

# Plat, Annexation and Zoning Committee Minutes

September 23, 2009

10:40 am (Meeting started at 11:00 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, Pam Walzer, Jason Wiener, and Jon Wilkins.

**Members Absent:** Stacy Rye and Dave Strohmaier.

**Others Present:** Bob Brugh, Jackie Corday, Doug Harby, Nick Kaufman, Ethel MacDonald, Mary McCrea, Jim Nugent, Janet Rhoades, Tim Worley, Shelley Oly and Denise Small.

## I. Approval of Minutes

September 16, 2009 were approved as presented.

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

## III. Staff Announcements

Janet Rhoades gave the committee a heads-up about an agenda item for next week relating to the Sonata Park Subdivision, which was approved on December 17, 2007.

- Sonata Park is a 37-lot subdivision on 34 acres in the mid-Rattlesnake, located just west of Duncan Drive on Teddy Turn. The subdivision was approved with RLD-2 zoning with a PUD Overlay.. Ms. Rhoades will provide slides and more background at the next PAZ meeting.
- Sonata Park Subdivision is in Court and the Judge requested that the City Council adopt the findings of fact that reflect the reasons for the decisions made regarding the zoning, the subdivision, the conditions of approval, and the variances.
- This is not a reconsideration of the project; it is only an affirmation of the findings of fact – the reasons for the decisions Council made back in December of 2007.
- This will be an Action item at PAZ next week and two actions will be needed:
  - The Committee will need to decide who can vote on the adoption of the findings of fact that supported the decision Council made December 17, 2007. Only 8 of the Council members who voted on this project in 2007 are still serving on Council. One option the Committee could consider would be to have the four Committee members who did not vote on the subdivision and rezone abstain from voting on the findings of fact.
  - The second action will be to adopt findings of fact that support the decisions Council made on the Sonata Park rezone and subdivision.
- Staff has prepared a draft document that includes the findings of fact based on the record of this decision: the subdivider's application packet, the staff report, testimony and discussion that occurred during the public process.
- Staff will email the draft findings of fact document by the end of this week. The findings of fact will also be linked to the PAZ referral on the web.
- The deadline for Council's adoption of the findings of fact is the October 19 City Council meeting, in order to meet the Court's deadline of October 23.

## IV. Consent Agenda Items

## V. Regular Agenda Items

A. Resolution to annex and zone, an ordinance to rezone, and a request to subdivide a 27.16 acre parcel known as Clark Fork Terrace No. 1 into a 38 lot residential subdivision. The property is located east of Deer Creek Road and south of Interstate 90 legally described as Tract 2 of COS 5850 in the north 1/2 of Section 20, T13N, R18W, P.M.M. The property is currently zoned C-RR1

in the County and upon annexation is proposed to be zoned RLD-1 in the City. The City Council will consider an ordinance rezoning the property from RLD-1 to RLD-2. The City Council will also consider a development agreement. ([Development Agreement](#)) ([Staff Annexation Report](#)) ([memo](#)) ([PAZ](#)) (Returned from Council floor: 09/21/09) (**REMOVE FROM AGENDA**)

**This item will be considered by the Council on September 28, 2009.**

**MOTION:** The committee recommends the city council adopt a [resolution](#) annexing Tract 2 of certificate of survey number 5850, commonly known as proposed Clark Fork Terrace No. 1 Subdivision, zoning the property RLD-1, and incorporating the area into the city of Missoula boundary. (north half of Section 20, Township 13 North, Range 18 West, P.M.M.)

**MOTION:** The committee forwards to the floor without recommendation an [ordinance](#) to rezone property legally described as Tract 2 of certificate of survey 5850, located in the N 1/2 of section 20, T13N, R18W, P.M.M., from RLD-1 (residential low density district) to RLD-2 (residential low density district)

**MOTION:** The committee forwards to the floor without recommendation a request to vary from City Subdivision Regulation Article 3-2(15)(D) to permit 10'wide non-motorized access easements based on the findings of fact in the staff report.

