

Plat, Annexation and Zoning Committee Minutes

May 2, 2012

10:05 a.m.

City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Dick Haines, Adam Hertz, Alex Taft, Cynthia Wolken, Jason Wiener, Mike O'Herron

Members Absent: Caitlin Cople, Jon Wilkins, Marilyn Marler,

Others Present: Nick Kaufman, Jerry Ballas, Lee Clemmensen, Todd Klietz, Jim Nugent, John Hendrickson, Brandy Gillespie, Bruce Anderson, Paul Bohan, John Snively, Jen Gress, Tom Zavitz, Aaron Wilson, Laval Means, Mike Barton, Bobbi Day

I. **Approval of Minutes of [April 18, 2012](#).** Approve as presented.

II. Public Comment on Items not on the Agenda

Paul Bohan suggested that when Council looked at things being done they should look at the project, purpose and the process. If these did not line up then it was about the power. Process was important but Council seemed to ignore that.

III. Staff Announcements

Aaron Wilson announced that staff had been working on an electronic process for project submittals and that a city subdivision was deemed sufficient yesterday. He asked if Council members were interested in getting a hard packet and if so, to let staff know. Councilman Haines requested getting essential pieces in hard copy such as the summary and plat. Councilwoman Wolken also requested an abbreviated packet.

IV. Consent Agenda Items

1. Consider a request for a phasing plan amendment for Wratishaw Addition Subdivision. ([memo](#))—Regular Agenda (Aaron Wilson) (Referred to committee: 04/23/12) **REMOVE FROM AGENDA**

Motion: The Committee recommends that City Council approve the request to amend the phasing plan to extend Wratishaw Addition Phase 1 final plat submittal deadline to April 23, 2014 and Phase 2 final plat submittal deadline to April 23, 2016, as shown in the Amended Phasing Plan dated March 2012 subject to the amended conditions of approval attached to the [memo from the Office of Planning and Grants dated May 2, 2012](#).

Aaron Wilson explained the request and condition amendments ([presentation](#))

- The property was located on the west side of Missoula adjacent to the Clark Fork River north of 3rd Street.
- The levy along the property has been certified by the Army Corp of Engineers.
- The current phasing plan was approved in April 2010 with Phase 1 due April 23, 2012 and Phase 2 due April 23, 2014. The request would extend the two phases out by two years (Phase 1 due April 23, 2014 and Phase 2 due April 23, 2016)
- Additional flooding information was provided during the recent extension request for Stoneybrook which is located near this subdivision. In 2011 there was high ground water on this property so a base flood elevation was recalculated to show it at one to two feet above the previously established 100-year flood elevation. Condition 13 was amended to include the developer's calibration based on the June 2011 flood elevations. A statement was also added that crawl space surfaces must be above base flood elevation.

- The flooding at the Stoneybrook location was different than at this site; this site had ground water issues.
- Condition #17 was amended to clarify that no fencing or other improvements were allowed in the riparian no improvement zone that overlapped the dike maintenance easement.
- An optional condition #25 was suggested that any new flood information be included and mitigated prior to filing of any phase.
- Staff recommended approval of the phasing plan extension subject to the condition amendments.

Committee discussion and questions:

1. Did the second base level refer to the 2011 flood event or the original base level prior to that flood event? It referred to the recalibrated base level.
2. Was it common to have the crawl space above the flood level? Yes, it was common practice to have them above elevation.
3. What did ground water do to the level of compaction? Mr. Kaufman explained that the road section would be at the level of the 500-year flood. Houses would be built so it would not be saturated with ground water. The footings would be designed and built so the house would sit on natural materials (current materials were deposited by the river). The ground water issue should not affect structural footings. Geo-techs would be involved with the road construction.
4. Was there a reason for the sequence of phasing? Part of the reason was related to the roads and access to Wratishlaw. If Phase 2 was done first all the roads would have to be completed to access that piece. Mr. Kaufman added that the first phase came off of Short Street so for economic reasons they wanted to do that part first. Phase 2 would be a function of absorption and demand.

Nick Kaufman explained that a hydrologist assisted with the ground level calculations. In 2011 they found that the river did not behave as a flood modeling event. He explained the process they went through to adjust the elevation and added that the property was not in the 100-year floodplain and was protected by the dike. The elevation would be above the 500-year flood elevation.

