

## Plat, Annexation and Zoning Committee Minutes

June 23, 2009

9:00 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

**Members Present:** Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, John Hendrickson, Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

**Members Absent:**

**Others Present:** Gary Bakke, Colin Bangs, Mike Barton, Kirk Bishop, Jen Gress, Harold Hoem, Linda Lennox, Ruth Link, Laval Means, Roger Millar, Ryan Morton, Jim Nugent, Tom Zavitz and Shelley Oly

### I. Public Comment on Items not on the Agenda

### II. Staff Announcements

### III. Consent Agenda Items

### IV. Regular Agenda Items

- A. An [ordinance](#) repealing Title 19 Zoning Code in its entirety and adopting Title 20 Missoula City Zoning Ordinance and an [ordinance](#) repealing Title 2.84, the Historic Preservation Committee in its entirety. ([memo](#)) ([PAZ](#)) ([Staff Report](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) (**HELD IN COMMITTEE**)

Chair Jaffe opened up the discussion of Lyn Hellegaard's motion that was currently on the floor.

- Mr. Hendrickson stated the ordinance was a rezone and not a rewrite and property owners should have more notification. The minority did not have an issue with how OPG notified the public but the issue was that everyone was not reached. This draft was not a time sensitive issue and should be returned to the Planning Board.
- Mr. Hendrickson called for the question, it failed.
- The Planning Board was an advisory board where as City Council was the governing body which meant the committee members needed to take responsibility to make the decision to discuss, make amendments and vote on this draft ordinance.
- Stacy Rye called for the question, it failed.
- Clarification was needed between a zoning rewrite and a rezone. Mr. Millar explained that for a rezone notification was sent out to adjacent property owners within the affected area and within 150-feet of the property, the property was posted, then a public hearing at Planning Board and City Council meetings. The only difference with a rezone was the posting and staff provided Findings of Fact and Conclusions of Law.
- Jason Wiener felt the public had been duly notified and called for the question, it failed.

- A scenario was described of the Farviews area when it was rezoned from “A” to R1” the neighborhood went through the whole rezone process. What was the difference today? Mr. Millar explained at that time the proposal was not for a City-wide rezone, only a portion of the neighborhood chose to go through this process. When the rezone occurred City Council could have initiated a rewrite to address all ‘A’ changed to ‘R1” but at the time that did not happen. Other code revisions have occurred such as amendments to the conditional use change and addressing town houses as new building type and were not rezones.
- Ms. Marler asked what the overall plan was for going through the draft ordinance. She felt this would be helpful to know for public notification. Chair Jaffe replied he felt the more difficult issues such as ADUs, minimum lot size and proposed new lot districts then move into heights, hillside standards, bed and breakfast, and administrative adjustments should be discussed first. Then after each meeting an outline of new discussion points could be made for the next meeting. Ms. Marler commented that Mr. Millar started sending out e-mails on the topic of the day that related to a hot button topic in the current zoning with the proposed zoning and that information was available to the public on the City webserver and on Missoula Red Tape.

The **motion** to return the proposed Title 20 new Zoning Ordinance to the Zoning Commission/ Planning Board for the purposes of reviewing Title 20 in the context of the City and State zoning laws including the Lowe test, sending the required notices to the property owners as to what changes would be affected on their property and reviewing all provisions of Title 20. Mr. Haines requested a roll call. (Ms. Marler-no, Mr. Childers-no, Ms. Mitchell-yes, Mr. Haines-yes, Ms. Hellegaard-yes, Mr. Wilkins-yes, Mr. Hendrickson-yes, Chair Jaffe-no, Ms. Rye-no, Ms. Walzer-no, Mr. Wiener-no, Mr. Strohmaier-no). The motion failed.

Jason Wiener made a **motion** to repeal Title 19 and adopt Title 20 as recommended by the Planning Board including the minor staff amendments included as Attachment B in the staff report. He felt that procedurally a main motion was needed as a starting point.

