

## Plat, Annexation and Zoning Committee Minutes

August 5, 2009

10:05 am – noon AND

1:05 pm – 2:00 pm

Missoula City Council Chambers, 140 W. Pine Street

**Members Present:** Bob Jaffe (Chair), John Hendrickson, Jon Wilkins, Pam Walzer, Jason Wiener, Renee Mitchell, Ed Childers, Marilyn Marler

**Members Absent:** Stacy Rye, Dave Strohmaier, Dick Haines and Lyn Hellegaard

**Others Present:** Laval Means, Tom Zavitz, Jen Gress, Jim Nugent, Roger Millar, Howard Reinhart, Gary Bakke, Brent Robison, Lane Coddington, Debra Williams, Heath Rasch, Ruth Link, Walt Muralt, Gary Hughes, Linda Lennox, Dave Sather, Ashley Sporono, Robert Jones, Eric Mendalsen, Myron Hudson, Joe Perchin, Neal Whitaker, and Bobbi Day.

### I. Approval of Minutes

- [July 29, 2009](#) (am meeting) – approved as presented
- [July 29, 2009](#) (pm meeting) – approved as presented

### II. Public Comment on Items not on the Agenda - None

### III. Staff Announcements - None

### IV. Consent Agenda Items

### V. 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) **HELD IN COMMITTEE**

#### [\(Presentation\)](#)

Chair Jaffe reminded the Committee that at the last meeting the Committee was discussing dynamic signs and that there was a motion on the floor. Councilman Wiener explained that his intent for the motion was regarding moving signs and to make the intent clear that there should be not future signs with movement. He restated his motion and added that no dynamic signs may be installed in any zoning district from the point of adoption of this ordinance except for the existing signs. This would prevent having to discuss hours of operation and regulate the ones that were already installed. The Committee discussed dividing the motion with the first part on prohibiting dynamic signs and the second part on the working group recommendations. It was agreed to divide the motion in two parts and start with prohibiting dynamic signs. The Committee discussed prohibiting dynamic signs, the issues, and other concerns.

1. Would this prohibit dynamic displays in all districts or anything that had a changeable copy in lights? Councilman Wiener wanted to prevent placement of any new dynamic signs and added that his rationale was that moving signs were distracting when driving. He felt that a driver's eyes tended to go to moving lights and presented a safety issue.
2. Would this include anything that could be changed remotely no matter how long the message was on the sign? Councilman Wiener felt his motion was the best way to acknowledge businesses that already had signs but alleviate further distractions being installed.

3. There was a difficult situation in Missoula with signs that did not comply with the current sign ordinance. There should be discussion about how to regulate the existing dynamic signs. This was more of an aesthetic issue that affected adjacent businesses. Those businesses do not have the opportunity to comment how dynamic signs impact their businesses.
4. Aesthetics was a matter of personal preferences but there were some good signs around Missoula such as the Tremper's Shopping Center sign. What would proliferate if dynamic signs were banned?
5. The safety issue was intriguing but there have not been any studies or objective data provided that would uphold that issue.
6. Some intersections such as Brooks and Reserve have so many signs that a driver could not read them all before the light changed. Most of the messages were not clear. Signs with just the message were more informative and clear. In the past City Council had restricted animated signs and that trend should continue.
7. If this motion passed, the definition of dynamic display should be changed so the message could be changed once a day.

Public comment was taken on the motion.

Ashley Sporono asked about a provision if the dynamic sign malfunctioned or was damaged to be replaced or fixed. Ms. Means responded that this was addressed in a different part of the chapter under nonconformity. The sign could be re-installed if there were damage.

Eric Mendalson agreed that aesthetics and safety were both valid concerns. Dynamic displays were ugly and gave Missoula a low grade Las Vegas look. He did not know of any scientific research about the safety of these types of signs but would be amazed if there were not a safety concern. Some people can tune out the motion from these signs; others would be distracted. There were many distractions outside of the car and drivers did not need any more. Moving electronic displays were more of a distraction than just an electronic display with no motion.

Myron Hudson opposed the new sign ordinance because it limited advertising. The reader board was an important part of his business. Drivers needed to be responsible and be aware of distractions. There is a problem with aesthetics in areas with shopping centers and conglomeration of businesses. The sign regulations needed to focus on areas where there were more businesses but he did not feel that was the case where businesses were spread out and had more road frontage.

