

Plat, Annexation and Zoning Committee Minutes

September 16, 2009

10:05 a.m. – 12:00 p.m.

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, John Hendrickson Dick Haines, Marilyn Marler (11:35 a.m.), Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

Members Absent:

Others Present: Earl Allen, Gary Bakke, Mike Barton, Bob Brue, Lori Davidson, Joe Easton, Jen Gress, Jamie Hoffmann, Nick Kaufman, Carla Krause, Linda Lennox, Ruth Link, Alan McCormick, Mary McCrea, Laval Means, Roger Millar, John Newman, Peter Nelsen, Jim Nugent, Olivia Riutta, David Shaw, George Varichak, Tim Worley, Tom Zavitz and Shelley Oly

I. Approval of Minutes

August 26, 2009 approved as amended.

September 2, 2009 approved as amended.

September 9, 2009 approved as amended.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

A. Consider a proposal to annex, zone, rezone, subdivide and enter into a development agreement for Clark Fork Terrace Number 1. ([memo](#))—Regular Agenda (Tim Worley) (Referred to committee: 09/14/09) (**REMOVE FROM AGENDA**) [OPG Memo for CC](#)

Via [PowerPoint](#) (18.95mb) presentation, Tim Worley outlined the following:

- ✓ Description of the proposed subdivision
- ✓ Background
- ✓ City Council vote to set the public hearing on September 21st
- ✓ Condition Number 6
- ✓ Subdivision Traffic
- ✓ Condition Number 8
- ✓ Area Trails and Linkages
- ✓ Black Bridge, the pedestrian bridge over the Blackfoot River
- ✓ An East-West trail across this subdivision
- ✓ Support for an East-West pedestrian walkway in the area
- ✓ Regulatory support for an East-West pedestrian walkway in the area
- ✓ Are there existing non-motorized transportation facilities to connect to?
- ✓ Securing a trail along the Southern boundary (Condition #17)
- ✓ Why didn't staff recommend a conditional easement?
- ✓ The text of Condition #17
- ✓ Request from the developer's representative at PAZ last December to use Condition #12 from Clark Fork Terrace No. 2 as an alternative to Condition #17
- ✓ Text of alternative condition
- ✓ Conclusion

Mr. Worley concluded by stating that both staff and the Planning Board support Clark Fork Terrace Number 1.

Comment by the developer's representative was provided by Alan McCormick, who outlined points from his letter to Mr. Worley and the City Council:

- “Conditions No. 1 through 34 are acceptable, so long as the Council’s adoption of those conditions includes the proposed deletions of Conditions No. 6, 8, and 17 as reflected in the December 22, 2008 memorandum. Neighborhoods By Design (NBD) does not accept Condition #35.”
- “It is clear that the purpose of the trail specified in Condition No. 35 is to provide non-motorized access *through* the property and not to directly serve the subdivision. NBD should therefore not be required to build any trail within this easement. NBD has already provided all necessary and required access through and within its proposed subdivision via roads, sidewalks and a meandering trail along Deer Creek Road.”

Mr. Worley provided further clarification:

- Condition No. 6 is with regard to standard RSID waiver language and would include both the onsite roads Charbonneau Drive and Drouillard Drive, but would also include Deer Creek Road adjacent to the subdivision but offsite.
- Condition No. 8 is the waiver of the right to protest future improvements to Speedway/Highway 200 intersection offsite. This was a condition that was enforced with Clark Fork Terrace No. 2, but there is again a concern about offsite construction burden borne by NBD.
- Condition No. 17 is staff’s original recommendation for dedicated common area along the southern 20 feet of Clark Fork Terrace No. 1 and it would have a 20-foot-wide non-motorized access easement laid on top of that and then a 10-foot asphalt trail contained within that non-motorized access easement.
- Developer’s proposed revisions to Condition No. 35 would have implications for parkland dedication.
- An east-west connection is more direct and much shorter into downtown via the Kim Williams trail, as opposed to the Canyon River Trail which is nice but would add distance.

With regard to the seeming relation of Condition No. 17 to Condition No. 35, Mr. Worley stated that originally Condition No. 35 allowed for conditional public access easement which would secure a trail within or south of the subdivision with a two-year time limit.. From staff’s position, the timeline for filing the plat was two years and if the time limit from Condition 35 was removed it would be difficult to enforce the condition of the plat approval and leave things a little open-ended.

Mr. Worley reiterated that this was a pre-public hearing and the subject would be taken up for consideration at the public hearing on Monday, September 21, 2009. He also stated that the deadline for making a decision on Clark Fork Terrace No. 1 was September 30, 2009 and that this matter could be referred back to the floor if necessary.

