

Plat, Annexation and Zoning Committee Minutes

September 2, 2009

10:05 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: Dick Haines, Stacy Rye

Others Present: Steve Adler, Mike Barton, Phil Condon, David Edgell, David Gray, Jen Gress, Elaine Hawk, Ron Johnson, Carla Krause, Ruth Link, Laval Means, Roger Millar, Gene Mostad, Jim Nugent, Tom Zavitz and Shelley Oly

I. Approval of Minutes

August 26, 2009 unavailable

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

A. Consider a request Petition No. 9384 for annexation by the Lighthouse Baptist Church ([memo](#)).—Regular Agenda (Carla Krause) (Referred to committee: 08/24/09)

Motion: The Committee recommends that City Council set a public hearing for October 5, 2009 to consider annexation of property at 5425 Gharrett Street.

Carla Krause provided background information on the property address of 5425 Gharrett Street. The property has received street maintenance and other city services due to its contiguous situation and the surrounding neighborhood being in the city for years. The property has connected to sanitary sewer thus is eligible to come into the City's jurisdiction and to continue accessing city services:

- ✓ This would have no impact on revenues or service costs.
- ✓ Staff recommended that the property be annexed into the City.

Committee members asked questions about the proposed annexation.

1) Chair Jaffe asked whether the recommended zoning made current use conforming. Ms. Krause answered that the OPG recommendation for zoning upon annexation was RR-1, which was the nearest equivalent City zoning designation to the existing County zoning of C-RR3.

She noted that the church was currently a legal non-conforming use and would continue as a legal non-conforming use after annexation. The property would be assigned to Ward 5 and the appropriate neighborhood council in the resolution language. Ms. Krause reported that churches were exempt from property taxes and generated no revenue. Since the City was already providing city services to the church, no additional costs of these services were anticipated with this annexation.

2) Renee Mitchell asked what City services would be accessible to the property owners after annexation, that were not available to them now. Ms. Krause stated that under annexation, the property owners would be able to seek financial services, such as City loans for sidewalk improvements. Ms. Mitchell asked whether this meant the property owners would have to pay any SIDs since they were tax exempt, and Ms. Krause replied that they would have to pay SIDs.

3) Ed Childers asked if Rufus Road would be annexed too, and Ms. Krause replied that it would not because it is a private road.

Jason Weiner **moved** that the Committee recommend that the City Council set a public hearing on October 5, 2009 to consider annexation of the property at 5425 Gharrett Street. The vote passed unanimously. This item will go on the Consent Agenda.

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](#)) ([Title 20 Discussion](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) ([Power Point Presentation](#)) (**HELD IN COMMITTEE**)

This meeting was a continuation from the previous PAZ meeting where the topic of the meeting was hillside heights.

Dave Strohmaier stated that his preference was to stay with the table top method of measurement. He realized this would mean some types of structures may not get constructed on hillside lots but this method of measurement does simplify the zoning code. He stated there have been other comments from different architects and other communities to support this type of hillside measurement. Jon Wilkins got a consensus from his Ward and stated the conclusion was for the table top method also. Ed Childers pointed out that the table top and envelope method of measurement do not differ significantly.

The floor was opened for public comment for hillside table top method.

David Gray mentioned that to approve the table top method meant to vote for flat roof houses on the hillsides or a very shallow pitched roof. He received comments from Mr. Condon and summarized the regulations provided from various areas around the country. He read that in Greeley the envelope method of measurement was used for hillsides and was in the hillside ordinance and an absolute method of measurement was used for non-hillsides. In Coeur d'Alene developers are allowed to add a full story to guarantee a first story. In Colorado heights are measured in multiple ways, a vertical method plus an envelope method. Mr. Gray asked for consideration in using the envelope method for the hillsides and to allow some fill in the measurement to enable the homes to blend into the existing neighborhood.

