

Plat, Annexation and Zoning Committee Minutes

August 26, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), 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:

Others Present: Mike Barton, David Edgell, David Gray, Jen Gress, Ruth Link, David Loomis, Roger Millar, Jim Nugent, Tom Zavitz and Shelley Oly

I. Approval of Minutes

[August 19, 2009](#) were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

- A. 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](#)) ([Title 20 Discussion](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) (**HELD IN COMMITTEE**)

Mike Barton distributed a residential district chart and said that he understood that some of the Council members want to propose an amendment to the chart to amend the 15,000 square feet as the minimum size of the zoning district.

John Hendrickson made a **motion** to increase the R3 zoning district minimum area from 15,000 square feet to 30,000 square feet.

There was discussion on Mr. Hendrickson's motion:

- ⊕ What was the relationship to a normal city block? Mr. Barton replied the smallest lots are around 4,000 square feet and 15,000 square feet would be approximately four of those lots. He added that 30,000 square feet would be less than half a city block.
- ⊕ The 15,000 square feet areas could be applied to lots that are used for mobile home courts, but anything larger like 30,000 square feet would be excluding potential future development in certain areas
- ⊕ Would the R3 zoning district affect mobile home courts
- ⊕ R3 should go into new building sites but not in established neighborhoods.
- ⊕ What makes R3 different from any other zone? Mr. Barton stated basically there was no difference.
- ⊕ A larger area expands the right of protest in the neighborhood. Chair Jaffe added that expanding the right of protest area could also dilute the protest.
- ⊕ Raising the square footage singles out R3 zoning district for special treatment. Mr. Wiener called for the question. It failed.
- ⊕ The application of this zoning was more likely to be in areas that are existing small lots and blighted areas that a developer wants to redevelop.

Ruth Link (MOR) stated they are in agreement with it, it was a good compromise and do not see a substantial difference from 15000 square feet to 30,000 square feet.

The motion to change the R3 zoning district from 15,000 square feet to 30,000 square feet passed with 8 votes of 'aye' and 4 votes opposed (Mr. Wiener, Mr. Strohmaier, Ms. Rye and Mr. Jaffe).

HILLSIDE HEIGHTS

Mr. Barton stated there were several hillside height measurement options. Mr. Barton pointed out there seemed to be a difference between the table top method and the two different types of envelope measurements. He added it may be useful to the Committee to take a straw vote to determine going forward with the table top method or envelope method.

Dave Strohmaier asked if there were any comments on Mr. Bishop's memo. Tom Zavitz stated there are no difficult restrictions with any of the three measurement options; the table top measurement method was the most restrictive and the envelope measurement method was the least restrictive. Roger Millar added that one of the reasons for revising Title 19 regulations was to provide the public with a simple, straight forward type of measurement for hillside heights. Mr. Bishop recommended the table top method because it was straight forward and simple to understand.

Jason Wiener asked for clarification on the fill question. Mr. Zavitz explained "fill" was the true exception to the height measurement. Fill allows the developer more options because it allows for a taller building and currently 8-feet of fill is allowed.

Jon Wilkins made a **motion** to accept the table top height measurement recommended by the consultant and the Planning Board. (Motion later ruled out of order.)

There was discussion on Mr. Wilkins's motion:

- ⊕ It was pointed out that this method was already in the draft.
- ⊕ Using the table top method, what percentage of the housing would not be buildable? Mr. Gray replied that none of the houses on the hillside would be buildable. He added according to the slide that was presented, all the houses built on a hillside would have to have a flat roof because of the percentage of the slope. Mr. Edgell stated that the table top method works for houses built on flat lots but much of the City of Missoula was built on hillsides. People do not like steep downhill driveways and that would not work in reality. Mr. Wilkins referred to the view shed. His constituents want a building measurement that protects the view.
- ⊕ What was the difference between the modified tapered envelope and regular envelope. Mr. Edgell replied that the modified tapered envelope tries to make the house look smaller from the street side.
- ⊕ Need to determine where the bottom measurement first.
- ⊕ At what point in time would the grade be calculated on a house that was being replaced in an existing subdivision? Mr. Zavitz replied the point in time would be when the subdivision was originally approved and platted. The grade at that time would be what the permit holder had to use when deciding on the structure.
- ⊕ How would an empty lot have the grade calculated in an established neighborhood? Mr. Zavitz replied the applicant would use the grade that existed at the time the land was platted or subdivided. The slope that was there would be the existing grade. Mr. Edgell agreed with Mr. Zavitz that the grade used was the grade established at the time the land was platted. He added if the grade is found to be over five percent at beginning of a building project then a topographical map was required..
- ⊕ Was there a permit to start the dirt work? The example used was the terracing of the Mansion Heights subdivision. Mr. Zavitz replied prior to subdivision a permit was not required. Mr. Loomis replied that Mansion Heights had unique restrictions and rules applied to this subdivision. Mansion Heights had a grading permit from City Engineering that pre-established the preliminary grades and then established rules that limited the first floor level on the downhill lots on the street.
- ⊕ Is there any way to address such issues as the manipulation of the ground prior to the subdivision application for riparian areas. Mr. Millar responded that OPG requires the applicant to provide proof before the process was started.

