

## **Plat, Annexation and Zoning Committee Minutes**

October 12, 2011  
10:05 a.m. to 12:00 noon  
City Council Chambers, 140 W. Pine Street

**Members Present:** Bob Jaffe, Ed Childers, Dick Haines, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, Jon Wilkins, Cynthia Wolken

**Members Absent:** Lyn Hellegaard, Marilyn Marler

**Others Present:** Jen Gress, Laval Means, Jim Nugent, Alex Stokman, Michael Tree, Amy Fisher, Terry Blair, Talbert DeMeester, David V. Gray, Deni Forestek

### **I. Approval of Minutes from September 28<sup>th</sup> approved as presented**

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

### **III. Staff Announcements**

### **IV. Consent Agenda Items**

### **V. Regular Agenda Items**

1. An ordinance amending Title 20, City Zoning Ordinance, as recommended by the Missoula Consolidated Planning Board, and shown in Title 20 maintenance amendments – 2011, Attachment A. Chapter 20.05 “Residential Districts,” Chapter 20.10 Entitled “Business And Commercial Districts,” Chapter 20.15 Entitled “Industrial And Manufacturing Districts, Chapter 20.20 Entitled “Open Space And Public Districts,” Chapter 20.25 Entitled “Overlay Districts,” Chapter 20.40 Entitled “Use- And Building-Specific Standards,” Chapter 20.50 Entitled “Natural Resource Protection,” Chapter 20.60 Entitled “Parking And Access,” Chapter 20.65 Entitled “Landscaping,” Chapter 20.70 Entitled “Miscellaneous Regulations,” Chapter 20.80 Entitled “Nonconformities,” Chapter 20.85 Entitled “Review And Approval Procedures,” Chapter 20.90 Entitled “Administration,” Chapter 20.100 Entitled “Terminology,” Chapter 20.105 Entitled “Use Classifications,” Chapter 20.110 Entitled “Measurements and Exceptions.” (Memo) (PAZ) (09/28/2011 PAZ) (Returned from Council floor: 10/03/2011) **HELD IN COMMITTEE**

Chair Jaffe directed the Committee to the memo with new attachments. Jen Gress gave a brief overview on the additional information requested by City Council at the October 7, 2011 meeting.

#### **Description of Micro-distillery:**

Jen Gress explained that an alternative option for the amendment addressing a micro-distillery was suggested by Councilwoman Walzer to read: A distillery that produces 25,000 proof gallons or less of liquor annually in accordance with MCA 16-4-310 through 16-4-312. This would ensure that the ordinance stays in accordance with the State rules.

Jason Wiener made the **motion** to adopt the ordinance amending Title 20, as shown in Attachment A with the following change to the amendment language: “A distillery that produces 25,000 gallons or less of liquor annually in accordance with MCA 16-4-310 through 16-4-312” for the description of micro-distillery.

**The motion was unanimously approved.**

#### **Definition of Dwelling Unit:**

Jen Gress directed the Committee’s attention to the three alternatives suggested for the proposed amendment to the definition of dwelling unit. In Alternative Option 1, the word

“complete” would remain in the definition; Alternative Option 2 is the same as the International Building Code which would be in harmony with the city building standards; and Alternative Option 3 would make it easier for enforcement staff to evaluate a dwelling unit and communicate a message to everyone about the typical features of a dwelling unit for zoning.

Renee Mitchell wondered what behaviors they were trying to encourage or eliminate and asked for examples. Laval Means explained that they wished to clarify what triggers a dwelling unit at the time of building permit to address density and impacts like parking, enforcement factors and/or working with the attorney’s office. One things, such as a wet bar, would not trigger this.

Public Comment:

- David Gray, Paradigm Architects explained that his biggest concern was to make sure that the Office of Planning and Grants was in step with the City Building Department. He cited examples where a wet bar in a basement or garage may trigger denial from city building department or OPG. He would like to see the building code in sync with the zoning code; otherwise there is no way to tell what is going on.
- Talbert DeMeester was concerned that this definition would affect a project for a commercial tenant adding a kitchenette to their unit.

Committee Discussion:

- Mr. Childers wondered if it would be a problem to refer to the International Building Code and make the commentary a regulation; this would reduce flexibility and make it better defined.
- Jon Wilkins would like OPG Code Enforcement Officers to give scenarios explaining the gray areas; he would not want to tie their hands.
- Pam Walzer felt that there are units in Missoula that are being rented out that are not in compliance. She felt that defining the unit as an independent living facility would help clarify it.
- Renee Mitchell would like to hear from the Building Department to see how they felt on this.
- Jason Wiener made a **motion** to adopt Alternative Option 2 to read: “A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation” with the commentary box that explains the features of a dwelling unit with the added statement: “The intent is to be consistent with the building code.”

**The motion passed with Ms. Mitchell and Mr. Haines voting nay.**

#### **Changes in Vertical Mixed Use**

Jen Gress explained that no changes were intended with vertical mixed use. She directed the Committee’s attention to the memorandum that had been attached to the referral memo. Chair Jaffe asked for public comment.

