

Plat, Annexation and Zoning Committee Minutes

June 02, 2010

10:05 am – 11:45 am

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, Roy Houseman, Dick Haines, Renee Mitchell, Stacy Rye, Pam Walzer, Jason Wiener, and Jon Wilkins.

Members Absent: Marilyn Marler, Dave Strohmaier

Others Present: Mike Barton, Jim Nugent and Shelley Oly

I. Approval of Minutes

May 26, 2010 not available

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

A. Confirm the re-appointment of Gregory Schultz to the City Board of Adjustment for a term commencing July 1, 2010 and ending June 30, 2013 ([memo](#)).—Regular Agenda (Mayor Engen) (Referred to committee: 05/24/10) (**REMOVE FROM AGENDA**)

MOTION: The Committee recommends that the City Council approve the re-appointment of Gregory Schultz to the City Board of Adjustment for a term commencing July 1, 2010 and ending June 30, 2013.

Mayor Engen recommended the reappointment of Gregory Schultz. He stated that Mr. Schultz was a local attorney with had a good attendance record for the CiBOA. He saw no reason not to reappoint Mr. Schultz to the CiBOA. Councilwoman Rye had the motion to reappoint Gregory Schultz to the CiBOA. This motion was unanimous and would go on the Consent Agenda

V. Regular Agenda Items

A. Consider a resolution of intention to adopt amendments to the City of Missoula subdivision regulations revising Articles 1 through 9. ([updated memo 05/21/2010](#)).—Regular Agenda (Laval Means) (Referred to committee: 05/03/2010) (**REMOVE FROM AGENDA**)

Laval Means stated this was a pre public hearing informational item and that the public hearing would be held on Monday, June 7, 2010. She gave an overview of the key [revisions](#):

- ⇒ Planning Board held public hearings on April 6, 2010 and April 20, 2010 and recommended this project be forwarded to PAZ for approval as amended.
- ⇒ Planning Board's recommended amendments were incorporated into the staff report.
- ⇒ The project will complete the contract with Duncan Associates.
- ⇒ This is the final phase of updating the City development regulations and the subdivision regulations reflect the zoning amendments.
- ⇒ There is a limited set of revisions that occur in various pieces throughout Article 1-9.
- ⇒ The revisions were broken down into five main themes:
 1. Revisions made to remain current with the state legislative directives.
 2. Revisions made to align with Title 20 City zoning
 3. Revisions that reflect recent revisions to the County Subdivision Regulations and their application.

4. Revisions that incorporate the resolution for parkland
5. Limited clean up based on early agency comments for overall development project and vague language.

Ms. Means explained there were two key bills that came out of the legislature that had to do with land use regulations.

- ⇒ Senate Bill 305 which would allow for more review time of 80 business days for larger subdivisions of 50 lots or more for a decision. This language was incorporated into the Procedures Chapter, Article 4.
- ⇒ House Bill 486 dealt with the subdivision regulations in various places regarding procedures, submittal information and the Exemption Chapter. These have been incorporated into Article 4.
 - The reference to wildlife and wildlife habitat was separated for submittal of the primary review criteria
 - An explicit regulation dealing with a written decision being provided to the applicant within 30 business days.
 - A requirement that public hearings for major subdivision also included the variances requested for the major subdivision.
 - A requirement for condominiums to have a certification stating this project had been reviewed by local government.
 - The ability for City Council to require a percentage of specific types of improvements be completed before allowing bonding.
 - A requirement for a new deadline stating that the waiver of a right to protest RSID and SID would expire within 20 years after the date the subdivision plat was filed and stated on the plat.
 - The State separation of terms for aggregation of parcels dealing with subdivision exemptions and is reflected in Article 8.

