

## Plat, Annexation and Zoning Committee Minutes

January 27, 2010

11:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

### Members Absent:

**Others Present:** Steve Adler, Jennifer Anthony, Mike Barton, Ellen Buchanan, Janet Caywood, David Gray, John Horner, Nick Kaufman, Courtney Kramer, Ruth Link, Linda McCarthy, Jim McDonald, Philip Maechling, Gary Midgett, Roger Millar, Jim Nugent Kathy Veazy and Shelley Oly

### I. Approval of Minutes

January 20, 2010 approved as presented.

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

### III. Staff Announcements

### IV. Consent Agenda Items

### V. Regular Agenda Items

A. An ordinance amending Missoula Municipal Code Title 20, the Missoula City Zoning ordinance and establishing Chapter 20.30 entitled "Historic Preservation." (PAZ)  
(Returned from Council floor: 11/23/09) (HELD IN COMMITTEE)

Chair Jaffe went through the recent history of the Historic Preservation Ordinance (HPO) to refresh the Board members as to why this was returned from the Council floor. There are a few minor amendments that have been proposed but the core issue was the scope of the ordinance and how it was applied. Currently the HPO would apply to individual properties already on the National Register of Historic Places (NHRP). There was discussion to expand the ordinance to include historic districts and to apply the ordinance either to all properties or just to the contributing properties in the district. The other side of the discussion has been the new part of zoning chapter dealing with neighborhood character overlays, and possibly the issue of districts could be taken up as a neighborhood character overlay.

- There was a public hearing, it was discussed and amended in committee so that the ordinance only applied to individual properties listed on the historic register. At this point it is an ordinance that would apply to the approximately 60 properties listed on the NHRP.
- The other issue was what the City's recourse was if citizens failed to comply with the ordinance. Mr. Millar pointed out there was a separate section in the Zoning Ordinance on enforcement (Chapter 20.95). Failure comply can result in action up to a misdemeanor with a fine of \$25.00 to \$500.00 for each offense with each day constituting a separate offense. This violation is treated like any other violation in the zoning ordinance in terms of enforcement.
- Historic districts have character defining features that make them eligible for listing in the national register. Councilman Strohmaier stated he would support the ordinance as amended and address the districts at a later date.
- The issue of demolition by neglect needed a more specific definition than the one in 20.30.060.

- The issue of non contributing properties included in the historic register.
- Using a neighborhood character overlay where the neighborhood can design the standards and decide how the standards in their historic district are regulated is a viable option.
- There are references to historic resources but it is not included in the definition. Mr. Millar replied an e-mail was sent to the Council explaining that Michelle Bryan-Mudd recommended a definition. The other amendment that Ms. Bryan-Mudd recommended was a 30 day advertising period for the demolition process be moved into the 90 day window to expedite that process.
- Will the phrase “exceptional practical difficulties” be deleted in this section? Mr. Millar stated the Planning Board wanted this recommended language left in as criteria for decision making.

Councilman Strohmaier made the **motion** to move the ordinance as it came back from the Committee with the additional amendments as suggested in [Mr. Millar's e-mail of January 26](#), 2010 such as the definition of historic resource, the advertising requirement for demo/relocation permit, and the language change in section 20.30.150 Section A, Paragraph 2 to add ‘the applicant has advertised the Historic Resource for sale in a local newspaper of general circulation for a period of 30 days’ and the changed language under mitigation under Paragraph 1 to add HPP for relocation adds the phrase ‘or demolition is approved’ and the additional language is struck out in Paragraph 2.

- Who gets noticed and what is the specific process. Mr. Millar explained there is a process for notification that is common to all zoning activity. The right of protest exists for rezoning of property only. He outlined the process:
  - The notification and a public hearing before the HPC with public comment before the action is taken.
  - The right to appeal to an HP Officer’s decision to the HPC.
  - The right to appeal a HPC decision to the City Council.
  - The right to appeal the City Council decision to the courts.

