

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

June 03, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

**Members Absent:** Lyn Hellegaard

**Others Present:** Denise Alexander, Gary Bakke, Bob Brugh, Bill Carey, Jean Curtiss, Mitch Doherty, Paul Forsting, Elaine Hawk, Paul Hubbard, Nick Kaufman, Michele Landquist, Mary McCrea, Laval Means, Roger Millar, Lisa Moisey, Ryan Morton, Michele Reinhart, Greg Sullivan, Tim Worley, Lewis YellowRobe, and Shelley Oly

**I. Approval of Minutes**

May 20, 2009 were approved

May 27, 2009 were approved

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

**III. Staff Announcements**

Denise Alexander reminded Committee members that when they receive the agency packets on subdivision and zoning applications there was no need to comment or respond back to the OPG staff because the packets are sent out as informational items only. If there are questions please e-mail or call OPG staff.

**IV. Consent Agenda Items**

- A.** Approve or deny the motion to continue the tabled status of Clark Fork Terrace No. 1 to September 14, 2009 ([memo](#)).—Regular Agenda (Tim Worley) (Referred to committee: 06/01/09 **(REMOVE FROM AGENDA)**) (*Powerpoint Presentation may take a while to load. Please be patient*)

**MOTION: The Committee recommends the City Council approve to continue the tabled status of Clark Fork Terrace No. 1 to September 14, 2009.**

Tim Worley gave a brief [powerpoint presentation](#) of Clark Fork Terrace No. 1

- Clark Fork Terrace No.1 was a proposal for 38 lots on 27 acres, located south of the Canyon River Development in the East Missoula area.
- The project went before the Planning Board on December 2, 2008, and before PAZ twice in mid December 2008.
- Council tabled the subdivision at the hearing before City Council on December 22, 2008, according to Rule 24 the six month limit on tabling would expire June 22, 2009.
- One option would be to remove this item from the table. Second option would be to continue the tabled status. This item would cease to exist if an option was not taken.
- If the tabling option is chosen Clark Fork Terrace No. 1 can be tabled for an additional period of time or until a specific condition was met.
- The one year deadline for review of the subdivision is September 30, 2009 and staff recommended the continued tabling of Clark Fork Terrace No. 1 until September 14, 2009. This would allow the subdivision to be heard by the PAZ Committee twice prior to the subdivision being heard by City Council, with all meetings occurring after September 14<sup>th</sup> but before September 30<sup>th</sup>.
- The developer has granted an extension to September 30, 2009.

Ed Childers asked about the status of the lawsuit. Tim. Worley replied he did not know the status. Rob Brugh replied the judge had stated, "He gets it done, when he gets it done." Mr. Childers asked if the

status of the tabled item could be continued. Mr. Worley replied it could. He made the motion to continue the tabled status until September 14, 2009.

John Hendrickson asked if this continuation was initiated by the City or the developer. Mr. Worley replied staff was notified by the City Clerk's office of the June 22, 2009 deadline which was the six month tabling deadline. It was staff's choice to initiate the continuation.

The motion to table the subdivision until September 14, 2009 passed unanimously and will go on the Consent Agenda.

## **V. Regular Agenda Items**

### **B. Presentation on and discussion of Transfer of Development Rights ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 06/01/09. **(REMOVE FROM AGENDA)**)**

Roger Millar stated this was an informational item. He felt this presentation would be good information because of the various issues being addressed by the Council and the Board of County Commissioners with regard to agricultural policies. One of the tools that have been talked about in various discussions was the transfer of development rights (TDR) to protect agricultural land while providing the landowner some economic benefit. Mr. Millar introduced Greg Sullivan, a former Director of Planning in Gallatin County and current City Attorney for Bozeman to describe Gallatin County's experience with TDR. The goal of this discussion was to educate and inform.

Mr. Sullivan showed a powerpoint presentation on the process of Transfer Development Rights (TDR) and Transfer Development Credits (TDC). He stated the transfer development right program was part of the growth policy implementation program with the main thrust being neighborhood planning. He added in concert with this was an effort was to develop a rural zoning document for all the unzoned lands in the Gallatin County. The rural zoning had three main components to it: density regulation, clustering developments, and transferable development rights and credits.

He added the lesson learned in the transfer development rights program was figuring out what worked for the Gallatin County because of its unique culture, the regulatory environment, and the environmental constraints.

