

Plat, Annexation and Zoning Committee Minutes

February 8, 2012

11:05– 12:00

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe, Ed Childers, Dick Haines, Adam Hertz, Marilyn Marler, Mike O'Herron, Alex Taft, Jason Wiener, Jon Wilkins, Cynthia Wolken

Members Absent: Caitlin Copple, Dave Strohmaier

Others Present: Jim Nugent, Tom Zavitz, Todd Klietz, Mike Barton, Dave Shaw, Molly Skorbik, Ray Tipp, Peter Nielsen, Laval Means, Doug Harby, Kevin Slovarp, Deni Forestek

I. **Approval of Minutes for [February 1, 2012](#)** – approved as presented.

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

III. **Staff Announcements**

IV. **Consent Agenda Items**

V. **Regular Agenda Items**

1. Approve or deny the appeal of the City floodplain permit #12-02 condition #2 prohibiting the Missoula Irrigation District from manually placing logs in a location where the natural flow of water would carry the same downstream to the damage or detriment of either life or property. ([memo](#))—Regular Agenda (Todd Klietz) **REMOVE FROM AGENDA**

MOTION: The Committee recommends that City Council, by variance, grant a City Floodplain Permit to the Missoula Irrigation District to allow them to divert debris downstream from the grate they propose to build at Point A in their proposal.

Todd Klietz [presented](#) this appeal, believed to be the first one in City Council history, to approve or deny the appeal of City Floodplain Permit #12-02, Condition #2. The floodplain regulations state that any logs and debris considered to be artificial obstructions must be removed from the floodplain and not be allowed to continue downstream where it could cause an obstruction or cause damage. The Missoula Irrigation District would like to place a grate over the entrance to their system to divert logs and debris before it enters the canal; however, during low water, logs and debris will catch in the grate and they wish to manually redirect those logs and debris downstream rather than removing it from the floodplain.

The action requested of the Committee was to either approve or deny the appeal. If the appeal is denied, the applicant can choose to apply for a variance, meeting criteria as outlined in the regulations as outlined in the presentation.

Molly Skorbik, an engineer from Morrison-Maierle, [presented the project](#) to the Committee. The Missoula Irrigation District conveys water from Jacob's Island, where they have dug a channel, to Target Range and the base of the South Hills. They have received funding from EPA and met all other agencies' permit requirements to place a grate over the inlet that would block the debris and logs at the spillway. In order to meet floodplain regulations, however, they would need to load the debris onto equipment and remove it through the City's trail system. Ms. Skorbik felt this would go against historical practice, cause impacts to the City trail system, and would be a safety risk with heavy equipment on or near the trail system. She also noted that FWP generally encourages debris to remain for fish habitat.

Ray Tipp of the Missoula Irrigation District explained that they had an alternative location in mind; however, this could have an impact on recreationists, safety and aesthetics. He felt it would be a financial and environmental burden since these logs cannot be sold or recycled.

Questions and comments from the Committee included:

Is the problem with the placement of the grate? Mr. Klietz said that the grate can be installed, but the problem is that logs and debris that get caught in the grate need to be removed from the floodplain instead of being placed back in the channel where the natural flow of water would carry them downstream to the damage or detriment of public or private infrastructure.

Ed Childers made a motion to approve the appeal.

Questions and comments on the motion:

- Jason Wiener would not support the motion since it creates a precedent for future applicants; he would prefer they apply for a variance.
- Jon Wilkins did not think that this was a good idea and would not support the motion.
- Marilyn Marler felt that a motion for a variance would be preferable and was inclined to side with the City Floodplain Manager on issues regarding the river. She spoke to FWP and although they have a strong preference that natural debris be returned to the river they did not have an issue with the cut logs being removed.

Mr. Wiener clarified that voting yes to approve the appeal meant that the Committee felt that the Floodplain Manager's interpretation was incorrect. A variance approval would mean that the Floodplain Manager's interpretation was correct; however, in this instance the Committee would allow an exception. Chair Jaffe concurred and asked Mr. Nugent if the Committee could grant a variance at this meeting. Mr. Nugent could not see anything in the regulations that would state otherwise; however, since this was the first appeal ever heard, there was no precedence. Mr. Klietz noted that there is a difference between an appeal and a variance—if the variance is applied for, the Missoula Irrigation District would need to meet all six criteria, which included approval by the Montana Department of Natural Resources and Conservation.

Mr. Childers revised his motion to grant a variance on this one permit to this one entity to allow them to divert the debris back into the stream; this would apply only to a grate at Point A on the presentation and the spillway.

Public Comment included:

Peter Nielsen, Missoula City-County Health Department, commented that over 17,000 logs have been removed from the Blackfoot River and it is possible that there will be more logs. These logs have an economic value; they have been used for Missoula County for picnic structures, and were used in the construction of the Native American Studies building at the University. He pointed out that the logs become tangled with other debris and have the potential to create obstructions that can cause impacts to infrastructure. He felt that the logs would not be able to continue flowing downstream since there would not be enough power in the river when this debris is redirected.

Discussion on the revised motion:

- Ms. Marler thanked Mr. Nielsen for his remarks and asked him to clarify what he meant by the debris not being able to be redirected. Mr. Nielsen explained that the debris would be deposited during high water and redirected during low water.
- Mr. Childers asked Mr. Klietz would prefer that the motion be reworded to specify when the debris could be redirected. Mr. Klietz felt that the issue was not when the debris could be placed in the river but that local and state regulations prohibit them from being placed where they would be carried downstream Mr. Wilkins called the question, which passed by unanimous voice vote.