Public Comment:

Terry Blair with Mauer Construction had a couple projects on Spruce Street that were multi-dwelling units that required landscaping features, such as adding a plaza to the top of the buildings. This would raise the cost of the project. Mr. Gray explained that this was referring to changes in the vertical mixed use category and what a landscape architect could sign off on.

David Gray with Paradigm went through the changes that may affect some projects he is working on and future projects. He referred to his email to City Council based on his meeting with OPG at the Information Desk. If vertical mixed use is being moved from uses allowed in business and commercial districts and being added to 20.10.030 Residential Building types, then those buildings have to comply with multi-family residential standards, which would require 35% landscaping; if there are 10 units, the building would have to have a play area of 20% of

the lot or 40 x 80 minimum. He was not sure why the statement “no regulatory changes to vertical mixed use will occur with the proposed amendments” was being presented.

Laval Means explained that the proposed amendments that address mixed use are for clarification purposes and they do not change the regulations the way they’re used. The reason they proposed this amendment was to clarify that vertical mixed use should not be in the use table since it is a building type. Residential and commercial uses are still permitted in those commercial districts, which is why P, for Permitted, has been added to the general category of “household.”

Ms. Means understood that this could be confusing because of the two main distinctions—single purpose residential and vertical mixed use. Vertical mixed use has to be distinct: it has no density requirement, no lot area requirement, and no multi-dwelling standard requirements. Therefore, it needs to stand on its own in the residential table about bulk and building standards while the single purpose has to reference a density and a minimum lot area. In the multi-dwelling standards, it states that these standards do not apply to vertical mixed use.

Chair Jaffe asked for an example of the difference between mixed use and vertical mixed use. There’s not a lot of difference, there’s only a few standards that have to do with vertical mixed use: establishing a certain percentage minimum of commercial use, the floor-to-ceiling height (13 foot) requirement on the main floor.

Mr. Nugent suggested adding something to the Zoning Ordinance clarifying that this does not apply. Ms. Means pointed out that in the chapter referring to landscaping for the activity area it says that in addition to the general site landscaping the following provisions apply to multi-dwelling house and multi-dwelling building developments that include ten or more dwelling units, that’s when the activity area kicks in. A vertical mixed use is not a multi-dwelling building and does not have to meet the multi-dwelling standards. Chair Jaffe asked if that is clear in the zoning ordinance that a vertical mixed use is not the same thing as a multi-dwelling building. Ms. Means suggested adding a statement under the activity area requirements in the landscape chapter that this does not apply to vertical mixed use. Chair Jaffe felt that might be helpful.

Mr. Wiener suggested not striking the building types out of the uses table and adding the mixed use another building type to the table as well. Ms. Means added that if we retain the building type reference in the use table we would not need to add the new section 20.10.030 Residential Building Type.

**Chair Jaffe suggested that this topic be tabled in the interest of time.**

#### **20.65.100 Alternative Compliance for Landscaping**

Chair Jaffe asked for clarification of this issue that was raised earlier in the meeting. Ms. Gress explained that the proposed amendment here added a sentence to subsection B that read: “This exception does not apply to section 20.65.020.C Activity Area Requirements for Multi-dwelling Houses and Multi-Dwelling Buildings, the screening requirements in section 20.65.070.B.2 Roof-mounted Mechanical Equipment, or section 20.65.70.B.3 Trash Receptacles. This means that a landscaped architect licensed in the State of Montana cannot sign off on these three things as an alternative to meeting the standards. In Title 19, it was explicit that these three items were not permitted to be signed off on by a landscape architect and this amendment allows Title 20 to stay consistent with the original intent.

Mr. Haines felt that the average citizen would have difficulty understanding the discussion. Chair Jaffe summarized that this section of the code relieves developers from having to have strict compliance with regulations by saying a landscape architect can come up with something and sign off that it meets the intent. He felt this was liberal, progressive and helpful to the business community. The question was whether this variance process overstepped the original intent. When Title 20 rolled this in, it created exceptions that weren’t there before, which wasn’t the intent.

Public Comment:

David Gray, Paradigm Architects, felt that these landscape changes caused a problem for the landscape architect community. In Title 19, the landscape architect could comply with the landscape chapter to the greatest extent possible; in Title 20 the only exception to not comply is a landscape architect signing off. An urban development with over ten units needs to have a landscape architect involved due to having to comply with these three items and this can be problematic. He cited different examples where it would be hard to meet these regulations under this amendment.

Jason Wiener felt that Mr. Gray's argument was against the activity area and he agreed that some of this does not apply to the Downtown Master Plan. However, if there are some areas in the city where these rules should not apply, that would be a different discussion. Chair Jaffe agreed that this does not seem relevant to this amendment. Mr. Wiener felt that there were projects in the works based upon this exception being present and if they do away with the exception in the absence of re-evaluating the rule, they would be complicating things. If they were going to close loopholes, it should be done in conjunction with the rule.

