

## Plat, Annexation and Zoning Committee Minutes

February 3, 2010

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

**Members Present:** Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, Roy Houseman, Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

### Members Absent:

**Others Present:** Rebecca Babin, Josh Ballman, Gary Bakke, Ann Blair, Laura Branson, Kim Bennett Buchanan, Kari Britton, Kim Chambers, Leon Chambers, Jeff Cyr, Jim Day, Kelly Mytty Denoghue, David Edgell, Justin Edgell, Don Garramone, Rochelle Glasgow, David Gray, Kathy Greathouse, Mikel Greathouse, Aaron Hanks, Elaine Hawk, John Hendrickson, Wade Hoyt, Nick Kaufman, Carla Krause, Steve Laber, Ruth Link, Blaine McElmurry, Mary Marry, Bob Martz, Roger Millar, Greg Midgett, Gene Mostad, Jim Nugent, Bob Olson, Tom Orr, Ray Pasquale, Janet Rhoades, Ryan Salisbury, Jim Schafer, Casey Smith, Carroll Anne Sowerby, Jason Suchecki, Shayla Suchecki, Kate Sutherland, Jennifer Taylor, Lovella Torp, Wayne Tundburg, Erin Turner, Jon Turner, Floyd Twite, Jerry Williams, Tiffany Williams, and Shelley Oly

### I. Approval of Minutes

[January 27, 2010](#) approved as presented.

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

### III. Staff Announcements

### IV. Consent Agenda Items

- A. Approval or denial of the 44 Ranch Subdivision phasing plan amendment ([memo](#)).— Regular Agenda (Janet Rhoades) (Referred to committee: 02/01/10) (Remove from Agenda) **REMOVE FROM AGENDA**

**MOTION:** The Committee recommends the City Council approve the proposed phasing plan amendment for 44 Ranch Subdivision in accordance with Article 4-7(2) of the Missoula City Subdivision Regulation.

Janet Rhoades presented a [power point presentation](#) with the 2010 phasing plan amendment for 44 Ranch. She stated this was an action item to be voted on today.

- The subdivision was approved by City Council with 19 phases on May 2005 and subsequently amended October 2, 2006.
- Phases 1 through 5 have been filed.
- Phase 6 was due to be filed December 2009 however a phasing plan amendment with an extension request was submitted instead.
- The applicant wanted to extend all the phasing filing deadlines out by five years due to the economy and reduced lot sales.
- The 2<sup>nd</sup> request of the applicant was to amend a portion of Phase 8 to 6A, amend Phase 7 to 6B and amend the former Phase 6 to Phase 7.
- The design of the phases including the lots and the road configurations will not be changed from the original plan.
- There were no adverse agency comments regarding this proposal.

Councilman Wilkins made the motion to approve the phasing plan amendment. The vote was unanimous and will go on the Consent Agenda.

- B. Review all changes from Title 19 to Title 20 regarding housing design standards ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 01/11/10)  
**(REMOVE FROM AGENDA)**

**MOTION: The Committee recommends that the City Council set the public hearing for February 22, 2010 on an [interim emergency ordinance](#) that would amend Title 20, Chapter 20.110.050(a) to strike from No.3 that states garages may not be located closer to the street than the front façade of the residence building.**

Roger Millar gave a [background review](#) regarding the housing design standards issue from Title 19 to Title 20 with various courses of action and suggested language if the Committee chose to amend the regulations. Listed below are the intents of the regulation:

- ✓ To ensure a visual connection between the living area and the street.
- ✓ To ensure the location and amount of living area is more prominent.
- ✓ Prevent garages from obscuring the main entrance.
- ✓ Ensure the main entrance for pedestrians is the prominent entrance.
- ✓ Provide a more pleasant view.
- ✓ Enhance public safety.

He stated that these regulations were used primarily the same all over the country and were a matter of public health and safety and a question of aesthetics. Mr. Millar pointed out that this regulation was in Chapter 19.66 which stated that “all garages which have access to the street shall have a minimum front yard setback of 20-feet and that minimum setback was to allow someone to park a car in front of the garage and must be on an even plan with the primary dwelling units or have a greater front yard setback than the primary dwelling units.” This was interpreted by OPG staff as applying only when there was an exception to some other set back requirement. The way to address this was to change the regulations.

Roger Millar remarked that the City Council wanted clear basic predictable standards in Title 20 and he read the recommendations that came out of the Concepts and Directions Report.

- The Concepts and Directions Report was drafted and reviewed by the Planning Board and the City Council before OPG started drafting regulations.
- The specific text that was in question was found in the Measurement and Exceptions Chapter of the ordinance which was in the 2<sup>nd</sup> module that was released to the public in August 2008.
- At that time the Public Works Department requested the setback be 25 feet from the street instead of 20 feet because cars and trucks were made larger.
- OPG recommended the setbacks be 20 feet to be consistent with the regulations in Title 19.
- The chapter was discussed by the Advisory Group but this issue was not a focus of the discussion.
- In March 2008 at the Planning Board public hearing, there was a discussion on the specific setbacks for garages and the decision was that this only be applied to residential garages. In response to the Planning Board discussion the terminology was changed to delineate between residential garages and other parking structures.
- City Council adopted the regulations in October 2009 and the regulations became effective as of November 2009.

