

## Plat, Annexation and Zoning Committee Minutes

May 25, 2011

10:05 a.m.

City Council Chambers, 140 W Pine

**Members Present:** Bob Jaffe, Ed Childers, Dick Haines, Lyn Hellegaard, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jon Wilkins, Cynthia Wolken,

**Members Absent:** Jason Wiener

**Others Present:** Denise Alexander, Mike Barton, Robin Carey, Brian Derry, Susan Firth, John Hendrickson, Mary McCrea, John Newman, Jim Nugent, Amy Rubin, Alex Taft, John Wolverton, Deni Forestek

### I. Approval of Minutes for [May 18, 2011](#)

The minutes were approved as presented.

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

### III. Staff Announcements

### IV. Consent Agenda Items

1. Review Montana Supreme Court Decision in Heffernan vs. Missoula City Council (Sonata Park Subdivision). ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 05/09/11)  
**REMOVE FROM AGENDA**

Dave Strohmaier referred this to the Committee. He wished to know if Council needed to take official action on Sonata Park and he thought it would be good to formulate a plan regarding making land use decisions going forward to avoid this problem in the future.

Mike Barton, Director of OPG, outlined some suggestions for the future:

- ✓ Council did not have to take any official action on Sonata Park.
- ✓ The land use map may need to be edited to reflect the text in the Growth Policy
- ✓ City Council may wish to revisit the land use map in the Growth Policy since it is dated and disconnected between the map and what is on the ground
- ✓ The use statements in the Growth Policy should be reexamined to be more explicit about applying Policy
- ✓ Staff has been directed to prepare separate staff reports for projects that require both rezoning and subdivision
- ✓ Staff has been directed to make a better effort to explain and recommend action that is supported by the Growth Policy
- ✓ Public officials and governing bodies should not demean or diminish the Growth Policy and its impact.

The floor was opened for discussion:

- ✓ The UFDA map was attached to the Growth Policy, does this present any implications? The land use designation map is more specific than UFDA. Mr. Barton suggested revisiting the land

- use map and incorporating densities that are more in character with what is seen in UFDA. UFDA points out that the zoning on the ground is in conflict with the Growth Policy.
- ✓ Does this mean that future projects should be judged stricter than in the past? Yes. On the other hand, there will be changes that merit changes in zoning, so this does not mean the City cannot rezone.
- ✓ How long would it take for OPG Staff to update the Growth Policy and Map, incorporate UFDA and make the Growth Policy a living document? The process would take at least 60 days, plus time to solicit community opinion.
- ✓ What is it in the decision that the court used to reject Sonata Park? Mr. Barton felt that the zoning was not in compliance with the Growth Policy; the subdivision was not considered. Attorney Nugent felt the court was talking about substantial compliance with the Growth Policy. The staff report pertained to the text of the Growth Policy, not the map; future staff reports need to be careful to avoid conflicts and inconsistencies.
- ✓ Specific language in the Growth Policy would solve future problems; right now it is not explicit enough. The Growth Policy should state the expectations of the community and serve as a concise guide.
- ✓ The City Council has done a great job with decisions in the past; the court upheld a decision five years ago in the Safeway case.
- ✓ Does this mean that Neighborhood Plans have more teeth? The notion of a neighborhood plan has not changed, it is not something binding.
- ✓ Would it be possible to recall the Growth Policy and not have one at all? Attorney Nugent indicated that, because Missoula is one of the most populous areas, it is required to have a Growth Policy. Laval Means added that if a city has zoning, they are required to have a Growth Policy.
- ✓ In the future, it is important for council to feel free to make unpopular decisions or raise controversial points without fear. The Growth Policy should be continually updated.

Chair Jaffe summarized the discussion into the primary issues for the City Council to look at going forward, which included:

- ✓ Changes should be made to the Growth Policy to show that the zoning and the text are cohesive;
- ✓ Care should be taken when formulating the Staff Reports to present the project to the governing bodies
- ✓ Council should receive a postmortem review from the City Attorney's Office regarding how the decision could have gone better, how the case was presented
- ✓ The Growth Policy itself should be something that lays down the expectations of the community as far as how it will grow.
- ✓ The Growth Policy should guide the city; however, there are sometimes conflicts.

