

Plat, Annexation and Zoning Committee Minutes

June 10, 2009

9:35 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: Denise Alexander, Jennifer Anthony, Gary Bakke, Collin Bangs, Janene Caywood, Ken Duce, Delia Hagen, Nick Kaufman, Ruth Link, Jamie Lockman, Linda McCarthy, Ryan Morton, Michelle Bryan Mudd, Philip Maechling, Cynthia Manning, Laval Means, Roger Millar, Mike Monsos, Jim Nugent, Tim Worley and Shelley Oly

I. Approval of Minutes

June 3, 2009 approved

II. Public Comment on Items not on the Agenda

Collin Bangs made it clear that he was not speaking on behalf of any groups that he belonged to but that he was speaking on behalf of his children and anyone looking for affordable housing. He commented that the new zoning ordinance was still a work in progress. Mr. Bangs felt that the existing zoning ordinance was unworkable, not understandable and could not be interpreted. He cited the example of Windsor Park, a residential development that could not happen under the current zoning ordinance. The reason Windsor Park existed now was because it was bought in under County zoning and the developers wrote the zoning district, annexed the project into the City and started building homes. It was not good for the future of Missoula to have developers writing their own zoning ordinances. Everything should be placed under one understandable, interpretable, well written zoning ordinance. The City of Missoula has tried twice to pass a zoning ordinance. This third attempt was a more involved process. If this Ordinance failed the City of Missoula would be condemned to live with the old zoning ordinance. For the sake of everyone's future, Mr. Bangs begged Council to not make this a political football but to make this the best ordinance possible and get it passed.

Nick Kaufman, owner of WGM group, co-chairman of Chamber and a member of Adapt agreed with Mr. Bangs and spoke about a commercial mixed use example at the corner of Russell and South Higgins. This was a mixed development with enhanced wetlands, commercial and retail in the neighborhood, and affordable housing all in one project. None of this could have been designed under the current zoning ordinance. He echoed Mr. Bangs concerns about the use of the existing ordinance and that what was proposed was much more workable, consistent and better for the future.

III. Staff Announcements

IV. Consent Agenda Items

- A. Approve or deny a request to create a phasing plan for The Gables Subdivision, including final plat submittal deadlines of May 26, 2014 for Phase 1, May 26, 2016 for Phase 2 and May 26, 2018 for Phase 3 ([memo](#)).—Regular Agenda (Tim Worley) (Referred to committee: 06/08/09 **(REMOVE FROM AGENDA)**)

MOTION: The Committee recommends that the City Council approve the request to create a phasing plan for the Gables Subdivision, including final plat submittal deadlines of May 26, 2014 for Phase 1, May 26, 2016 for Phase 2 and May 26, 2018 for Phase 3 as illustrated in Sheet 1 of 1 dated May 2009, subject to the amended conditions of approval in Attachment G.

Tim Worley gave a [power point presentation](#) on the creation of a three phases of the Gables Subdivision.

- This 42 lot subdivision was located in Orchard Homes, northwest of Hawthorn School, adjacent to Hiberta and 3rd Street.
- The subdivision was approved May 22, 2006 with a preliminary plat approval deadline of May 26, 2008 extended to May 26, 2009.
- The developer requested another extension and was informed the extension could only be done via phasing.
- Approved preliminary plat approval deadline for the three phases would be May 26, 2014 for Phase 1, May 26, 2016 for Phase 2 and May 26, 2018 for Phase 3.
- Agency comments from City Engineering recommended storm drainage be installed with 3rd Street and Hiberta Street construction. Since most of Hiberta Street would be disrupted at Phase 2, the complete street needed to be completed by Phase 2 (including the section adjacent to Phase 3).
- There are 26 Conditions of Approval with amendments to reflect the appropriate phase for completing work.
- Storm sewer facilities were added to conditions requiring street construction.
- Staff approves the phasing plan for the Gables Subdivision.

Nick Kaufman explained the request for the plat extension was because of the economic downturn. This subdivision is woven into the infrastructure plan of the City and completion of the City of Missoula sewer in Orchard Homes. He encouraged the Committee members to give consideration to the requested phasing plan.

Chair Jaffe asked why the corner property was included in Phase One. Nick Kaufman replied there would be future parkland dedication included with Phase One and the primary importance would be preservation of the riparian area. Chair Jaffe asked if there was public access along the levee and whether the gate that crossed Hiberta Street was public access. Mr. Kaufman replied there was public access along the levee but did not know whether the gate was but he could find out.

