

## Plat, Annexation and Zoning Committee Minutes

August 12, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

**Members Present:** Ed Childers, Lyn Hellegaard, John Hendrickson Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

**Members Absent:** Bob Jaffe (Chair)

**Others Present:** Mike Barton, Phil Condon, Paul Druyvestein, Mr. Edgell, David Gray, Jen Gress, Jamie Hoffmann, Laval Means, Roger Millar, Gene Mostad, John Newman, Roger Millar, Jim Nugent, Tim Worley, and Shelley Oly

### I. Approval of Minutes

[August 5, 2009](#) approved.

### II. Public Comment on Items not on the Agenda

David Gray stated the absolute height measurement method does not currently work in the proposed Title 20. The 8:12 roof pitch proposal that would allow an additional 5-foot of height to be incorporated into the building design does not work either. Bungalow style architecture prevalent in Missoula does not have such steep "Chalet style" roof forms. Some Victorian roof form do have similar roof pitches but not for the entire roof. The proposal says the roof must be 8:12 to use the exception and many roofs do not have the same pitch used throughout. (Open front porch and dormer roofs being a good example) He requested for future meetings the committee discuss replacing the absolute height and 8:12 pitch exception with the modified method of measurement. Ms. Means stated at public meeting and at the Planning Board meetings that the modified method was the most used method of currently measuring height. Mr. Gray adapted the existing modified [height measurement text](#) from title 19 and included the Planning Boards revision of allowing an additional 5-foot to the maximum building height allowed in a zone.

### Staff Announcements

### III. Consent Agenda Items

1. Review Bernadine Gantert's membership on the Historic Preservation Commission to appoint her from the "at large" position to the "Northside/Westside neighborhood representative" for a term commencing immediately and ending December 31, 2011 ([memo](#)).—Regular Agenda (Kelly Elam) (Referred to committee: 08/03/09)(**REMOVE FROM AGENDA**)

**MOTION:** The Committee recommends the City Council transfer Bernadine Gantert's membership on the Historic Preservation Commission from the "at large" position to the "Northside/Westside neighborhood representative" for a term commencing immediately and ending December 31, 2011.

There was no discussion on this item only a motion. Mr. Wilkins made a motion to transfer Bernadine Gantert to serve as the Northside/Westside neighborhood representative. The motion to transfer Ms. Gantert passed with a unanimous vote and would go on the Consent Agenda.

2. Approve or deny a preliminary plat adjustment and condition amendment request for Flynn Ranch Subdivision ([memo](#)).—Regular Agenda (John Newman) (Referred to committee: 08/10/09 **(REMOVE FROM AGENDA)**)

**MOTION: The Committee recommends the City Council approve the proposed plat adjustment for Flynn Ranch Subdivision in accordance with Article 4-7(4)(A) of the Missoula City Subdivision Regulations subject to amended Condition No. 19 as well as approve the Floodplain Administrator-recommended amendment to Condition No. 32.**

John Newman gave a [powerpoint presentation](#) (4.41MB) that showed the proposed plat adjustment for Flynn Ranch Subdivision.

- ✓ The Flynn Ranch Subdivision was approved in May 2008 subject to 38 Conditions of Approval.
- ✓ The Flynn Ranch Subdivision consisted of 18.88 acres located north of Mullan Road on the east side of George Elmer Drive.
- ✓ In 2008, City Council approved a plat adjustment creating 14 additional townhouse lots.
- ✓ The applicant proposed to adjust the approved preliminary plat by providing facilities for detention and management of stormwater onsite rather than offsite.
- ✓ The applicant proposed to install a stormwater detention basin as well as a drainage easement onsite in the northwest corner of Lot I.
- ✓ As a result of installing the detention facility the applicant proposed to decrease the number of multi-family units on Lot 1 from 13 to 12.
- ✓ Staff recommended amendment of Condition No. 19 to account for the applicant no longer needing a drainage easement.
- ✓ Staff received no comment from the Public Health Department.
- ✓ The Floodplain Administrator had no adverse comments but reviewed the Condition No.32 which stated that lots that are currently in the floodplain needed to be removed by a letter of map revision. A specific letter needed to be submitted before phases could be filed. Mr. Newman added that Phases 2 and 3 are changed to Phases 1 and 2.

Pam Walzer wanted to make sure all the concerns are addressed before the final approval and wanted to make sure the lots are designed for 6-plexes and not 8-plexes. Mr. Newman replied this was a typographical error and this error has been fixed. Paul Druyvestein pointed out this was a conceptual design for lot 1 and represented the 6-plexes and not the 8-plexes.

