

Plat, Annexation and Zoning Committee Minutes

September 30, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

Members Absent: Lyn Hellegaard.

Others Present: Mike Barton, Brian Derry, Jen Gress, Ruth Link, Philip Maechling, Mary McCrea, Jim Nugent, Janet Rhoades, Don Snavely, Tim Worley, Shelley Oly and Denise Small.

I. Approval of Minutes

September 23, 2009 were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

Jen Gress distributed to Committee members a document that contained the most current rendition of Title 20 and draft ordinances that repealed Title 19, repealed the historic portion 2.84 and adopted Title 20. Ms. Gress asked that any questions about this document be addressed with staff prior to Monday, October 5, 2009 when it would be going to vote.

IV. Consent Agenda Items

A. Schedule a public hearing for the revised draft historic preservation ordinance, as recommended by the Missoula Consolidated Planning Board ([memo](#)).—Regular Agenda (Philip Maechling) **(REMOVE FROM AGENDA)**

MOTION: The committee recommends the City Council set a public hearing on October 26, 2009, on an [ordinance](#) amending Missoula Municipal Code Title 20, the Missoula City Zoning Ordinance and establishing Chapter 20.30 entitled "Historic Preservation."

Via [PowerPoint presentation \(14.5 MB\)](#), Philip Maechling outlined the draft historic preservation ordinance. The presentation included several photographs of some of Missoula's historic buildings and neighborhoods and informational slides addressing:

- A map of The Urban Fringe Development Area Study
- Criteria for listing on the National Register of Historic Places
- A map of Missoula's National Register Historic Districts
- Rehab versus New Construction
- Montana Tax Credit Projects
- The Draft Historic Preservation Ordinance

Mr. Maechling reported the date requested for a public hearing was October 26, 2009. A brief discussion included the following:

- Jason Wiener asked about the historic building demolition process. Mr. Maechling replied that property owners had to apply for a demolition permit and were then subject to a 90-day demolition delay, during which time they were required to try to find a buyer interested in rehabilitating the property or adapting it to modern uses. If an honest and concerted effort to

do so failed, then the demolition permit would be granted. Mr. Wiener asked if an administrative review was the criteria for evaluating such an effort. Mr. Maechling replied that it was, and noted that within those 90 days was a 30-day publication period in which the owner had to advertise for property bids.

- Chair Jaffe asked what would happen if the owner's intent was to demolish and rebuild rather than to rehabilitate and re-use. Mr. Maechling noted if this were the case then a demolition permit would then be granted at the end of the 90 days. Chair Jaffe asked if the property owner had to seek buyers that would reuse and seek an alternative to demolition. Mr. Maechling responded that owners had to seek buyers who would rehabilitate or reuse and that the goal was to conserve the resource and in its context adapt it to modern uses.
- Jon Wilkins wondered if this process could be circumvented and done without the property owner's permission. Mr. Maechling replied that the property owner was always involved and this process was only triggered if the owner applied for a building permit. He added that the way the ordinance was drafted, the process for Register listing neither changed what presently existed nor created resources not currently listed. Mr. Wilkins asked about the process for creating a historic district, and about a property owner's right to protest being listing in one. Mr. Maechling stated that if more than 50% of property owners in a historic district objected to being listed, then the keeper of the National Register of Historic Places would not list the district but deem it as eligible for listing. He also said that effectively the right of property owners to protest did exist.
- Chair Jaffe asked if the draft ordinance applied to contributing homes within a historic district. Mr. Maechling said that it applied to sites within historic districts and sites already on the National Register of Historic Places.
- Pam Walzer asked if there was a monetary threshold that property owners had to accept from buyers. Mr. Maechling said that while owners were required to advertise for buyers they were not obligated to accept offers they felt were unacceptable. Ms. Walzer asked about the process for property owners to demolish and rebuild designated as contributing to a historic neighborhood. Mr. Maechling said that owner would have to go through the same 90-day delay demolition process.
- John Hendrickson asked if Administrative review deemed a property owner's efforts to find a buyer inadequate could the delay period be shortened. Mr. Maechling stated that the period was still 90 days but property owners could appeal directly to the City Council and both appeal and variance mechanisms were in place within the draft historic preservation ordinance.
- Jason Wiener noted that it would be helpful to see charts that demonstrate the different projects to which paint does not apply, at the public hearing. He also asked if the draft ordinance, as currently worded, applied to non-contributing buildings within a district. Mr. Maechling said that it did, and the district itself was the resource.
- Ed Childers asked if the draft ordinance affected only properties that were historic resources or actually listed on the National Register of Historic Places. Mr. Maechling said yes. He also added that the listing process was a systematic and methodical inventory of every building within a district area and that the eligibility of a building as a contributing was determined at that time. Mr. Childers asked if an owner could keep his property from being listed if it were deemed eligible. Mr. Maechling responded that if 51% of property owners in the entire district objected, then the owners could keep the district from being listed.
Individual owners can prevent the listing of their property, but if it is determined eligible, it remains eligible for listing.
- Mr. Childers asked a two fold question; have the City shops along Broadway been affected under the draft ordinance and would those shops be deemed eligible for listing and the ordinance applied? And then if the City, as property owner wanted to demolish the building would it come up against the Historic Preservation Commission? Mr. Maechling replied that was not correct. He cited section 20.30.020 of the Draft Historical Preservation Ordinance,