Jon Wilkins asked this was the property that came in without zoning. Mr. Kaufman replied the City approved the subdivision but were unable to reach a consensus over protest on the zoning. Tim Worley stated this property had been posted and noticed. Mr. Wilkins asked if the phasing plan comes down to the subdivision being zoned. Mr. Kaufman responded the subdivision could continue because it had received preliminary plat approval under the provisions of the Municipal Zoning Ordinance for unzoned land. It can continue infrastructure and the built environment without and not be in violation of the zoning.

Stacy Rye moved that the Council approve the phasing plan as presented with the condition in Attachment G. The motion passed with one abstention (Jon Wilkins). This would go on the Consent Agenda.

B. Consider referring the draft Historic Preservation Ordinance to the Missoula Consolidated Planning Board for its review and recommendation to the City Council as an amendment to the Zoning Ordinance. ([memo](#)).—Regular Agenda (Phillip Maechling) (Referred to committee: 06/08/09) (REMOVE FROM AGENDA)

MOTION: The Committee recommends the City Council approve that the draft Historic Preservation Ordinance be referred to the Missoula Consolidated Planning Board for a public hearing, review and recommendation by the Planning Board to the City Council.

Roger Millar explained in 2008 the Committee members had expressed concerns with the earlier Historic Preservation Ordinance draft document. He pointed out that those concerns have been addressed and the new proposed draft Historic Preservation Ordinance was ready to be sent to the

Planning Board for their review. The document that was discussed in 2008 was not incorporated into the zoning code rewrite project because of the need to address Council and Planning Board concerns with the draft. The draft ordinance was divided into two pieces. The section authorizing and empowering the Historic Preservation Commission is in the proposed Title 20 under Section 20-90-030 Historic Preservation Commission. (HPC) He explained that language replaced the language in Title 19 that created the HPC. It also replaced the language in Title 2.84 that created the Historic Prevention Advisory Commission. That is why 2.84 was being repealed. The Appeals of HPC decisions section needs revision. As it currently exists in 20.90.030 HPC decisions would be appealed to the CiBOA. Mr. Millar recommended the Committee consider changing the language to follow the language in the Design Review Board that stated review of any appeals would then go to City Council. Renee Mitchell asked if the review of any appeals from the CiBOA went to City Council. Mr. Millar stated no, any appeals of the CiBOA went to court.

Mike Monsos, a representative of the HPC stated this document was a great tool to preserve structures that are already in the register and provided a means to protect historic buildings. He added this document was not an effort to save every building in Missoula. The document was not meant to impede any process but would act in parallel with the process. This document would give the means and tools with which to work with historic buildings and districts in Missoula and to make informed decisions.

Michelle Mudd, director of the Land Use clinic, gave a brief background on the Historic Preservation Ordinance. She stated two years ago the clinic became involved in drafting the ordinance. The HPC identified a need to have a regulatory mechanism that was flexible enough to protect resources in the community but predictable enough for those involved in the process. The current regulations are outdated because of the cumbersoness of them. The regulations were not specific enough for landowners to rely on and understand the process of review. As such they were not applied to areas other than Ft. Missoula and the Roosevelt block.

The clinic looked at various models ordinances from a variety of states across the country and also some federal model ordinances. The primary goal was to move away from requiring every historic resource to have its own zone. There are only two zones in Missoula, the Roosevelt block and Fort Missoula. What was proposed was to designate resources in the community for protection at the local level. There would be a local inventory that would contain everything that had been put on the National Register so that the National Register criterion was consistent with the local inventory. This would give the HPC the ability to review projects affecting individual resources and districts. There would be a process for dealing with new construction or the alteration of homes that are not contributing to the historic nature of the district. The local inventory list could be found under Section 20.030.50.

- ❖ Once the local inventory is addressed there are a set of activities for a property and those activities are subject to the HPC review.
- ❖ The activities are described in the Alterations, New Construction, Relocation and Demolition Section.
- ❖ Those activities are standard and listed in the current Ordinance.
- ❖ Depending on the action taken the review could be altered.
- ❖ There would be standardized review criteria for any actions.
- ❖ In addition to standardized review criteria there are criterion for a particular property to have driven context design guidelines.

Mr. Millar added that the standard review criteria listed in the current ordinance are the Secretary of Interior's standards for rehabilitation that are national standards. This ordinance would give the historic district neighborhoods the ability to propose historic guidelines that would be unique to that neighborhood.

Ms. Mudd stated within the historic districts the properties are classified as contributing and non contributing resources. Contributing resources are historic resources and non contributions resources are the non historical other resources. Activities that impact contributing buildings would require a certificate of appropriateness. A non contributing resource would not require a certificate of appropriateness unless that property was demolished and then the new construction would

require this certificate. An alternative compliance section had been added to work with landowners with undue hardships. Another alternative would be in the demolition section that gave the landowner the opportunity to get rid of a structure but also provided the Commission with a slow down mechanism to be able to explore alternatives to purchase the building. If the building was ultimately demolished the building would be preserved through documentation.

