

## Plat, Annexation and Zoning Committee Minutes

May 11, 2011

10:21 a.m. – 12:00 noon

City Council Chambers, 140 W Pine

**Members Present:** Bob Jaffe, Ed Childers, Dick Haines, Lyn Hellegaard, Renee Mitchell, Dave Strohmaier, Pam Walzer, Cynthia Wolken

**Members Absent:** Marilyn Marler, Stacy Rye, Jason Wiener, Jon Wilkins

**Others Present:** Ann Cundy, Jim Nugent, John Newman, Tim Worley, Jen Gress, Mike Barton, Dale McCormick, Steve Adler, Michael Tree, Laval Means, Denise Alexander, Jerry Ford, Gregory Kennett, Bobbi Day

I. **Approval of Minutes** for [May 4, 2011](#) – were approved as presented.

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

III. **Staff Announcements**

IV. **Consent Agenda Items**

**B.** Consider a proposal to apply phasing to the Larson Addition Subdivision, with final plat submittal deadlines of June 16, 2014 for Phase 1, and June 16, 2016 for Phase 2.

([memo](#))—Regular Agenda (Tim Worley) (Referred to committee: 05/09/11) **REMOVE FROM AGENDA**

**The Committee recommends that City Council approve the proposal to apply phasing to the Larson Addition Subdivision, with final plat submittal deadlines of June 16, 2014 for Phase 1, June 16, 2016 for Phase 2, and change the language of Condition #16 so that the sidewalk installation southeast of Grant Creek is done with Phase 2.**

Tim Worley reported that this was an action item and gave the following information:

([Presentation](#))

- The Larson Addition was a four-lot subdivision located on Expressway.
- The two lots of record were divided into four lots in 2008.
- Through an approved extension, the current final plat submittal deadline was June 16, 2011.
- With approval of the proposed phasing plan, Phase 1 final plat deadline would be June 16, 2014 and Phase 2 would be June 16, 2016.
- City Engineering requested that sidewalks be installed with Phase 1 with the goal of connecting spotty sidewalk connections in the vicinity of Expressway.
- The sidewalk improvements would have to be completed by June 16, 2014 per City Engineering's recommendations. An Improvements guarantee could extend that date out by one year.
- Staff recommended approval of the phasing plan request.

Dale McCormick, representing Mr. Larson, explained that the request for the phasing plan was because of the poor market. They asked that the sidewalk installation be allowed in each phase rather than the city engineer's requirement. Typically the improvements were installed with each phase rather than the first phase as engineering had requested. Mr. McCormick asked that a condition be amended so that they could install the section of sidewalk southeast of Grant Creek with Phase 1.

Renee Mitchell made a motion to approve the phasing plan request with the exception on condition #16 and allow the sidewalks to be installed southeast of Grant Creek with Phase 2. Councilman Childers asked about the property adjacent to Phase 1. That property was city right-of-way and was adjacent to both phases. The vote passed unanimously.

**C.** Direct staff to change interpretation regarding lifting a building and replacing foundations as a trigger for loss of non-conforming status and make appropriate code adjustments in maintenance update to Title 20. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 05/09/11) **REMOVE FROM AGENDA**

**The Committee recommends that City Council direct staff to interpret the nonconforming chapter (Chapter 20.80) to allow modifications of structures without triggering loss of nonconformity status if the modification did not increase the nonconformity.**

Chair Jaffe explained that this was his referral and that one of his constituents made him aware of an interpretation issue. This person wanted to make repairs to a nonconforming structure by raising the house and replacing the foundation. This owner was told that if he did this, the nonconforming status would be lost. The primary issue was on how the nonconforming chapter of the zoning code was interpreted. City Council could either encourage re-use of existing structures or try to phase out nonconformities. Chair Jaffe was in favor of re-using existing structures and suggested that some language changes in Chapter 20.80 could help. He hoped the Committee would agree with him and request staff to change their interpretation for the short-term and go forward with language change in the next maintenance update.

Committee discussion on how to proceed:

1. Be sure that the interpretation included not increasing the nonconformity.
2. The change in the interpretation was reasonable and made sense.
3. How did staff interpret these now? When someone raised a home and replaced the basement or foundation, staff considered that a structural alteration. Title 20 states that structural alterations needed to comply with current zoning.
4. If all the person was doing was reinforcing the foundation, it seemed reasonable as long as they were not increasing the nonconformity.
5. Replacing the foundation was a logical way to maintain the home and keep the value of the building.

Pam Walzer made a motion to direct staff to change their interpretation of the nonconforming chapter to allow modifying a structure without triggering loss of nonconforming status and not increasing the nonconformity. Mr. Nugent noted that the definition of footprint included the upstairs and the basement but that this discussion was narrower. Whatever made the nonconformity, the property owner could not make it worse. Ms. Alexander reported that adding a basement to a single family home did not change the use, however, if height was dependant on setback then an increase in height could increase the setback nonconformity. Discussion and questions were made on the motion:

1. Would this be done as an ordinance or as a recommendation? Staff would do a Zoning Officer Opinion or interpretation and then an amendment to the ordinance would be done later.
2. Gregory Kennett was the owner of the house in this particular instance and was making improvements to the house as an investment property.
3. Steve Adler, the architect working on this project explained that in order to improve the house, it needed to be lifted to work on the foundation. The interpretation of the code would not allow this because of the setback.
4. In this instance they just wanted to lift the house? Yes, they were working with what was currently there and had no plans to go up higher.

The vote on the motion to direct staff to interpret the nonconforming chapter (Chapter 20.80) to allow modifications of structures without triggering loss of nonconforming status if the modifications did not increase the nonconformity passed unanimously.

