

# Plat, Annexation and Zoning Committee Minutes

October 28, 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:** Jim Nugent, Bobbi Day, John Newman, Philip Maechling, Tim Worley, Mary McCrea, Todd Klietz, Mike Barton, Steve Adler, Carl Posowitz, David Gray, Jeff Cyr, Rebecca Ciccone, Rod Austin.

### **I. Approval of Minutes**

October 21, 2009 were held for approval at the next meeting.

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

### **III. Staff Announcements**

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

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

A. Approve or deny a preliminary plat adjustment and condition amendment request for Flynn Ranch Subdivision ([memo](#)).—Regular Agenda (John Newman) (Referred to committee: 10/26/09) **REMOVE FROM AGENDA**

**Motion 1: The Committee recommends that City Council approve the proposed plat adjustment for Flynn Ranch Subdivision in accordance with Article 4-7(4)(A).**

**Motion 2: The Committee recommends that City Council approve the Floodplain Administrator recommended amendment to Condition No. 32 for Flynn Ranch Subdivision.**

John Newman reported on the plat adjustment and condition amendment request for Flynn Ranch Subdivision. ([Presentation](#))

- The property is located off Mullan Road adjacent to the 44 Ranch.
- The plat adjustment affects only the section for the townhouse lots. It consists of minor lot line adjustments to fit a different home model.
- The proposed adjustment would change lot widths up to 5 feet in this section of the subdivision but would not require any other revisions.
- Staff recommends approval of this request.
- The condition amendment has to do with the revised FIRM maps that show the floodplain shifted to the west of the property.
- The Floodplain Administrator noted that the floodplain would become Zone A for this area.
- The condition will be obsolete when the new FIRM maps are approved.
- The condition requires a LOMA (Letter of Map Amendment) be filed. Rather than do a LOMA, the current FEMA map would be identified that was in effect at the time of final plat submittal.
- Staff recommended approval of the amended condition.

Councilman Wilkins asked when the new FIRM maps would be approved and Mr. Klietz thought they should be next June. Councilman Wilkins noted that so far these maps had not been approved and there was not guarantee they would be by the time the final plat was filed. He did not feel it was appropriate to change the condition at this time. Mr. Nugent explained that the proposed condition language would address either situation by bringing in the most up-to-date map. Mr. Klietz added that the current maps showed the floodplain nearly a mile away from this location which would be shown on the 1998 FIRM map. Councilman Wilkins wondered if the developer would still be under the same obligation to provide the LOMA or would this amendment relieve them of that obligation and if there was a cost to the developer. Mr. Klietz noted it would relieve them of the obligation and there was a significant cost to prove the FIRM map was wrong.

Councilman Childers made a motion to approve the plat adjustment and the condition amendment. Councilman Wilkins request that these be separated into two motions and Councilman Childers agreed.

Jeff Cyr, with DJ & A representing the developer, explained that the changes would be to Lots 2 through 15 (the townhouse lots) to accommodate a slightly larger building. The smaller lots would be increased while the larger lots would be slightly decreased in size. There were not other changes – just small changes to the lot lines. He added that on the floodplain issue, the maps were already adopted by the County. They were working with FEMA to address this issue. To do the LOMA would require them to notify all the residents from the interstate to the Clark Fork River which would be quite expensive. They have the support of the Floodplain Administrator on the condition amendment request.

The vote on approving the plat adjustment passed unanimously and will go on the Consent Agenda.

Councilwoman Waltzer pointed out that there would still be protection for residents of this subdivision by identifying the FIRM map in place at the time of final plat submittal. She was satisfied there would be protection to the buyers and the LOMA should be removed.

The vote on the condition amendment passed with Councilman Wilkins opposed.

B. Ordinance amending Missoula Municipal Code Title 20, the Missoula City Zoning Ordinance and establishing Chapter 20.30 entitled "Historic Preservation." ([memo](#)) ([PAZ](#)) (Returned from Council floor: 10/26/2009) **HELD IN COMMITTEE**

Chair Jaffe suggested that the Committee take public comment and have a general discussion to identify the issues and give staff direction. Councilman Strohmaier started the discussion by asking about outcomes for specific projects and asked Mr. Maechling to walk the Committee through a scenario, such as Lincoln School, and how the process would unfold. Councilman Childers asked if this ordinance had been in place at the time the Lincoln School project was developed if the project would have been stopped. Councilman Strohmaier wondered if this ordinance could stop a project or provide alternatives to make a project better.

