

Plat, Annexation and Zoning Committee Minutes

June 16, 2010

11:05 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: Stacy Rye

Others Present: Dick Ainsworth, Gary Bakke, Jackie Corday, Nina Cramer, Paul Forsting, Elaine Hawk, John Hendrickson, Michelle Hutchins, Carla Krause, Ruth Link, Laval Means, Peter Nielsen, Jim Nugent, Brianna Randall, Janet Rhoades, and Shelley Oly

I. Approval of Minutes

[May 26, 2010](#) approved as presented.

[June 02, 2010](#) approved as presented.

[June 09, 2010](#) approved as presented.

Public Comment on Items not on the Agenda

II. Staff Announcements

III. Consent Agenda Items

- A. Petition #7653 to annex the portion of Montana Rail Link Right-of-Way generally located from the Van Buren Street and I-90 Interchange to the East Missoula and I-90 Interchange, including the portions of East Broadway and I-90 Rights-of-way adjacent ([memo](#)).—Regular Agenda (Carla Krause) (Referred to committee: 06/07/2010)
(REMOVE FROM AGENDA)

MOTION: The Committee recommends the City Council recommend Council adopt a resolution extending the corporate limits of the city of Missoula, Montana, to annex within the boundaries of the City portions of railroad, East Broadway and Interstate-90 rights-of-way generally located between the Van Buren and Interstate 90 interchange and the East Missoula and Interstate 90 interchange (Sections 23, 24, 25 and 26, Township 13 North, Range 19 West, P.M.M.)

Carla Krause briefly summarized the answers to the questions that were asked at the last PAZ meeting. Ms. Krause stated that she had sent an e-mail to Greg Robertson and he explained that the proposed annexation of East Broadway does not appear to have any adverse impact on the County's Tiger Two Grant because their project is outside the annexations' boundary. The project would begin at the I-90 interchange and would run through East Missoula to the top of the hill near the Citizen's Bank. The county has no reason to participate in the improvements because the East Broadway right-of-way was currently under state jurisdiction and the MDT paid the city to maintain the right-of-way.

Councilman Strohmaier made the motion to adopt the Resolution of Annexation. The motion was unanimous and would go on the Consent Agenda.

IV. Regular Agenda Items

- A. [Resolution](#) to adopt the revised City Council draft of the City [Subdivision Regulations](#) articles 1 through 9, dated April 30, 2010 as amended by the Planning Board. ([memo](#))

Chair Jaffe stated the two main issues regarding the Subdivision Regulations were the riparian issues raised by the MBIA and the alley requirements that would be referred as a separate process.

Laval Means pointed out the issue was primarily how riparian resource standards applied to irrigation ditches. She added that after Councilman Houseman suggested some revisions to that section the MBIA put together alternative language for addressing irrigation ditches with regard to riparian resource standards. Councilman Houseman's and the MBIA suggestions were circulated to Parks and Rec and the Health Department. Both agencies had some additional suggestions for clarifying the measurement of the width of a ditch. She explained MBIA's suggestion was to modify the definition of the riparian resource with an exception that would read, 'an irrigation ditch that does not lie within a floodplain and has an average width on the property of 3-feet or less shall not be considered a riparian resource per the subdivision regulations.' She said the agencies had additional recommended revisions to the MBIA suggestions so that if the Committee chose to go with an exception for some irrigation ditches the recommended would be 'an irrigation ditch that does not lie within a floodplain and measures less than 3-feet at its greatest width on the subject property as measured from the high water mark on the ditch shall not be considered a riparian resource per these subdivision regulations.'

Councilwoman Marler asked if all the ditches were treated as riparian resources in Title 20. Ms. Means stated that currently all the irrigation ditches were treated as another body of water and part of the riparian resource in the Subdivision Regulations. She added that in Title 19 and now Title 20 irrigation ditches were not considered as a riparian resource.

John Hendrickson clarified that MBIA was concerned with all the man-made ditches and not natural springs, creeks or streams. He added that the irrigation ditches were controlled by the two irrigation districts and not the city or county, and in order to cross a ditch a variance was needed. Chair Jaffe asked if the issue was primarily crossing the ditches. Mr. Hendrickson replied the issues involved crossing the ditches, care of the ditches and changing the direction of the irrigation ditches. He also shared that the MBIA had no problems with the recommended revisions.

The Committee members had various questions concerning irrigation ditches:

- ✓ Why there was concern about the width of the ditch instead of the flow capacity. Council Childers understood that a ditch was created as a water supply for irrigation of an agricultural land. Mr. Nielsen replied that width was easier to measure and flow varied.
- ✓ Would the variance application be part of the subdivision review or the zoning compliance for each parcel that would be built? Ms. Means replied the application would be part of the subdivision review.
- ✓ What the purpose for applying riparian resources standards to ditches was. Ms. Means responded the water flows from the surface water supply like rivers and creeks then back into those systems. The value of riparian resources adjacent to the ditches would be filtration of potential pollutants and better control of water temperature.
- ✓ What was the compromise? Ms. Means replied the compromise would be not requiring ditches less than 3-feet in width outside a floodplain to be considered a riparian resource during subdivision review.