Councilman Wiener made the motion to replace the current definition of demolition by neglect 20.30.060 and read the [proposed amendment](#).

Discussion on Councilman Wiener’s motion:

- ✓ What would happen in the scenario of a citizen with limited financial resources unable to maintain their building which is not on the historic register? Mr. Millar explained if it is subject to the ordinance it would be labeled as a zoning infraction.
- ✓ The first step in the zoning infraction process is not to fine people but to work with people to get them back into compliance.

The floor was opened to the public.

David Gray stated this was a difficult subject to deal with because if this scenario happened being charged with a misdemeanor would be adding insult to injury and there needs to be some way to mitigate this.

Ruth Link –stated the reason the demolition definition should be included in the zoning ordinance is not for the average citizen but those people who want to intentionally destroy a building.

Chair Jaffe called for the question. It passed.

The motion for clarification of the definition of Councilman Wiener’s amendment passed with 7 votes of ‘aye’ 3 votes opposed (Councilwoman Hellegaard, Councilwoman Mitchell, Councilman Haines) and 1 abstention (Councilman Wilkins).

Courtney Kramer is one of two Historic Preservation Planners for the City of Bozeman. She gave a power point presentation about the Neighborhood Conservation Overlay District process.

- The [power point presentation](#) described the establishment of the Neighborhood Conservation Overlay District (NCOD), the Certificate of Appropriateness process, and Bozeman's Design Review Program.
- Bozeman's NCOD evolved after 1980 and currently encompasses nine national register historic districts and 25 plus individually listed historic sites.
- The Certificate of Appropriateness Program (Section 18.28.050) is applied to 4000 sites within the overlay district before a building permit can be obtained.
- There are Design Guidelines in place to review an application that helps the applicant and the community to know what options there are for a proposal.
- Once a project is reviewed, a letter is written to the applicant indicating that it has been approved with a list of other code issues to be resolved. The permit is valid for one year and a pink notice is hung on the building.
- Design Review is also used for entry way corridor projects.
- The NCOD allows property owners a mechanism to ask for special relief from zoning ordinance standards.
- The deviation process requires public notice, mailings and a posted notice on-site. Public notice also happens when intensification is proposed.
- An extended review is used when demolition is proposed or when an extensive addition is proposed.
- The City Commission is the only agency that can approve demolition of a historically significant building and appeals of any denial go to the District Court.

The floor was opened for discussion:

- Does the flow chart process always progress all the way to the City Commissioners or is that only for appeals? Ms. Kramer replied if the application does not include a demolition, it does not. Deviations go to the Board of Adjustment for a decision.
- Is there a separate fee structure associated with the COA? Ms. Kramer stated the \$100.00 COA fee is for everything and can go higher due to its level of complexity. Maintenance and repair is not subject to fee or review.
- Define the difference between maintenance and repair as oppose to remodeling. Ms. Kramer explained if it is same material for same material, it is maintenance and repair.
- Is the architectural staff specialized in historical architecture? Mr. Kramer stated on the staff there are a variety of viewpoints regarding historic architecture.
- Would an owner have to prove hardship when their building is neglected? Ms. Kramer pointed out there is a fine structure associated with or funding of demolition by neglect findings. Once those fines come in a fund could be established to help property owners who could prove hardship.

## **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. Request to rezone the property legally described as Lot 3 of Scott Street Lots Subdivision, located in Section 16, T13N, R19W, P.M.M. from 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)
4. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)

5. Review all changes from Title 19 to Title 20 regarding housing design standards ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 01/11/10)
6. Review Plat, Annexation and Zoning referrals. ([memo](#)) – Regular Agenda (Marty Rehbein) (Referred to committee: 01/11/10)
7. Review Title 20 sign ordinance to address prior commitments to business community ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 12/21/09)
8. Ongoing discussion of City planning issues with members of the Planning Board.— Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)

### **VIII. Adjournment**

The meeting adjourned at 12:20 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.***