Roger Millar suggested that if the Committee initiated the amendment of the ordinance, which would be a text amendment, it would have to be initiated by the City Council, go through the public hearing process, and then if action were taken, any amendment change would be effective 30 days after passage. If there was urgency to this amendment the City Council could pass an interim ordinance that would only be in effect for six months. He added that this interim

ordinance would expire within the next six months. This would need to be voted on today to set a public hearing.

Roger Millar gave some suggestions that could be used as a starting point for discussion. He added the talking points were built on the language already in the ordinance. The suggested amendments would provide for exceptions that would allow placing the garage closer to the street than the rest of the house in certain instances:

- ▶ Steep slopes up or down 15% or greater.
- ▶ Allow garages on lots greater than 10,000 square feet
- ▶ On lots that secured a building permit prior to November 4, 2009.
- ▶ Allow a detached garage that is non-conforming to be built on the existing footprint if constructed illegally.

He explained that these amendments were intended to be a starting point for the Committee's discussion.

The floor was open for discussion:

- 1) Councilman Strohmaier wondered how other communities that had similar language on garage setbacks dealt with those concerns. Mr. Millar replied that some cities addressed the issues through subdivision design.
- 2) Councilwoman Mitchell asked how this amendment of 15% slopes or 10,000 square feet helped people who wanted smaller houses and smaller lot sizes. Mr. Millar replied these amendments were suggestions for starting points in a discussion; the extent of the change in the amendments was ultimately in the board's hands.
- 3) Councilwoman Rye asked why the garage could not be built further back than the house. Mr. Millar replied the developer and the home owner needed to take in consideration the plans of the inside of the house as well as the outside of the house.
- 4) Councilman Wiener stated the interim ordinance was needed so that the language in the text amendment could be amended. He suggested amending the ordinance through the interim regulations and strike "and may not be located closer to the street than the front façade of the residence building."

Councilman Wiener made the motion to set the public hearing for February 22, 2010 on an interim emergency ordinance that would amend Title 20, Chapter 20.110.050(a) to strike from No. 3 that garages may not be located closer to the street than the front façade of the residence building. Several Committee members supported Councilman Wiener's motion making these comments:

- People needed time to think about this, there were many people that were in the process of building and this would alter or halt that construction.
- Wanted to hear more from the community's viewpoint on where the garage should be.
- Criticizing City Council was not helpful feedback, be specific in the type of feedback.
- Felt the concerns of the community's feedback were articulated very well and had no problem with the type of e-mails that had been sent.
- This type of design created a more stable neighborhood.
- Would like to start working on exceptions so that by the following building season developers would know what was allowed.

The floor was open for public comment:

John Hendrickson stated the MBIA was in support of the interim ordinance and offered to help craft the amended language

Justin Edgell stated he conducted his own research and found that realtors and builders in Phoenix did not know about the garage restrictions. He made a plea to remove the language in Title 20 because it created a hardship for people in the construction industry.

Ryan Salisbury passed around [pictures](#) of homes in his neighborhood that were good home designs but had garages that stuck out in front of the house. He stated that by allowing the garage to face the front of the house affected the interior garage space making it smaller.

Smaller garages could lead to congestion of cars and trucks on the streets because they would not be able to fit in the garage. He stated that the one size fits all mentality will affect home owners and voters in Missoula.

David Edgell stated there should not be blanket regulations because not every lot or every neighborhood is the same. This interim ordinance would allow time to amend the regulations.

David Gray wanted the ordinance struck from the code.

Gene Mostad stated that many of the slides in the power point were homes built on flat ground. Missoula was unique in that much of this city is built on hillsides and we need an ordinance that allows for that.

Kim Matthew stated Missoula is a diverse community and our homes show that character. She offered to help work with OPG on some of these issues.

Kate Sutherland thanked the OPG staff for their work with the Zoning Code Rewrite. She pointed out that the simplification of the code was a pleasure to work with. She explained because Missoula is such a diverse city there needed to be exceptions in the ordinance. She suggested taking the neighborhood pattern into consideration. Ms. Sutherland also suggested including the phrase "the pattern of the existing neighborhood" with items a-b and c; and adding that a structure could be rebuilt if it were unsound as well as accidentally destroyed.

Nick Kaufman stated there needed to be a compromise in the regulations and in what a builder was allowed to design. The developer needed to be able to sell their ideas and designs to perspective home owners. If a builder loses a sale because he can not match the consumer preference that is a huge deal in this economy.

Tiffany Williams stated that Councilman Wiener's motion was a solution to the industry as a whole.

Jeremy Williams pointed out that this issue was more than the cost of designing the plans for Missoula but how the function of the house would be affected by pushing back the garage.