Heath Rasch discussed the various uses and value for reader boards. The use of them for Amber Alerts was one of those examples how electronic message centers helped.

Message centers were also used by Fire Departments for safety tips, special events and evacuation information to get information out to the community. Other uses included traffic control and getting general information out to the community.

Joe Perchin pointed out that there have been studies that showed dynamic signs did not cause accidents. These signs could also help cut down on crime by providing additional lighting. The use of them for Amber Alerts was very important.

Lane Coddington reported that Missoula would not be the first city to ban these types of signs and listed most of the places that had already struggled with this issue. Just because the technology was available did not mean it should be used. He suggested banning new dynamic signs and regulate the existing ones because business did not depend on them. They were not needed in Missoula and were not wanted as a community. In your face advertising should not be allowed in Missoula.

Walt Mural has a digital center at his Broadway business and this decision would impact his business. He did appreciate keeping the view shed clean. His business did public support messages on their sign. To do away with the message centers would be like doing without the internet or email. Mr. Mural was against the restrictions being considered but felt there should be restrictions on how much time the message should be on the sign. He added that eight seconds was too long.

Dave Sather read from an ordinance from Spokane that addressed dynamic signs and how they were used. He felt they were okay if they were used correctly. He introduced Neal Whitaker who talked about his experience in other communities with dynamic signs.

Neal Whitaker noted an instance where a city required them to show if there was an impact on the area when a dynamic sign was installed. He had to use city documents showing the number of accidents before the sign was installed and the number after it was installed and found that there was not impact. The Phoenix area changed its zoning to include electronics. The Highway Safety Board even uses electronic message centers. He felt these signs did not cause accidents but created awareness.

Debbie Williams did not feel the signs were the problem but how they were displayed. If the text was not scrolling and there was a longer holding time they would be more tasteful.

The vote on the motion to prohibit dynamic signs in all zoning districts failed (Bob Jaffe, John Hendrickson, Jon Wilkins, Renee Mitchell, and Ed Childers voted against).

The Committee voted on the motion to accept the draft provided by the working group regarding dynamic signs. The motion failed with four members in favor and four members against.

Councilman Wiener made a motion that the dynamic signs must be static and the next message on the message board instantaneous as recommended by the Planning Board. This was the motion that Councilman Strohmaier originally offered and that the static images could be up for eight seconds and then move to the next message that would be up for eight seconds. Chair Jaffe reminded the Committee that they had already discussed this motion at the last meeting. A few members had more questions on this motion.

1. Would this prohibit dynamic signs in all zones if this motion was approved? The motion did not address where the signs were allowed.
2. How did this affect animation or was this part of the transitions and special affects. The motion would take Section 4 as listed and would apply it in all the districts which would not allow animation (dancing turkeys). The message duration would be the same in the whole eight seconds.
3. How did this differ from the working group recommendation; was it the same? This was different.
4. Would it make a difference on the timing of the sign depending on the location? The time could be different depending on the location. Ms. Means noted that staff had looked at other ordinances around Montana and they did not see the location approach. Special districts could be customized to address specific corridors.

Robert Jones from YesCo showed a presentation that showed the difference between static displays and animation. There were four levels of display:

- Level 1 -Static only that has no transition;
- Level 2 – Static with some fading involved;
- Level 3 – has some animation with some text motion; and
- Level 4 – all animation

All of these levels could be regulated.

Walt Muralt pointed out that many times the content would not fit on one display and would have to go the next to get the whole message.

Neal Whitaker felt that eight seconds was too long; the average driver has four seconds to read a sign. Sign area would need to be larger to include more content. If eight seconds was the rule, the sign should be bigger or reduce the time to four seconds.

Debbie Williams reported that the Tremper's sign was static and set for five seconds; eight seconds was a long time. It would work with a large sign such as Tremper's but for smaller signs it would not work. Two or three seconds would allow time to get the entire message on the sign.

Chair Jaffe expressed exasperation with this discussion on a motion that would most likely not pass. Councilman Hendrickson stated that they could not regulate based on business type since each one was different and that the working group put out a good product. He called for the question and the motion passed.

The vote on the motion that dynamic signs must be static and up for eight seconds failed with three votes in favor and five against.

Councilwoman Marler commented that the dynamic signs were not necessarily the problem but that the transitions and animation were and made a motion to prevent animation and transitions had to be instantaneous without special effects and that the eight section restriction should be struck. The Committee discussed the motion with the following questions.