The floor was open for public comment:

Peter Nielsen from the Health Department gave a [power point presentation](#) showing various types of ditches in the Missoula area. Mr. Nielsen stated that the two areas of concerns seemed to be the crossing of the ditches and if the crossing had to be perpendicular and

whether the ditches should be considered riparian resources. He added that the Health Department and Parks and Rec were in agreement to exempt some of the smaller ditches. Mr. Nielsen explained that the ditches take water out of the river and return flows back to the rivers. The ditches flow through urban areas and pick up significant amounts of contaminate loads so an important function of the riparian resources was to help filter contaminants out of the water. The ditches also provide shading for fish that swim into the ditches from the streams and rivers. He remarked that there could be a way to exempt the smaller ditches from being called riparian resources and prevent the requirement of a management plan under the subdivision regulations. Mr. Nielsen pointed out the amended language concerning road construction. The amended language stated that all road construction would be prohibited within riparian resource areas except in cases where there was no other practical route to access the subdivision or emergency access. He stressed that the riparian areas were valuable even though the ditches were man-made and not permanent structures because they are connected to surface water. Chair Jaffe wondered if the criteria should be whether the ditch flowed back into the rivers. Mr. Nielsen replied that all of the major irrigation ditches had to have return water flows.

Ms. Means distributed the [statement](#) received from the MBIA as modified by suggested revision by the agencies.

Paul Forsting explained how the irrigation districts treat the ditches. He stated that ditches are a utility and treated as such from the irrigation district. The first thing an irrigation district does when asked to relocate or change the water flow was to install a half pipe of concrete so the water flow does not flow back to the main body of water. The irrigation districts attempt to clear the ditches of vegetation on a yearly basis to keep the water flow high which reduces riparian resources. He felt that the language that prohibited the access over a ditch unless there was a secondary access should not be the guide when deciding the access of a subdivision and added that the access to a subdivision should be based on traffic patterns and circulation. Brianna Randall from the Clark Fork Coalition (CFC) stated that ditches are now considered a normal part of the hydrology. She expressed that the CFC were working with private water right holders to restore stream flows by directing the flow of the irrigation ditches back into the rivers. She also stated that in some cases there is no irrigation district associated with a ditch. Ms. Randall pointed out that the CFC was agreeable to the revised riparian resource language in the proposal but was unsure why the definition needed to be changed when the ditch crossings seemed to be the problem.

Chair Jaffe stated a relevant issue was clearing the vegetation right up to the ditch. Ms. Corday replied that the focus was smaller ditches less than 3-feet and explained that the exemption would mean that the ditches would not be treated as riparian resources so there would not be a buffer, the ditches would not be delineated on plat maps and people could mow right up to the edge of the ditch. But one the ditch goes beyond the 3-foot width there could be significant vegetation that needed to be protected.

Councilman Houseman made the suggestion to find a compromise between the irrigation districts closing off the smaller ditches that could be found in and around the Orchard Homes and Shopko areas and the water rights that would be required by developers that could potentially cause problems for future subdivisions. He **made** the motion to adopt the revised City Council draft to the City Subdivision Regulations as amended by Planning Board with the amendment given by staff for riparian resource definition.

- ✓ Were there any structures to divert the water from the rivers and is the water measured at the head gate? Mr. Nielsen replied there was some method of measurement but the water right holders do not maintain continuous flow measurements on the irrigation ditches.
- ✓ Should delete the variance language and think about the conditions.
- ✓ Need additional definition on what an irrigation ditch was versus a natural stream or channel. Mr. Nielsen replied creeks can be diverted into a ditch and if it was used as an

irrigation source it would be considered as an irrigation ditch. Janet Rhoades stated this has not been an issue in the past because there were no separate regulations for irrigation ditches.

- ✓ Need to clarify the meaning of irrigation ditches.
- ✓ The width was more constant than the flow for measurement purposes.
- ✓ There are trade-offs between ditches that support riparian vegetation versus ditches that are efficient and do not flow back to the river. Ditches have additional conservation values as bird and insect habitats and not just the filtering.

This discussion would be continued at the next PAZ meeting and the motion was not voted on.

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. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
5. Discuss the implications of the Sonata Park court case ([memo](#)).—Regular Agenda (Bob Jaffe) (Referred to committee: 03/08/10)
6. Discussion of OPG's [task list](#) and workload.—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)

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.