Roger Millar reminded the public and the Committee that this was the language in Title 19 and nothing was changed from Title 19 to Title 20 except to identify that this was a problem. He added that the OPG staff would be very willing to work with the community on Councilman Wiener's motion.

The motion to set a public hearing on February 22, 2010 passed unanimously and will go on the Consent Agenda.

## **V. Regular Agenda Items**

- A.** Consider a request to extend the deadline for executing the Chickasaw Place development agreement for 6-months for and after the date the lawsuit challenging the subdivision approval is concluded ([memo](#)).—Regular Agenda (Carla Krause) (Referred to committee: 02/01/10) **REMOVE FROM AGENDA**

**MOTION:** The Committee recommends the City Council adopt a [Resolution](#) extending the Chickasaw Place Annexation Development completion date to six (6) months from the date the lawsuit challenging the subdivision approval process is concluded.

Carla Krause had received a letter from the representative of the developer of Chickasaw Place agreement asking to petition the court to hold in abeyance the deadlines for signing the development agreement and the filing of the final plat until the lawsuit was concluded and to extend the deadline for the Development Agreement six months after the conclusion of the lawsuit. She pointed out that according to Mr. Nugent it was not necessary to ask the court to hold these items in abeyance and that City Council could handle the six month extension administratively. Ms. Krause noted that the lawsuit was challenging the City Subdivision approval process and the conclusion was undetermined at this time. A Resolution has been drafted that included the requested delay for six months from and after the lawsuit was

concluded. The resolution would make it public record. She added that staff was supportive of this request.

Councilwoman Rye made the motion to extend the Resolution of the Chickasaw Annexation Development Agreement completion date to six months from the date the lawsuit was completed.

The floor was open for public comment.

Tom Orr, the attorney for the Orchard Homes Community Association, recommended denial of the request for the extension. He explained that the first extension request was made prior to the lawsuit. The delay was put on hold because it was uncertain whether the developer intended to proceed with the subdivision. The plaintiffs did not want to spend money for a lawsuit that did not need to be pursued.

- The developer has not been clear to the neighborhood as to the reason why they did not want to pursue the approval.
- The developer has put half of the subdivision up for sale.
- The development agreement has never been made public.

Mr. Orr pointed out that now the developer was asking for an indefinite stay on their requirement to complete this proposal. He stated that this stay was not in the City's or the neighborhood's best interest and asked that the developer continue with the proposal or withdraw the subdivision.

John Turner mentioned that his land borders the subdivision. He reiterated that in the public meetings the developer specifically told the Orchard Homes Association let's "get it done." He wanted to know if the decision was made why the developer was dragging his feet.

Kari Britton concurred with what Mr. Orr and Mr. Turner said. She remarked that the developer had six months to sign the Development Agreement and chose not to. She felt if the developer intended to complete this project then half of the subdivision would not be up for sale. She felt that the developer did not want to finish the subdivision because the subdivision was different from what he originally proposed.

The floor was open for discussion.

Some Committee members were not in favor of the request because:

- ✓ This has degenerated with everyone trying to please everyone else which did not work and this proposal has ended up being small lots with a large section of agriculture land.
- ✓ The developer has not come forward with any explanations.

Some Committee members were in support of the proposal because::

- ✓ This was an unusual subdivision and the developer needed to be given an opportunity to finish the subdivision.
- ✓ Project deadlines did not become null just because a project was in litigation. It would seem reasonable to extend all the deadlines.

Councilwoman Mitchell asked if the lawsuit would interfere with the signing of the Development Agreement. Ms. Krause replied that once the subdivision was approved the developer had 30 days to sign the Development Agreement. It became clear that a lawsuit was pending so the developer asked for the six month delay. This was a good choice of action on the part of the developer. The delay time was up but the lawsuit had not been concluded and the developer felt it was important to request another six month delay to give the lawsuit time to run out. She added that even though the subdivision had been approved, the developer could not go forward because of the litigation.

Councilman Wilkins asked what would happen if half of the subdivision sold. Ms. Krause replied that the subdivision could not be completed the way it was approved. Mr. Millar added that if the property sold and the two parties entered into a partnership then the subdivision could be

completed, or because the preliminary plat has been approved to come up with another idea or the whole project could be abandoned.

The motion to extend the deadline to sign the Development Agreement passed with 7 votes of 'aye' and 4 opposed (Mr. Wilkins, Ms. Hellegaard, Mr. Haines and Ms. Mitchell).

#### **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. 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)
4. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
5. Review all changes from Title 19 to Title 20 regarding housing design standards ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 01/11/10)
6. Review Plat, Annexation and Zoning referrals. ([memo](#)) – Regular Agenda (Marty Rehbein) (Referred to committee: 01/11/10)
7. Review Title 20 sign ordinance to address prior commitments to business community ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 12/21/09)
8. Ongoing discussion of City planning issues with members of the Planning Board.— Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)

#### **VIII. Adjournment**

The meeting adjourned at 12:00 noon.

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.***