Phil Condon stated this issue was very complicated and even more so when trying to figure out heights on hillsides and trying to make a house fit into an existing neighborhood. He stressed that the zoning code needed to be straight forward, consistent, predictable and uniform yet easy to understand for the normal lay person. He reminded council members of other review and comments including the past process for developing the standards that included hours of review by Planning Board; the consultant recommendation that continues to be for the table-top method; and comments from other architects that did not indicate all future homes on hillsides would have to be built with flat roofs. He pointed out that city wide conformity may limit design somewhat but it protected the homeowner, existing residences and hillside views. He voiced that the examples of the communities he sent to city council did not have any hillside regulations to encourage extra height or flexibility. By using the table top method of measurement for measuring height from the lowest point that meets the grade to the highest point of the roof ensures uniformity. He indicated that the envelope method would allow for greater heights and would block the views of the houses above. Mr. Condon added that the suggestion that Ms. Marler made to keep the code predictable and uniform and if neighborhoods wanted to establish a different set of standards to preserve the character in their area they could apply for a neighborhood character overlay.

Gene Mostad stated that no one has ever told him the current method of measuring hillsides did not work. He added there was a lot of misinformation floating around and suggested a meeting for all concerned to view actual drawings and see the elevations and slopes of hillside lots and discuss these before adopting a measurement method into the code. He added that using the table top method on hillsides would render many of the lots undevelopable.

David Edgell agreed with Mr. Mostad and stated that this issue should not be so complicated. He did not think there was a problem with the current hillside ordinance. The table top method would

work on 'flat' lots but not on a hillside and a one size does not fit in the ordinance. It would be a great tool and beneficial for all concerned to view different plans and drawings and see where the slope of the lot is.

Ron Johnson hoped that the new ordinance will have some way of preventing building a modern taller building into an historical neighborhood.

Ruth Link supported the envelope method because it offers a diversity of housing and anything that limits style of building doesn't make sense. She pointed out that there was not a great deal of difference between the two methods but a one size for all would not work in the Missoula area.

Steve Adler stressed looking at the intent and the purpose for the building height such as blocking views, streetscape, the view from the valley floor, or quality of design. He stated the table top method would limit the height on the uphill side but push the bulk of the building to the back so that the house will be pushed out sideways and increase the lot width. The actual measurement should be from the slope of the site to the plate height of the top of the vertical wall.

There was much discussion regarding the table top method of measurement:

- ✓ This issue is too confusing with varying beliefs and disagreements. There was no problem with Title 19 hillside measurements.
- ✓ Not convinced that the table top method will lead to all houses on the hillside having flat roofs. The main concern in Ward 5 was the view shed. What was wrong with the hillside section in Title 19? Tom Zavitz replied the basic problem with Title 19 was that there was a third method for measuring height on a hillside that is an interpretation of unclear language in the hillside chapter. The policy was not written clearly enough so it causes confusion between the developers and OPG. He explained that along with the existing measuring method 8-feet of fill is allowed which means an 8-foot exception and then the developer starts to measure the grade. It is difficult to measure the height on a building with the current hillside measurement. He concurred that OPG stood behind the recommendation from the consultant.
- ✓ Whether the developer uses the envelope or the table top method the result was the same on the downhill side as well as the uphill side of the house. The envelope method was better on the hillside and could be used city-wide.
- ✓ More variation of building design is possible with the envelope method.
- ✓ Already decided at last weeks PAZ meeting that the point of measuring hillside height would start with existing grade, therefore not allowing fill to be an exception to the height.

Mr. Childers made a **motion** to use the envelope method to measure height on hillsides.

There was discussion on Mr. Childers's motion:

- Cannot create a standard of measurement for the whole of Missoula when trying to accommodate what method of measurement was needed for the South Hills area.
- People on the 'flat' lands also have view sheds, views as an issue was not relegated to just hillsides.
- The envelope method of measurement is the best and the less restrictive, but are concerned with existing neighborhoods.
- Need to stress the right of protest for the neighborhoods on the South Hills.
- Worried about the unintended consequences that would restrict or prohibit the growth on the hills if use the table top method of measurement.
- More supportive of the tapered envelope

Lyn Hellegaard made a **substitute motion** to change from the envelope method to the tapered envelope method of measurement. She asked what the definition of tapered envelope was and staff read the definition.