Corrected Copy – Corrected on 11/18/09
which stated that public development activity on government-owned property was not subject to compliance under the ordinance.

Public Comment:

Ruth Link stated the provision addressing demolition by neglect should either be removed or very narrowly defined. She added that what was historic should be preserved and the rest of Missoula should be allowed to grow.

Dave Strohmaier made a **motion** to schedule a public hearing on October 26, 2009. The vote passed unanimously. This item would go on the Consent Agenda.

V. Regular Agenda Items

- A. Adopt findings of fact and conclusions of law for Sonata rezoning & subdivision, which was approved by City Council on December 17, 2007 ([memo](#)).—Regular Agenda (Janet Rhoades) (Referred to committee: 09/28/09) (**HELD IN COMMITTEE**)
- Via [PowerPoint presentation \(21.3 MB\)](#), Janet Rhoades reviewed the project and reason for Committee review:
 - A large amount of findings were from the original staff report, but there were subsequent corrections to that report.
 - There were also updated findings based on Council action, and the original staff report didn't reflect that.
 - Staff examined all of the minutes and tapes and while they could be made available in hardcopy, that review had already been completed by staff.
 - Many of the new findings were added from the public record. Staff already has looked at all of the minutes so all findings in blue are added and cited from the record.

Subsequent discussion by the Committee included the following:

- Stacy Rye asked why the Committee was being asked to affirm their vote and whether they were allowed to change any part of their December 2007 decision. Ms. Rhoades replied that reason behind the request for affirmation was that the Committee did not originally adopt the Findings of Fact and Conclusions of Law. She added that the Committee could not change their decision only affirm the Findings of Fact and Conclusions of Law. Ms. Rye asked if minutes covering that decision could be made available for review. Jim Nugent replied that the minutes did not clarify the exact motion so it wasn't clear what was actually being voted on at that time. He also said the judge had asked for a more thorough identification of what Council relied on to make their December 2007 decision and for the citation of reasons for their conclusions. Stacy Rye asked what the original vote was and Ms. Rhoades noted it was 10 to 2 for approval.
- Jim Nugent reminded the Committee that they were not required to act immediately, but had a window of time in which to read and consider.
- Chair Jaffe said he understood that the judge in the current court case was giving Council an opportunity to better document the Findings of Fact. The Committee was not changing any decisions but providing better documentation.
- Ed Childers offered that while everything was in the record, it was not sufficiently summarized in the Findings of Fact and Conclusions of Law.
Mary McCrea noted that because PAZ minutes were not verbatim, staff had gone through all of the Missoula Community Access Television (MCAT) recordings to cull the pertinent information. Planning Board and City Council minutes were verbatim and could be provided to the Committee. Jim Nugent noted that the MCAT video of the special meeting held December 14, 2007 was unavailable but summary minutes were printed. Janet Rhoades stated the minutes would be linked with the next PAZ referral and offered to provide hardcopies to Committee members.