There was discussion on Mr. Wiener’s motion:

- ✓ Needed to deal with the “hot button” issues one issue at a time.
- ✓ Needed to compromise.
- ✓ As the draft was reviewed, amendments could be offered on an issue, discussion on the amendment, vote on the amendments and come to a solution on the amendment and then be finished with that issue.
- ✓ Would like clarification on the difference of current ADUs and what was proposed. Mr. Millar stated that accessory dwelling units are not in the current zoning ordinance. There are two kind of accessory dwelling units in Missoula; legal non conforming accessory dwelling units that existed before the zoning code and illegal units that have been created by property owners and rented out. These units are not regulated. OPG enforces the zoning ordinance on a complaint driven basis so when people complain the issue gets addressed. The proposed for accessory dwelling units is to allow individuals to rezone their property to include the dwelling units and there are specific standards that need to be followed.
- ✓ ADUs would be proposed as a new zoned district overlay, not applied anywhere until requested by a property owner and approved by City Council. Mr. Millar explained the overlay district zone is a different zone. If anyone wanted to

request an overlay they would have to go through the rezoning process which include required a planning board hearing, notice, posting of the property, hearing at City Council and right-of-protest. He pointed out there were multiple options for ADUs besides this approach could be one option stated instead of allowing an individual property owner to rezoning their property the requirement would be for a certain minimum land area to rezone to an overlay.

- ✓ ADUs continue to be a hot button item, why are those items still in the rewrite? Mr. Bishop explained the initial draft that had the ADUs included provision that would have allowed ADUs as-of-right. The overlay option, even though it required going through the re-zoning process was a better way to address housing affordability, and help to ensure that neighborhood character would be better preserved.

Dick Haines made a **substitute motion** to take the current motion off the floor and go through the process chapter by chapter without any motions until the chapter review was finished.

The floor was opened for public comment:

Harold Hoem preferred Mr. Haines method. He felt it was the best way to give the public a chance to voice their opinion.

Ryan Morton wanted to hear how the hot button issues would be resolved.

There was discussion on Mr. Haines substitute motion:

- ✓ Mr. Haines called for the question. It failed.
- ✓ Making a main motion for the project and then make amendments is a typical process.
- ✓ The fact that there was a motion on the floor may be perceived to mean no more public input and that is not the case, so the normal process should be adhered too. The motion was a placeholder, a place to start somewhere and end somewhere. There needed to be a main motion.
- ✓ A list of topics should be available to the public via newspaper or other media so those who are interested can express their opinions.
- ✓ Not sure how to handle any amendments without a main motion.
- ✓ Ed Childers called for the question. It failed.
- ✓ If the main motion was taken off the floor it made it easier to make changes in the chapters.
- ✓ The idea of making no motions does not equate to making policy. In order to deal with the policies in this draft motions need to be made.
- ✓ Going through chapter by chapter gives the committee an opportunity to re-read each chapter to be more informed plus allows the public a chance to comment either at the PAZ meeting during the day or during the City Council meeting on Monday evening.
- ✓ There has been extensive public process and comment through the Planning Board meetings. There will not be a sub committee or working group to review the draft. Do not see a rational to fabricate any new parliamentary procedures.
- ✓ Concern that with a main motion someone can call the question at anytime.
- ✓ Pointed out that many Committee members have various issues to discuss.
- ✓ Public process means the public needs to know the process.
- ✓ Marilyn Marler called for the question. It failed.

- ✓ The question was raised on procedural deviations from the process. Mr. Nugent replied that the City statutes states the Committee can make the rules to fit the process.
- ✓ Ed Childers stated Mr. Haines substitute motion does not allow for any decisions and called for the question. It carried.

The **substitute motion** to take the current motion off the floor and go through the process chapter by chapter without any motions until the chapter preview was finished failed with 5 votes of 'aye' and 7 votes opposed. (Mr. Strohmaier, Mr. Wiener, Ms. Walzer, Ms. Rye, Mr. Jaffe, Mr. Childers, and Ms. Marler).

Chair Jaffe reminded everyone if there are any typographical errors or corrections found in the draft those can be forwarded to Laval Means from OPG.

Jason Wiener stated that no-one should call the question on the main motion without a weeks notice.

Below is a list of technical questions asked by the Committee to Mr. Bishop:

- ❖ Why should floor to ceiling height of a ground floor space of a vertical mixed use should be 13 feet? An architect said adding that extra foot added increases additional requirements. Was there something about that particular number? Mr. Bishop said when it came to providing viable commercial pedestrian oriented spaces to lease or shop more is more. The draft provides some substantial incentives for vertical mixed use buildings and in exchange for that an additional requirement of fairly generous floor to ceiling heights would be imposed to ensure vibrancy of the spaces.
- ❖ Why does the building height not follow the contour of the hill in the section labeled height and hillside? Mr. Bishop replied that by using the same methodology on hillsides as on flat land the contour of the hill was not followed. One disadvantage of following the contour of the hill was the spill down effect of large buildings. This means in order to maximize the floor space in the buildings the building has to come further down the slope to accommodate the changing slope condition.
- ❖ Was there any regulation that addressed the hillside blocking views? Mr. Bishop replied that many communities address hillside regulations through overlay district standards where the protected hillside concepts are mapped within the city and use either a case by case design review process with the Board or Commission looking at the visual impacts.
- ❖ There are multiple areas in the City that have a greater slope than 25%, does the hillside protection in the example of other communities cover those sections as well? Mr. Bishop replied yes, this was one of the chief advantages of the mapped overlay approach.
- ❖ Was it a requirement for one of the units of ADUs to be owner occupied? Mr. Bishop replied that requirement was not in the property ordinance but could be. Mr. Nugent stated where there is multiple dwelling units on the property there could be a restriction but not a single dwelling. Mr. Millar added that owner occupied would be easy enough to require at application but enforcement would be difficult if the property was sold. He suggested a deed restriction or another way of tracking ADUs for enforcement purposes.
- ❖ Are ADUs only allowed as a possible overlay in single dwelling districts? Mr. Bishop stated no the overlay could be for any residential district. There is a

