

Plat, Annexation and Zoning Committee Minutes

June 23, 2010

10:05 am – 11:30 pm

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Roy Houseman, Dick Haines, Renee Mitchell, Dave Strohmaier, Pam Walzer, Jason Wiener.

Members Absent: Lyn Hellegaard, Marilyn Marler, Stacy Rye
Jon Wilkins,

Others Present: Gary Bakke, Jackie Corday, Paul Forsting, Elaine Hawk, John Hendrickson, Ruth Link, Laval Means, Peter Nielson, Jim Nugent, and Shelley Oly

I. Approval of Minutes

[June 16, 2010](#) approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. 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](#)) ([PAZ](#)) ([PAZ 06/02/2010](#)) (Returned from Council floor: 06/07/2010) (**REMOVE FROM AGENDA**)

MOTION: The Committee recommends the City Council adopt a [Resolution to Adopt](#) the City Council Draft of the City Subdivision Regulations Articles 1 through 9, dated April 30, 2010, as amended by Planning Board and as [amended](#) by City Council.

This was a continued discussion regarding the City Subdivision Regulations. Issues to discuss include accepting the proposed revision for the definition for riparian resource, providing a definition of an irrigation ditch and limitations on exceptions to road construction. Other issues raised include revisions that could be a result of Councilman Childers comments, and a staff recommended revision to the section on appeals.

Councilman Childers requested separation of the issues.

Laval Means conveyed to the Committee that after meeting with various interested parties for definition of an irrigation ditch and any modifications to the road construction, the resulting potential [revisions](#) were distributed through e-mail. Ms. Means also distributed a staff response to comments from Councilman Childers, and staff's recommended revision regarding the regulations and revisions in section 1-120 having to do with appeals.

The floor was open for discussion:

- ✓ Has anyone spoken to the people at the Irrigation District as to what was considered a riparian resource or the definition of an irrigation ditch? Ms. Means stated they have not directly spoken to a district representative but staff understood the approaches through dealings with the land use planners, developer representatives and agencies who work directly with the Irrigation District.
- ✓ Is the Irrigation District listed on the agency comment notification list? Ms. Means stated she did not believe so.

- ✓ How was the high water mark in ditches established even if there was no water in the ditches? Peter Nielsen replied that the high-water mark was visible even if there was no water in the ditch.
- ✓ A request was made to have all motions listed on the agenda.

The **motion** to accept the proposed revision to the definition of riparian resource passed with 7 votes of 'aye and 1 vote opposed (Dick Haines).

Ms. Means pointed out that based on initial review by agencies, interested parties and the consultant, the following definition of "irrigation ditch" was suggested; *human-made feature that carries only irrigation water to or away from irrigated lands.*

The floor was open for discussion:

- ✓ What would this definition exclude? Ms. Means responded this would give a clarification between creeks that serve many more purposes besides irrigation and an irrigation ditch that was solely man-made.
- ✓ Would this eliminate Patty Creek, for example, from being considered an irrigation ditch because even though it was a man made canal it originated from a natural body of water. Ms. Means remarked if it was not being used for irrigation purposes.
- ✓ Chair Jaffe voiced that all water comes from a natural source. Ms. Means stated the proposed city subdivision regulations could operate without a definition and would continue to coordinate with the experts on whether this was an irrigation ditch or not. Chair Jaffe suggested if it was a natural creek it should be protected even if it was less than 3-feet wide but a canal that was man-made was different.
- ✓ Are there irrigation ditches that are not part of the irrigation district? Ms. Means replied there were and the upkeep was maintained by private citizens.
- ✓ Would crossing an irrigation ditch at a perpendicular angle minimize the amount of crossings? Ms. Means replied that crossing at a perpendicular angle will use less area that would go through a riparian resource area.

Councilwoman Walzer made the **motion** to accept the definition as written. The vote was unanimous.

Ms. Means stated that the next item that was raised based on concerns with regard to limitations on exceptions to road construction. Ms. Means indicated that after meeting with various agencies as well as people in the building industry the major concerns seemed to deal with the crossing of an irrigation ditch. She explained that often irrigation ditches are adjacent to roads and could become more impacted from road run off, so this was one area that could be a reasonable exception to road construction but where the crossing would still need to meet standards.

The floor was open for public comment:

John Hendrickson offered up a revision to .6 Section G for consideration that if road fill was not allowed then a bridge was necessary. Mr. Hendrickson came up with alternate language that stated, *road fill may be deposited in riparian resource but not in a manner as to cause adverse impacts in a riparian resource area.* Chair Jaffe asked was the intent to not allow a culvert? Jackie Corday shared that a culvert was used when crossing a small ditch but a bridge was preferred for wild life crossings unless the culvert was extremely large. Ms. Corday suggested alternate language to read, *road fill material if needed must be minimized in the resource area.* This language should be flexible in order for staff and agencies to comment on whether a culvert or a bridge was needed.

Elaine Hawk remarked that the vagueness of the language was appropriate because it gave the flexibility to work with the other agencies and decide on a case by case basis. She explained this would not require a variance but a condition of approval.

Ruth Link stated that in order to exclude irrigation ditches under 3-feet she recommended to codify this in the road construction language to have it read *when crossing an irrigation ditch*

under 3-feet and under Section A *all crossings of streams, lakes, wetlands, irrigation ditches under 3-feet*. Ms. Rhoades added for sake of consistency in the riparian resource definition the language should read *all crossings of streams, lakes, wetlands, irrigation ditches greater than 3-feet and other body of water* under Section A, since irrigation ditches under 3-feet in width are excluded from this riparian resource section entirely.

