

Plat, Annexation and Zoning Committee Minutes

July 22, 2009

1:30 pm – 3:30 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: Lee Clemmensen, Joe Easton, Jen Gress, Laval Means, Roger Millar, Jim Nugent, Jeff Rolston-Clemmer, Lewis YellowRobe, Tom Zavitz and Shelley Oly

I. Approval of Minutes

Public Comment on Items not on the Agenda

There was discussion concerning special meeting days for PAZ:

- ❖ Citizens that want to attend the PAZ meetings are unable to attend unless scheduled on the regular PAZ day.
- ❖ This coming Wednesday is the quarterly meeting at the usual PAZ timeslot.
- ❖ There might be an opportunity to have a PAZ meeting in the afternoon if all the members can attend and other committees are not meeting.
- ❖ It was difficult to have extended PAZ meetings on Wednesdays plus get other PAZ work done as well as work that needed to be done with the other committees.
- ❖ The preference is to do the extra PAZ meeting on Wednesday.
- ❖ There will not be a special PAZ meeting on Tuesday, July 28th from 2:30-5:00.

Staff Announcements

II. Consent Agenda Items

III. 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](#)) ([Potential List of Issues](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) ([Powerpoint Presentation](#))

This meeting was a continuation of the morning PAZ meeting.

Home Occupation

There was continued discussion on home occupations:

- ✓ Asked what the reason was for restricting the 25% of floor area for home occupation. Ms. Means explained that the consultant felt 25% was too restrictive.
- ✓ The idea of a home based business was a business that started out of a person's home. When that business starts to grow with the need to hire more people this business should be allocated to the commercial areas.
- ✓ Title 19's restriction to 25% of the usage of the structure fits the spirit of a home business.

Ms. Mitchell made a **motion** to amend the current document to reinstate the current maximum allowance of 25% floor area for the purpose of a home based business.

There was discussion on the percentage of accessory use:

- ◀ Ms. Means stated what directs the accessory use was the “spirit” of the use, it must be incidental and subordinate in nature. The language is found in 20.45.010.C, under the general regulation for all accessory uses and structures.
- ◀ How would incidental and subordinate be interpreted? Could 50% of the home be used for a home occupation? Ms. Means explained it would depend on the use that was being requested.
- ◀ Is the 25% limited to the dwelling unit? Ms. Means stated that Title 20 did not have a percentage maximum for the amount of floor that went towards the home occupation.
- ◀ There should not be a specific square foot maximum because local government does not need to manage what goes on inside a private home.

The motion to restrict use of home based businesses to 25% of the floor area failed with 1 vote of ‘aye’ and 11 votes opposed (Ms. Marler, Mr. Childers, Mr. Haines, Ms. Hellegaard, Mr. Wilkins, Mr. Hendrickson, Mr. Jaffe, Ms. Rye, Ms. Walzer, Mr. Wiener and Mr. Strohmaier).

Neighborhood Character Overlay

Ms. Means explained there was no specific language for the concept of a Neighborhood Character Overlay in the current ordinance. She pointed out there were existing overlay districts that fit the proposed enabling language that meet this new intent. In the proposed ordinance these districts have been moved into a category of Neighborhood Character Overlay, which is Chapter 20.25.040. The idea with having this enabling language recognizes the uniqueness of certain area around the community; it helps to create consistency in organizing the document for grouping the types of overlays that might be requested, consistency for the approach for establishing it, for the minimum requirements for it and the degree of modification for future overlays from it.

The standards are:

- ① The area has to be greater than five acres.
- ① It must be within an approved neighborhood plan or a national registered historic district.
- ① It may be initiated by the City Council or a signed petition of 35% of the property owners.
- ① The zoning map amendment procedures must be followed including provisions for public notice, public hearing and protest.

There was discussion on the Neighborhood Character Overlay:

- What can’t be done with a neighborhood character overlay. Ms. Means replied it could not be applied for unless there was a neighborhood plan or registered historic district and it typically had to be greater than five acres.
- Zoning was suppose to be compliant with the Comp Plan so wouldn’t the neighborhood overlay need to be compliant also? Ms. Means stated this was a tool to help implement neighborhood plans or a portion of a plan.
- If a district does not have a neighborhood plan then a Neighborhood Character Overlay could not be done.
- A proposed neighborhood character overlay takes 35% to initiate and then it would be a standard rezone procedure and the right of protest would apply.
- The route from neighborhood character to the growth policy compliance was when a neighborhood plan was adopted the growth policy was amended and then zoning designations are tested against the adopted growth policy.
- This gives ‘teeth’ to a neighborhood plan.
- Should a neighborhood plan be one of the requirements?

Mr. Strohmaier made a **motion** to strike B-2.

- This was a way to let a neighborhood implement what the public wants for their neighborhood.

