

Plat, Annexation and Zoning Committee Minutes

April 7, 2010

9:30 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: Denise Alexander, Gary Bakke, Jerry Ballas, Paul Dryvestein, Elaine Hawk, John Hendrickson, Dode Hoyt, Ruth Link, Solomon Martin, Laval Means, Roger Millar, Gene Mostad, John Newman, Kathy Noble, Tracy O'Reilly, Janet Rhoades, Ryan Salisbury, Jim Nugent and Shelley Oly

I. Approval of Minutes

[March 24, 2010](#) approved as presented.

II. Public Comment on Items not on the Agenda

Councilwoman Rye explained Philip Maechling had come up with a great assignment regarding historic buildings for her daughter's class at Paxson School. She shared that the project was to locate as many unique architectural features on the historic buildings in downtown Missoula that was on the list. She stated that this was one of the most enjoyable assignments that she shared with her daughter.

III. Staff Announcements

IV. Consent Agenda Items

- A. Appointment to the Historic Preservation Commission ([memo](#)).—Regular Agenda (Marty Rehbein)
(Referred to committee: 04/05/10)(**REMOVE FROM AGENDA**)

MOTION: The Committee recommends the City Council appoint Solomon Martin as the southwest area representative on the Historic Preservation Commission for the term commencing immediately and ending on December 31, 2013.

Mr. Martin is a life long Missoula resident and graduated in 2008 from the University of Montana with a degree in Anthropology. He is self employed contractor specializing in masonry and preservation.

1) Mr. Martin stated the purpose of historic preservation was to uphold the Preservation Act of 1960 which included guidelines on how to protect what a historic and a cultural resource was. He felt that he was fulfilling his dream to become an historic preservationist and a chance to help keep Missoula a nice place to live.

2) He replied the Historic Preservation Commission (HPC) contributed to Missoula through economics and ecology. In the architectural sense HPC makes green decisions to reuse or find ways to preserve old buildings and make them more energy efficient rather than to tear them down and rebuild. He added that preservation jobs tend to employ more specialized technicians so there are more opportunities for higher paying jobs. He saw this as a way to keep Missoula vibrant.

3) Mr. Martin's academic background comes from taking various cultural resource management, archaeology and historic preservation classes. His practical experience stems from working as a mason and a construction worker.

4) He felt the priority of the HPC board was to educate homeowners and property owners on what historic preservation was and how it could benefit Missoula. Mr. Martin lumped himself into the mix when he stated that many Missoulians do not know what historic preservation is.

5) The relationship between historic preservation and economic development was a hand and glove type of a relationship. Even though there is tension between developers and historic preservationist it can work because there is a greater opportunity for rehabilitation of old buildings and keeping historic resources in good condition to promote tourism.

6) Mr. Martin replied there are candidates for historic preservation designations. One such project would be to survey historic property walls. He replied there are certain criteria listed for historic building but one building he would like to see on the National Register was the Saratana Mill on the NorthSide.

The floor was open for discussion:

Councilwoman Walzer asked the applicant if he would be willing to serve on the HPC board until December 31, 2013. Mr. Martin stated he would have no problem with the extension.

Councilman Childers asked Mr. Martin's opinion whether it was the place of the HPC to assist and encourage property owners whose properties are already listed on the register or who want to be listed or was it the place of the HPC to use their influence to sway property owners who have eligible properties but do not want to preserve said properties. Mr. Martin replied he would not want the government to tell him what he should do with his property. But there was language in the ordinance that was a concern. But it was the role of the HPC to be proactive in those types of situations to be cooperative, look for funding and permitting applications to be facilitory and not obstructionist.

Councilwoman Marler made the **motion** to appoint Solomon Martin to the Historic Preservation Commission until December 31, 2013. The motion passed unanimously and would go under the Consent Agenda.

