

# Plat, Annexation and Zoning Committee Minutes

August 19, 2009

10:05 am

Missoula City Council Chambers, 140 W. Pine Street

**Members Present:** Stacy Rye (Chair), Dave Strohmaeir, Jason Wiener, Pam Walzer, John Hendrickson, Jon Wilkins, Lyn Hellegaard, Renee Mitchell, Dick Haines, Ed Childers, Marilyn Marler

**Members Absent:** Bob Jaffe

**Others Present:** Jim Nugent, Carla Krause, Tim Worley, Roger Millar, Matt Ellis, Ellen Buchanan, Nick Kaufman, Rob Fleming, George Lake, Rod Austin, Linda McCarthy, Jinny Ivloser, Alan McCormick, Cynthia Manning, John Horner, Charlie Beaton, Lynn Redding, Alex Gallego, Ruth Link, Philip Maechling, Jen Gress, Tom Zavitz, Mary McCrea, Laurie Lane, Nina Duncan, Rosalie Cates, Mike Barton, and Bobbi Day

## I. Approval of Minutes

[August 12, 2009](#) were approved as presented

## II. Public Comment on Items not on the Agenda - None

## III. Staff Announcements - None

## IV. Consent Agenda Items

- A. [Resolution](#) to adopt the [Missoula Greater Downtown Master Plan](#) as an attachment and an amendment to the Missoula County Growth Policy. ([memo](#)) ([PAZ](#)) (Returned from Council floor: 7/27/2009) **REMOVE FROM AGENDA**

**MOTION:** The Committee recommends that City Council adopt a [Resolution](#) to amend the Missoula County Growth Policy with the Missoula Greater Downtown Master Plan as an attachment with the [proposed amendments](#) as changed by PAZ.

Matt Ellis, a member of the Master Plan Steering Committee reviewed the proposed changes presented in the [memo dated August 19, 2009](#). A [one page synopsis](#) was also provided. Several meetings were held with the Steering Committee and outside interests to deal with the issues raised at the July 27, 2009 meeting. The memo answered the questions as outlined below:

- Study Area Boundary – the Steering Committee recommended no changes to the study area boundary because the selection of the boundary included:
  - 1) capturing the gateways into downtown;
  - 2) neighborhood protection, especially on the fringe areas of the commercial districts; and,
  - 3) historic downtown boundary definitions from the MRA and BID.
- Southside Neighborhood/South Higgins – add proposed language to page 30 that would help deal with concerns raised regarding the Hip Strip.
- Broadway Corridor Plan – the Steering Committee did not support returning West Broadway to its former condition. They wanted to further emphasize this point and offered language change to page 66. If conditions required West Broadway to return to four lanes, all constituents should be involved.
- Old Sawmill District – proposed adding language at the end of page 26. Representatives of the Sawmill District did not approve of the last sentence of this new language but the Steering Committee felt it did not change the context of the Plan.

- Historic Preservation Commission – the Committee continued to do outreach and talked with the Commission to get their support for the Plan. New language was proposed to page 31 that better stated HPC goals and objectives and re-emphasized what was in the Plan.

Mr. Ellis stated that the Steering Committee stood behind the Plan but felt that the suggested changes noted in the memo would bridge concerns and would not affect the Plan goals for the community.

Chair Rye suggested starting with a motion to adopt the Plan and then work through amendments (similar to the process they were using for the Zoning Rewrite). Councilman Strohmaeir made a motion to adopt the Missoula Greater Downtown Master Plan as an amendment to the Missoula County Growth Policy and that the proposed amendments in the August 19, 2009 memo should be accepted with the exception of the item for the Southside Neighborhood/South Higgins relating to the Hip Strip. He felt the proposed language should replace the fourth bullet on page 31 (in the draft document) under Hip Strip.

Replace “Development sites of quarter acre or larger should be developed to at minimum density of 60 dwelling units per acre. “ with “Development sites of a quarter acre or larger should be developed at a higher residential density as permitted by zoning.”

Discussion followed on the Old Sawmill District language.