- It is important to have reference to UFDA and neighborhood planning. Ms. Means explained the growth policy would still be considered.
- The planning process is extremely long and it would help to make this more accessible in a shorter time span.
- Would the City want to commit to the obligation if the neighborhood did not have the money to fund the project?
- Mr. Wiener called for the question, it carried.
- What was the rationale for tying this to the neighborhood plan? Ms. Means explained the neighborhood plans have more detailed descriptions of what was unique to that neighborhood. There was an interest in developing a tool that would bring forward the concepts explored in a neighborhood plan.
- Could a neighborhood character overlay be created that allowed for ADUs. Mr. Millar answered that ADUs could be an added use as a part of a rezone or an overlay.

Roger Millar pointed out the neighborhoods plan for change but a character overlay helps to direct the change.

The **motion** to strike Section B-2 carried with 11 votes of 'aye' and 1 vote opposed (Mr. Weiner)

There was discussion on the 5-acre criteria for a neighborhood character overlay:

- ◀ What was the rationale for the 5-acres? Ms. Means explained that the intent was that at that size a uniqueness of an area would begin to emerge.
- ◀ The neighborhood character overlays would be a rezone of property and the cost that was initiated by the City Council was around \$8000 and the fee for the neighborhood would be half of that.
- ◀ If the criterion was larger than 5-acres it might dilute the concept of the neighborhood.

Temporary Uses

Ms. Means pointed out this section was on Page 20.40.-10 under the Use and Building Specific Standards. These are new standards for uses that had not been addressed in the current ordinance. The only reference to temporary uses was in regards to the existing parking chapter and unzoned lands. She explained that currently, the temporary uses are reviewed for their impact to parking. She pointed out if there were a section available it would clarify that a zoning compliance permit (ZCP) for a temporary use is needed, it would be administratively reviewed, there are conditions that may be imposed and it was available for all zoning districts.

There was discussion on temporary uses:

- ☞ Is the 12 days total for garage sales in the current regulations in C-1? Tom Zavitz replied garage sales are not regulated in OPG, however if the garage sale went on for an extended period of time then it would be considered a business and then it would be regulated by OPG. Mr. Millar stated the intent of limiting the garage sales to 12 days was to have a regulation in place to stop the perpetual garage sale.
- ☞ Is the authorized used up to the determination of the Zoning Officer? Mr. Millar explained this was intended to keep the authorized use regulated.
- ☞ Are there time limits with the temporary permit? Ms. Means explained once the use was longer than 10 days then it was not temporary and needed to meet the standards of the zoning district, general regulations, and a ZCP would be required for the use as permanent.
- ☞ It would be helpful to have someone from the Finance Department to explain the business license procedure. Ms. Means explained when a request is applied for the planning office looks at the amount of parking and that the parking is not being displaced. Mr. Millar stated this could be revisited to determine how it impacted the traditional commercial operations. Ms. Means pointed out with regards to the Parking chapter it talks about temporary use and limits the temporary use to not less than 90 days within one calendar year.
- ☞ What does 20.40.120. B-3 mean when it speaks about the zoning officer authorizing temporary uses to be processed as a conditional use? Mr. Millar explained the zoning

officer has the discretion to say what would be processed as a conditional use and therefore require the proposal follow the review and approval procedures for conditional use.

- ☞ Is there any restriction as to how many temporary permits can be applied for in one year. Mr. Millar stated as of today this is no cap.

Lyn Hellegaard made a **motion** to have a cap put on the temporary uses and insert the language of *no more than three permits would be issued within one year.*

There was discussion on the temporary use cap:

- ✧ The goal was to keep someone from applying for a temporary use over and over again when the person should be applying for a permanent license.
- ✧ Was Out To Lunch a temporary use? Ms. Means replied that was in a public place and not subject to zoning.

Lyn Hellegaard offered a **friendly amendment** to say the three times a year cap would be in the residential zones.

Pam Walzer felt this might be too restrictive and offered a **friendly amendment** to raise the cap to four times a year. Ms. Hellegaard accepted this change.

The **motion** was to limit the use of temporary use, to four times per year in the residential districts. The vote was unanimous.

Chair Jaffe made a **motion** based on the previous discussion in commercial and industrial districts to retain the existing regulation for temporary uses which was 90 days with no restriction within a calendar year.

There was discussion on this motion:

- ✓ Was the regulation based on separate uses? Ms. Means stated it was based on the individual use.
- ✓

The **motion** to retain the existing regulation for temporary uses which was 90 days with no restriction within a calendar year in commercial and industrial districts passed unanimously.

There will be no special meeting next Tuesday July 28th and because next Wednesday is the Committee of the Whole in the morning a special PAZ meeting will convene in the afternoon. Signs will be discussed on July 29th. Laval Means will invite a representative from the sign industry to be available for questions. She will also present a powerpoint that will show the length of an 8-second reader board and the length of a 60-second reader board.