**MOTION:** The committee forwards to the floor without recommendation the Clark Fork Terrace No. 1 subdivision along with the findings of fact and conditions listed in the staff report.

**MOTION:** The committee forward to the floor without recommendation an [annexation development agreement](#) between RGB Development and the City of Missoula the pertaining to the Clark Fork Terrace #1 project.

Via [PowerPoint](#) (**1.67 MB**) presentation Tim Worley addressed bike/pedestrian issues:

- An East-West Trail Across This Subdivision
- A Map of the Milltown Superfund Site Redevelopment and Related Trail Projects
- Condition #17
- Condition #17 Summary
- Letter Dated 9/16/09 (PAZ) from the Developer's Representative
- Clark Fork #2: East-West Trail Condition
- -Preliminary Plat of Clark Fork Terrace No. 1

Mr. Worley noted the following:

- Staff felt that securing the southern 20 feet of Clark Fork Terrace No. 1 for an east-west trail would benefit subdivision residents. The Missoula Parks and Recreation Department (Parks and Rec) referred to this potential connection with the Kim Williams Trail as the Commuter Trail because it would provide a connection from Clark Fork Terrace No. 1 directly to Missoula.
- Staff emphasized the benefit to the subdivision residents with the trail connectivity to the city and to the other trail networks stretching southeast to Turah.
- Staff continued to advocate Condition No. 17 which required a 20-foot greenway along the southern 20-feet of Clark Fork Terrace No.1 and which was recommended by Parks and Rec. The whole area would be overlain by a 20-foot-wide public non-motorized access easement.
- According to the condition language, the developer was required to build a 10-foot-wide asphalt trail within this area.
- At the September 16 PAZ meeting, the developer's representative offered up alternative language to Condition No. 35, the original text of which was being contested in the Clark Fork Terrace No. 2 lawsuit. The developer offered up further amendments to that language that pertained to the time period for easement activation.

The floor was opened for discussion:

Ed Childers asked about the similarities and differences between Clark Fork Terrace No. 1 and Clark Fork Terrace No. 2, what was part of the Clark Fork Terrace No. 2 lawsuit and how that might affect Clark Fork Terrace No. 1. Nick Kaufman responded to Mr. Childers' questions. With regard to the issues in the complaint against the City, Mr. Kaufman addressed:

- The requirement for a trail easement along the Clark Fork River, noting that CFT1 does not touch the river at any point
- The requirement for an easement along the southern portion of Clark Fork Terrace No. 2, noting it interfaced with proposed staff recommendation for an easement in Clark Fork Terrace No. 1.
- The required building envelopes along the riverfront lots which was part of the conditional approval of Clark Fork Terrace No. 2, noting that there aren't any building envelopes or river frontage in Clark Fork Terrace No. 1.

Bob Brugh added that in the original complaint there was a provision that the common area had a blanket easement over it. He said in Clark Fork Terrace No. 1 the common area includes the proposed soccer field, but that the concern is that if this were a blanket easement then the general public could participate in soccer games uninvited.

Mr. Childers asked if Clark Fork Terrace No. 1 had a blanket easement over the common area. Mr. Worley replied that it did not. Mr. Childers asked if Clark Fork Terrace No. 1 had building envelopes. Mr. Worley replied that it did not have building envelopes nor riverfront trails.

Renee Mitchell asked if State statute prevented the City Council from allowing an extension that's already put forth. Jim Nugent noted the following:

- The deadline comes from the City's subdivision regulations which state that the acceptance of subdivision applications must be processed within one year. In this instance the application packet was deemed sufficient on October 1, 2008 so the application would expire on September 30, 2009.
- In the current subdivision regulations there was not a process in place by which that one-year period could be extended.
- Staff was concerned about Council suspension of rules and regulations without such a process in place.
- The one-year deadline does exist in State statute.

Jon Wilkins stated he would not vote for any annexation while there was litigation going on..

Chair Jaffe felt the main point was getting the trail connectivity. If Clark Fork Terrace No. 1 annexation is denied, it would presumably not be built or at least not for a long time. If Clark Fork Terrace No. 1 annexation is approved, it will be built sooner rather than later and there will at least be infrastructure put along Deer Creek Road. With annexation there will at least be a short connection along the river. If the City prevails in the lawsuit, Clark Fork Terrace No. 1 gets annexed and annexation guarantees more trail.