There was discussion on Ms. Hellegaard's motion:

- ☞ Substituting the tapered envelope allowed some mitigation on the uphill side and seemed like a good compromise.
- ☞ The advantages of the table top method are not to measure the lowest point to the highest point but it follows the contour of the hillside. The envelope method would follow the topography.
- ☞ The consultant is an expert so professional help has been involved in this discussion.
- ☞ Maybe the best approach is to have the regulations more restrictive initially and allow the developer to go through a rezoning if they would like something different.
- ☞ The problem is attempting to define what the total height is.
- ☞ The tapered envelope would protect the view sheds.
- ☞ For simplicity sake the straight envelope method works better than the tapered envelope.

Jason Wiener called for the question, it passed.

The floor was opened for public comment on the tapered envelope method:

Phil Condon asked for a clarification of the original envelope motion. Language previously discussed included fill with three options. Mr. Childers replied there was no fill in the original envelope motion; it was a measurement from the original grade. Mr. Condon asked if the slope followed the contours of the grade. He believed the tapered envelope would provide more protection for existing neighborhoods, but thought the table top method of measurement was the clearer, more concise form of measurement. He reminded the committee that the only way this measurement would kick in would be if a lot met the 15% grade for hillsides.

Gene Mostad stated if a tapered envelope method was used for measuring the house it would lower the pitch of the roof so the houses would have a squashed looking roof. Mr. Zavitz reminded the committee that there was still the exception to go to 35-feet with a steeper pitched roof.

David Edgell stated there has been no contention from the public that current hillside standards have not been met. If the method of measurement is the tapered envelope it would be difficult to determine what the taper is. He added it was best to keep it simple and use the original envelope method, most of the front on a downhill lot is the garage and garages are not usually very tall. The height issues are usually on the down hill side of the lot.

David Gray explained the standard envelope method gives consistency to the neighborhood and gives the front street elevations consistency going down the street. He pointed out that if a tapered envelope method could not be used because lots on hillsides are not square to the street but follow the contour of the land. Laval Means added the lowest point and the highest point of where the building meets the grade could be determined.

The **motion** to substitute using the tapered envelope method of measurement failed with 3 votes of 'aye' and 7 votes opposed (Mr. Strohmailer, Mr. Wiener, Mr. Jaffe, Mr. Hendrickson, Mr. Wilkins, Ms. Mitchell, and Mr. Childers).

The **main motion** to use the original envelope method passed with 6 votes of 'aye' and 3 votes opposed (Mr. Strohmailer, Mr. Wilkins and Ms. Hellegaard) and 1 abstention (Ms. Mitchell).

LOT LINE HOUSES

Jason Wiener made the motion to add the lot line residential development language that was stricken by the Planning Board back into the original document.

There was discussion on Mr. Wiener's motion:

- The regulation was written to ensure these types of houses happen within developments of their own kind.
- This was a tool to develop more detached single family housing.
- Can still have detached houses on lots without the problems that lot line houses incur.
- Lot line houses still have internal setbacks but for some lots a side setback may be two times the required while the other side may be zero. Laval Means presented diagrams that showed the setbacks for lot line houses. Roger Millar added the buildings are the same distance apart and the houses outside the lot line development are not affected at all.

- It makes sense to have a side yard that can be used.
- Lot line houses are ideal for new development and shows how small lot developments can be used.
- This would not be useful in established neighborhoods because a right of way or easement for major repairs is needed.
- The development standards would include the need for a perpetual maintenance easement between property owners to ensure the ability to maintain the building.

David Gray stated he lived adjacent to a lot line house and these houses make nice homes with nice side yards.

The **motion** to reinstitute the lot line house language passed with 6 votes of 'aye' and 4 votes opposed (Ms. Hellegaard, Mr. Wilkins, Mr. Hendrickson and Ms. Mitchell).

Ms. Marler made a request of staff to provide a comparison of riparian regulations between Title 19, Title 20, and County Regulations.

John Hendrickson stated he hoped that Mr. Wiener would not make a motion to approve the rewrite because of the pending lawsuit. He felt if the motion passed then the City could be without a zoning ordinance if the lawsuit were successful.

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 9438](#)—City of Missoula, 300 Fort Missoula Road commonly known as Fort Missoula Park, Tract B, Certificate of Survey No. 4826 located in the northwest one-quarter (NW 1/4) of Section 31, Township 13 North, Range 19 West and the northeast one-quarter (NE 1/4) of

VIII. Adjournment

The meeting adjourned at 12:05 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.