

## Plat, Annexation and Zoning Committee Minutes

February 10, 2010

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

**Members Absent:** Dick Haines

**Others Present:** Steve Alder, Jennifer Anthony, Mike Barton, Ellen Buchanan, David Gray, John Hendrickson, Philip Maechling, Laval Means, Roger Millar, John Newman, Jim Nugent, Carl Posewitz, Trudy Smith, Tim Worley and Shelley Oly

### I. Approval of Minutes

[February 3, 2010](#) approved as presented.

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

### III. Staff Announcements

### IV. Consent Agenda Items

**A.** Consider a proposal to extend the Larson Addition final plat submittal deadline from June 16, 2010 to June 16, 2011 ([memo](#)).—Regular Agenda (Tim Worley) (Referred to committee: 02/08/10) **(REMOVE FROM AGENDA)**

**MOTION: The Committee recommends that the City Council approve to extend the preliminary plat period for the Larson Addition Subdivision to extend the final plat submittal deadline to June 16, 2011.**

Tim Worley presented a power point presentation concerning the final plat extension deadline for Larson Addition Subdivision.

- This is a four lot subdivision located in the vicinity of Carl Tyler Chevrolet and Washington Corp and west of Grant Creek.
- The preliminary plat was approved June 16, 2008 with a deadline of June 16, 2010.
- The applicant requested an extension to June 16, 2011.
- Staff recommends approval of the Larson Addition plat extension.

Councilman Wilkins made the motion to extend the final plat submittal deadline to June 16, 2011. The vote was unanimous and will go on the Consent Agenda.

**B.** Amend the 2006 Missoula County Growth Policy to include Sand and Gravel Resources and Wildland Urban Interface ([memo](#)).—Regular Agenda (Laval Means) (Referred to committee: 02/08/10) **(REMOVE FROM AGENDA)**

**MOTION: The Committee recommends the City Council set a public hearing on March 22, 2010 and adopt a Resolution of Intention to Adopt the proposed Sand and Gravel Resources and Wildland Urban Interface-related amendments to the Missoula County Growth Policy.**

John Newman presented information to request a public hearing and set a Resolution of Intent to adopt the proposed Sand and Gravel Resources and Wildland Urban Interface related amendments to the Missoula County 2006 Growth Policy.

He added the changes come about from changes in from State law. The request is to bring the City's adopted Growth Policy into compliance with the County version of the Growth Policy. OPG proposed the public hearing for March 22, 2010. Draft amendment revisions based upon Planning Board discussion will be provided prior to the Public Hearing.

Councilman Strohmaier made the motion to set the public hearing for March 22, 2010. The vote was unanimous and will go on the Consent Agenda.

C. 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) [\(REMOVE FROM AGENDA\)](#)

**MOTION: The Committee recommends the City Council adopt an ordinance establishing Chapter 20.30 Historic Preservation and amending Chapter 20.85 of Title 20 [Exhibit A](#) of Title 20, Missoula City Zoning Ordinance.**

Roger introduced the outcome of the various changes to Title 20, establishing Chapter 20.30 entitled Historic Preservation. He stated that Councilwoman Mitchell had brought up a good point at the last PAZ meeting about the review and approval process. It was recommended that the Review and Approval process elements in Chapter 20.30 Historic Preservation be moved to Chapter 20.85 which contained the review and approval process for all other zoning actions. He explained the e-mail of February 9, 2010 that contained both documents; [Chapter 20.30](#) and [Chapter 20.85](#). Mr. Millar pointed that all the amendments made by the PAZ to date were contained in the documents with underline strikeout format all of the changes that were required to split the original document between the two chapters.

Councilman Strohmaier added to his motion staff's recommendation to move the approval procedures and review language from Chapter 20.30 to Chapter 20.85.

Councilwoman Hellegaard asked a question regarding Carl Posowitz's e-mail. If the ordinance only applied to individual properties then why would there be a need for superficial verbiage regarding historic districts. Mr. Millar replied in the Chapter 20.30 there was a new definition in underline format (page 3) for the historic overlay district. He shared that what was currently in the draft has this ordinance applying only to individually listed properties but, per 20.30.040 Designation Criteria for Historic Resource (page 4), the City Council may choose in the future to classify any contributing or non-contributing property in a historic district through adoption of a Neighborhood Character Overlay (NCO). The historic district language was left in the draft in the event the Council elected to protect a historic district in the future using the neighborhood character overlay process.