Attorney Nugent shared some observations, which included:

- ✓ The Supreme Court noted this multiple times and the state's statute still says a Growth Policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law.
- ✓ He thinks a significant review has to be performed to address obvious conflicts. There were some inherent inconsistencies between what OPG Staff cited and their recommendations.
- ✓ Sometimes the Growth Policy is recommending something different than the actual land use and zoning that exists.
- ✓ If the Growth Policy says private property is to be used as Open Space, how can you approve development?
- ✓ Make sure public comment gets addressed after the public hearings, even if there are significant changes made.
- ✓ The general community goals should have primary consideration when doing neighborhood plans and should mesh with the Growth Policy.
- ✓ Mr. Barton has some good ideas on how to improve the Growth Policy and maps.

Public Comment included:

Robin Carey, one of the plaintiffs, commented that the key to this decision was that the court felt it was important that the Growth Policy be as neutral as possible without taking political atmosphere into consideration. The decision was clear between a regulatory document and the Growth Policy, citing that absolute compliance is required of a regulatory document and substantial compliance is required with the Growth Policy.

John Hendrickson wondered if the owners of Sonata Park were going to receive reimbursement for the work that had been done. Attorney Nugent reported that the owners did get an allocation for the sewer rights and if they did not utilize all the sewer rights, the city could buy them. They have been able to sell those rights to other people in the community.

Chair Jaffe did not want City Council to feel paralyzed about making a decision in the future on zoning and subdivision decisions because they have unanswered questions. He would like the Council to feel comfortable moving forward.

Chair Jaffe requested OPG to modify its work plan to review the Growth Policy in the interest of identifying conflicts and modifications to address issues with the map. He requested that OPG staff work at changing the format of the staff presentation. He would appreciate it if OPG staff could develop some recommendations to Council on how to put things on the record and how to address conflicts.

## **VI. Items to be Removed from the Agenda**

Update the Rattlesnake Valley Comprehensive Plan Amendment ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 04/02/07)

Dave Strohmaier asked that the above Item be removed from the **Held in Committee** items.

## **V. Held in Committee or Ongoing in Committee**

1. Annexation. (see separate list at City Clerk's Office for pending annexations) (Ongoing in Committee)
2. 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)
3. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
4. Resolution repealing resolution No. 7404 and declaring the annexation of Lots 53 and 54 Dinsmore's Orchard Homes No. 5 null and void. ([memo](#))—Regular Agenda (Jessica Miller) (Referred to committee: 01/10/11)
5. Resolution to annex and incorporate within the boundaries a certain parcel of land described as Linda Vista 12<sup>th</sup> Supplement, and zone the property Miller Creek View addition planned unit development with the underlying zoning of R-215 residential in the city all located in Section 13, Township 12 North, Range 20 West, P.M.M. ([memo](#))—Regular Agenda (Jessica Miller) (Referred to committee: 04/11/11)
6. A resolution to adopt the 2011 Missoula Active Transportation Plan as an amendment to the Missoula County Growth Policy and set a joint public hearing with the Missoula County Board of County Commissioners to review the Plan. ([memo](#))—Regular Agenda (Ann Cundy) (Referred to committee: 05/09/11)
7. Ordinance amending the text of the Southside Riverfront Neighborhood Character Overlay as described in Section 20.25.060 of the Title 20 Missoula City Zoning Ordinance. ([memo](#)) – Regular Agenda (John Newman)

8. Ordinance to rezone certain properties to be included in the Southside Riverfront Neighborhood Character Overlay as described in Section 20.25.060 of the Title 20 Missoula City Zoning Ordinance. ([memo](#)) – Regular Agenda (John Newman)

## **VI. Adjournment**

The meeting adjourned at 11:25 a.m.

Respectfully Submitted,

***Deni Foretek***

Recording Secretary

Office of Planning and Grants