1. Would the existing signs with animation be grandfathered? No, there could be an image without animation. There could be images such as snowflakes, they just could not be moving.
2. Would this ban level three and level four? This would ban all but level one.
3. Councilman Wilkins asked the audience for a show of hands in support of the motion and no one raised their hands. When he asked for a show of hands against the motion most of the audience raised their hands.
4. Councilman Weiner suggested a hold time of at least one second to create a way to enforce the restriction and Councilwoman Marler accepted the amendment to the motion.
5. If this motion passes the transition would have to be instantaneous.

The following public comment was given on the motion:

Gary Bakke noted that the Planning Board recommendation (see #8) took care of this and was not needed. He suggested accepting that recommendation but remove the hours of operation and change CDBG to allow dynamic signs.

Joe Perchin stated that the transition was important for clear thoughts and then the text would move onto the next advertisement.

Walt Muralt stated that when businesses purchase equipment with extra features they want to use them. It would be like purchasing a car and not being able to use features that came with it. He felt it was more pleasing to have transitions on text and wondered if this was a safety concern or a personal preference. Chair Jaffe explained that Council was tasked with making the best decision for the community.

The Committee took the vote in two portions by voting on eliminating transition effects and then animations. The vote on eliminating transitions failed with two in favor and six against. The vote to eliminate animation effects passed with five in favor and three against (John Hendrickson, Renee Mitchell and Jon Wilkins).

Councilwoman Walzer asked why the Planning Board prohibited dynamic signs in the CDBG. Ms. Means responded that the Planning Board and thought through which districts were appropriate for these signs and did not list CDBG. Councilwoman Walzer mentioned that movie theaters were allowed to have changeable copy signs and wondered if the Wilma would be allowed to have its sign. Ms. Means explained that existing signs could continue to operate as nonconforming signs. There needed to be clarification if the theater reference overrode the district restriction.

Councilman Hendrickson stated that the CDBG should be allowed to have dynamic signs and gave the example of the Triangle. If Missoula wanted to invite new businesses to the downtown, they should have the possibility of those types of signs. He made a motion to allow dynamic signs in the CDBG, to strike the language under dynamic signs and to add it under the zoning. Mr. Millar explained that the CDBG zone was a portion of the downtown and the downtown was a historic district and would be prohibited as the ordinance was

drafted today. The historic district was larger than the CDBG. The Committee asked questions regarding the motion.

1. How would this motion affect the DRB decisions such as the one for the Wilma? Mr. Millar explained that when a sign package was applied for it was reviewed by staff and DRB. There was no regulation on dynamic signs today and they could not go back and review those packages that were already approved. The language that would be adopted would then be the language used to review applications.
2. What size signs were allowed in the CDBG and how would these regulations be applied? Mr. Millar referenced the section under CDBG noting the table that showed the types of signs allowed.
3. What would dynamic signs do to a historic district? Mr. Millar responded that as the Historic Ordinance was drafted today would not allow dynamic signs. The CDBG zone was included within the historic district so it would not be allowed.

Councilwoman Walzer suggested waiting on voting on this motion to allow BID and MDA to comment. ***The meeting adjourned [noon] until 1:05 pm.***

Chair Jaffe called the meeting back to order. Ms. Means reported that she had talked to Ryan Morton with BID and they had not official position on this issue. The Committee continued discussion of the motion.

1. What was the status of the Downtown Historic District nomination? The decision rests at the State. SHPO has determined that it was eligible but has not put it in the register yet.
2. Was the Triangle in the CDBG and the Historic District? Yes ([Map of Historic Districts](#))
3. If a dynamic sign were not permitted at the Triangle, could a variance be requested? Yes, it would go to the City Board of Adjustment and the Board would apply the sign rules.
4. If BID had an issue, they could come forward.

Public comment was taken on the motion,

Gary Bakke pointed out that this would prohibit downtown financial businesses the ability to use reader boards to give the current rates. He felt that banks would like to have those reader boards.

Linda Lennox stated that the CDBG had one of the most restrictive sign rules. The electronic reader boards were maxed out at 40 square feet in the current guidelines. This would control itself by the sign standards.

Councilman Hendrickson wanted the opportunity for dynamic signs to be in the CDBG even though he agreed that these would be self policing. The vote on the motion to permit dynamic signs in the CDBG failed with two votes in favor and six votes against.

Councilman Wiener made a motion to strike the hours of operation because it was problematic to try to enforce. The vote passed unanimously.