Councilwoman Marler asked if the most recent attachment applied to properties already listed on the National Register of Historic Places (NRHP). Millar replied it only applied to properties on the NRHP but noted that Council could elect to adopt an historic district overlay in the future.

The floor was open for public comment.

Carl Posewitz remarked that he was relieved that the ordinance changed to apply to properties that were individually listed properties on the register. He stated that the verbiage that did not apply should be deleted. He offered to edit the section in question.

David Gray agreed with Mr. Posewitz but felt that the ordinance still seemed broad in scope and undefined. He stated it would be good to have clarifications on the definitions brought to the beginning of the ordinance. Mr. Gray had concerns in the following three areas:

- The neighborhood character overlay should be struck because that responsibility falls under the DRB issue and not the HPC.

- The changing of the underlying zones should be struck because the responsibility falls under the CiBOA and the Planning Board.
- The properties must be sold or for sale for demolition.

Mr. Gray put together some pricing examples regarding the impacts the homeowner would be responsible for in a historic overlay district.

Steve Adler added that there was one point on page 6 under H Criteria for Review of Alteration and New Construction, point 4 should be struck because the context was talking about historic districts and not individually listed properties. Mr. Millar responded that that language was put in the context of green energy and reducing carbon footprint which would apply to individual districts and individual properties as well.

The floor was open for comment:

- 1) Councilman Wiener asked what the relationship of the existing Fort Missoula Historic District and the Roosevelt Block was. Mr. Millar replied the Roosevelt Block was a Planned Unit Development (PUD) and the regulations for that block are in the PUD and have been implemented. The Fort Missoula Historic District is in Title 20 as a Neighborhood Character Overlay and the regulations for that neighborhood were developed prior to Title 20, but the review procedure would follow the procedure in the current ordinance.
- 2) Councilwoman Marler pointed out that because two historic districts already exist then Section 20.30.160 Design Guidelines for Historic Districts could not be struck from the ordinance. Councilwoman Marler offered an amendment to strike 20.30.160 Design Guidelines because this guideline existed in two places in the ordinance. Mr. Millar read the language in 20.30.160. He explained that this was direction for what the guidelines should include if a district is developed. He added that the whole section 20.30.160 was about how to adopt design guidelines and what the design guidelines should include as they are adopted. Councilwoman Marler withdrew her amendment.
- 3) Councilwoman Walzer felt the references to historic overlay districts should be left in because this would give a placeholder for that process to build upon.
- 4) Councilwoman Rye felt the Review and Approval procedures in Chapter 20.30.85 page 7 under section J seemed excessive in terms of requiring properties be put up for sale as a good faith efforts when other measures have failed. Mr. Millar pointed out the standard language does not require the owner of the property to sell rather than to demolish or move the property, but only to advertise the property for sale. Councilwoman Rye moved to amend page 7, section J, to strike B and C.

Councilwoman Walzer made a substitute motion to keep B and C but change the word "and" to "or" at the end of C so that the property owner would have four options but only one of the four options would be required to show good faith effort.

There was much discussion on Councilwoman Rye's amendment.

- ✓ These amendments are not adequate.
- ✓ All four options need to be a package.
- ✓ The benefits of having property listed on the national register include a plaque and the owner can apply for and receive tax credits to help with the rehabilitation and preservation of the building.
- ✓ Physical location is criteria for evaluating properties listed on the national register. Moving a property from a historic district would likely result in it being taken off of the NRHP.
- ✓ If an individual owned property listed on NRHP and wanted to tear down an accessory building that person would need to advertise the property for sale. Mr. Millar stated if the property was a national listed building and the accessory building contributed to it being on the NRHP then the property would have to be advertised for sale.
- ✓ There is an added cost and burden to put a building up for sale.
- ✓ The owner has the option to renovate the building to bring it up to standards then the owner would not have to put the property up for sale.

- ✓ The goal is to say this property though it is private property, is a community resource and therefore an obligation to the community to be preserved because the property is on the NRHP.
- ✓ Were there any objections from people who owned a NRHP building be covered under public comment. Mr. Millar replied that, to the best of his knowledge, the only property owner with listed buildings to oppose the ordinance was the Diocese. The church is listed on the NRHP but they expressed concern with the ordinance covering the school which was not on the Register.
- ✓ Was there a time stipulation for putting the property up for sale? Mr. Millar stated the advertisement period in the local newspaper was 30 days.
- ✓ Section A stated that the owner has to make a good faith effort to find some alternative to preserve, renovate or use the historic resource.
- ✓ Would like to utilize Mr. Posewitz's offer to go through the ordinance and strike out the unnecessary verbiage.
- ✓ If the buyer had other designs for this property would he go through the same process? Mr. Millar replied he would.