Before Mr. Maechling could walk the Committee through a scenario, Councilwoman Marler suggested that the discussion have a logical progression of steps and then start working towards amendments rather than the anecdotal discussion so far. She suggested getting some motions out there for parts of the ordinance. Chair Jaffee felt that this type of discussion could better help understand the ordinance process and wanted to get the Committee to agree on the scope as the first step.

Philip Maechling explained that a project under this ordinance could be denied by the Zoning Officer, the Historic Officer, or the Historic Preservation Commission. The aggrieved person (or persons) could appeal to City Council. In the instance of the Lincoln School, the aggrieved person could have lived across the street or down the block. The appeal makes it extremely flexible since Council could decide to hold a public hearing and then make a decision. If Council refused, then a variance could be applied for.

The Committee continued asking questions mostly regarding the process.

1. Would anyone get denied a demolition or building permit because of this ordinance? Staff would let them know they did not comply and ask them to fix the problem. If the applicant did not (or could not), then they could apply for a variance.
2. It appeared that the underlying zoning would be overruled by this ordinance. According to the language in the ordinance, "The designation of a resource as an Historic Resource does not change the underlying zone classification of the Historic Resource and does not exempt Historic Resource owners from complying with other city building and zoning regulations." If that language was not adequate, Council could suggest other language. The ordinance does not change underlying zoning; it does not change height or setback standards.
3. Regarding the Lincoln School project that was zoned to build duplexes, the building proposal would have to have been contrary to the Historic Preservation ordinance for the project to be denied. The applicant would have the right to submit a proposal to build duplexes. Land owners have the right to build on lots that exist. In this case, they ended up with fewer lots.
4. What is the advantage of taking an appeal to City Council rather than the City BOA? If the BOA denies the request, then the applicant goes to court for an appeal. City Council must have a majority to approve an appeal request. City Council has the right to make changes in zoning. The advantage of taking a request to City Council is that it could make itself the final authority, but there might be other issues or challenges besides historic preservation.

Chair Jaffe noted they were running out of time and suggested that this item could be scheduled for discussion in a week or two and members should define issues; what was needed for them to approve the ordinance, what needed to happen to move forward, if against the ordinance – why? Committee members listed the following issues and recommendations:

- Better education about the ordinance
- An issue may not be with the person doing the development but with the neighbors. Neighbors have rights with projects, not just the land owner. This was especially true in special districts.
- Aggrieved people did not have to be the owner.
- Would the building permit be for exterior and interior work?
- Building heights in certain districts and how they fit with the neighborhood character.
- Protect historic buildings on the list but find a way to provide soft protection of districts (maybe follow federal guidelines until site specific ones could be developed).
- Better define the appeal path.
- Amendments to height, bulk and mass and go with design standards rather than review criteria.

The following public comment was provided:

David Gray listed the main issues he had with the draft-

- Why was demolition by neglect included? If a person could not maintain a home or building because of something beyond their control, would the City prosecute or fine? This was not fair.
- To get a simple siding or roofing permit several other permits would also have to be acquired and take longer than necessary.

- Money would have to be spent on simple alterations, such as changing out in interior door. This would cost too much.
- There could be possible delays up to 180 days which could cost financing, tenants, or could only get partially done.

Carl Posowitz was in favor of part of the ordinance, specifically saving legitimate historic landmarks such as Lincoln School. The rest of the ordinance he had concerns with legal exposure. It could take just one person that saw the vague design criteria differently. He asked that the ordinance be more clearly defined to prevent unnecessary litigation.

Chair Jaffe will work with staff to figure out a schedule for further discussion and something that would refine future discussions.

## **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. 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)
4. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
5. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
6. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)
7. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)

## **VIII. Adjournment**

The meeting adjourned at 12:01

Respectfully Submitted,

**Bobbi Day**  
Support Services Administrator  
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.***