

Plat, Annexation and Zoning Committee Minutes

May 27, 2009

11:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

Members Absent:

Others Present: Gary Bakke, Jen Gress, Jim Hausauer, Ruth Link, Laval Means Roger Millar, Ryan Morton, Jim Nugent, Lewis YellowRobe, Tom Zavitz and Shelley Oly

I. Approval of Minutes

May 27, 2009 Not Available.

II. Public Comment on Items not on the Agenda

Jim Hausauer, a member of the Franklin to the Fort Neighborhood Council invited the City Council to attend a public meeting on May 28, 2009 at Franklin School at 5:30 p.m. to discuss the Planned Neighborhood Cluster (PNC) for Hill and McCullough, located southwest of Franklin Park. The developer wants the Neighborhood Council to give up the primary asset in this PNC which is a trail that would connect the park to the PNC as well as to the corner of Eaton and Spurgin Road. The only issue that was problematic in the PNC was the configuration of the lots.

III. Staff Announcements

Roger Millar announced that at the next PAZ meeting of June 3, 2009 Greg Sullivan, the former Planning Director for Gallatin County led the effort to develop a transfer for Development Rights Ordinance for preserving agricultural land in Gallatin County. Mr. Sullivan is currently the City Attorney for the City of Bozeman. He will give a presentation on the process, the procedure that was followed and what was learned from this project. The Board of County Commissioners has been invited to the meeting.

IV. Consent Agenda Items

V. Regular Agenda Items

- A.** Consider the proposed Title 20, Missoula City Zoning Ordinance Rewrite ([memo](#)).—Regular Agenda (Laval Means) (Referred to committee: 05/18/09) [Zoning Policy Update](#) (**HELD IN COMMITTEE**)

MOTION: The Committee recommends the City Council set a public hearing on June 22, 2009 to consider repealing Title 19 in its entirety and adopting Title 20 and repealing Title 2.84, the Historic Preservation Committee in its entirety.

Roger Millar pointed out there were two recommended motions before the Committee today. The first motion was to set a public hearing for an Ordinance repealing Title 19 in its entirety and adopting Title 20. The second motion was to set a public hearing for an Ordinance repealing Title 2.84, the Historic Preservation Committee in its entirety. The second motion was mentioned because the Historic Preservation Commission was authorized in both Title 2.84 and Title 19. OPG proposed to place the Historic Preservation Commission in Title 20.

Mr. Millar gave a brief [process overview](#) of the requirements in State law and the Municipal City Code for the amendment of the zoning regulations.

- ❖ Page 1 - MCA 76-2-203 procedure to administer certain annexations and zoning laws-hearing and notice. Subsection (2) requirement of a public hearing and fifteen days notice of the local newspaper.
- ❖ Page 2 - MCA 76-2-305 alteration of zoning regulations – protest.
- ❖ Page 3 – Chapter 19.72 Amendments, 19.72.10 amendment to general regulations.
- ❖ Page 3 – 19.72.30 Decision and Protest.
- ❖ Page 17 – The Public Involvement Plan

Mr. Millar concluded that based on the above OPG recommended and City Council directed that the draft ordinance be submitted to the Planning Board for its review and the Planning Board has made a recommendation. He stated that some members of the public raised concerns about the rewrite versus rezone issue during the Planning Board public hearing. Mr. Nugent issued several legal opinions regarding the process. One legal opinion confirms that there are two separate processes for amendment in City Code. One process is for general amendments and a separate process exists for the changes to zoning designations (boundary changes). There was a discussion about when does a rewrite become a rezone of property. Another legal opinion addressed three court cases from other States and indicated that significant substantive revisions to permitted uses within a Zoning District might rise to the level of requiring a rezoning process. The advice OPG received from the City Attorney was to find if any permitted uses were removed from the Zoned Districts, or any use that was not permitted before was made into a permitted use. As a part of its public hearing the Planning Board reviewed all the zone districts to make sure no permitted uses were eliminated that were allowed in Title 19 and that none were added.