Councilman Childers made the motion to approve the request to extend Phase 1 to April 23, 2014 and Phase 2 to April 23, 2016 and to amend conditions 13, 17 and to add condition 25. ([Email clarifying Committee discussion on condition amendments](#)) The motion passed unanimously and will go on the Consent Agenda.

V. Regular Agenda Items

1. Consider an amendment to Title 20 clarifying that amendment authorizing accessory uses or conditional uses are considered text amendments. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 04/23/12) **HELD IN COMMITTEE**

Chair Jaffe explained the intent of today's discussion was to have a staff presentation and committee discussion then take a few weeks to think about this before any action was taken. Jen Gress provided background information and options to consider for amending Chapter 20.85 ([presentation](#)):

- Council wanted to consider an amendment to Title 20 to clarify that amendments authorizing accessory dwelling units (ADUs) or conditional uses were considered a text amendment.
- The question was what was considered a text amendment. A map amendment was a change in the zoning map whereas a text amendment was a change to the written language of the zoning ordinance.
- State Law states that a public hearing must be held with notice of the hearing placed in the newspaper 15 days prior to the hearing for either type of amendment.

- Title 20 differentiates noticing requirements between text and map amendments. Text amendments required noticing in the newspaper while map amendments also required posting on the property and a certified mailed notice to the property owner.
- Staff reviewed the changes made to the notification section of the zoning process and noted the regulations have been amended approximately every ten years prior to 2009 when Title 20 went into effect.
- Staff provided two amendment options to be considered: [Option 1](#) would add language to Section 20.85.040A stating “Zoning ordinance amendments authorizing accessory uses or conditional uses shall be considered text amendments.” and [Option 2](#) that would combine text amendments and map amendments into one process.

Committee discussion and questions:

1. Was Missoula the only entity that distinguished between text and map amendments? No, other cities differentiate noticing requirements between text and map amendments similar to Missoula; however, none have the requirement of certified mail notification. For example Billings does wide spread notice electronically for text amendments, and adds posting and mailing for map amendments. Kalispell does electronic notification of text amendments and adds a mailing for map amendments. Bozeman also notifies electronically for text amendments and adds a mailing and posting for map amendments.
2. Were the options provided to the committee prepared at Council’s request or was this staff’s idea? Council asked staff to prepare these options.
3. Did OPG staff have a position on the amendment? Staff would like to see the certified mail portion removed and just go with First Class mail.
5. At the minimum Council should clarify the difference between text and map amendments and what elevated an amendment to a map amendment.
6. Certified mailing did go over board when looking at text amendments but was fine when individual property was changed.
7. Missoula’s present process was the most stringent in the State. The reason for the certified mailing was to make sure that the notifications were sent and to have proof they were received.
8. Title 20 was considered a text amendment process even though some felt there were changes to the regulations that rose to the substantive level.

Public comment:

John Snively noted that several years ago he rezoned property that required regular notification to neighbors and in the paper. He wondered if the city decided to downgrade zoning, would it require notification. He felt it would because it was similar or the same as a map amendment since it was a significant change in zoning.

Jerry Ballas has lived in his home for 40 years and had done some remodeling and additions. He wondered what was considered substantive change. When Council considered changing occupancy on a lot he felt that was a substantive change. He fought to make sure that would not happen and he would do what he must to make sure that did not happen. Mr. Ballas did not want the committee to think just because Title 20 was successful as a text amendment that other proposed changes would be considered text amendments, too. Boundary line adjustments also tried to increase the density with the courts saying they could not be done as proposed.

Lee Clemmensen serves on the City Board of Adjustment and has been watching this process since 2003. This issue has been heard at Supreme Court and upheld; she was not sure why it was being looked at again. The Growth Plan stated that more public involvement must be done including taking comments in each stage of the process. People did not know this was being done or why it was being considered. The Mayor stated he would not support alley houses. Ms. Clemmensen was shocked that there was a document drafted for today’s meeting. This document was not drafted openly; it was dropped in their laps. Each part should have been discussed. She felt the document was illegal and not done through the public process. The Council owed it to the public to go through step by step and line by line what was intended and why. She also requested that the certified mailings not be removed; who reads legal ads? Certified mail needed to be done when doing changes to zoning. Keep it honest and open and

not ram it through. This proposal was a zoning change; it might be great for one property but it would affect neighboring properties.