1. What was the Sawmill District developer’s concern with the last sentence? Mr. Kaufman, representing MRP explained that the concern was in what might happen. It was likely that the language could work, but if someone were to come in with a project at the Mill site that required rezoning there could be a problem. He asked to continue working with the Steering Committee and see if this concern could be addressed for potential rezoning needs. It would give them a chance to understand the concern better although the language could still possibly work.
2. Taking out the last sentence might be irrelevant since Council would look at applicable plans if the property were proposed to be rezoned whether the language was in the Plan or not. The language made it clear that examination would take place. Council has been very supportive of what has been proposed for the Mill Site; this language just clarified in words what Council would do anyway.
3. Would it make sense to remove the last sentence and keep the sentence prior to it? Mr. Millar responded that the last sentence was recommended because it could be construed from the first sentence that the Plan would not apply if someone did apply for rezoning.
4. What was the intention of the sentence before the last one? Mr. Millar explained that it acknowledged what the law required Council to do according to zoning.
5. Conflict arises because the Plan was not entirely in sync with the Mill Site Plan. Mr. Millar pointed out that the Downtown Plan was coming after the zoning of several areas and future zoning decisions needed to be made in the context of the Plan.

Ellen Buchanan noted that if the development was not in concert with the Plan it could affect funding sources. None of the plans were out of concert with the concept but the language should be in the Plan. It would allow going back to the Growth Policy when looking at rezoning requests.

Councilman Childers made a motion to remove the last sentence of the proposed language for the Old Sawmill District (“Any future change to the Mill Site Special Zoning District would be considered in the context of the Missoula Greater Downtown Master Plan.”). Committee members discussed the motion with the following comments:

1. The language should not be removed; Council would have to default to the Master Plan if the developer wanted to change the Mill Site zoning.
2. It seemed like the first sentence conflicted with the second sentence and one of them should be removed.
3. It would be fine to remove the sentence; this would not affect the developer's conceptual design for the retail space in the Mill Site. It would not limit development of the land as proposed since the developer would have entitlement for zoning.
4. Would there still be tax credit possibilities? Ms. Buchanan responded that deleting this language would not impact tax credit financing but leaving the language in would enhance market tax credits.

Matt Ellis stated that the Steering Committee has backed the Mill Site developers and what the committee has done. They wanted to make sure it was clear and did not have any desire to change decisions on the Mill Site.

The vote on the motion to remove the last sentence failed with one vote in favor and nine votes against. (Renee Mitchell abstained). The last sentence will remain as proposed.

Councilwoman Mitchell asked about Councilman Strohmaeir's motion and recommending replacing language under the Hip Strip. Councilwoman Walzer explained that he was suggesting replacing what was in the draft document with the proposed language so it said that the land should be develop to full capacity of what zoning allowed. She read the language that would be stricken:

"Development sites of quarter acre or larger should be developed to at minimum density of 60 dwelling units per acre. "

The Committee discussed the motion to adopt the Plan with the proposed amendments and replacing the fourth bullet under Hip Strip with the proposed language "Development sites of a quarter acre or larger should be developed at a higher residential density as permitted by zoning".

1. How are height and parking addressed? Less height would be allowed. Parking was addressed through zoning; currently that zone required onsite parking.
2. There was a neighborhood plan in place; how would this plan compare to what was in place? Mr. Millar referenced a [comparison document](#) sent to Council earlier by email. It showed all the plans in place. He noted on page 3 that the goals of the Master Plan talked about transitions between other plans. The Downtown Plan was consistent with what was proposed in the Southside Plan. Height had to step down when abutting residential areas; commercial heights would be higher but step down into residential areas.
3. What were the heights in the Hip Strip now as zoned and what would they be in the future? Today 125 feet was allowed; in the future the height allowed would be 65 feet (which is five stories).

Councilwoman Hellegaard made a motion to change the language under Southside Neighborhood so that it did not mandate development. It would read, "Development sites of a quarter acre or larger are recommended to be developed at a higher residential density as permitted by zoning" (dropping "should"). The Committee voted unanimously to change this language.

Public comment was taken on the main motion to adopt the Downtown Master Plan with the proposed changes as amended by the Committee.

Charlie Beaton was excited about the Plan and wanted to see it adopted and implemented.