The floor was opened for discussion:

1. Jon Wilkins asked what the difference was between citizen initiative zoning changing zoning from "A" to "R-1" and a City wide zoning. Roger replied a group of property owners approached the City about rezoning their property under 19.72.20 to change the zoning designations. The property owners went through a rezone process to change their property from "A" to "R-1". The City is currently using 19.72.10 amendments to the general regulations. 19.72.10 amends the zoning regulation including taking the name of the R-1 District and changing it to R 5.4 and taking the A District and changing it to R 5.4 and changing the regulations in those districts so the districts are the same for the entire City. He added that the property owners could have come to the City Council to inquire about a general regulation amendment to combine those two zone districts into one for the entire City as opposed to a smaller geographic part of the "A" zone. Jim Nugent added that a name change is not a substantive change.
2. Marilyn Marler understood that just changing the name of a zoning was not a rezone. She stated that however, there were a number of issues that were more than changing the name. There issues keep coming up and need to be discussed to decide whether they are a substantive change. She stated some of the issues she had heard discussed include giving too much control to the Zoning Compliance Officer, building heights in certain districts, and ADU's. Mr. Millar replied that Ms. Means would go through the substantive issues that were identified at the end of the advisory group process and the action Planning Board took on each of those items. Mr. Millar responded that the rewrite process anticipated substantive change. In the Spring 2007 City Council charged the Office of Planning and Grants to go to the community, have a substantive discussion with what was wrong with Title 19 and bring back a recommended Title 20 to City Council, which was done. Mr. Millar thanked Laval Means, Tom Zavitz, Mike Barton, and Jen Gress and all who participated in this process.
3. Chair Jaffe stated the goal between now and the pre public hearing meeting would be to have the members come up with a list of issues that need to be addressed.

Jason Wiener made the motion to set the public hearing for June 22, 2009. Stacy Rye made a friendly amendment to combine the other two motions; to repealing Title 19 in its entirety and adopting Title 20 and repealing Title 2.84, the Historic Preservation Committee in its entirety.

She stated she remembered voting to clean up the language in the zoning rewrite and making it more user friendly. Mr. Wiener accepted the friendly amendment.

Public Comment on motion to set public hearing

Rocky Seinhert stated in the portion of the State law that Mr. Millar was presenting there was a section that was missed which was 76.2.304 that dealt with the purposes of zoning. 76.2.304 stated, "Zoning regulations must be made in accordance with the growth policy." He added this Committee was making regulations when adopting Title 20. He noted that nowhere in the process have these particular factors been discussed. He mentioned the Lowe test that originated with a Missoula court case concerning rezoning a piece of property. When a piece of property was rezoned there was a list of twelve criteria that needed to be followed. He wondered why those twelve criteria have been omitted when addressing zoning regulations. Mr. Nugent offered a legal opinion regarding the Lowe Test. He pointed out the Lowe case dealt with a down zoning and rezoning and had nothing to do with the Growth Policy Master Plan, Comprehensive Plan or subdivision because there was nothing applicable to the land. He added that no one has stated any specific issue that needed to be addressed or discussed. There was a legal opinion issued this year that goes into detail concerning the Lowe Case and the Lowe case analysis and sets forth in its entirety what the Supreme Court decided. Roger Millar stated that all the legal opinions are posted on the Zoning Missoula website.

Ryan Morton with the Building Association extended an invitation to any Committee member who has concerns with the Zoning Rewrite and offered legal advice and/or other legal opinions through the National Association.

The combined motions amended passed with 6 votes of 'aye' and 5 votes opposed (Mr. Hendrickson, Mr. Wilkins, Ms. Hellegaard, Mr. Haines, Ms. Mitchell). Ms. Marler was absent.

Mr. Millar reminded the Committee that Ms. Means has assembled a list of the substantive issues and would add another issues.

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. Discuss council's interest in pursuing a negotiated settlement over disputed trail conditions for Clark Fork Terrace No. 2 Subdivision ([memo](#)).—Regular Agenda (Mayor Engen/Jim Nugent) (Referred to committee: 02/25/08)
4. 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)
5. Orchard Homes discussion and work session to set a foundation for considering annexation, rezoning, and subdivision proposals within the context of City land use and infrastructure policy. ([memo](#))—Regular Agenda (Roger Millar) (Referred to committee: 07/14/08)
6. Correct the conflict in the height calculation regulations, between written language (a building envelope shall be established by showing the maximum vertical height allowed by zoning from finished grade) and the drawing on [page 151](#) of the [Zoning Ordinance](#).—Regular Agenda (Ed Childers) (Referred to committee: 3/27/06)
7. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
8. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)

9. Consider an interim emergency ordinance for proposed amendments to the City Zoning Ordinance, Chapter 19.90 Signs ([memo](#)).—Regular Agenda (Tom Zavitz) (Referred to committee: 12/15/08)
10. Consolidated Public Review Draft of the Missoula City Zoning Ordinance submitted by Duncan Associates to the Missoula Consolidate Planning Board for its review and recommendation ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 02/09/09)

VIII. Adjournment

The meeting adjourned at 12:10 pm.

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.