Jon Wilkins made the **motion** to approve the proposed plat adjustment and Floodplain Administrator recommended amendments as a package. The motion to approve the two amendments as a package passed with a unanimous vote and would go on the Consent Agenda.

#### **IV. Regular Agenda Items**

1. An [ordinance](#) repealing Title 19 Zoning Code in its entirety and adopting Title 20 Missoula City Zoning Ordinance and an [ordinance](#) repealing Title 2.84, the Historic Preservation Committee in its entirety. ([memo](#)) ([PAZ](#)) ([Staff Report](#)) ([Potential List of Issues](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09 **(HELD IN COMMITTEE)**)

Marilyn Marler summarized the discussion from the last PAZ meeting. She stated the discussion was about the role of the Zoning officer and the abilities of the Zoning officer to make administrative adjustments. Ms. Marler added that the motion concerning striking the 15% reduction in parking in transit areas was tabled.

Roger Millar reviewed the issue of the Zoning officer in the zoning ordinance.

- Missoula has had a zoning officer for years probably since the first zoning ordinance was adopted in 1932.

- The language stays essentially the same but there are some rewording for clarity. Article 8 in Title 19 creates the zoning officer position. In Title 20 Section 20.90.050 creates the position. There was no substantive difference between the existing ordinance and the proposed one, just clarification.
- The table in Section 20.85.010 provides a summary of who has review and decision making authority for the various procedures in Title 20.
- The table describes the decisions that the zoning officer gets to make. There are no changes to those decisions in Title 19.
- There was no substantive change in the language except for the Administrative Adjustments.
- Mr. Millar reviewed a second handout that summarized the proposed Administrative Adjustments. The adjustments are proposed for a limited list of actions as a simpler alternative to requesting a variance from City Board of Adjustments (CiBOA).

The floor was opened for discussion:

(1) Renee Mitchell asked about the Moyer case. Ms. Mitchell pointed out that that this was an Administrative Adjustment. Roger Millar replied that this case was not an Administrative Adjustment made by the Zoning officer but rather the Zoning officer implementing a City Attorney's opinion. The OPG does not grant variances for anything. Variances are applied for and approved or denied by the CiBOA.

(2) Jon Wilkins made a **motion** to deny the Zoning officer the ability to reduce the required parking in transit areas by 15%.

(3) Stacy Rye asked for clarification on the parking requirement. The City of Missoula does not require parking for anything in the Central Business District but business owners can not get a loan without providing for parking. The committee members need to remember that parking regulations are not the final say on parking. The reduction of parking would be more in the commercial arenas. He also explained if a commercial building changed uses then the parking requirement could also change. This was an opportunity to give business up to a 15% break if the conditions were right. The applicant would go through an application process, all the neighboring properties would be made aware of the proposed reduction, the other property owners would then have the opportunity to comment and the decision would then be made based on the application and the comments received. He added that the parking schedule was located in Chapter 20.60. The parking requirement varies by the use of the building. If the parking requirement could not be met then the applicant had the option of going before the CiBOA for a variance or not signing the lease.

There was discussion on Jon Wilkins's motion:

- The correct remedy was to have the people go before the CiBOA.
- Did not want to see overspill of commercial parking into the residential areas.
- If there was a large residential project that wanted reduced parking what other options does this project have? Mr. Millar replied there was an option under the Parking Chapter 20.60.030 listed as Shared Parking which provides a model that allows for a reduction in parking when it was shared by adjacent uses. The applicant could also demonstrate a hardship and request a variance from the CiBOA. Mr. Millar stated that this ordinance provided for a parking reduction for some affordable housing.

Jon Wilkins modified his **motion** to allow the Zoning officer the ability to reduce the required parking in transit areas in commercial projects but not in residential projects.

Roger Millar stated that that can be accommodated.

Roger Millar read from the proposed Title 20 what the Zoning officer was authorized to approve and suggested to add "*business and commercial uses*"

The motion to allow the right of the Zoning officer the ability to reduce the required parking in commercial projects passed with 10 votes of 'aye' and 1 opposed (Ms. Rye).

John Hendrickson asked if the City has a say on the amount of parking spaces for universities. Mr. Millar stated public entities are exempt but private universities are not and this section was placed in the proposed ordinance for guidance purposes.

