

Plat, Annexation and Zoning Committee Minutes

October 21, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

Members Absent: Lyn Hellegaard, John Hendrickson.

Others Present: Steve Adler, Mike Barton, Ruth Link, Phillip Maechling, Mary McCrea, Roger Millar, John Newman, Jim Nugent, Jamie Ryan Lockman, and Denise Small.

I. Approval of Minutes

October 7, 2009 were approved as presented.

October 14, 2009 were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

- A. Phasing plan amendment request for Hauser Addition, a 5-lot minor subdivision of a 0.86-acre parcel, located near the intersection of Davis Street and Fourth Street in the Franklin to the Fort area ([memo](#)).—Regular Agenda (Mitch Doherty) (Referred to committee: 10/19/09) **(REMOVE FROM AGENDA)**

MOTION: The committee recommends the City Council approve the request for a phasing plan amendment for Hauser Addition Subdivision extending the final plat submittal deadlines to October 31, 2014 for Phase I and to October 31, 2018 for Phase II.

Via [PowerPoint presentation \(1.07 MB\)](#), John Newman presented a request by the subdivision developer to amend the phasing plan for the Hauser Addition Subdivision. He reported:

- The amendment request was received in September 2009.
- The Subdivision was approved August 7, 2006 subject to twelve conditions of approval.
- A combination phasing plan amendment/plat adjustment/condition amendment request was made and approved on January 28, 2008. At that time the final plat submittal deadline for Phase I was set at October 31, 2009 and the Phase II deadline was set at October 31, 2013.
- The amendment request extends the final plat submittal deadlines to October 31, 2014 for Phase I and October 31, 2018 for Phase II.
- Under the amendment, the only changes were to the final plat submittal deadlines.
- Staff recommended approval of the phasing plan amendment.

Discussion:

- Chair Jaffe stated that it seemed unusual that a developer would request the extension of initial project filing deadlines so far beyond the date of preliminary plat approval.
- Ed Childers had no issues with leaving the plan in place and noted the possible future connection to Third Street and eastward as well. Chair Jaffe added that this was a pedestrian connection.
- Jon Wilkins agreed with Mr. Childers and stated he would support extending the deadlines.

- Renee Mitchell asked about the extension of the access road to the eastern and northern property boundary. She wanted to know why that connection was not happening and was there any way to make that connection now. Ms. Mitchell reported having a problem with Condition #10, specifically about a developer being able to waive future homeowner right to protest.

Roger Millar shared her concern and added that it was a condition of the preliminary plat approval that City Council already approved. He reported that the committee action was limited to approval or disapproval of extending the Phase I and Phase II final plat submittal deadlines. He noted the PowerPoint slide of the actual plat indicated the actual easement and that the aerial photo showed what it would connect.

On the aerial photo, John Newman indicated a 20-foot strip of land originally owned by the county and sold to an adjacent property owner, and on which townhouses were subsequently built. When that 20-foot strip was sold, the purchaser granted a 20-foot easement over the strip itself. Ownership of the strip transferred but a public easement was put over the strip, and the developer dedicated an additional easement of 5.5 feet. At that point, there was an actual public connection. The condo development site plan showed a road that narrowed significantly where it entered the Hauser Addition, with the idea being it was not a thruway but designed to minimize speed and traffic. He noted it was an automotive connection.

Ms. Mitchell asked what would happen if the request for deadline extension were denied. Mr. Newman responded that the plat would expire and the property owner would essentially have to come back in for a new subdivision. He said that the property owner's other option was to submit the Phase I by October 31, 2009.

Ed Childers made a **motion** to approve the phasing plan amendment to the Hauser Addition Subdivision and extend the final plat submittal deadlines to October 31, 2014 for Phase I and to October 31, 2018 for Phase II. The vote passed with nine votes of 'aye' and one vote of 'no' (Renee Mitchell). This item will go on Committee Reports.

- B. Revised draft historic preservation ordinance, as recommended by the Missoula Consolidated Planning Board ([memo](#)).—Regular Agenda (Philip Maechling) (Referred to committee: 10/19/09) (**HELD IN COMMITTEE**)

Roger Millar stated the revised draft historic preservation ordinance was a pre-public hearing informational item. He explained the original proposal was brought before the Planning Board and City Council over a year ago and a revised draft was brought back for consideration in Spring of 2009. The Planning Board reviewed the ordinance and sent a recommendation back to PAZ.