Marilyn Marler asked who owns the property south of railroad on the east side of Deer Creek Road and about the width of that parcel. Mr. Brugh said that: the first piece is BNSF right-of-way; the second piece paralleling that with a width of approximately 100 feet is the former Milwaukee right-of-way; south of that is the (Randy) Jacobs Family Trust which owns everything from there up to the lookout and confined by the river; next is the settlement with ARCO, and then comes Deer Creek Road. She stated there was too much confusion between the two Clark Fork Terrace projects and it was hard to separate them. Mr. Kaufman stated the project developer, would provide both 300 feet of riverfront trail along the west side of the Clark Fork River and an appropriate easement that leads to the internal pedestrian walkway system in Clark Fork Terrace No. 1. This would make the connection down to the meandering trail along

Deer Creek Road, creating the connection to Canyon River. He also stated that if the language for an easement in this location can be negotiated and was agreeable to both sides then there will not be a lawsuit if conditions were significantly similar to the following. If you decide against annexation of Clark Fork Terrace No. 1 and you lose the lawsuit on Clark Fork Terrace No. 2 then you don't have anything. If you approve annexation of Clark Fork Terrace No. 1 and lose the lawsuit on Clark Fork Terrace No. 2 then you have at least preserved the Canyon River Trail link and have 300 feet of riverfront trail.

Mr. Brugh added that if annexation of Clark Fork Terrace No. 1 were approved then, regardless of the lawsuit, there would be gained the 100 feet and the connectivity to the internal circulation system and then out to the Deer Creek Road and that's an absolute. This was later corrected by the developer as 300 feet. He added that there will be no lawsuit on the 20 feet of the south side, that decision on the existing lawsuit would trigger the results in the prevailing party. Mr. Nugent stresses the importance of getting this in writing from the applicant and that such would be acceptable to PAZ in that format. Mr. Brugh replied that it would be in writing.

Mr. Kaufman addressed the language of last week's letter from Alan McCormick. He addressed the staff's concern about language calling for an easement but not specifying the size. He said that the language for this easement does not require NBD to build a trail. He said NBD doesn't want to do so, because of significant disagreement over both the thought that a trail can go under the railroad bridge, and the cost and safety of trail going under the railroad.

Jackie Corday, of the Missoula Parks and Recreation Department, asked Mr. Kaufman if Neighborhoods By Design wins the lawsuit and there is no appeal, what happens with the southern trail in Clark Fork Terrace No. 1 and Clark Fork Terrace No. 2? Mr. Kaufman replied if the judge were to rule the easement granted was inappropriate then the trail goes away; and if the judge were to rule the easement was appropriate then the easement, applicable to both Clark Fork Terrace No. 1 and Clark Fork Terrace No. 2, would stay. .

John Hendrickson stated annexation provides opportunity for trail connectivity, thus gaining something regardless of the lawsuit outcome.

Pam Walzer stated her desire to have the developer's proposal for a new trail in writing as soon as possible. She questioned the contradictions in parkland dedication, noting the staff proposal to include the southern trail as part of parkland dedication and the initial response from the developer that they did not need that. She also asked whether the soccer field would be included in parkland dedication because of the public access involved, and if a trail were built outside of the development what would happen to parkland dedication figures. Chair Jaffe reported that in order for common area to count towards parkland dedication, it doesn't have to be public access. Mr. Worley stated some implications for parkland dedication. If the developer's trail condition prevails, then the 20-foot strip along the southern edge of Clark Fork Terrace No. 1 would not count toward parkland dedication, only the strip along Deer Creek Road would count. He then noted that the issue of what to include in parkland dedication was up to the discretion of the City Council. Ms. Corday shared the position of the Parks and Recreation Department was that the most important area to have for parkland was the trail. She added that the 40-foot-wide area along the front of Deer Creek Road should also count. If anything above that were needed, the area encompassing the proposed soccer field should be included.