The floor was opened for discussion.

1. Ed Childers asked if a listed property could receive a determination of eligibility with out the owners consent. Michelle Mudd stated traditionally with the owner's consent that a structure was listed on the National Register. Mr. Millar stated this was one of the issues of concern. He added that it was his recommendation to limit eligibility to any property listed in the National Register because properties can only go on the Register with the owner's consent; however this discussion was about sending the proposed draft to the Planning Board. Ed Childers wondered why interiors were not considered. Ms. Mudd pointed out that the clinic proposed the provision that interiors could be considered with the owner's consent. Mr. Millar added interiors that have been protected through voluntary compliance. Steve Alder stated the general concept of the ability of protecting interiors falls outside of the responsibility to protect the General Health, Safety and Welfare of the public while the character of historic buildings and districts does falls under General Public Welfare.

2. Stacy Rye asked how many properties were on the Historical Register. Philip Maechling replied there were 3500 properties in the nine districts plus the 68 that are individually listed.

Ms. Rye asked what if the property was not on Historic Register. Mr. Millar stated the goal was to provide regulations that protected the properties that were already listed on the Historical Register.

3. Chair Jaffe asked how this compared with the neighborhood character overlay. Roger Millar stated the neighborhood character overlay goes beyond the historic district. It could work together with the historic district.

4. Dick Haines asked what role the zoning officer plays in the HPC. The Historic Preservation Officer is staff to the Commission and made administrative decisions that are appealable to the Commission and then be appealable to City Council. THE HPC officer worked directly for OPG. He felt the appeal process needed to be clarified.

5. Jason Wiener asked how the Certificate of Appropriateness would operate and what would the fees be. Mr. Millar stated the fees would have to be established and bring a resolution to the Committee for consideration or adopt it without fees.

6. Jon Wilkins asked for the Planning Board to look at the phrase "practical difficulty."

7. Chair Jaffe asked how the area surrounding the historical building would be affected if the structure was preserved but the surrounding area was not. Mr. Millar replied that such a proposal would be an alteration to an historic resource. There would be a certificate of appropriateness application, the HPO would take it to the Commission, there would be a public hearing, the Commission would make a decision on the certificate of appropriateness and any appeal would be taken to the Council to have the ultimate say.

8. John Hendrickson asked how the historic downtown core fit into the Downtown Master Plan. Mr. Millar stated the HPC was on the steering committee and contributed to the Downtown Master Plan.

Jon Wilkins made the **motion** to move this proposed draft ordinance on to the Planning Board.

The floor was opened for public comment.

Linda McCarthy stated this ordinance affected the City of Missoula. The MDA supports the HPC. The MDA still felt there should be continued dialogue.

The vote in favor of the motion was unanimous and would go under the Consent Agenda.

V. Regular Agenda Items

- A. Schedule a special presentation by the National Trust for Historic Preservation on the sustainability, economics and heritage role of historic preservation in our communities ([memo](#)).—Regular Agenda (Philip Maechling) (Referred to committee: 06/08/09) (**REMOVE FROM AGENDA**) [power point presentation](#) [file size 1,539 KB]

Philip Maechling gave a presentation on the heritage role of the National Trust. He stated that the National Trust was founded in 1947 and is dedicated to revitalizing neighborhoods, preserving historic and cultural resources and assisting and educating the community in acknowledging our historic and cultural resources, ways to adapt them to new uses and to help learn about the places where communities live and work.

Jennifer Buddenborg, is the program manager for the Mountain States Region of the National Trust which is a national non-profit organization that is headquartered in Washington, DC. She explained there are nine regional field offices across the country. The Denver field office services Montana and seven other states in the region. She gave a power point presentation about what the National Trust does and the benefits of historic preservation. She added that much of the community's knowledge comes from visiting different historical sites. There are various reasons to protect and preserve historic building.

- Protecting and preserving local buildings that make local places important.
- Protecting sites from the more recent past.
- Protecting a diverse range of buildings.
- Preservation is about what makes a community unique.
- Maintain a tangible connection to history for aesthetic interests and beauty.
- To revitalize older neighborhoods and commercial areas.
- To stimulate economic activity and growth.
- Conserve resources, reduce greenhouse gases and make community more sustainable.