Jason Wiener made a **motion** to leave 20.65.100 Alternative Compliance, as it is in the current code and then take up the activity area as a separate referral.

Discussion on the motion:

- Ms. Walzer wondered if they could exclude activity area and leave the recommended language for screening from mechanical units and garbage. Code requires that multi-dwelling buildings screen their garbage. Chair Jaffe felt it does not mean you do not screen garbage, it is saying a landscape architect can propose a plan for accomplishing the goals of the code, and that it may not be in strict compliance.
- Mr. Wiener asked staff what the mechanism in place was for review of the landscape architect's submitted plan—was it deemed alternatively compliant? Ms. Gress understood this to be true.

**The motion passed with Ms. Mitchell voting nay.**

**Tying transit service to transit infrastructure:**

At the City Council hearing, it was requested that transit infrastructure be connected to a time when Mountain Line would be serving those infrastructure items. Michael Tree, General Manager of Mountain Line, suggested amending section 20.60.140 to say: "When development is adjacent to or within 1/4 mile of an established public transit route, the City Engineer may require applicant to finance and construct public transit improvements, including bus pull outs and transit amenities such as shelters, benches, bike parking, map cases and signage along established bus route."

Stacy Rye felt that this language addressed the concerns and made a **motion** to add this language to the amendment.

Discussion on motion:

- Chair Jaffe asked what had been changed with this language. Ms. Gress explained that the amending language was limiting the area where these infrastructures can be placed, tying it to within a 1/4 mile of existing transit routes.
- Stacy Rye pointed out that it says "may" rather than "shall." She thanked Mr. Tree for his suggestion.
- Mr. Tree stated that this language is found where a traffic study is required and so this language basically gives the City Engineer the opportunity to look at the impact of the development and have the developer provide the necessary amenities.
- Ms. Rye asked if this should also be in general language as well—she would imagine that the trigger for a traffic study is a fairly large subdivision and it is the accumulation of

developments that makes public infrastructure necessary. She wondered if this should be somewhere else in the Ordinance. Ms. Gress explained that the proposed new paragraph is dealing with traffic studies; however, in addressing Ms. Rye's concern, similar language is being added to the subdivision regulations.

- Ms. Mitchell thought that requiring developers to finance and construct this infrastructure was going to add to the cost of housing and would prohibit affordable housing. She will not support the new language, although she would support bus pullouts.
- Chair Jaffe wondered if there was a requirement in the City Engineering code to require bus pullouts if they were anticipating something like that in the future. Mr. Harby, City Engineering, said they are an important part of the subdivision regulations that are being rewritten. City Engineering does have the ability to require right-of-way improvements including transit amenities.
- Mr. Haines wondered what criteria the City Engineer would base his decision on regarding these amenities. If Habitat for Humanity wanted to put up a development, it might cause them problems. Ms. Gress pointed out that traffic studies are only required for developments that generate 200 or more average daily trips.

Ms. Rye felt that this new language addressed all the concerns and that if a development was anticipated to cause 200 or more average daily trips a day that it would need transit. She called for the question.

The call for the question failed with Mr. Haines, Ms. Mitchell, Mr. Wilkins, Mr. Wiener and Mr. Jaffe voting nay.

Public Comment:

- Talbert DeMeester was concerned about the cost of the traffic study, the structures, the parking requirement, and the bus pullout, what happened if the bus route moved. He wondered if an SID would help him to cover these costs. Each time these rules are put in, such as the 13-foot ceiling, it causes him problems. All these expenses raise the cost of the units which in turn raises the cost of all units in town.

Discussion from the Committee:

- Mr. Wilkins was fine with the language presented. Regarding increased value of land, this has been a big concern; the more regulations, the higher the cost. We do need regulations but need to pay attention to how this raises land values.
- Mr. Wiener will support the motion and would like to offer a friendly amendment that the word "amenities" be changed to "facilities" to show that transit is not frivolous but an integral part of getting around otherwise these things would not be required. Ms. Rye accepted this friendly amendment.

Ms. Walzer felt that one of the key points is that the language states "may" and not "shall" which would trigger a discussion between the City Engineer and the developer. She is in favor of this because public transportation is necessary.

**The motion passed with Mr. Haines and Ms. Mitchell voting nay.**

Due to time constraints, the Title 20 Maintenance topic was continued at the next meeting.

- 2, Discuss clarifications to the regulations for non-conforming uses and structures in Title 20, Missoula City Zoning Ordinance, especially pertaining to 20.80.040 Nonconforming Uses, 20.110.050 C3 Exceptions to Side Setbacks, and 20.80.030 Nonconforming Structures. (Memo)—Regular Agenda (Tom Zavitz) (Referred to committee: 08/22/11) **HELD IN COMMITTEE**

Due to time constraints, this topic was tabled until next meeting.

## **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. 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)
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: 01/10/2011)

## **VIII. Adjournment**

The meeting adjourned at 12:03 p.m.

Respectfully Submitted,

***Deni Forestek***  
Recording 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.***