Dick Haines asked if the director of OPG was authorized to remove the Zoning officer. Mr. Millar stated he could appoint a new zoning officer. Mr. Haines would like to see the zoning officer be independent from the Director of OPG and the removal of the Zoning officer be subject to the super majority of the City Council. Mr. Millar replied that the language in the proposed Title 20 was the same as in Title 19. This was not a new issue. The Director appoints someone from OPG as the Zoning officer. The Zoning officer is an administrative function. The Zoning officer issues zoning compliance permits which are subject to the review of the CiBOA and issues Zoning officer opinions which are subject to the City Council.

Dick Haines made the motion that the Director of the Office of Planning and Grants was authorized to appoint and remove same with the concurrence of the City Council.

There was discussion on Dick Haines's motion:

- Who was the Zoning officer: Mr. Millar replied it was David Loomis.
- Could a different Zoning officer be named for different projects? Roger Millar replied that the Director of OPG was ultimately responsible for the Zoning officer's activity. Functionally this was a shared responsibility but the decision lies with Mr. Loomis.
- Can the flow of authority be clarified better? Mr. Millar stated that he believed this was clear.
- Felt there was too much ambiguity in this process as to who is responsible for what and the Zoning officer should be someone other than the Director of OPG and was not subject to the director of OPG for recall. The City Council should be responsible for removal of the zoning officer.
- The charter stated the approval of the Mayor's appointment of removal of department heads.
- The removal of the Zoning officer by the City Council was an inappropriate step for the City Council.
- The City Council should not hear intra-departmental grievances. Jason Wiener called for the question, it failed.
- OPG employees are County not City employees. Mr. Nugent observed that there was an interlocal agreement for a process to select the director. The responsibility lies with the director. Mr. Hendrickson wondered if there was enough cross training in OPG to replace Mr. Loomis if the need arose. Mr. Millar stated there was adequate cross training and reminded the Committee that in the interlocal agreement the City Council has the ability to remove him as director.
- Would like the Zoning officer to stop giving out in-house variances because not everyone gets notified in those situations.
- The Zoning officer should be named specifically in the zoning code.
- Chair Marler suggested that Mr. Haines, Mr. Millar and a 3<sup>rd</sup> party meet outside the committee and brings back language to the motion. Mr. Haines was agreeable to this and withdraw his motion. Ms. Rye stated the motion was now the committee's motion.
- The solution would be to have a separate department, not a division of OPG but a separate department that would do zoning. Ed Childers called for the question, it passed.

The floor was opened for public comment:

Jamie Hoffmann relayed an incident with landscape requirements. Staff concurred with the both landscape requirements but one plan was more restrictive than the other. Staff stated the need to apply both landscape ordinances and did not have the authority to allow one ordinance to override the other. Mr. Hoffman appealed to the director of OPG and the director concurred with the applicant. He pointed out that if an applicant was dissatisfied with a zoning compliance judgment there is an internal process that can be used to appeal.

Ed Childers made a **motion** to table Mr. Haines's motion. The motion to table Mr. Haines's motion passed with 9 votes of 'aye' and 2 votes opposed (Mr. Haines and Mr. Hendrickson)

John Hendrickson made a **motion** to have the OPG director be the Zoning officer and have the discretion to delegate his authority. Mr. Millar stated then the motion would be to amend 20.90.050A appointment to say, “*The director of the office of Planning and Grants is the Zoning officer.*” He added that #13 needed to be modified to say, “*the review and approval of the City Attorney.*”

The motion to have the OPG director be the Zoning officer passed with 7 votes of ‘aye’ and 3 votes opposed. (Ms. Rye, Mr. Walzer and Mr. Childers)

Ed Childers made a motion to remove Mr. Haines’s motion off the table. The vote was unanimous. Ed Childers made a motion to dispose of Mr. Haines’s motion. The vote was unanimous.

## HILLSIDE HEIGHTS

Chair Marler disclosed that she had a meeting with Mr. Gray and Ms. Clary to review the background history of hillside heights. In prior PAZ meetings the discussion was to have the hillside height measurement as a table top method or an envelope method. She stated there are two different views one view advocating an unconstructed view for hillsides which is the table top method and the builders advocating the envelope method. Staff was directed to return with possible language to choose from.

Mike Barton stated other options include an envelope method that was tapered, send problematic cases to the Design Review Board (DRB), or the method described in the Planning Board referral.

