Mr. Alvarez confirmed that it is the act of expansion. Chair Harbage asked if the CUP were not granted that they would not be able to expand. Mr. Alvarez confirmed this.
- (2:05:04) Mr. Wilson stated he was looking for the email with additional comments Mr. Alvarez had sent to the commission. Mr. Alvarez stated the comments were largely about parking, especially for the larger services people can be parking on the street and blocking driveways, additionally there was some concerns with the pre-k and balls getting loose and a vehicle having been damaged by something that had gotten loose from the grounds of the pre-k. [The public comments were found and shared on the screen with the Zoning Commission, so they were able to read them]
- (2:09:34) Mr. Wilson referenced the map in the packet and asked why an area to the northeast was highlighted. Mr. Alvarez stated that is property owned by the applicant and responded to a question about their use with the reply of they are youth facilities. Mr. Wilson asked about the zoning in the area. Mr. Alvarez stated that the area to the north and west is R-2 and to the east and south is B-2. The R-3 is meant as a buffer between the commercial district and the residential neighborhood.
- (2:10:51) Ms. Sorenson asked for more information about what if any the parking situation should be considered, as the facility is expanding, but the number of parking spaces is staying the same, and there are already complaints about parking in the area. Mr. Alvarez stated the applicant will be required to show that they have all the required parking necessary for the facility's size to obtain a building permit. It is a slightly different part of the process; we asked the applicant to reinforce their parking numbers and one of the ways they did that was to go to neighboring businesses and ask for cross-parking agreements and they have received those from a half dozen neighboring businesses. Mr. Alvarez stated that he does not have numbers for the commission as to whether the applicant is compliant, but if they want to build, they will need to be.
- (2:12:14) Chair Harbage asked about the intersections around the property, and if there are stop signs at these intersections as one of the

commenters mentioned traffic accidents at National and Elm. Mr. Alvarez stated they are uncontrolled.

(2:12:42) Mr. Wilson asked if the expansion is due to a major growth in the size of the church which will result in more attendance and more parking, or this growth to create a better space for the existing population of the church. Mr. Alvarez stated the applicant would be better suited to answer the question, but it is his understanding the expansion has been being planned for some time.

***Applicant Addressed  
the Commission***

(2:13:50) Ben Tintinger, Mosaic Architecture, the representative for the applicant, presented on the proposed expansion of Helena First Assembly of God's worship facilities. Mr. Tintinger stated that the applicant has gone through all the calculations, and they will have enough parking onsite and, on the street, but also has the parking agreements with the neighboring businesses. Mr. Tintinger stated that the intent is for the church to continue in the R-3 zoning at this site. Mr. Tintinger stated the church is aware of the concerns from the neighbors and they plan on managing the people who come to the church as best they can. Doug Greenman, 5627 Derby Dr, staff pastor for Helena First Assembly of God, addressed the commission and stated the concerns that he has heard have been a surprise to him and that the church wants to be good neighbors and the church is actively working to mitigate some of those concerns.

***Public Comment***

(2:26:59) Chair Harbage opened the public comment period on the hearing for this item.

(2:27:37) Laura Morrow, 2300 National, stated that she is concerned about putting in a playground and asked about the R-3 Zoning definition and asked for someone what the word Church means. Mr. Alvarez gave the definition of a Worship Facility, and that the other uses would be considered an accessory use, such as a school, and are allowed by right if they are not the primary use. Ms. Morrow asked about the plans for school facilities or if a school will be run out of the facility. Mr. Greenman stated the areas that appear to be a school are spaces for children's worship areas. Ms. Morrow also asked about the lighting. Mr. Alvarez stated that per city code all lighting would need to be shielded and pointed downward. Ms. Morrow spoke about her comments she had submitted to the commission and how some of those concerns had not been addressed, such as Wednesday evening activities such as color bombing and big events in the parking lot with lots of noise, and expansion is scary because you don't know if you'll get more of the same. Ms. Morrow stated she is opposed to the CUP allowing for expansion. Ms. Morrow asked further questions about the plans and questioned how a café/coffee shop could be added in an R-3. Chair Harbage reminded Ms. Morrow that this was a public comment period and stated that the primary use for this property is a worship facility, and everything else would be an accessory use and be permitted by right.