Via [PowerPoint presentation \(15,709 KB\)](#), Philip Maechling's discussion included:

- Maps of Buildings on the National Register of Historic Places, National Register Historic Districts
- Diagram of the spectrum of what could be protected
- Buildings around Missoula,
- Diagram of the Draft Historic Preservation Ordinance
- Diagram of the application process
- Rehab vs. New Construction

Mr. Millar reported that a proposed amendment to the draft ordinance came from the business community and was supported by Mayor Engen. Jason Wiener asked him to define the potential amendment, and Mr. Millar replied:

- In examining the ordinance, it was important to consider the process and criteria for review, as well as what projects were subject to that review. The criteria and process in the ordinance are standard.
- Mr. Millar noted that historic properties were addressed on page 4, section 20.30.050 of the ordinance. There are nine historic districts in Missoula, comprised of approximately 2000 properties and 3000 contributing buildings. The ordinance classified the Downtown area as a historic district. Any contributing or non-contributing property within the historic district would be subject to review.

Mr. Millar shared the concern of Mayor Engen and the business community that this was maybe too large to address all at once rather than gradually. The suggestion was to change Section 20.30.050 so that any property listed individually in the National Register of Historic Places or that was determined eligible for listing would be subject to the ordinance whereas the historic districts themselves would not.

Additional discussion:

Marilyn Marler wanted a definition of "contributing" and "non contributing": Mr. Millar replied that when a historic district was created, an inventory was taken done of buildings that contributed to its historic nature. While all of those buildings were designated as part of the district and identified specifically as contributing properties, it was the district itself that was listed on the National Register. His example was originally protecting only individually-listed or eligible-for-listing properties, to including contributing properties, to then including non-contributing properties or finally to including any property that is over 50 years of age. Ms. Marler asked if this meant the terms "contributing" and "non-contributing" were not relevant unless talking about an established historic district and Mr. Millar concurred. Mr. Millar reported the first historic district potentially affected was the Downtown area.

Chair Jaffe requested clarification of "listed" and "eligible" properties. Mr. Maechling responded that an evaluation process occurred for any nominated property. The final phase of that process was the determination by the Keeper of the National Register of Historic Places to list a property on the register. If a property owner objected to being listed, the property was then determined by the Keeper to be eligible for listing.

Mr. Strohmaier asked for a definition of "business community." Mr. Millar responded that in this case it was the Boards of the Missoula Downtown Association and the Business Improvement District. Mr. Strohmaier stated that when taking historic districts into account, ensuring the integrity of the district itself was as important as protecting the contributing or individual properties. He asked if there was way to alert the committee or commission to the potential for disturbing a district's character or integrity. Mr. Millar responded that 1) the additional process requirement and 2) potential for disagreement with the proposal by the commission were expressed as concern. He noted this ordinance did not change or restrict underlying entitlements to zoning; however, the concern existed that something might happen. Mr. Millar stressed this was the pre-public hearing information session and urged the committee to listen to the Commission and any other testimony as to pros and cons of different approaches. Mr. Strohmaier suggested that rather than amending the public hearing draft, the committee attach this amendment to the electronic public hearing documents. Mr. Millar responded that specific amendments would be discussed after the public hearing.

Ed Childers wanted the ordinance to cover only properties listed on the Historic register.

Mr. Millar reported that prior to the public hearing staff would supply to the committee a list of "eligible but not listed" properties. Chair Jaffe asked that staff include a sampling of the listed contributing buildings.

Stacy Rye asked about "contributing" or "non-contributing" specifically in terms of the County Courthouse and the Annex. Mr. Maechling reported that the Courthouse itself was individually

listed on the National Register, the Courthouse lawn was a contributing site to the Downtown site for its significance and the Annex was a non-contributing site. Ms. Rye asked if the street off of Russell Street that was deemed historic, and did it hold up the transportation project in that area. Mr. Maechling responded that transportation law had a unique set of standards for 4-F properties, which are not individually listed on the Register. Those projects were eligible to be in a historic district and therefore were to be avoided in terms of project construction. He also stressed that it was the State Review Board that determined criteria defining "contributing" or "non-contributing" properties.