Other questions or public comment:

- Peter Nelsen, representative of the Health Department and Staff Liaison to the Milltown Superfund Site Redevelopment Working Group, showed a map of land being acquired by the State of Montana from The Northwestern Corporation, for the Two Rivers State Park. He anticipated completion of the transaction within a few months. The land would be managed by the State Department of Fish, Wildlife and Parks. He stated additional lands were being acquired from the Carpenters Union, the Nature Conservation, Plum Creek, and Burlington Northern Santa Fe. He indicated the location of a pedestrian bridge, noting it differed from the location of that bridge as presented by the developer. The current conceptual design of the bridge would be located downstream from the former dam site and just upstream from the subdivision. The state park would immediately border the subdivision, separated only by the rail line. Because it was not safe to access the park via the rail line Montana Rail Link felt the shortest and safest access would be along a trail that would cross underneath the railroad.. He noted this potential trail easement did not exist and could not be counted on. He concluded by stating the electronic map he displayed would be provided directly to each of the City Council members.

Chair Jaffe asked whether action was needed to move this to the floor, and Mr. Worley noted that this was a pre-public hearing and this had been presented as an informational item.

Additional questions:

- Ed Childers asked how Peter Nielsen’s information on ownership and potential ownership of the land south of the tracks fit in with NBD’s stated intention to acquire land south of tracks. Nick Kaufman outlined the parcel ownership and the borders of the property that NBD has been working with.
- Mr. Childers asked about Condition No. 35. He noted the developer’s proposal to eliminate any time limit for action, and that it appeared that if this land was in limbo having it be part of the State park

requirement didn't work very well. He didn't know how that could happen without some kind of date certain beyond which either it becomes part of the trail easement or it becomes something for the developer. Alan McCormick stated that there was no need to have that easement count as parkland in order for NBD to meet its parkland calculation requirement, noting that the subdivision as proposed met that requirement. He stated that the Department of Parks & Recreation would like PAZ (City Council) to not accept NDB's proposed parkland and instead accept a portion of the proposed and move a portion of it down through the 20-foot easement area. If PAZ (City Council) were to accept NBD's proposed parkland instead, and NBD's proposed trail language, the parkland dedication requirement would be satisfied.

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) ([REMOVE FROM AGENDA](#))

This item will be considered by the Council on October 5, 2009.

MOTION: The Committee recommends the City Council repeal Title 19, Missoula Municipal Code in its entirety. ([Ordinance](#))

MOTION: The Committee recommends the City Council adopts an ordinance repealing Section 2.84, Missoula Municipal Code, Historic Preservation Commission in its entirety. ([Ordinance](#))

MOTION: The Committee recommends the City Council adopt an ordinance establishing Title 20, Missoula City Zoning Ordinance as recommended in the staff report and by the Planning Board and as amended by the Committee. ([Ordinance](#)) (3.24 MB)

There were two sets of amendments offered by Dave Strohmaier and Jason Wiener.

Dave Strohmaier explained that his amendment dealt primarily with typographical or technical issues with the language. Mr. Strohmaier made a **motion** that the list of suggested amendments to Chapter 20.090.030, 20.090.040 and 20.090.050 be included in the draft. The vote for the suggested changes passed with 10 motions of 'aye' and 1 opposed (Renee Mitchell).

Jason Wiener explained that his amendment dealt with issues regarding the density allowed for multi-family residential. Where there are currently bedroom tests a minimum of 1000 square feet of lot area per dwelling unit is required. This was increased by Planning Board to 1500 square feet of lot area per dwelling unit for single purpose residential developments. Jason Wiener made a **motion** to restore the original 1000 square feet minimum and R1.5-45 would be changed to RM1-45 and RM1.5-35 would be changed to RM1-35.

There was discussion on Jason's amendment:

- ✓ In Title 19, lot-area requirements for the districts in question are dependent upon the number of bedrooms. Mr. Childers voiced a concern with the impact of automobiles parking in a high-density residential project in a neighborhood that was already built out. Laval Means indicated that the parking requirement in Title 20 depends on square footage of a unit.
- ✓ Mr. Wilkins asked if this change would constitute a re-zoning? Ms. Means replied that since current zoning allowed for 1000 square feet for a studio apartment in these zoning districts already there would not be considered a re-zoning.
- ✓ Could developers build more apartments with this change? Jamie Hoffmann replied that the question was not increasing the number of units but whether to separate the bedroom(s).
- ✓ Ms. Mitchell expressed the opinion that codes are not easy for the layperson to understand and said she would like more time to think about this amendment.

