

Plat, Annexation and Zoning Committee Minutes

September 22, 2010

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

Members Absent: Marilyn Marler

Others Present: Lori Davidson, Jen Gress, Elaine Hawk, John Hendrickson, Ruth Link, Laval Means, John Newman, Jim Nugent, and Shelley Oly

I. Approval of Minutes

August 18, 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. Consider amendments to the Title 20 Missoula City Zoning Ordinance, Section 20.45.080 “Wind Energy Conversion Systems” as shown in Attachment 1. ([memo](#))—Regular Agenda (John Newman) (Referred to committee: 08/02/10) **HELD IN COMMITTEE**

John Newman explained that this was set for public hearing on September 27, 2010 for Title 20 Missoula City Zoning Ordinance, Section 20.45.080 Wind Energy Conversion Systems. He brought the Committee up to date on the review process so far:

- ✓ This item was brought before PAZ on May 26, 2010 and the Committee recommended the language in the Planning Board review draft of Title 20 be sent back to Planning Board for consideration after an agency review period.
- ✓ The contemplated language was sent out for agency review, interested party review throughout the State of Montana.
- ✓ Horizontal axis wind turbines are taller with larger turbine blades and are more effective in open areas where buildings do not prohibit the flow of the wind.
- ✓ Vertical axis wind turbines are shorter, the turbine blades are vertical and spins via a central axis like a large wind meter and are designed to pick up gusts of wind from all different directions and are more effective for residential areas
- ✓ Along with the comments received from the agency and interested party reviews the Planning Board came up with (Attachment 1 in the staff report). Some of the changes the Planning Board made included:
 - Section A - Changed the structure from building mounted to ground mounted.
 - Section B –The maximum size of the unit was 100 Kw and was changed to no more than 25 Kw because the rating was proportional to the size of the turbine blades.
 - Section C – Each lot would be permitted one turbine but can a person could have up to three per site per the conditional use process if a lot was zoned R-80 or larger.

- Section D- The unit needed to be set back in distance equal to 1.1 times the overall height of the system. This was governed by the maximum height of a zoning district however the size of the unit would be based on the size of the lot.
- ✓ The Planning Board discussed the lowest point of any moving elements for horizontal axis system the lowest point for any blade needed to be 20feet off the ground and the vertical axis system could be 10feet off the ground. This height facilitated the installation in residential areas.
- ✓ Mr. Newman stated that the operational noise may not exceed 55 decibels. He showed a noise table that listed an air conditioner generated 60 decibels of noise. He pointed out that these systems were quieter than an air conditioner.
- ✓ There was a change to the maintenance section per City Engineers that required identification keys to enable tracking of installations, the maintenance and abandonment section allow the building inspector to remove Wind Energy Conversion Systems (WECS) that were abandoned or in disrepair.

The floor was open for comment:

- 1) Councilman Strohmaier wondered why the ordinance stipulated 1.1 times. Mr. Newman replied that this was designed to add a margin of safety for maintenance issues or dismantling. Councilman Strohmaier would like to know the difference in decibels between the vertical and horizontal wind energy conversion systems.
- 2) Councilman Childers stated the phrase 'extended over the property line' could be construed differently and would like that language amended. He also wondered if there was a way to separate the phrases dismantle and removal because dismantling something was often a quick process and removal of something was a longer more dangerous process.
- 3) Councilman Wilkins felt that the time line of 12 months was too long and wanted to make sure that if a WECS was abandoned or a threat to the safety of the neighborhood that it would be removed as soon as possible. Councilman Wiener asked if the following language would address the concern: "Any wind energy conversion system that is in obvious state of disrepair and a threat to public safety will be deemed abandoned and must be dismantled and removed by the property owner. Any wind energy conversion system that is not operated for a continuous period of 12 months or more will be deemed abandoned and must be dismantled and removed by the property owner." Councilman Wilkins wanted the language to clarify a set date for dismantling the WECS's.
- 4) Councilwoman Hellegaard wondered what recourse the City had for dismantling a WECS if the property owner was in fiscal distress. Mr. Newman would need to research this matter further. Mr. Nugent responded that the provisions in the State Building Codes that the State adopts provides for the city intervening and taking action such as putting an assessment against the property. Chair Jaffe wondered whether there was a blanket statute in State Law that allowed for a city to step in for public health and safety issues related to building safety. Mr. Nugent replied only if the City Inspectors deemed the WECS was in disrepair and a hazard.
- 5) Councilman Haines stated there needed to be clarification in the length of time that would constitute abandonment because there are many people that leave Missoula for warmer climates during certain times of the year.
- 6) Councilwoman Rye requested to have a recording of what a wind energy conversion system sounded like so she could hear it. Mr. Newman could bring a decibel meter to the public hearing. Ms. Rye had more concerns with the vibration aspect than the noise issue. Mr. Newman replied there was a letter that addressed the vibration aspect in attachment 5C.
- 7) Councilman Weiner noted that there were a number of different models installed in Ennis at the Planetary Systems property. He added that this item was not about city installing wind turbines but allowing private citizens to install them.