regulation in this proposal that an ADU could only occur on a parcel with a single dwelling.

- ❖ Is there any other reason an ADU might be more valuable in a multi dwelling? Mr. Bishop added that ADUs might be better received in the multiple dwelling zones because some density is expected. The construction of an ADU in compliance with the design standards might be better received by the neighborhood in preserving neighborhood character.
- ❖ Why is there a recommendation to increase the threshold definition for a slope condition subject to hillside preservation standards from 10% average grade to 15% average grade. Mr. Bishop answered the 10% was a low threshold and the 15% is the more common condition to trigger hillside or slope protection standards. The hillside standards are generally applicable to all land in the city regardless of the elevation.
- ❖ What are the minimum lot area requirements for group living situation? Mr. Bishop stated those requirements were found in the use standards chapter of the document (20.40.070). Most cities allow group living in residential zoning districts because they are required to accommodate certain types of group living. A table of equivalency was created for occupants in group living equated to the allowed density of the zoning district. The use standards require a larger lot for more people in a group living situation but no a large structure. Mr. Millar stated there currently was no standards for household living where many people live in the house, but there are building code and health regulations in place.
- ❖ Can a rezone request be conditioned? Mr. Millar stated one cannot condition a rezone but the property owner could say no to the rezone request. However, conditional uses would provide a way to impose condition. A conditional use has no right of protest provision. Mr. Nugent stated as long as people know what the standards and objectives are the standards need to be complied too.
- ❖ How much material was needed to be recycled for a business so it was not labeled as junk? Mr. Bishop answered there was a use category for Recycling Service listed under Industrial Use group and if the draft does not accommodate recycling uses there is another category in Chapter 110 for General Recycling Services in more commercial classification.
- ❖ What is an example of a Recycling Service limited use? The limited use is more of a consumer oriented transfer situation, where consumers of all business take materials to be recycled and then taken to a general recycling facility to be processed.
- ❖ What is the separation of residential buildings on the same parcel? Mr. Bishop stated the building separation standards were an existing code standard that has been tweaked editorially.

Are there any points of clarification? Mr. Bishop stated that the consulting team did not know the outcome of this ordinance before it was drafted. There was a general attempt to respond to issues and take a fair approach to the regulation zones in Missoula.

The agenda for the PAZ on the 24<sup>th</sup> would include one hour of general questions, ADU discussion and small lot discussion.

## **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. Discuss council's interest in pursuing a negotiated settlement over disputed trail conditions for Clark Fork Terrace No. 2 Subdivision ([memo](#)).—Regular Agenda (Mayor Engen/Jim Nugent) (Referred to committee: 02/25/08)
4. 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)
5. Correct the conflict in the height calculation regulations, between written language (a building envelope shall be established by showing the maximum vertical height allowed by zoning from finished grade) and the drawing on [page 151](#) of the [Zoning Ordinance](#).--Regular Agenda (Ed Childers) (Referred to committee: 3/27/06)
6. Ongoing discussion of City planning issues with members of the Planning Board.--Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
7. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)
8. Consider an interim emergency ordinance for proposed amendments to the City Zoning Ordinance, Chapter 19.90 Signs ([memo](#)).—Regular Agenda (Tom Zavitz) (Referred to committee: 12/15/08)
9. Consolidated Public Review Draft of the Missoula City Zoning Ordinance submitted by Duncan Associates to the Missoula Consolidate Planning Board for its review and recommendation ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 02/09/09)
10. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
11. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)
12. [Petition 9428](#)—Peters Properties LLC; 208 Montana Avenue and 210-212 Montana Avenue; Part of Lot 17, All of Lots 18-20 of Block 32 of East Missoula Addition; Geocode #220024117020000; Petition for Annexation

## 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.***