Public comment:

Ruth Link stated MOR supported this change because this was an important type of housing. There was a need to continue to build these types of dwelling units and put residential uses where residential services are.

Jamie Hoffmann stated he was in support of this change because Missoula was not keeping up with the housing demand given the modest growth that Missoula was currently experiencing.

Lori Davidson expressed that Missoula Housing Authority supports the motion also. She added that the rental housing market in Missoula is in a critical state of despair. She explained that developers are not building new affordable houses because the rents would not be able to support the construction cost. Developers need to be able to build more units to be able to build the apartments at all. She pointed out that over 50% of Missoula residents are renters.

The motion to amend the density for 1000 square feet allowed for multi-family residential passed with 8 votes of 'aye' and 3 opposed (Lyn Hellegaard, Dick Haines and Renee Mitchell).

Jason Wiener explained the intent of the second part of the amendment was to treat residential development in the existing D zoning districts the same as in commercial districts. Chair Jaffe asked if the 'D' zones permit residential development. Laval Means stated they do permit residential development. Mr. Wiener explained that if a person wanted what to know what the permitted residential density was in the 'D' zone the cross reference would direct the person to the current 'B' zone.

Mr. Wiener restated the motion as follows: The **motion** was to amend 20.15.030 to change the standards from RM1.5 to RM1 (1,000 square feet per unit) for single-purpose residential development in the M1R-2 districts.

The vote passed with 9 votes of 'aye', 1 vote opposed (Renee Mitchell) and 1 abstained (John Hendrickson).

Jason Wiener made a **motion** to repeal Title 19 in its entirety and Section 2.84, Historic Preservation Commission in its entirety and adopt Title 20, Missoula City Zoning Ordinance as recommended in the staff report and by the Planning Board and as amended by the Committee.

There was discussion on the main motion:

- ✓ Was there anything in Title 20 incorporating new Historic Preservation language? Mr. Barton replied that currently the Historic Preservation Commission was authorized in both Title 20 and Title 19. The repeal of Section 2.84 and adoption of Title 20 would simply resolve the different references.
- ✓ There had been changes in the language suspending Title 19 pending court action. Mike Barton replied that should City Council vote and enact the ordinance prior to the court acting on the suit brought by the three council people, their request for writ of mandate becomes moot. If the intention was to block the implementation of Title 20 their complaint would have to be amended to request the court then void the council's action which would disable Title 20 and cancel the action repealing Title 19 and 2.84.

Dave Strohmaier asked if a date certain needed to be incorporated into the motion given that a number of council members would be out of town next week. Chair Jaffe asked if Mr. Wiener would accept a friendly amendment for October 5th. Mr. Wiener replied he would accept that date as a friendly amendment.

There was discussion on Mr. Wiener's main motion:

- John Hendrickson supported waiting until the lawsuit is over to vote.
- Jim Nugent reiterated there was no way to know how or when the court would rule.
- The ordinance would not be effective until 30 days after it was passed.

- Mr. Wilkins expressed concern about the project still being a rezone for his district, proposed as R5.4, and wished to wait for a court ruling.
- Mr. Childer's pointed out that if there is still concern over a potential rezoning because of the maximum height change in R5.4 there is an easy way to reverse the change in height calculations in the current A district. An amendment could be made to change the current 'A' zone to R5.4-45 (its existing height) and the current R1 to R5.4-30. Mr. Wilkins indicated that he was not interested in making such an amendment.
- Stacy Rye called for the question, it passed.

Public comment:

Joe Easton stated developers have projects waiting until a decision was made. This is a significant motion and should not be put off. To file a law suit challenging the process instead of the issues could create a precedent and give the wrong impression of the City Council as a governing body.

The vote to send Title 20 to the floor on October 5, 2009 passed with 7 votes of 'aye' and 4 votes opposed. (Mr. Wilkins, Mr. Hendrickson, Ms. Mitchell and Ms. Hellegaard).set the date to approve the main motion

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. Appoint one member to the Historic Preservation Commission an "At Large" position for the term commencing immediately through December 31, 2012, and appoint one member to the Eastside sector for the term commencing immediately through December 31, 2011 ([memo](#)).—Regular Agenda (Kelly Elam) (Referred to committee: 08/24/09)
13. [Petition 9439](#)—Lue and Mary Yang and Tou and Pangcha K. Lee; 1625 and 1525 Cote Lane; Lot 12 of Kona East Phase 1 Geocode #219915305120000; Lot 13 of Kona East Phase 1 Geocode #219915305130000; Petition for Annexation

XIII. Adjournment

The meeting adjourned at 11:48 a.m.

Respectfully Submitted,

Shelley Oly/ Denise Small
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.