There was discussion on the hillside heights:

- ⊕ Was the language amended from what was in the proposed ordinance and where did the language come from? Chair Marler stated the description that was handed out was a proposed modification. Mr. Barton stated the envelope that would be created under this option would be described by the higher of the finished grade or existing grade and the underlying allowable height of the zoning district. Mr. Millar stated it provided for specific areas where fill could be considered in that height calculation. This option came from the design community and the consultant put the option into language that was consistent with the other language in the proposed draft.
- ⊕ The previous envelope proposal would be measured from existing or finished grade whichever was lower, why does this new version state measured from existing or finished grade whichever was higher? Mr. Millar stated the design community says in the hillside situation the fill would be a part of the building height calculation but only up to 6-feet.

The floor was opened for public comment:

Phil Condon stated he objected to this method since the proposed ordinance has already been through the Planning Board and the public has already commented on this; these objections were not raised at the Planning Board so why allow it now? He added Title 19 was ambiguous and confusing and Title 20 is beginning to be confusing and ambiguous by allowing new methods to surface. This zoning ordinance is about protecting the homeowners and helping them understand the ordinance. One single height method that applies everywhere seems to be the fairest and most consistent. Jamie Hoffmann pointed out that homes built on hillside lots should have a main floor with a higher ceiling, a partial 2<sup>nd</sup> floor and a daylight basement and if the ordinance when adopted does not allow this then there is something amiss.

David Gray stated the subject of heights is a big deal. He pointed out that absolute height does not function and builders use modified height. He presented various examples of absolute height and modified height measurement with a one and a half story house. He showed why fill was important. He summarized by saying that houses measured by absolute value measurement cannot be built on a hillside.

Gene Mostad stated that absolute method measurements do not work for all kinds of slopes for hillsides. He added that a one standard of measurement does not work for the City of Missoula because Missoula has hillsides with different slopes and flat ground.

Dave Strohmaier added it would be helpful for future discussions if folks could direct comments to the specific alternatives.

Chair Marler pointed out that Ms. Rye will chair the PAZ meeting next week. The committee was considering four proposals, two from Ms. Means, one from the Planning Board and one from Ms. Marler. She asked the minutes reflect that Mr. Millar, Ms. Mitchell and Mr. Hendrickson were gaveled and Mr. Hendrickson was gaveled twice.

### **Removed from the Agenda**

1. **Held in Committee or Ongoing in Committee** Annexation. (see separate list at City Clerk's Office for pending annexations) (Ongoing in Committee)
2. Update the Rattlesnake Valley Comprehensive Plan Amendment ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 04/02/07)
3. Discuss council's interest in pursuing a negotiated settlement over disputed trail conditions for Clark Fork Terrace No. 2 Subdivision ([memo](#)).—Regular Agenda (Mayor Engen/Jim Nugent) (Referred to committee: 02/25/08)
4. Request to rezone the property legally described as Lot 3 of Scott Street Lots Subdivision, located in Section 16, T13N, R19W, P.M.M. form D (Industrial) to I-1 (Light Industrial), based on the finding of fact and conclusions of law. (PAZ [05/21/08](#)) (Returned from Council floor: 6/2/08)
5. Correct the conflict in the height calculation regulations, between written language (a building envelope shall be established by showing the maximum vertical height allowed by zoning from finished grade) and the drawing on [page 151](#) of the [Zoning Ordinance](#).—Regular Agenda (Ed Childers) (Referred to committee: 3/27/06)
6. Ongoing discussion of City planning issues with members of the Planning Board.--Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
7. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)
8. Consider an interim emergency ordinance for proposed amendments to the City Zoning Ordinance, Chapter 19.90 Signs ([memo](#)).—Regular Agenda (Tom Zavitz) (Referred to committee: 12/15/08)
9. Consolidated Public Review Draft of the Missoula City Zoning Ordinance submitted by Duncan Associates to the Missoula Consolidate Planning Board for its review and recommendation ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 02/09/09)
10. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
11. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)
12. [Resolution](#) to adopt the [Missoula Greater Downtown Master Plan](#) as an attachment and an amendmenamendment to the Missoula County Growth Policy. ([memo](#)) ([PAZ](#)) (Returned from Council floor: 7/27/2009)

### **VIII. Adjournment**

The meeting adjourned at 12:00 p.m.

Respectfully Submitted,

***Shelley Oly***

Administrative Secretary  
Office of Planning and Grants

***The recording of these minutes is available in the City Clerk's Office (for up to three months after approval of minutes). These minutes are summary and not verbatim.***