B. Discuss Title 20 garage setbacks resulting from meeting with building industry working group ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 03/22/10) (**REMOVE FROM AGENDA**)

Roger Millar explained that the language regarding garage setbacks that had been interpreted incorrectly in Title 19 and clarified in Title 20 has apparently created a hardship for the building community. The building industry was asked to work on the language that would resolve this issue. The builders proposed to take the incorrect interpretation of Title 19 that was used for over ten years and make it the regulation in Title 20. He stated that OPG has no problem with what the building industry is recommending;

- ✓ Under 20.110.050 setbacks, the exception section which is located in 20.110.050.(A-2) has A-B-C-D then No.3 which is garage setbacks. The No. 3 would be changed to E and all the language would be moved under the exception section.
- ✓ Language would be added to a new paragraph 20.110.050(D) that would require all garages to be set back 20 feet from the property line.

The floor was open for discussion:

Chair Jaffe asked if there were any zones with less than a 20-foot setback. Mr. Millar replied that commercial zones had less setback but in the residential zones the setback is 20-feet. He read the language from Title 12 and stated that regulations for garage setback are both the zoning code and the engineering code.

Councilman Wilkins made a **motion** to move this to the Planning Board. Mr. Millar explained that this did not need a formal action just instruction to staff to refer it to the Planning Board.

The floor was open for public comment:

Elaine Hawk stated this was a status update before it went before the Planning Board. She explained that there had been quite a few meetings with the building industry and there were only a few agency comments that came back from the agency reviews.

The motion to move this item to the Planning Board passed unanimously and would go under Consent Agenda.

C. Authorize the Mayor to sign the settlement agreement pertaining to the litigation Stockyard Road Investments LLC has filed against the City of Missoula et al. ([memo](#)).—Regular Agenda (Mayor Engen) (Referred to committee: 04/05/10) (**REMOVE FROM AGENDA**)

MOTION: The Committee recommend the City Council approves and authorize the Mayor to sign the Settlement Agreement pertaining to the litigation filed between the parties Stockyard Road Investments LLC vs. City of Missoula et. al., Cause No. DV-10-95, filed in the Montana Fourth Judicial District Court.

Roger Millar presented the background pertaining to the litigation with Stockyard Road Investments LLC:

- Stockyard Road Investments LLC is the entity developing the Flynn Ranch Subdivision.

- The Flynn Ranch Subdivision was granted approval May 19, 2008 and the plat has been modified several times since.
- The developer started working on the building plans for the subdivision in 2009 prior to the adoption of Title 20.
- The developer asked about setback requirements in Title 19 to decrease the front yard setbacks on some of the lots and apply the exception to side loading garages.
- A member of OPG gave the developer incorrect information. The applicant used that advice to develop plans and submit building permits.
- The application for the building permits were submitted to OPG. When OPG discovered the incorrect information a meeting was held with the applicant to try to rectify the situation stating the applicant could request a variance, go through a Planned Unit Development (PUD) or redesign the buildings in question.
- The applicant chose to sue the City on the basis of relying on the incorrect OPG advice to their detriment.

Roger Millar explained the settlement agreement would grant the applicant a PUD. OPG felt this was in the best interest of the City given the specific circumstances of the project and recommended that City Council authorize the Mayor to sign the agreement.

Chair Jaffe had concerns with the issue of the side loading garages because it would create a public health and safety issue with the turning radius. Mr. Millar explained the applicant made some changes to conform to Title 12.

Councilman Strohamier asked if the legal fees were included in the settlement. Mr. Millar stated everyone was taking care of their own so that there would be no additional cost to the City. He added that this was not a bad project and this was a way to resolve the issue without costing the tax payer more money.

Councilwoman Rye made the **motion** for City Council to authorize the Mayor to sign the settlement agreement. The vote was unanimous and would be under the Consent Agenda.
Unanimous and on the consent agenda

V. Regular Agenda Items

A. Rezone a parcel at the northeast corner of the UM campus from R8 to OP ([memo](#)).—Regular Agenda (Marilyn Marler) (Referred to committee: 04/05/10 (**REMOVE FROM AGENDA**))

MOTION: The Committee recommends the City Council direct OPG staff to begin working on the rezoning and annexation for the UM property. (This will be on the April 19th agenda under committee reports)

Councilwoman Marler wanted to initiate council-initiated rezoning on the University campus.