The motion passed by majority vote, 5-4. Mr. Nugent then pointed out that the variance could not be granted until all the criteria had been met including the approval of DNRC.

2. A [resolution](#) to adopt amendments to the City of Missoula Subdivision Regulations, Article 3 entitled “Subdivision Design Standards,” Section 3-020 entitled “Streets, Access and Transportation.” ([memo](#)) ([PAZ](#)) ([PAZ 11/30/11](#)) ([PAZ Motions to date](#)) (Returned from council floor: 12/05/11) **HELD IN COMMITTEE**

Mr. Zavitz gave a quick recap of the items the Committee discussed last meeting and went over the motions that had been made to date. He distributed a [packet of information](#), including the Engineering comments that had been gone over with the Committee. He asked the Committee to move to accept the changes that had been discussed.

Jason Wiener pointed out that Home Zones 7C did not have stamped concrete as an option. Mr. Zavitz concurred and would make that change. Mr. Taft asked that the document be changed to state Home zones/Woonerfs instead of just Home zones.

Mr. Wiener moved to accept the changes from last meeting. The motion passed unanimously.

PARKS DEPARTMENT COMMENTS

Mr. Zavitz went through the comments from the Parks Department, WGM, and MOR. He reported that he had emailed the Committee a copy of the presentation to make it easier to follow. Using the comments in the packets, research, and discussion with City Attorneys, OPG staff was able to provide language with a safe legal footing for compelling trail building in subdivisions. The updated language could be used during subdivision review to address the impacts a subdivision has and how a trail might mitigate those.

Alex Taft **moved** to change the term “non-motorized” to “active transportation” in the section heading. The motion passed unanimously.

Questions and comments:

- Mr. Haines wondered who determines what a “safe” route was. Mr. Zavitz pointed out that there were standards that referred to what is safe, and that OPG, Parks, and Engineering would review the subdivision with an eye to these standards.

Mr. Wiener **made a motion** to incorporate as Section 15 of the Subdivision Regulations the staff updated draft changes to non-motorized facility and the clarification that “safe” should be consistent with AASHTO bike and pedestrian design guidelines.

Discussion on the motion:

- Jackie Corday clarified that every subdivision proposal is reviewed by the Parks Department, the Bike/Ped Officer, Engineering, and Public Works and the reviewing departments all refer to AASHTO; however, they also use other criteria from many different sources and she felt that if these guidelines or standards were cited, it would be sufficient.
- Mr. Wiener agreed that careful subdivision review could define the word “safe” on a case-by-case basis in a defensible way; however, he was concerned that without something more specific, things may be missed.
- Chair Jaffe wondered if something specific could be added to the Missoula Active Transportation Plan to more clearly define “safe.” Mr. Wiener did not feel this was feasible; however, he would like to hear more suggestions.
- Mr. Taft said that the term “safe and convenient” is used in transportation documents at a local, federal and state level and did not feel it needed to be more clearly defined. He agreed with Ms. Corday that it should not be limited; however, if they said “as defined by federal and state law” it would be okay.

- Mr. Childers would like predictability and consistency in the reviewing process and agreed with Mr. Wiener.

Chair Jaffe felt that the significant issues to be discussed were more the off-site connectivity requirements. There was also something that had been mentioned about the trails not being part of the parks dedication. Mr. Zavitz explained that measurements of impacts taken together with community adopted plans would clarify where trails should be required.

Mr. Wiener withdrew his motion, explaining that he would like some language that would elaborate on the term “safe and convenient” and could be used as guidelines for subdivision review. Mr. Zavitz will research this and offer more language to the Committee.

OFF-SITE IMPROVEMENTS

Chair Jaffe asked for clarification on the term “off-site” in the document in reference to connectivity of the subdivision. Mr. Zavitz explained that the Planning Board changes removed the term “on-site,” referring instead to access or routes that could be off-site. This allows impact to be mitigated off-site. This is not always possible, such as obligating a developer to purchase land outside of the subdivision in order to provide connectivity. The on-site versus off-site language allows the reviewers to think about off-site mitigation.

Chair Jaffe understood that the proposed changes stated that the subdivider must provide safe and convenient access to services, such as shopping and schools; he wondered how this would happen. He asked Mr. Slovarp to explain how they required off-site road improvements for motorized transportation. Mr. Slovarp explained that off-site primary access roads to the subdivision are built using a Transportation Impact Fee. The developer pays for half the road that is built.

Mr. Haines felt it was valid to charge a developer for motorized transportation facilities; however, it would be hard to prove there’s a need for a trail.

Mr. Taft was comfortable with the Planning Board’s recommendation of removing the term “on-site.” However, we wondered if the language should be more precise, stating that off-site active transportation facilities shall be in accordance with other required motorized facilities which would go along with complete streets. Ms. Corday concurred. that if off-site improvements for the road are required, they should be complete streets, including pedestrian facilities and a bike lane, if appropriate.

Chair Jaffe would like the Committee to focus on the off-site language to be used for off-site trails requirements and whether it should be counted towards the park dedication.

V. Items to be Removed from the Agenda

VI. Held in Committee or Ongoing in Committee

1. Annexation. (see separate list at City Clerk’s Office for pending annexations) (Ongoing in Committee)
2. Ongoing discussion of City planning issues with members of the Planning Board.— Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
3. Amendment Article 7. Error Corrections and Adjustments to the subdivision regulations to allow for restrictions or conditions placed on a plat by the governing body to be amended or removed by a future council. ([memo](#))—Regular Agenda (Jon Wilkins) (Referred to committee: 11/07/11)

VII. Adjournment

The meeting adjourned at 11:59 a.m.

Respectfully submitted,

Deni Forestek

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.