B. Proposed text amendments to Title 20, Missoula City Zoning Ordinance, Section 20.05.040 Development Options and Table 20.05-3. ([memo](#))—Regular Agenda (Jen Gress) (Referred to committee: 08/02/10)[\(Ordinance Alternative\)](#) **HELD IN COMMITTEE**

Jen Gress explained this was a pre-public hearing update for the subsidized housing amendment.

- ✓ Planning Board sent approved language for the Committee's consideration that stated subsidized housing under Housing and Urban Development (HUD) or Montana Board of Housing (MBOH) would be allowed to have modified building standards including up to a 20% density bonus, smaller lot sizes, modified building standards would be required to be permanently affordability.
- ✓ Staff solicited comments from agencies, community housing organizations and interested parties. The only concerns came from the City Engineering and Building Departments with regard to the proximity of structures to the property line. They stated that with proper design this tool would be useful.
- ✓ The Planning Board made changes to the original option by amending the density bonus from a flat 20% increase for 50% of the units meeting area median income (AMI) guidelines to an adjusted ratio scale that allowed a density bonus of 10% increase for 30% of the units meeting 80% of the AMI guidelines to a bonus of 20% for 50% of the units meeting AMI guidelines.
- ✓ The Planning Board included town homes in the building types and wanted to see the phrase "permanent affordability" stated.
- ✓ The Planning Board wanted to make sure private developers could benefit from this option as well.

The floor was open to for public comment

Lori Davidson stated that the Missoula Housing Authority (MHA) was in favor of this modification. She asked the Council to consider making this a more useful tool for private developers. She stated one of the simplest ways to encourage private developers was to use a deed restriction on the affordable units in their development in exchange for the bonus. She pointed out there was a couple of properties that used the deed restriction, such as the Eaton Street Condominiums that were deed restricted to affordable incomes and monitored by realtors and the title companies. The MHA was not involved in ensuring the affordability aspect stayed from seller to buyer. Ms. Davidson stated this was easy to initiate but it took action from the governing body to remove the deed restriction

Chair Jaffe asked what aspects precluded the deed restriction. Ms. Davidson replied tying this to the MBOH and the HUD funding limited the use for the private developer. Chair Jaffe stated the intent was to come up with a governing mechanism that ensured that the income restrictions would be applied. Chair Jaffe asked that there be some revision to the language that had examples of how this could be regulated but not exclusively.

John Hendrickson stated that the deed restriction was part of the original language proposed by MBIA before it went to the Planning Board. The whole idea of expanding this referral was to invite private developers. Chair Jaffe asked if the language was stricken by Planning Board. Mr. Hendrickson stated in the affirmative. Laval Means pointed out that the term deed restriction was not in the original draft that went before Planning Board. The concept was that the language did not preclude doing a deed restriction; it was one mechanism of documenting and recording the affordability. The concept using a reference to MBOH or HUD was that they would be able to provide the screening for the potential buyers. Ms. Means stated the term 'subsidy' could be reviewed and staff could insure it did not preclude the possibility of allowing permanent affordability through a deed restriction. Ms. Rye asked if this could be codified to encourage private development. Elaine Hawk stated language was given to OPG that followed the statement with the phrase 'or a deed restricted property for residents who income falls below 80%.' Ms. Rye stated it sounded like it did preclude it and may need to explicitly state that private development with the guarantee of a deed restriction could get a bonus in density through doing some affordable housing.

Councilman Strohmaier suggested it would be beneficial to have potential amendment language available at the public hearing.

Chair Jaffe stated the ordinance should be concerned with the occupants of the homes meeting the AMI requirement. He asked staff to come up with revised language that had the idea of the guarantee, the permanent affordability, and the sliding scale.

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. 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 11:10am

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.