Chair Jaffe asked if "contributing" were a finite list of structures already defined at the time the district was created. Mr. Maechling agreed. He also noted that there was an individual, detailed form and photographic documentation for each building in a historic district.

Ms. Rye agreed with the ordinance covering historic districts but felt that the inclusion of anything additional was too much. Mr. Maechling responded that the approved and recommended only included historic districts, eligible buildings and existing listed buildings. Ms. Rye addressed the Southside district, noting that while several properties would fit this definition, several would not. Mr. Maechling responded that the Southside district had 80% contributing buildings and 20% non-contributing buildings. .

Pam Walzer asked whether the recommended amendment to the ordinance was to remove just the historic district issue or the eligibility issue. Mr. Millar responded that the ordinance would remove the historic district, but that Council could agree to remove more. Ms. Walzer asked what options were available to owners to do major renovation. Mr. Millar replied that the intent of the ordinance was to ensure that new construction, renovations or demolitions were consistent with the district's character.

Mr. Wiener asked about the alternative compliance, as relating to Planning Board changes to page 7 of the ordinance. Mr. Millar reported that the only way to do alternative compliance for renovations and new constructions was to a principal residence. The Planning Board decided that any building covered should be eligible for alternative compliance. Mr. Wiener asked about the revision relating to setbacks. Mr. Millar responded that issue was already covered in Title 20 and was removed by the Planning Board to avoid duplication.

Mr. Wilkins addressed a specific situation and property in the Northside area, questioning whether any property owner, would have any say over his or her property. He was also concerned that approving the ordinance would restrict property renovation or demolition. He felt that passage of the ordinance placed undue hardship on the owner of the Northside property and owners in general. Mr. Maechling responded that while the property was in the Northside historic district it was not listed in the Register. He noted while this building had a unique history it was abandoned. Mr. Millar added that there were no restrictions on selling this property. He further noted that under the ordinance, prior to any renovation or demolition a property owner would have to undergo a specific building permitting process.

Mr. Wilkins addressed the issue of a house on Railroad Street that was demolished and replaced by a condominium that did not fit the character of the neighborhood. He stated belief of the rights of property owners to alter their own property, and reiterated concern that passage of the ordinance would present an undue hardship on property owners. Chair Jaffe asked how the Railroad Street case would have played out under the ordinance. Mr. Maechling replied said that the owner would have applied for a building permit. If the property met the setback and space-involved patterns of the neighborhood the permit would be approved.. If it did not meet those patterns or neighborhoods and the permit were denied, the property owner could appeal to the Commission or Council. He stated there was no way to know in the abstract what would actually happen.

Chair Jaffe stated it was clear whether a property needed to go through the process but he was unclear as to what the process actually was. Mr. Maechling responded that the way the ordinance was drafted, the process was to defer to the Secretary of Interior Standards which are national in scope and fairly flexible. Most reasonable projects fitting into a specific neighborhood would then be approved. Mr. Millar noted these standards appeared on page 10 of the ordinance under section 20.30.096 Criteria for Review of Alterations and New Construction.

Chair Jaffe asked how the building permit process for a property in the historic district would differ from the current permit process for anyone else. Mr. Millar responded that a general permit was reviewed by OPG for zoning compliance but further determination was required for a property in the historic district.. Chair Jaffe asked how the list of submittal requirements for properties in a historic district different from those for other properties. Mr. Millar replied the list was less detailed, and no additional requirements were included.

Chair Jaffe stated his concern was less with costly remodels and more with individual homeowners doing modifications to their homes and that in those cases a 60-day delay would be significant. Mr. Millar stated that he and Mayor Engen shared that concern. He stressed the importance of protecting individually listed properties the ordinance right now, and then having the Historic Preservation go back to work with each specific neighborhood to develop a preservation process that works for them.

Chair Jaffe addressed neighborhood overlay, noting that it establishes a zoning criteria. He asked whether that overlay could contain procedures as well, so there was something that was part of the overlay that directed property owners in the process. Mr. Millar replied yes, to an extent. He expressed hope that for the sake of simplicity, the overlay process would direct property owners back to the ordinance itself.