John Hendrickson noted that this discussion had been well vetted during the Title 20 process and that was why it passed 10-2. He believed that a text amendment was a major amendment. He had the following questions:

1. If someone wanted to build an ADU, would they have to go through a subdivision for lease or rent review (at another meeting Mike Barton had answered 'yes')?
2. If it goes through subdivision for lease or rent review it now became two lots – how did the owner occupied rule get enforced when each lot could be sold individually?
3. Subdivision review involved more fees for the process – would they be subject to minor subdivision rules?
4. Debt to income ratio of some of the neighborhoods – most people would not qualify for financing to build a mother-in-law unit. Has this been considered?

Mr. Hendrickson requested further discussion on these questions.

Chair Jaffe responded to Mr. Hendrickson's questions noting that subdivisions for lease or rent would apply anytime a detached structure was proposed but not for an attached structure.

- This would not create a second lot. Do have to go through the subdivision review process but that did not mean the property was being split.
- SLR (subdivision for lease or rent) rules made it too cumbersome for most applicants to build ADUs. The legislature would probably look at SLR rules in next session so this would be changing.
- An ADU would not get the full review process but it would go under a less intensive process.
- Basically an owner might not qualify for a loan to build a second unit. Councilman Hertz added that proposed rental income could not be used as part of an application for a loan. They could only use current income to qualify for residential projects. If there were substantial equity in the current home, they could finance a rental unit.

Further committee discussion:

1. Housing populations were changing and needs were shifting. There was an assumption of degradation of zoning to have an apartment or small home on property. This could be a flexibility tool for those that needed to add to their income options.
2. The purpose of this amendment was to clarify the text amendment piece.
3. ADUs should be taken on a case-by-case basis so that neighbors knew there was a change going on, rather than going through a text amendment. Since there has been minimal desire for ADUs these should be done parcel by parcel which would be a better process.
4. An ADU would be a zoning change and needed to be considered as such.
5. Having more stringent notification requirements was a good thing.
6. Concern about how this amendment would affect home owners associations (HOA). Those subdivisions with covenants prohibiting second units would still have the ability to enforce their covenants through the HOA. A request was made to look at the possibility of a city regulation enforcing compliance of any ADU regulation in neighborhoods with HOAs.
7. Covenants could restrict ADUs but enforcing those restrictions could become expensive. What city wards have homeowner associations with covenants that restrict ADUs? Could staff provide that information? Mr. Barton responded that staff did not maintain records of covenants so there were no reliable records. It would take considerable research to find out which homeowner associations had restrictions. The Office of Neighborhoods maintains the neighborhood associations and could contact each one about its covenants.
8. Council needed to amend Chapter 20.85 for the level of notification. This portion should be referred to the Planning Board to get notification requirements that fit. That would be better than what was in place now. Sending certified mail was over kill.
9. The conundrum with the text amendment was what was a text amendment and could that change land use in the future.

The Committee asked staff to look at other cities to see if any had text amendments that had been considered a map amendment. They also requested information on the legality of requiring homeowner occupation as part of an ADU.

Chair Jaffe outlined the process going forward with this item. In a few weeks discussion of the text amendment would come back to PAZ, hopefully with an action item. The action could be specific like it was in the referral or more general for the Planning Board. The Committee should give the Planning Board a place to start; the starting point could be from the city attorney including some advice.

Public comment:

John Snively said it sounded like the committee was envisioning creating privileged neighborhoods not affected by city regulations.

Paul Bohan wondered what was the difference between zoning and covenants. He suggested rather than hiring consultants from outside of Missoula the city should look to people that live here.

VI. Items to be Removed from the Agenda

V. 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)
4. Direct OPG Staff to draft an amendment revising the accessory dwelling unit (ADU) provisions of Title 20 with the following provisions and to refer the amendment to the Planning Board for review: Revise Chapter 20.45 Missoula Municipal Code entitled, "Accessory Uses and Structures" to allow ADUs by right in all zoning districts that allow residential uses where one of the dwelling units is owner-occupied; revise Chapter 20.60 Missoula Municipal Code to reduce required parking to one parking space for a second primary dwelling unit on a parcel that contains no more than two dwelling units, totaling three required parking spaces for the two units. This would apply to two single detached units or a two-unit house. OPG staff is directed to draft these changes as text amendments to Title 20 and to include a finding of fact and conclusion of law in the staff report indicating the amendments are text amendments. ([memo](#)) ([PAZ](#)) (Returned from Council floor: 4/23/2012)

VI. Adjournment

The meeting adjourned at 11:47 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.