1) Councilman Strohmaier suggested striking the word 'or' from .6 Section G out of the sentence to read *road fill may not be deposited in the riparian resource area in such a location or manner as to cause adverse impacts in the riparian resource area*. Mr. Hendrickson was fine with this language.

2) Councilman Haines asked what an adverse impact in section G was and who decides this? Chair Jaffe stated that staff makes the judgment call based on agency comment. Janet Rhoades explained the staff would come up with a recommendation on what an adverse effect was based on agency and riparian agency comment and the subdivision regulations, but the ultimate decision was Council's.

3) Councilman Weiner stated Section A should replace "streams, lakes, wetlands, irrigation ditches or other body of water" with *riparian resource* since they mean the same thing. Ms. Link was fine with this suggested change. Ms. Rhoades clarified the language should read *all crossing of riparian resources must occur at a perpendicular angle*. She was not sure if *perpendicular angle* should be kept in because streams are linear but ponds and other body of water are not.

Paul Forsting suggested adding the addition of a 3-foot requirement to exclude the crossing from needing variances. He reported the interest was to exclude the need to have a variance to cross an irrigation ditch regardless of the size. Ms. Corday agreed with Mr. Forsting and this was why it was important to come up with a definition of an irrigation ditch. She explained that much less riparian resource would be disturbed if the stream crossing was perpendicular to begin with.

4) Councilwoman Walzer **made** the amendment to add to the road construction language for Section A, *all crossing of riparian resources must occur in such a manner as to minimize the number of crossings and minimize or mitigate the disturbance of the riparian resource area*. For Section G, *road fill may not be deposited in the riparian resource area in such a location or manner as to cause adverse impacts in the riparian resource area*.

5) Councilwoman Mitchell pointed out that even though the numbers of automotive crossings are minimized pedestrians and bicyclists would still cross the irrigation ditch. The phrases, *number of crossings* and *perpendicular angle* should be deleted from the definition.

Peter Nielsen was in support of the changes that were proposed however the reference to crossing a stream at a perpendicular angle should be included as a clause at the end of the sentence of Section A to read, *through such measures as crossing the stream at a perpendicular angle*. He stated this was already in the existing language. Ms. Hawk felt the language was appropriate.

6) Councilman Haines remarked mitigate was not the appropriate word to use. He clarified that the word mitigate was used after a job was done and should not be in the definition. He added that Section C needed to be incorporated into Section A and Section F incorporated into Section B. Ms. Corday replied that this criterion, section A through G had been in place since 1996 and there had been no problems. Ms. Means added that the bulk of the standards had been in place as written and that the *all crossings* statement was a regulation from the county that was incorporated into the City Subdivision Regulations. Ms. Corday clarified that in the first paragraph of 3-130.6 when it stated *that road construction was prohibited except when crossing irrigation ditch*, this statement conveyed that a variance was not needed. In Section A, *all crossing of riparian resource*, meant anything less than 3-feet would not be subject to this criteria, but if the ditch was over 3-feet it would be considered a riparian resource and would be

subject to this criteria. Ms. Corday stated that the last point was it was important to minimize ditch crossings through riparian resources.

Councilwoman Walzer **modified** the amendment to read for Section A, *all crossing of riparian resources must occur at a perpendicular angle in such a manner as to minimize the number of crossings and minimize the disturbance of the riparian resource area.* For Section B, *to replace streams, wetlands, or other body of water with riparian resources* For Section G, *road fill may not be deposited in the riparian resource area in such a location or manner as to cause adverse impacts to the riparian resource area.*

The motion to accept the modified amendment made by Councilwoman Walzer passed with 7 votes of 'aye' and 1 opposed (Dick Haines).

Ms. Means summarized the three revisions that could occur to the subdivision regulations based on Councilman Childers comments:

- The first revision was a clarification in Section 2-010.2B to add the word *required* in the first sentence. So it would read *the time in which an act is required to be completed is computed by excluding the first day and including the last day.* The phrase when *counting calendar days* would be added to the front of the second sentence and continue with *if the last day is Saturday, Sunday or Monday observed by the city that day is excluded.*
- The second revision is to eliminate the 5:00 pm reference (end of day) in Section 2-010.2C.
- The third revision found in Section 2-010.6 was to strike the word *or*.

Councilman Childers made the motion to approve the revisions. The vote to accept Councilman Childers's motion was unanimous.

Councilman Wiener explained that in order to make the staff recommended change congruent with state law concerning when a district court appeal of the subdivision could be made; the phrase *business days* would need to be replaced with *calendar days*.

Councilman Wiener **made** the motion to strike the word *business* from the draft in the section I-120 Appeals.

Councilwoman Mitchell asked for an explanation of 30 business days versus 30 days. Ms. Means replied that was how the state law stated the limitations on the appeal. According to state law, the only time that we can refer to working or business days would be when state law says working or business days.

Councilwoman Walzer asked if the definition of days meant calendar days.

Ms. Means agreed and pointed out that was part of the Article 2 that set up the general computations of time.

The vote to accept Councilman Wiener's vote was unanimous.

The vote to accept the main motion to adopt the City Subdivision Regulations as amended passed with 6 votes of 'aye' and 2 opposed (Dick Haines and Renee Mitchell). This would go on Committee Reports

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 11:25am

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.