Mr. Wiener asked if the building demolished on Railroad Street and replaced with a condominium had been contributing or non-contributing. Mr. Maechling replied that at that time the survey had not been done so the determination had not been made. Mr. Wilkins felt the building was solid and could have been used. Mr. Wiener stated this case was exactly why a preservation ordinance was needed, to provide a forum for expressing feelings when change happened all around them. He said that was the intent with the ordinance, without providing undue constraints.

Mr. Childers asked if the Railroad Street house had been deemed eligible for listing on the Register, would demolition have been denied or allowed under the ordinance. Mr. Maechling responded that the way the ordinance was drafted, a 90-day waiting period would be set in place before demolition could happen. He noted the purpose of that period was to allow time in which to find a viable way to retain the building and retain its use. Mr. Childers asked if that meant that it was not prohibition, but rather a delay that would be created under the ordinance and Mr. Maechling agreed.

Mr. Childers asked what the process would be for a listed property, such as Lincoln School. Mr. Millar replied that an applicant would apply for new construction, supplying a layout for review by the HPC and a subsequent public hearing would occur. The School was protected by what happened but the school grounds were not and they had been covered by the listing. The project may have been denied or approved but there would have been a public hearing and Council would ultimately decide to approve or disapprove. Mr. Millar reiterated this was not a prohibition but a delay and consulting process, and not an address of zoning or rezoning.

Mr. Childers asked about The Catholic Block. Mr. Millar noted the church was listed and the rest of the block was eligible. Mr. Childers asked what would happen to property owner intent to demolish the property and rebuild. Under the ordinance, would there be a difference in process for listed or eligible processes. Mr. Millar replied the same process would exist for both.

Mr. Millar reported that the way the ordinance was drafted, if the Commission failed to take action within 90 days for a demolition request or 60 days for other action requests, that lack of action is deemed approval. If action is taken within the specified timeframe, then the appeals process had no deadline. In the case of appeal, the case would be brought before Council as a public hearing.

Ms. Walzer stated further interest of contributing and non-contributing in a district, specifically the percentage of value and trying to renovate properties. The review process would be cumbersome and may not make a difference to the general look of a neighborhood, as houses in the neighborhood are slowly added onto. She was also sensitive the Railroad Street area, specifically that "demolition by neglect" was affecting some of the homes there. She hoped this ordinance would assist property owners in obtaining the property or look that was most appropriate for their neighborhood.

Public Comment:

Ruth Link, Missoula Organization of Realtors, supported the suggested amendment. She agreed with Mr. Childers that the rights of property owners should be kept in the forefront.

Ms. Link stated in terms of demolition by neglect, Title 20 reduced the amount of interpretation needed. She also noted that with regard to property values, this neglect may make certain properties more difficult to sell but property value wasn't necessarily lost.

Chair Jaffe urged those watching or listening to the PAZ meeting to attend the public hearing on October 26, 2009.

C. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08) (HELD IN COMMITTEE**)**

Dave Strohmaier shared his goal was to ensure the currency of all Ward 1 planning documents, and noted that the Rattlesnake Valley Comprehensive Plan Amendment of 1995 called for 5- to 10-year revision cycle which had since passed. He stated that a scoping process was begun with the assistance of OPG staff and neighborhood council representatives in the Rattlesnake, and the result was a final revision scope much larger and more costly than originally envisioned. The City did not have the resources to fund the project and consequently the plan has not been updated.

Mr. Strohmaier suggested that perhaps the cycles themselves were not as important so long as the neighborhood's vision and goals remained applicable. He felt that this was a citywide issue worthy of attention, and wondered: how the currency of these plans could be ensured; if there were any errors in the plans and how to correct them and was it possible to forego a major growth policy plan amendment and still give neighborhoods what they wanted. He also stated this was an opportunity to hear from staff and learn what suggestions or ideas they had on how to move forward in this process.

Roger Millar distributed a [list of City and County vicinity plans](#) from the 2005 Growth Policy Update. He noted other plans existed but were not listed because they were adopted after the Update. He reported that Missoula had 18 neighborhood councils and if each had a neighborhood plan with a 5-year revision cycle, it would result in a perpetual work cycle even if staff worked on several plans at the same time.