Jon Wilkins said that he hadn't heard anything new in this discussion that would change his mind. To support annexation would be to send a message to the court that something else is acceptable. Ms. Marler agreed with Mr. Wilkins. She said that without anything in writing from the developer there could not be negotiation in good faith.

Jason Weiner explained there were advantages for the annexation. He stressed the necessity for the trail on the south and that it was within subdivision regulations to require the trail.

Mr. Childers noted that Clark Fork Terrace No. 1 dovetailed with Clark Fork Terrace No. 2. He felt that conditions for Clark Fork Terrace No. 1 should not be tied in any way with having in writing the offers about trail for Clark Fork Terrace No. 2.

Mr. Hendrickson asked the developer to provide PAZ with everything in writing by Friday, including any diagrams, maps or slips the developer would be presenting at the City Council meeting the following Monday. Mr. Kaufman replied that the developer would comply with this request and would include with these materials a discussion on how parkland can work.

John Hendrickson made a **motion** to approve the annexation of Clark Fork Terrace No. 1.

The motion passed with 8 votes of 'aye', 2 votes opposed (Marilyn Marler and Jon Wilkins). This would go on Committee Report.

Jason Weiner made a **motion** to advance the re-zoning and subdivision to the floor without recommendation of pass or fail.

The motion passed with 8 votes of 'aye', 2 votes opposed (Marilyn Marler and Jon Wilkins).

Mr. Childers asked Mr. Nugent to offer a legal view of the developer's offer of 300 feet and the approval or disapproval of annexation of Clark Fork Terrace No. 1. Mr. Nugent stated that the whole lawsuit was in Mr. Brugh's control and, that he could settle all or parts of it even without court ruling. He said that if this would be considered access to and from the subdivision, there is sometimes the ability to do something adjacent to the subdivision with respect to accessibility. He also said that this offer of a 300-foot access should be another condition that indicates one of the accesses into the subdivision.

Chair Jaffe added the annexation is conditioned upon a development agreement, the terms of which are flexible and could contain language to things that are offsite. He assumed that this offer of a 300-foot access would belong as part of the annexation development agreement.

Mr. Wilkins expressed disappointment over the idea of negotiating, and the real meaning of the term, with the developer and the possible effect that the outcome of such negotiations may have on the current lawsuit. He noted that whether the City wins or loses, it still was costing the citizens of Missoula money. He didn't understand what negotiations were in this instance.

Mr. Brugh wanted it made "crystal clear" that the offer is 300 feet, not 100 feet. He said to Ms. Marler that there will be no subsequent lawsuits. Mr. Nugent stated that with regard to the Clark Fork Terrace No. 2 lawsuit, there were three conditions that were never contested and Mr. Brugh brought suit over them. Mr. Brugh felt he had no choice in that, and that a lawsuit was the answer. Mr. Nugent replied that a choice for Mr. Brugh would have been to come back to the Council and ask for amendments to the approved subdivision and that option was never exercised. Mr. Brugh reiterated that there will be no lawsuits. This will be in writing and delivered by the attorney who will try to get it to the committee by Friday. He stated that everything he said would be in writing by himself and his attorney. Mr. Wilkins asked if it would be in writing that Mr. Brugh would not sue over what the committee did. Mr. Brugh said that will be in writing.

Mr. Childers asked Mr. Brugh if he felt he had a choice on the 300 feet on the north end of Clark Fork Terrace No. 2. Mr. Brugh stated that if Clark Fork Terrace No. 1 were approved, the 300 feet would be given regardless of the outcome of the lawsuit on Clark Fork Terrace No. 2. Mr. Childers asked if the footage would be given whether or not Clark Fork Terrace No. 1 passed or failed, Mr. Brugh replied that the gift of the footage is dependent upon passage of Clark Fork Terrace No. 1, that if Council does not approve Clark Fork Terrace No. 1 then "it's over."

## **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 annexation) (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)

## **VIII. Adjournment**

The meeting adjourned at 12:10 p.m.

Respectfully Submitted,

**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.***