Rosalie Cates thanked everyone and the Council for the work on this Plan. She was really excited to have a Master plan to have a clear statement that was helpful to the City. She supported adopting the Plan adding that these documents were helpful in getting tax credits into this area.

Lynn Redding with the Heart of the City Neighborhood Council noted that the Plan had been presented many times to the public and to the neighborhood council which helped with public participation in the process. She stated it would be helpful to have this type of document and urged the Council to adopt it.

The Committee voted on the motion to adopt the Resolution for the Master Downtown Plan as an amendment to the Growth Policy with the amendments incorporated into the Plan. The motion passed unanimously and will go on the Consent Agenda.

## V. Regular Agenda Items

- A. Consider granting a request for a 6-month extension for the execution of the annexation development agreement for Chickasaw Place Subdivision ([memo](#)).— Regular Agenda (Carla Krause) (referred to committee: 08/17/2009) **REMOVE FROM AGENDA**

**Motion: The Committee recommends that City Council approve the request for a six month extension for the execution of the annexation development agreement for Chickasaw Place Subdivision.**

Carla Krause explained that the developer was making this request because of economic changes and problems executing conditions. They would like to delay the annexation for financial reasons.

Nick Kaufman, representing the Lake Family, noted that the preliminary plat had been approved for one year. They needed to look at the conditions and make a decision whether to move forward or not. This subdivision was unique because it was the first one with a development agreement that needed to be implemented within 30 days of approval. The context of the agreement could be worked out but making the decision to move forward was too fast so they were asking for six months to make that decision.

Councilman Wiener made a motion to approve the six month extension. Councilwoman Mitchell felt this was an odd request because of the lawsuit. She asked if there was the possibility of the subdivision reverting back to its original status if the extension were not granted and if the developer could support that. Mr. Kaufman stated that the developer desired the extension. The conditions needed to be considered and they needed more time to do that.

The vote on the motion passed with nine members in favor and two against (Renee Mitchell and Jon Wilkins).

- B. Remove Clark Fork Terrace No. 1 annexation, zoning, rezoning and subdivision from the table, suspend the council rules, and set a public hearing on September 21, 2009. ([memo](#)) – regular agenda (Tim Worley) (referred to committee: 08/17/2009) **REMOVE FROM AGENDA**

**MOTION 1: The Committee recommends that City Council remove Clark Fork Terrace No 1 annexation, zoning, rezoning and subdivision from the table.**

**MOTION 2: The Committee recommends that City Council suspend city council rules and set a public hearing on September 21, 2009 (an abbreviated meeting) to consider Clark Fork Terrace No. 1 annexation, zoning, rezoning and subdivision.**

Chair Rye noted that three motions needed to happen with this item. Councilman Wiener made a motion to remove this item from the table. The motion passed unanimously.

Tim Worley reviewed the Clark Fork Terrace No. 1 proposal located near Clark Fork Terrace No. 2 (which was already approved) and adjacent to the Clark Fork River. Action items to be taken care of at this meeting were to remove this item from the table (done in the motion above), suspend the rules to hold a public hearing, and set a public hearing for September 21, 2009. Today's information following voting on the remaining action items would be pre-public hearing.

Councilman Childers asked about the consequences of voting for or against setting the public hearing. Mr. Worley noted that the public hearing schedule was full so it was not clear when it could be scheduled if it were not set today. Councilman Childers wondered if a public hearing needed to be scheduled. Mr. Worley stated that this item did need to be heard so a public hearing needed to be set. The hearing in December 2008 was not opened since this item was tabled. There was a statutory requirement to have a hearing before City Council within one year of sufficiency so the hearing would need to be set up prior to September 30, 2009.

Councilman Hendrickson made a motion to suspend the rules to set a public hearing for September 21, 2009. The motion passed with Jon Wilkins opposed.