- Dave Strohmaier reported that in 2007 he did not support the staff recommendations or the subdivision and thus would probably abstain from voting.
- Dick Haines asked for a list of Council members from 2007 and how they voted. Jim Nugent responded that the vote was 10 to 2 for approval with both representatives from Ward 1 voting against. Mr. Haines asked if it were possible to have a list of Council members and their votes to any amendments or conditions. Janet Rhoades said that while it would be a fairly extensive process. Mr. Haines responded that it would be helpful to refresh his memory and be useful to have a better idea of what the issue was and how the vote on it went. Chair Jaffe suggested that minutes could be provided and that the motions themselves and the votes could be found there. Mr. Haines agreed.
- Pam Walzer stated that she was one of the four Council members that were asked to abstain from the vote. She explained that was in the audience during that meeting, and felt she could offer impressions but not vote. She noted that the three other Council members were Jason Wiener, Renee Mitchell and Lyn Hellegard. Jon Wilkins asked that Committee members not part of that 2007 vote would refrain from responding as not to confuse the matter.
- Mary McCrea clarified that motions provided to the Committee for the September 30, 2009 meeting were not changed, because the Court did not ask for that. Rather, it asked only that Findings of Fact and Conclusion that supported the motions be provided. Conditions noted in green were those made as the Council and those noted in blue were findings of fact pulled from the record. Renee Mitchell said that she would not participate except as an interested bystander
- Chair Jaffe suggested that relevant discussion would come from members present for the 2007 vote, would clarify why things were done, or would offer anything that had been missed. He urged the Committee to keep in mind that the task was for members to affirm why they voted the way they did in December 2007.

Discussion on how to proceed:

- Janet Rhoades asked Committee members who wanted to add findings to notify staff by mid-day on October 1, 2009 so there would be sufficient time for research, citation and insertion into the record. Stacy Rye stated that, due to her work schedule, she wouldn't be available to do any reading until next week. Janet Rhoades clarified that if the Committee members wanted to take this to Council on Monday, October 5 then staff would need the information by noon on Thursday, October 1; however, extra time had been built into the Committee schedule for discussion at both the October 7 and October 14 PAZ meetings. In that case, comments were not needed by staff until next week or later. The latest this item could be addressed was October 19, 2009 in order to meet the October 23 deadline.
- John Hendrickson asked if this issue could be handled in Committee or was it necessary to have public hearing and address it on the Council Floor. Jim Nugent responded this was a public meeting and the public could comment. Mr. Hendrickson asked how this all fit into the timeframe of meeting the deadline of October 23. Chair Jaffe responded that it had to go to the Council Floor on October 19 because there was no City Council Meeting on October 12. Mr. Nugent explained that if this issue went out of Committee on October 19, it should be voted on then. It would not be a public hearing so it could not be sent back to Committee, and will just be on Committee Reports. Chair Jaffe stated there was additional time for discussion if needed and proposed that the subject be taken to the City Council on October 19.
- Ed Childers relayed that the Committee was deliberating on the validity of the material and observe if anything was previously overlooked but needed to be added. Chair Jaffe added that the task for Committee members was to read through all of the material provided and decide if it was adequate for them.
- Dick Haines asked if there was potential for litigants to come back and request changes. Jim Nugent said they could, if they were able to cite something in public record that would have supported the outcome of a particular vote; however, they could not lobby the

Corrected Copy – Corrected on 11/18/09

Council for reconsideration. He stressed that the judge was asking for a more thorough identification of anything in the public record supporting the 2007 vote and conclusions.

Public Comment:

- Don Snavely, attorney for the project developer, noted that in the motion made to approve the subdivision, there was no reference to the findings. The minutes for the December 17, 2007 meeting set forth the votes for each motion and so a record of individual votes could be found there. He added that the developer has no quarrel with any action by Council.

Additional Committee and Staff Discussion:

- Jon Wilkins was most interested in the recording of votes on December 17, 2009.
- Janet Rhoades said she would link up separately the minutes for PAZ, Planning Board and City Council so that members could more easily access what they were looking for.
- Chair Jaffe urged the Committee to read through everything and be sure of what they wanted to say. It was important to respond to this correctly. The next PAZ meeting of October 7th would be brief and there would be additional time to address this issue. Mary McCrea reminded the Committee of the 21-calendar-day deadline. If the Committee took any action next week, there would be time for staff to produce and send out a memo to everyone so there would be an additional week for discussion before action had to be taken.

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 9441](#)—Donald L. Pearson and Alta I. Pearson; 5565 Mullan Road; A tract of land located in the Southeast one-quarter (SE 1/4) of the Northwest one-quarter (NW 1/4) of Section 13, Township 13 N, Range 20 W, P.M.M.; Geocode 219913302020000; Petition for Annexation

VIII. Adjournment

The meeting adjourned at 11:16 a.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.