Ms. Buddenborg stated the idea with preservation is that it uses the authenticity of a community which attracts not only visitors but residents to restore and build the existing resources that make a place unique. She explained at the federal public level there is the National Park Service that deals with the National Register of historic places and the rehabilitation tax program. The Advisory Council on Historic Preservation deals with the review and compliance with the National Historic Preservation Acts; and the Preserve American program which promotes heritage tourism efforts. At the federal level there are also designated tribes with their own historic preservation offices. At the state level there are historic preservation offices and main street programs. Montana has a State Main Street program. At the local level Missoula is a Certified Local Government (CLG) with a local preservation commission. The Local Preservation Commissions are usually established by a preservation ordinance and can create a design review process for designated historic properties that are privately owned. This process is generally tailored to a specific community and based on locally developed criteria. A Preservation Ordinance establishes the preservation commission and sets up a process to review changes to historic properties. This review may be binding or advisory. Historic Ordinances do not freeze properties in time but help to ensure alterations and additions are consistent with the property's historic or architectural character. Since 1931 more than 2300 communities across the country have established one or more historic districts. The designations protect investments of property owners, encourage better quality designs, result in a positive economic impact from tourism, attract new businesses, and provide an attractive place to live and work. At the private national level there is the National Trust for Historic Preservation, Preservation Action, and the National Alliance of Preservation Commissioners. At the state level Montana has the Montana Preservation Alliance in Helena. Locally Missoula has a new non-profit Preserve Historic Missoula. There are twelve economic and community benefits of historic preservation.

- ✓ Rehabilitation costs are roughly as same as new building construction.
- ✓ Creates jobs.
- ✓ Increases property values.
- ✓ Conserves resources.
- ✓ Uses existing public investments and infrastructure.
- ✓ Supports small business.
- ✓ Revitalizes Main Street.
- ✓ Attracts investments.
- ✓ Attracts visitors.
- ✓ Prevents sprawl.

- ✓ Creates affordable housing.
- ✓ Good economic development.

Ms Buddenborg pointed out that more information concerning 'green' publication and Main Streets are "green" can be found on the www.preservationnation.org website.

The floor was opened for discussion:

1. Renee Mitchell asked how many historic districts have been identified in Missoula. Philip Maechling replied Missoula had nine historic districts. They are the Fort Missoula district, the Northside Railroad district, the downtown historic core district, the lower Rattlesnake district, East Pine district, U of M district, University neighborhood district, Southside district and McCormick district. Ms. Mitchell asked if these buildings would become extinct without some kind of historic overlay or protection. Mr. Maechling replied that was correct. The National Register was not a regulatory tool but a voluntary designation and afforded no protection. Roger Millar added that the current Ordinances provided no protection for these historic properties. There was no current change from the current Ordinance to the proposed new Ordinance in terms of protection of historic properties. However the next item on the agenda would discuss potentially sending to the Planning Board for its review an ordinance that would provide protection for historic properties.
2. Chair Jaffe asked if the idea of a rehabilitated historic building would last an additional 100 years. Ms. Buddenborg replied historic buildings are very durable. She added that buildings built before the 1920's were actually as energy efficient if not more so than the newer "green" buildings today. If the structures are rehabilitated appropriately they could last an additional 100 years. She pointed out there was research prepared on windows and the rehabilitation and repair of historic windows that could be just as energy efficient, if well maintained, as the new windows of today. The lack of energy efficiency comes through heat/loss gain of the ceilings and walls. Historic buildings were built with natural ventilation and a natural way of lighting, heating and cooling.

Chair Jaffe asked if labeling a district historic enhanced the values of the homes. Jennifer Buddenborg stated when a designation was given to a district it created a more unique place which would make people want to live there and in turn have better maintained homes and higher property values. She added that incentives are offered for rehabilitation that is not offered to homes outside historical districts. He also asked whether the National Trust organization provided technical assistance in creating new structures and adaptive uses in historical districts and what the resources were. Ms. Buddenborg stated adopting the proposed historic preservation ordinance with good design guidelines that have a regulatory review process was a good start. Local preservation was where preservation really happened. Also grants are provided through the National Preservation fund to public agencies to hire design professionals to help develop design guidelines.

3. Dave Strohmaier commented that this discussion presented historic preservation in a favorable light in terms of economic standpoint and environmental sustainability.
4. Jason Wiener what values would historic preservation be competing with and what would be the appropriate balance. Ms. Buddenborg replied one of the biggest conflicts was new development. There are ways to make new development and density work together and new development and new construction can happen in a compatible way with historic resources.

The floor is opened for public comment

Delia Hagen with Preserve Historic Missoula pointed out that most historic guidelines for adaptive reuse applied to the exterior of the buildings and there are not many guidelines that deal with interior spaces.

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. 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)
6. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
7. Discussion on assuring the currency of growth policy amendments ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)
8. 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)
9. 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)
10. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
11. 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 11:45 am.

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.