Councilman Wiener called for the question, it passed.

Councilman Wilkins asked could an ordinance force someone to sell their property. Mr. Nugent replied there would some concern but he would need to research it further. Mr. Millar clarified the earlier statement that no where in the ordinance does it require a property owner to sell anything, but it did requires a good faith effort and to advertise the property.

Councilman Wilkins called for the question, it passed.

Mr. Millar recommended adding to Councilwoman Walzer's substitute motion by stating at the beginning, "the Commission shall review the HPP application for compliance in accordance with at least one of the criteria." Councilwoman Walzer accepted the recommendation.

The floor was open for public comment

Steve Adler stated that this was riding on the intent of maintaining the integrity of the property. If tearing down the accessory building affected the listing of the property there would be a case. The elements that the law looks to are listed in A, B, and C. B and C help to define what a good faith effort is. The potential benefit of the owner to advertise is to make other interested parties aware.

Jennifer Anthony shared that this was getting sidetracked because there were only five family homes that were individually listed on the NRHP.

Ellen Buchanan wondered that if an historic district was protected through a NCO would every building then be deemed a historic resource. Mr. Millar answered it would depend on how it was defined in the NCO.

The motion to approve Councilwoman Walzer's substitute motion failed with 3 votes of 'aye' and 8 votes 'opposed.'

Chair Jaffe asked who determines that a good faith effort has been made. Mr. Millar replied the good faith effort is determined by the officer and ultimately by the Commission and if there is an appeal by the City Council.

The motion to approve Councilwoman Rye's motion to strike B and C criteria failed with 4 votes of 'aye' and 6 votes opposed (Councilman Childers, Councilwoman Marler, Councilman Strohmaier, Councilman Wiener, Councilwoman Walzer and Councilman Houseman)

Councilman Wiener made the **motion** to include the word "eligible" as well as "listed properties". There was discussion on Councilman Wiener's motion:

- How many properties this encompassed. Mr. Millar stated only two properties that are not currently listed were determined to be eligible through the National Park Service process. Those properties are the Catholic block and the Moon-Randolph Homestead.
- This ordinance would apply to that property; whether the property owner wanted it or not. Mr. Millar stated that was correct.
- This is a very philosophical situation.
- Let this ordinance apply to the owners who have listed their properties on the register.
- Let the owner choose to preserve their properties.
- Historic resources are a value to the community
- There is a criterion listed by the National Parks Service to determine whether property was eligible and can be listed need to go through this process and it should not be left up to the property owner.
- Should not force anyone who owns property outside regular zoning issues to be on the NRHP.
- If a property was on the NRHP and is sold can the new owner delist that property? Philip Maechling replied that property can be delisted by the keeper of the NRHP if it is determined that the property has lost its historic attributes and the integrity has been compromised to a point that the property no longer meets the criteria.
- Whether or not a resource is a resource is a fact and not in relation to the preferences of the owner.
- The definition of resources is a well defined researched element of neighborhood character.

The floor was open for public comment.

Steve Adler explained the determination of eligibility takes a lot of effort and the amount of research that goes into this process is quite extensive and serious.

Carl Posowitz stated owners consent is what determines being listed.

The motion to approve Councilman Wiener's amendment to insert the language to include eligible for listing properties failed with 5 votes of 'aye' and 6 votes opposed (Councilman Wilkins, Councilwoman Hellegaard, Councilwoman Mitchell, Councilman Childers, Councilwoman Marler and Councilwoman Rye.)

Councilman Wiener stated this ordinance was a good start on recognizing and providing a reasonable process for handling this. He called for the question on the main motion, it passed.

The motion to approve the main ordinance as amended passed with 8 votes of 'aye' and 2 votes opposed (Councilwoman Mitchell, Councilwoman Hellegaard) and 1 abstention (Councilman Wilkins)

## **V. Regular Agenda Items**

## **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. 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)
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 Plat, Annexation and Zoning referrals. ([memo](#)) – Regular Agenda (Marty Rehbein) (Referred to committee: 01/11/10)
6. Review Title 20 sign ordinance to address prior commitments to business community ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 12/21/09)
7. 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 11:45 am

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.***