Tim Worley continued the [presentation](#) of the proposed subdivision with the following highlights:

- There was concern by Council that No. 1 and No. 2 were designed to mesh with each other but No. 2 was in litigation so No. 1 was tabled in December 2008.
- A decision must be made by September 30, 2009, which is the one-year review deadline based on the sufficiency date of October 1, 2008.
- The proposal is for 38 lots on 28 acres and to rezone upon annexation.
- Staff supported rezoning the property to RLD-2
- The subdivision road was proposed to be built to city standards (Conditions 1 and 5 relate to roads).
- Deer Creek Road would need to be reconstructed to city road standards with a five foot expansion of the right-of-way on the developer's side of the road.
- Condition 8 was shown as stricken according to a memo to City council dated December 22, 2008 because of concerns from the developer at a December 2008 PAZ meeting.
- City Parks recommended against parkland in the area along Deer Creek and Condition 30 recommends that this should be common area.
- Condition 17 addresses securing a trail along the southern boundary.
- Staff did not recommend implementing a conditional easement because of the Clark Fork Terrace No. 2 lawsuit. Base on the recommendations of City Parks and Recreation, staff and Planning Board recommended dedication of a 20 foot wide pedestrian/bicycle greenway corridor that would contain a 10 foot wide asphalt trail. This would be within a 20 foot Public Non-motorized Access Easement.
- The developer's representative voiced concerns over the language in the original Condition 17 in December 2008, and suggested use of the language from Clark Fork Terrace No. 2 regarding the easement and trail along the southern boundary of the property. This language is included in the memo to City Council dated December 22, 2008.
- Staff and Planning Board supported Clark Fork Terrace No. 1.

Nick Kaufman stated that this project could not be postponed further; there has been a culmination of four years of planning work put into this project. Land development needed to stay current with demands. No. 1 had been redesigned for consumer preferences for smaller lots. He felt the design met with those consumer preferences.

The public hearing on this item will be held on September 21, 2009.

- C. 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**

Mike Barton suggested the discussion for today include energy conversions and the R3 district and started with wind energy. He provided a handout showing the Planning Board's recommended [changes to Chapter 20.45.070](#).

- Planning Board recommended that wind energy conversion systems not be allowed at this time.
- This was not an anti-green decision but they recognized that the technical information was not yet available.
- Council may want to take this up as a separate agenda item at some point in the future.
- Height was discussed to be an effective issue to the view shed.
- Staff supported Planning Board's recommendation.

Councilwoman Walzer preferred to just strike this section and not address it rather than not permit wind energy. Mr. Millar explained that there would be a problem when it is not specifically addressed. Council would have to develop policy when someone proposed the project. This way they could work through the details as a community when time allowed. By stating that wind energy was not allowed it would prevent uncertainty when the question came up. Mr. Barton added that other cities (Chicago and Boulder) were looking at this issue and realized that in order for wind energy to be effective the windmills must be 40 feet above rooflines. Councilwoman Walzer thought it was interesting that gravel pits were allowed but not windmills.

Councilwoman Walzer made a motion to retain the stricken language and allow wind energy only in M2 (Heavy Industrial). Mr. Nugent pointed out that wind energy conversion systems needed to be defined before banning them and to also consider how to annex something that was already in place (such as the one in Hellgate Canyon). Mr. Millar said that windmill would be a nonconforming use and was on State property. Wind energy was defined in the document. He added that there were many constituents that were against having them and no one came forward in support of them. Heavy Industrial districts would still affect neighbors. Councilwoman Walzer felt that there were noise limitations that only allowed certain decibels at the property line. Committee discussion provided the following points on the motion:

1. The Committee should hear from the University that has the windmill in Hellgate Canyon before striking the language. Councilman Wilkins offered to invite them to come to PAZ and discuss this.
2. This use seemed like an accessory use rather than a major utility. Coal fired plants were allowed in M2.
3. Not only are windmills noisy but they are also visually unappealing.
4. There should be an exception to this some where.
5. It would be possible to have windmills within the community and still not be obnoxious (like coal fired plants).

Councilwoman Walzer called for the question and it passed (Jon Wilkins and Dave Strohmaier opposed). The vote on the motion to reinstate the energy wind language failed so the language will remain as proposed by Planning Board.

Discussion on R3 will be held over to the next meeting.

## **VI. Items to be Removed from the Agenda**

## **VII. Held in Committee or Ongoing in Committee**

1. 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)

## **VIII. Adjournment**

The meeting adjourned at 11:59 am

Respectfully Submitted,

**Bobbi Day**

Support Services Administrator  
Office of Planning and Grants

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