(2:34:29) Kim Beull Clouse, 2303 National, stated she had submitted comments, but wanted to point out she has concerns, primarily the increased growth of the facility while she feels they are not doing a good job of managing what they have right now. She has had a number of issues, and with the notice of variance she has had discussions with the church but has does not feel as though they have not addressed any of the problems that have been associated with their fellowship and does not feel they have not ever gone beyond with their plans any of the concerns of residents of the area. She stated she has had some nice response to her criticism, but that does not mean much in reality. She would like to know further developments in plans, and is very interested in how additional traffic, noise, people, and parking will be handled. Ms. Clouse is not in favor of a playground, and questions the aspects of the businesses they bring in themselves and would like more information.

(2:37:19) Public comment was closed on this item

***Commission  
Discussion, Motion,  
and Vote***

(2:37:43) Mr. Wilson motioned to recommend **Approval** of a resolution granting a Conditional Use Permit to allow a Conditional Use Permit to allow a worship facility use in the (R-3) Residential Zoning District for a property with a legal description of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in Block 33 of the Grand Avenue Addition to the City of Helena, Lewis and Clark County, Montana, Together with the vacated alley adjacent to lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in block 33 as vacated by ordinance no. 2080. The property generally occupies the entirety of the block bordered by Elm St on the north side, Dodge Ave on the east side, Cedar St on the south side, and National Ave on the west side

With the following conditions:

1. A building permit must be submitted for the expansion within one (1) year.
2. All conditions must be met within one year of CUP approval, as per Section 11-3-9 of the Helena City Code.

Ms. Sorenson seconded the motion.

(2:39:11) Ms. Sorenson stated that as it is already obviously a worship facility, a CUP is essentially taking into changes in zoning, and is interested to see how they do with their variances moving forward.

(2:39:34) Mr. Wilson stated he wanted to add that he is mindful of the traffic and parking concerns, but it sounds as though the church is working on those concerns and he is confident the church will be able to mend fences with its neighbors.

(2:40:10) Mr. Tintinger addressed the Commission regarding the condition of the 1-year limit for the building permit, and that there would need to be additional time for the church to fundraise and design the building, and if that condition could be extended. Mr. Wilson asked if that is allowed under city code. Mr. Alvarez confirmed it is allowed, but the condition is worded that way to align with the



way that variances are typically conditioned. Mr. Wilson stated that he wanted to recommend a 2-year condition. Chair Harbage asked how that would work with the variances. Mr. Alvarez stated that he could recommend 2-years as a condition to the Board of Adjustments. Ms. Anderson asked Mr. Tintinger was enough time. He stated that 2 years is a good place to get the project started and if they need more time, they can approach the city for an extension, and that the variances are essential before they proceed with design work.

- (2:43:58) Mr. Wilson amended the first condition to his motion as follows:
1. A building permit must be submitted for the expansion within two (2) years.

Ms. Sorenson confirmed her second of the motion but pointed out that the second condition would also need to be amended.

Mr. Wilson amended the conditions to his motion as follows:

1. A building permit must be submitted for the expansion within two (2) years.
2. All conditions must be met within two years of CUP approval, as per Section 11-3-9 of the Helena City Code.

Ms. Sorenson seconded the amendment.

- (2:45:38) Chair Harbage stated that while there were some concerns, but it sounds as though the church is willing to address those and the plans are considerate that they are in a residential neighborhood, and this has been a worship facility use for a long time and just because there have been changes to the zoning code this is how we ended up here. She does have mild concerns about the influx of traffic in a short window of time instead of over a longer period, but those are questions for someone else.

A vote was taken, and the motion passed unanimously (4:0). This will come before Board of Adjustment on May 3, and also be heard before City Commission on May 9, 2022.

**Old/New Business** (2:47:37) There was no old or new business identified.

**Public Comment** (2:47:43) The meeting was opened for general public comment. There was none.

**Proposals for Next Agenda** (2:48:18) Chair Harbage stated that it sounds as there are several backlogged items, consideration of recreational marijuana; where residential uses are allowed; updating the land use table; revisiting signs in the city; taking a look at casino uses across the city; having a conversation about design standards. Mr. Wilson asked if the Gateway overlay was still ongoing. It was determined that had been dropped as building permits have already come in for the area it was being discussed for. It was also noted priorities will be discussed with a new director. New business for the next meeting

is electing a new Vice-Chair. Mr. Wilson stated he would not be available for the next meeting.

- Next Meeting* (2:52:47) The next meeting is scheduled for May 10, 2022.
- Adjournment* (2:52:58) Meeting was adjourned shortly before 9:00 PM.