## V. Regular Agenda Items

A. A resolution to adopt the 2011 Missoula Active Transportation Plan as an amendment to the Missoula County Growth Policy and set a joint public hearing with the Missoula County Board of County Commissioners to review the Plan. ([memo](#))—Regular Agenda (Ann Cundy) (Referred to committee: 05/09/11) **HELD IN COMMITTEE**

Ann Cundy explained that this was a request to adopt a Resolution of Intent and to set a public hearing for June 13, 2011 on the Missoula Active Transportation Plan as an amendment to the Growth Policy.

Councilwoman Hellegaard was hesitant to attach more documents to the Growth Policy until the recent court ruling on Sonata Park was understood. The City might be adding more problems if this plan was added at this time. Mr. Nugent explained that the more text there was in the Growth Policy the more Council would have to pay attention to keep in compliance. When relying on text language in the Growth Policy, there could be some inconsistencies. Council did need to be concerned about adding documents to the Growth Policy and complying with them.

Questions and comments from the Committee:

1. Was this updating an existing amendment to the Growth Policy or was this something different? The Missoula Active Transportation Plan replaces the 2001 Non-motorized Transportation Plan, which was an amendment to the current Growth Policy.
2. It made sense to have the Active Transportation Plan part of the Growth Policy but now may not be the appropriate time.
3. Council should give legal staff time to review the plan to make sure there were no unintended consequences. This seemed reasonable considering the recent lawsuit decision.
4. This could be tabled until the Committee knew how to proceed.
5. The public hearing will be a joint one with the Board of County Commissioners. City Council did not have to make a decision on the day of the public hearing. It could be sent back to Committee and a decision could be made later.
6. The Committee could get the full presentation, have discussion and get feedback from legal staff before setting the public hearing.
7. How did the OPG Director feel about this issue? Mr. Barton noted that there was a risk of having a Growth Policy, and also of not having one. The Committee could go forward and set the public hearing, and if the city or county attorney found any issues, a decision could be tabled or consideration could be delayed. Given the Supreme Court's decision on the Sonata Park lawsuit, the Active Transportation Plan may not have an impact on the Growth Policy. Mr. Nugent added that it was important to have these plans; it could have been beneficial to have the Active Transportation Plan in the Growth Policy. The City may need to have different language than the County. He suggested continuing the process.

Ann Cundy noted that the Active Transportation Plan was just for the MPO planning area that was mostly in the urban area. She could come back and do a presentation when the Committee requested it.

Dick Haines made a motion to table setting a public hearing on this until legal council had time to review the Active Transportation Plan. The motion passed with 6 in favor and 2 against (Pam Walzer and Bob Jaffe). Mr. Nugent said he would try to find time to review the plan.

**D.** Update committee regarding Russell Street zoning project. ([memo](#))—Regular Agenda (John Newman) (Referred to committee: 05/09/11) **HELD IN COMMITTEE**

John Newman gave an update on the Russell Street zoning project ([presentation](#)).

- Council had asked staff to take this to Planning Board and engage in a public process beyond sending out letters.
- A series of meetings were held with folks already in the boundary overlay area and then with folks not yet in the boundary area.
- There was agency review, a legal notice posted and Planning Board held a public hearing May 3, 2011.
- Changes that Council recommended for the map amendment included 31 more parcels.
- Text amendments included:
  - Decreasing the front setback from 60' to 40'.
  - The maximum building height would be 65'.
  - Change the allowed uses so that the former uses that were called 'permitted' would now be 'legal nonconforming'. This amendment got the most comment.
  - Added primary use casinos as a prohibited use.
- Planning Board wanted to see more that addressed the entire area rather than the Russell Street corridor and felt this was not enough.
- Planning Board voted on each amendment but then voted to deny the whole proposal. They felt that if Council voted against the Planning Board's decision, the Council could see how they voted on each amendment.
- Staff felt it was tough to change text for something that had not changed and recommended denial of the allowed use change.
- Council had three options:
  1. Move forward with all the recommendations;
  2. Move forward with some of the recommendations (staff's); or
  3. Not move forward.

The Committee discussed how to proceed and asked questions on the amendments.

1. Why were the setbacks along Russell Street going from 60' to 40' and also increasing the building height allowed by 20'? With the maximum setback decreased it forced parking to go behind the building (preventing the Reserve Street effect). The higher building height would help create the desired pedestrian corridor feel.
2. Would the 40' be from the current right-of-way or the proposed? It would be the proposed at the property line.
3. What comments were received from those not in the overlay area now? There was not much comment received from those outside the boundary but staff did hear from a representative of the Holiday Store. They stated that there was an established business and this amendment would take away from that business. Folks did state that by removing 'permitted' felt like the city was going back on a promise. Legal nonconforming was not a welcome concept.
4. What was the difference between 'permitted' and 'legal nonconforming'? Legal nonconforming restricted how a business or building could expand or change and it allowed transfer of ownership.
5. Would changing property to 'legal nonconforming' change the value? Nonconforming did affect getting financing.

Jerry Ford, a commercial realtor, asked if an existing use could remain. Mr. Newman answered that it could if it were in existence prior to the effective date of the amendment. Any businesses prior to that date would be permitted. Mr. Ford recommended not changing the setback because people liked to park in front of the business. He felt these amendments were heavily against businesses.

Chair Jaffe suggested moving forward with all the recommendations and putting this on the next PAZ agenda to set the public hearing. The Committee agreed to move forward and set a public hearing.

#### **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. Resolution repealing resolution No. 7404 and declaring the annexation of Lots 53 and 54 Dinsmore's Orchard Homes No. 5 null and void. ([memo](#))—Regular Agenda (Jessica Miller) (Referred to committee: 01/10/11)

#### **VIII. Adjournment**

The meeting adjourned at 11:45 a.m.

Respectfully Submitted,

***Bobbi Day***

Recording 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.***