Mr. Millar stated that with completion of the Urban Fringe Development Area Plan, Transportation Plan Update and the Zoning Ordinance Update, staff was now ready to address the planning process and how best to use existing neighborhood plans. He wondered if it were necessary to employ 5-year revision cycles if a neighborhood vision hadn't changed. He also

wondered how many adopted neighborhood plans contained items that were yet to be implemented and what role OPG could have in that implementation.

Mr. Millar reported beginning to converse with staff about this issue and expressed the desire to also converse with Council as staff went about creation of a work plan. He mentioned several items for discussion, including: how to ensure that visions set forth in a neighborhood plan came to pass; building a neighborhood plan that lays out the intended vision of that neighborhood; how to address action items in that plan; how best to communicate with Council on staff progress on a plan's action items; and how a plan would be incorporated into the budget process or grant applications.

Mr. Strohmaier agreed with Mr. Millar that people were not interested in perpetual planning but in implementing on the ground they want to happen in their neighborhoods, and asked:

- Could factual changes in older neighborhoods be made if the neighborhood vision has not changed. Should language setting planning cycles that are currently in place be removed from these area plans?
- How to envision the development of a plan implementation process?

Mr. Millar replied the first issue would be to look at the legal requirements for growth policy. In this case State law required re-visitation, but not necessarily actual revision, of growth policy on a 5-year cycle. Because Missoula growth policy was adopted in late 2006 it must be revisited in 2011. Growth policy evaluation was part of the 2011 work plan, so that staff could then recommend to the City Council and Board of County Commissioners whether or not updates were necessary.

- He posed the following questions that may come about if that evaluation resulted in recommendation for update: what if future planning documents incorporated appropriate neighborhood plan elements into the growth policy itself; what if focus were on actual neighborhood issues rather than on minute details; and shouldn't the planning process be truncated and focused on implementation and organization of the community to get things done on the ground.
- The updating process could actually be the growth policy itself, rather than the individual neighborhood plans. The policy would be examined on a regular cycle and that process would involve re-visitation of the neighborhood plans incorporated into the actual policy.
- There were organizational issues involved in this effort. In terms of implementation, what would be the roles of individual departments such as the Office of Planning and Grants, Neighborhood Liaison, Public Works, or Parks and Recreation? Exactly how would everyone engage? Staff was taking all of this into consideration but prior to proposal formation, wanted input from Council.

Discussion:

Ed Childers asked if Roger Millar were interested in putting infrastructure plans into growth policy. Mr. Millar responded that they were already incorporated by reference. With regard to the Rattlesnake plan, he noted that it was adopted before the State Legislature determined growth policies could not be used as regulatory documents. He said this plan called for a density pattern on upper Duncan Drive of certain very low densities but that the Council, neighborhood and property owners could never agree on zoning to implement the plan. With regard to the Target Range plan, Mr. Millar stated that the neighborhood council did not want anything included in the plan that could not be realistically implemented on the ground in zoning. He further stated that staff would bring together the plan and the zoning necessary for implementation, then present it all to the Board of County Commissioners. He stated that a lesson learned was that if use of a neighborhood plan for recommending zoning changes was anticipated, then it was necessary to move forward with the affected property owners already in agreement or with enough plan support to put in place a super majority of Council to pass the necessary zoning.

Renee Mitchell agreed that any new revisions needed to be implemented into the growth policy rather than into individual neighborhood plans.

Mr. Strohmaier said he supported the idea of incorporating neighborhood council plans in the next growth policy revision process. He wonder if by suggesting the incorporation of these area plans into the growth policy, was he essentially "jettisoning" the original area plans. Mr. Millar replied that he didn't know at this point. He stated that perhaps not every area or neighborhood needed a plan at all or the same type of plan as other areas. He also relayed the importance of infrastructure plans and that perhaps that should be a focus area as we move forward in this effort.

VI. Items to be Removed from the Agenda

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)
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)
7. 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)
8. 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)
11. 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)

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. 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)
8. 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)
9. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
10. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)
11. 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 11:56 am.

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.