He showed the majority of the Gallatin valley was set up to have some type of neighborhood planning structure. The rural areas are the "sending areas" for TDR under the proposed program. He stated that the growth area triangle between Bozeman, Four Corners and Belgrade was the "receiving areas." The program was set up initially for County only sending areas into County only receiving areas. The rights and credits were to be transferred into the rural properties into this growth area triangle.

Mr. Sullivan stated that plans need tools in order to be implemented and TDR and TDC are not plans but tools. This tool can be fashioned in a way that would work best for Missoula and allow for a diversity of application. As an example in the Gallatin County transferable development credits were applied broadly against the landscape instead of focusing on individual resources.

- Transferable development rights are different from transferable development credits.
- TDR's are entitlements that provides a right to build out at a certain density, TDC's are value based credits that can be sold or transferred to create an increased density to another location.
- A regulatory structure is needed to make this program work.
- Transfer rights or credits are taken from a rural "sending area" to a "receiving area" an area where development is slated to go in exchange for some kind of compensation.

He explained that the stakeholder in the TDR program was the rural landowner, the growth area landowners and the public. The sending landowners need to benefit by receiving some value from their land. The receiving landowners need to benefit through the infrastructure off set program. The public would benefit through open space protection and decrease in cost of services.

Mr. Sullivan shared Gallatin County contracted with a group out of California called Solimar that did economic market analysis for TDR programs. He stated that the details of the Solimar report were

available on the Gallatin County Planning Department website. He summarized Solimar created some development scenarios that reviewed:

- ✓ The kinds of projects developers were building.
- ✓ The increment of density that would be allowed through the purchase of a credit.
- ✓ How much would a developer be willing to pay for an increment of density.
- ✓ There were two methods that Solimar recommended for determination of credits for rural landowners.
  - Straight acreage based method for TDC sold.
  - Value based method for TDC received.
- ✓ No upzoning for the developer, if the developer wanted more zoning they would have to go through the TDC process and buy the credits.

The floor was opened for discussion:

1. Stacy asked how the people in the triangle feel about the growth designation.

Mr. Sullivan replied that during process there was a lot of discussion on what was acceptable for the triangle in terms of future development. Part of the TDR program was to mitigate an infrastructure off set program. The basic idea was that for every dollar a developer would spend on additional credits that would come from a receiving area there would be some kind of public off set of those dollars if the developer spent money on specific types of infrastructure that help mitigate the impacts of the increased density. There was a need to have a balance between the benefits that accrued to the County with the conservation of open space in the rural parts and the burdens that get placed on County residents who end up having that increased density coming to those neighborhoods.

2. Dave Strohmaier asked if the zoning districts in the receiving area would have language written into the zoning regulations that would describe that density could be increased as an option through purchasing credits. Mr. Sullivan replied that each zoning district that wanted to be either a sending or receiving area would have specific language to that effect.

3. Chair Jaffe stated that Missoula has a desire to see higher density and wondered how this TDR program could be implemented here. Mr. Sullivan replied that the TDR program would be dependant upon what policy objective that needed to be fulfilled to fit Missoula. Roger Millar agreed that Missoula would have to create its own plan and this transfer development rights plan could be used as a tool in many different ways. The basis for this discussion was to educate and inform so the Council could choose to initiate this process or not.

4. Jon Wilkins asked if the transferable rights come close to the City limits do people still have the rights of protest. Greg Sullivan stated it would depend how the TDR program was written. Roger Millar there would be an opportunity of right to protest if zoning was changed to allow TDR by right but would not at the project level once the zoning was in place.

5. Dave Strohmaier asked how to craft sending and receiving zones immediately adjacent to Missoula for the purpose of preserving ag lands so those zones would benefit. Mr. Sullivan replied the concept would be only within the planning jurisdiction or defined area so the benefits would be received by the people in that community.

Ryan Morton stated that there were fewer people like custom builders and developers that may or may not pay for density. He added through the UFDA process it was learned that there are over 5000 entitled lots and neighborhoods don't need higher density so he wondered who would pay. He agreed the TDR program make more sense for the County than for the City.

Nick Kaufman asked who would compensate the landowners who transfer their development rights. Who was going to accept the increased density? How were they compensated for the increase in that density? People that will pay for the open space are the people in the future who will buy the new homes and they are being taxed with increased home costs to in order to preserve the agricultural land. He stated he did like the idea of the off set for the developers that come from the public sector for the infrastructure.

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

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)

## **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)
11. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
12. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)

## **VIII. Adjournment**

The meeting adjourned at 12:00 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.***