- B. (3:00 pm item)** Confirm the re-appointments of Lee Clemmensen, Joe Easton and Jeff Rolston-Clemmer City Board of Adjustment for a term commencing immediately and ending June 30, 2012 ([memo](#)).—Regular Agenda (Mayor Engen) (Referred to committee: 07/13/09) **(REMOVE FROM AGENDA)**

MOTION: The Committee recommends City Council deny the Mayor’s (re)appointment of Lee Clemmensen to the City Board of Adjustments for a term commencing immediately and ending June 30, 2012.

MOTION: The Committee recommends City Council confirm the Mayor’s (re)appointment of Joe Easton to the City Board of Adjustments for a term commencing immediately and ending June 30, 2012.

MOTION: The Committee recommends City Council confirm the Mayor's (re)appointment of Jeff Rolson-Clemmer to the City Board of Adjustments for a term commencing immediately and ending June 30, 2012.

Chair Jaffe announced that the Mayor was not available because of scheduling conflicts. He offered the following appointments for consideration to the City Board of Adjustments (CiBOA) for the terms. Their term expired on June 30, 2009 and if re-appointed their terms will run through June 30, 2012.

The floor was opened for discussion:

- 1) Renee Mitchell stated that all Mr. Easton and Ms. Clemmensen have served on the CiBOA for some time. Ms. Mitchell was unsure how long Mr. Rolson-Clemmer had served on the board but Ms. Mitchell made a **motion** to accept all three appointments. Ed Childers made a request for separate the motions. Renee Mitchell commented that two positions on the CiBOA had been vacant for awhile and only Ms. Clemmensen and Mr. Easton applied.
- 2) Pam. Walzer noted that the CiBOA was a board with a lot of importance and power and was concerned with one of the applicants. She felt that Lee Clemmensen's rudeness and poor decorum in meetings showed improper behavior for a public servant and reflected poorly for the CiBOA.
- 3) Jon Wilkins felt that Ms. Clemmensen did a good job of representing the CiBOA. Mr. Wilkins stated that Ms. Clemmensen knew the issues, was fair and participated in good discussions. He remarked that everyone gets emotional on certain issues and felt it was unfair to judge her for being passionate on certain issues. Renee Mitchell agreed that Ms. Clemmensen raised legitimate concerns and should not be judged on emotional outbursts. She added that Joe Easton and Lee Clemmensen are a good balance for each other and the Committee would be doing Missoula a disservice not appoint her for an additional term.
- 4) Marilyn Marler pointed out that Lee Clemmensen had served on the CiBOA for two terms already and appreciated all of her service. Ms. Marler stated that Ms. Clemmensen has a reputation for being an opinionated person and would not support her because these emotional outbursts are not isolated incidences.
- 5) Ed Childers remarked that he did not want to support someone who was unwilling to accept the function that their job entailed. The CiBOA made decisions and has to be able to accept responsibility for those decisions and Lee Clemmensen seemed unwilling to do that.
- 6) John Hendrickson called for the question, it carried.

The **motion** to re-appoint Lee Clemmensen to the CiBOA failed with 5 votes of 'aye' and 7 votes opposed. (Mr. Strohmaler, Mr. Wiener, Ms. Walzer, Ms. Rye, Mr. Jaffe, Ms. Marler and Mr. Childers).

- 7) Stacy Rye stated that Mr. Easton was very knowledgeable and experienced and felt he was a good candidate for re-appointment to the CiBOA.
- 8) Jon Wilkins called for the question, it carried.

The **motion** to re-appoint Joe Easton to the CiBOA passed with 7 votes of 'aye' and 5 votes opposed (Mr. Hendrickson, Mr. Wilkins, Ms. Hellegaard, Mr. Haines and Ms. Mitchell)

- 9) Jon Wilkins called for question, it failed

10) Chair Jaffe remarked that Jeff Roston-Clemmer has been on the board for a couple of terms also. Dave Strohmaier remarked that Mr. Rolson-Clemmer had served on the Historic Eastside Neighborhood Association and was a bright and a tentative individual.

11). Ed Childers reminded everyone that unless there was a replacement for Ms. Clemmensen she would remain on the board even though her term expired in June. Mr. Nugent had made a legal opinion regarding the subject of expired terms on Boards; and person whose term has expired was obligated to serve until a replacement was found.

The **motion** to re-appoint Jeff Rolston-Clemmer to the CiBOA passed with 7 votes of 'aye' and 3 votes opposed (Mr. Hendrickson, Ms. Hellegaard and Mr. Haines) and 2 abstained. (Mr. Wilkins and Ms. Mitchell).

These three motions would be on Committee Reports for Monday evening.

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)

VIII. Adjournment

The meeting adjourned at 3:20 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.