Mike Barton reminded the Committee that the three basic issues that needed to be answered were whether the hillside measurement would be the envelope method or the table top method, existing or finished grade and how much fill allowed

Ed Childers made the **motion** to measure from the base measurement from the original grade at the time of the application for the subdivision.

Mr. Wiener read the definition of *existing grade* from the Terminology section on page 7 and asked if any part of this would be changed due to Mr. Childers's motion. Mr. Barton replied there would be no change to the definition. Chair Jaffe explained that the existing language is what Mr. Childers is proposing. Mr. Wiener stated Mr. Childers was proposing to change the definition on page 105 of the Measurement section that talks about the lowest point where the building line meets the existing grade or finished grade whichever is lower. Chair Jaffe explained that Mr. Childers's motion was to measure from the existing grade which provides for the daylight basement without being penalized on the height.

Stacy Rye called for the question, it failed.

Dick Haines suggested that there needed to be a better definition of existing grade, or a time frame where existing grade existed.

David Gray stated for the downhill side of a home on a hillside the grade is always measured at the basement floor and a minimal amount of fill is needed because of the slope of the hill so the measurement would originate at the fill line. Roger Millar stated the issue is where the height is measured from. He added that existing grade does not prohibit fill, but the measurement can not start from on top of the fill.

Doug Harby stated that Public Works requires developers to measure the original slope by determining the lowest point and highest point and then drawing a line between the two points. Mr. Wiener pointed out there was a proposed slope definition in Chapter 20, Section 50 that deals with contour lines multiplied by intervals and asked if this is the definition that Public Works uses? Doug Harby stated that is the procedure to figure out the contour lines and then the slope is calculated from the contour lines.

Stacy Rye called for the question, it failed.

Ed Childers stated measuring from the original grade or the existing grade whichever was lower makes it more difficult to build so he proposed measuring from the original grade only. He added that another alternative method would be measure from whatever amount of fill the builder thought was appropriate. Marilyn Marler stated the purpose of Mr. Childers's amendment was to not penalize people who wanted a daylight basement. She called for the question, it passed.

The motion to measure height from the original grade passed with 8 votes of 'aye' and 4 votes opposed (Mr. Hendrickson, Mr. Wilkins, Mr. Haines and Ms. Mitchell).

Dick Haines asked what was the original or existing grade? Mr. Millar stated the grade that exists on the ground at the time the final plat is approved is the original grade. For older lots the developer is required to bring in a survey to establish the grade. Dave Strohmaier stated there was too much ambiguity in the definitions. He read the definition and wanted to clarify more precisely when the original grade was set. Mr. Millar stated the language could be amended to read "*human alteration subsequent to the approval of the final plat.*" Jim Nugent asked if it was from the preliminary plat or the final plat. Mr. Millar wanted the definition to be subsequent to the approval of the final plat.

Pam Walzer **made** a motion to modify the language "human alteration subsequent to the approval of the final plat" into the definition.

The motion to establish existing grade at the time of final plat passed with 10 votes of 'aye' and 2 votes opposed (Ms. Mitchell and Mr. Haines).

Ms. Marler felt there should be two different options of measurement for hillside heights; using the envelope method for other areas of Missoula and using a more restrictive method of measurement or an overlay that applied to heights for the South Hills area.

Chair Jaffe asked for an explanation of the modified envelope and modified table top. Mike Barton replied that the modified table top was a referral to the DRB for exceptions; the modified envelope limited height on the uphill side to 80% of the height on the downhill side.

Remove from the Agenda

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)
12. [Petition 9438](#)—City of Missoula, 300 Fort Missoula Road commonly known as Fort Missoula Park, Tract B, Certificate of Survey No. 4826 located in the northwest one-quarter (NW 1/4) of Section 31, Township 13 North, Range 19 West and the northeast one-quarter (NE 1/4) of Section 36, Township 13 North, Range 20 West, Principal Meridian Montana. SUID 5908116 Geocode 219936101060000; Petition for Annexation (Referred to committee: 08/24/09)

VIII. Adjournment

The meeting adjourned at 12:00 pm

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.