- ✓ The parcel is located on the northwest corner of the UM campus.
- ✓ The parcel is zoned residential R-8 and the result is that every time the University wants to carry out a project they need to go through the City Board of Adjustment (CiBOA) and it becomes quite expensive for the University.
- ✓ Would like council-initiated zoning of this parcel from R-8 to OP-3 (Open lands and institutional).
- ✓ The drawback of this is if it is council-initiated zoning the University does not pay for the staff time.

Roger Millar stated the question was whether the council refers this project or does the University petition and pay the fee. There was much discussion on this topic:

- What was the estimated cost of staff time. Mr. Millar replied the average cost of a rezoning is approximately \$8,000 of terms of staff time and the City picks up half of that through the fee. If the University paid the fee they would pay \$4,000 of the cost but if the City initiates this project the City would pick up the entire cost
- Would prefer to have someone that does not work for the University and someone that represents that ward make that motion.
- Councilwoman Hellegaard related a personal rezoning encounter and was concerned about the disparate treatment of what is done for the University versus what is done for the business community.

- If \$4000 was half the cost then it was appropriate for the University to share the cost.
- This was a government to government process and consideration should be given.

Mr. Millar clarified Councilwoman Hellegaard's encounter by saying that OPG does not make the decision whether the council initiates the zoning. Council refers the zoning, not OPG, and after the conversation Councilwoman Hellegaard chose not to make the referral. He explained it costs OPG a certain amount to do the rezoning; half of the cost is recovered when the applicant pays for it but none of the cost is recovered when the City pays for it. The Council makes the decision on whether the City or the applicant pays for the rezoning.

Jerry Ballas gave perspective from the University's standpoint regarding the rezoning:

- The University was looking at this from a public agency to public agency cooperation and support without any additional cost.
- The University does not have to comply with the zoning on its lands.
- The University will not initiate the zoning so the other option would be to go before the CiBOA and pay on a project by project cost.
- This zone runs through the middle of the stadium and cuts the facility service ground in half.
- The University would not be making any money on this rezoning.
- This is for the convenience of the City and the University and reduces the staff time and review for each project.
- What was the actual estimated average cost for the CiBOA versus the fees for rezoning. Mr. Millar replied generally established fees are at a fifty percent cost recovery rate. When the zoning is less than one acre it is \$2,080.00, more than one acre is \$ 4,160.00 and the University rezoning is more than one acre.
- Because this is project specific, have there been difficulties with public complaints or extra time for each project when brought before the CiBOA. Mr. Ballas replied because there are no adjacent property owners connected with this project there has been no objection.
- Two criteria that justifies the council-initiative rezoning are greater public benefit than single property owner wanting to enhance the ability to develop a parcel, and existing uses on the parcel that are out of sync with current zoning.

Councilman Strohmaier made the **motion** to direct staff to develop a recommendation for the Planning Board.

- Felt a good faith gesture from the University would be to pay half of the fee (\$2000.00) because they are not a regular tax pay but a multimillion dollar institution. This is a public institution and owned by the tax payers.
- The University chooses to freely move back and forth between being a business run organization to an educational institution.

Roger Millar reminded the Council that the City was picking up half of the cost of the CiBOA fees. So this could eventually end up costing the City more money in the long run to process the CiBOA hearing than to pick up this rezoning.

- The University has County property that needs to be rezoned, why not combine the two rezone. Mr. Ballas replied there needs to be an annexation process before the rezoning. It is two separate issues.
- The question was called, it passed.

The **motion** to direct staff to develop a recommendation for the Planning Board passed with 7 votes of 'aye' and 5 votes opposed (Councilwoman Rye, Councilwoman Hellegaard, Councilwoman Mitchell, Councilman Wilkins, and Councilman Haines).

Denise Alexander stated the annexation of the University property would be brought to the public hearing in mid June.

Councilman Wilkins asked for a cost estimate for this project. Mr. Millar replied OPG does not track time on individual projects, but said this project would probably be less expensive than the average project.

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. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
6. Discuss the implications of the Sonata Park court case ([memo](#)).—Regular Agenda (Bob Jaffe) (Referred to committee: 03/08/10)

VIII. Adjournment

The meeting adjourned at 10:35 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.