Councilwoman Walzer asked about traveling text and wondered if it would be allowed per the previous motion on animation and transitions. Scrolling was a type of transition but it must freeze to be allowed. Councilwoman Walzer made a motion that traveling text should be added to the list of prohibited display types and to add it after "tracing" as a prohibited effect. The motion passed with five in favor and three against (John Hendrickson, Jon Wilkins and Renee Mitchell).

Chair Jaffe mentioned that he had a problem with text holding for one second since it could still show movement. Councilwoman suggested that tying hold and transition together should get to that issue.

The Committee discussed mobile billboards next and Chair Jaffe asked for clarification where they landed; where they allowed or not. Mobile billboards were allowed al long as

they were on a vehicle that belonged to the business. Ms. Means read the definition of mobile billboard for the ordinance adding that public transportation vehicles were not considered mobile billboards. The following questions came up regarding mobile billboards:

- Would the use of taxis for advertising be prohibited? Yes
- Would a dynamic sign on a vehicle be allowed? Vehicles were not a zoning district.
- A taxi was public transportation so why could it not be used as a display? This question will have to be researched further.

Gary Bakke pointed out that it was clearly stated in the proposed ordinance that mobile billboards and signs were not allowed on cars that drive around unless it pertains to the owner's business.

The next topic for discussion was Administrative Adjustments. Mr. Millar wanted to clarify the issue of the zoning officer in the zoning ordinance. He provided the Committee with a copy of the [existing Chapter 19.80](#) for the City Zoning Officer adding that this was nothing new.

- Missoula has had a zoning officer since the first zoning ordinance was adopted.
- Mr. Millar also provided the [proposed Chapter 20.90.050](#) for the Zoning Officer showing the duties. The language stays the same but there was some rewording for clarity.
- Item 6, 17, and 18 were new but just clarified duties. There was not difference between the existing ordinance and the proposed, just clarification.
- The table provided a summary of who had review and decision making authority.
- Administrative Adjustments was new and not currently in Title 19.
- Planning Board recommended administrative review of minor deviations of certain specified standards in the Pedestrian District Overlay, bike parking, nonconforming use expansion in building, minor parcel area adjustments, and parking reductions on a transit route.
- For the zoning officer to make a decision on any of these several steps have to be made including notice to adjacent property owners.
- The decision is appealable to the City Board of Adjustment by a person. All zoning decisions and opinions are appealable.

Councilman Wilkins asked if there would be a meeting with the property owners and Mr. Millar responded that was not the intent. Councilman Wilkins noted that the recourse of the neighborhood was to go to the Board of Adjustment which cost money. He would rather see it go to the proper board just to have the hearing rather than the Administrative Adjustment. He felt it was not fair to the public to have to pay. Mr. Millar pointed out that staff would have to use the criteria set in the ordinance.

Councilman Wilkins asked what 'adjustment' meant. Mr. Millar explained that there were five areas that the Zoning Officer had the ability to make adjustments. These were the only items that the Zoning Officer could do and were very limited and specific. Councilman Wilkins felt that the adjustment on minor parcel areas and the parking reduction in the transportation corridor should go to a board. Mr. Millar read the criteria from the proposed Title 20. Councilman Wilkins asked about a right of protest. Mr. Millar explained that it existed for zoning decisions only.

Councilman Wilkins made a motion to strike adjustment for lot size and parking reduction and suggested they be taken in two motions. The Committee discussed striking lot size adjustment first. The vote failed with Jon Wilkins the only supporter.

The vote on striking the reduction in parking in transit areas was tabled until the next PAZ meeting. Comments on this motion included the number parking spaces needed for multi-family developments and how the parking was at the Gold Dust (which was fine and there were been no parking problems).

## **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. Resolution to adopt the [Missoula Greater Downtown Master Plan](#) as an attachment and an amendment to the Missoula County Growth Policy. ([memo](#)) ([PAZ](#)) (Returned from Council floor: 7/27/2009)
13. Review Bernadine Gantert's membership on the Historic Preservation Commission to appoint her from the "at large" position to the "Northside/Westside neighborhood representative" for a term commencing immediately and ending December 31, 2011 ([memo](#)).—Regular Agenda (Kelly Elam) (Referred to committee: 08/03/09)

## **VIII. Adjournment**

The meeting adjourned at noon for the morning part and 2:07 pm for the afternoon.

Respectfully Submitted,

***Bobbi Day***

Support Services Administrator  
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.***