Ms. Means pointed out that the second type of revision dealt with the alignment with Title 20 Zoning including:

- ⇒ A section entitled General Interpretation in Article 2.
- ⇒ Incorporated some of the definitions from Title 20 into the Subdivision Regulations.
- ⇒ Examples of types of PUDs were included in the Subdivision Regulations.
- ⇒ The riparian regulations were aligned with Title 20 and the County Subdivision Regulations.
- ⇒ Hillside protection and cluster and conservation were aligned to reflect the revision in Title 20.

The third type of revision deals with coordination with the County Subdivision Regulations and Application

- ⇒ Additional references were included for the proof of access at final plat found in Article 3.
- ⇒ Procedures for plat adjustments that were similar to the language used in the County Subdivision Regulations.
- ⇒ Brought back the requirement for an environmental assessment and Community Impact Report in Article 5.
- ⇒ The description of what was included in the phasing plan was revised to have more detail.
- ⇒ There was new language requiring soils assessments for certain ag soil types.
- ⇒ There was additional restriction on the variance language

The fourth type of revision dealt with the resolution for the parkland dedication for some minor subdivision. She remarked that these revisions were included in Article 3 under the Parkland Chapter and in Article 5 under requirements for submittal. The final revision deals with the limited clean up and clarification of vague language. She explained that the goal was for a more direct statement of language and intent but allowed for some flexibility for topographic concerns.

- ⇒ These statements dealt with the Design Standards in Article 3

- ⇒ Updating the language that dealt with the existing practices for an element review meeting prior to submitting the element review package in Article 4.
- ⇒ The proposed language to strike the older statement in Article 8 to eliminate any confusion and clarify that exemptions need to meet zoning.
- ⇒ Updating the language but not the intent of the requirement for a 5-foot minimum access for boundary line relocation to the street or the alley. Ms. Means pointed out that the consultant made the revision for the above statement explaining the five foot minimum access in two places and this revision should only be in 8.040.4.E.2D and not in 8.040.4E.1D

Ms. Means reviewed the Planning Board recommendations and pointed out that the Committee received a full detailed list of these recommendations in their packet:

- ⇒ Additional revisions to definitions.
- ⇒ Additional cross references to the relationship between the Subdivision Regulations and the Zoning document.
- ⇒ New definitions for placeholder items.
- ⇒ Additional revision to the delineation of the riparian resource.
- ⇒ Additional exception for roads within the riparian resource areas.
- ⇒ Additional consideration under the Community Impact Statement.
- ⇒ Additional revision to the soils analysis.

The floor was opened for discussion:

- 1) Councilman Haines asked for more clarification concerning the comments of State law and the waiver of the right to protest. Ms. Means replied that the language was specific language that the state approved. She explained Article 5 stated how to submit and document the information and the requirement to be on the final plat. Councilman Haines questioned whether the waiver of the right to protest expired or the length of time expired. Ms. Means replied the waiver of the right to protest expired.
- 2) Chair Jaffe asked if the condominium certification requirement was a change in practice. Ms. Means replied the language documents a process for OPG. She explained the certification meant that the condominium had been reviewed by OPG for whether they met the exemption criteria including compliance with the applicable zoning. This could be found in Article 4, page 13.
- 3) Councilman Wiener asked how aggregation of lots differed from vacating a plat. Ms. Means explained aggregation meant putting numbers of lots together. There was a procedure for vacating a plat that reverted back to the land division prior to the vacation. Vacating plats is a procedure directed through subdivision. Aggregation is an exemption procedure that gets reviewed by the Attorney's Office.
- 4) Chair Jaffe asked what the requirements were for including alleys in the Subdivision Regulations. Ms. Means pointed out there was a section in the Road Standards 3.020.6.D that dealt with alleys. She read the statement and said that section D allowed for some ability to look at the development on either side of a project and decide whether alleys were relevant. Chair Jaffe stated there should be more discussion on the encouragement of more alleys when developing new subdivisions.

The floor was open for public comment

John Hendrickson stated he felt that the alleys should be left open to the developer's discretion on type of subdivision and wait until the decision had been handed down by the courts on the greenways as to whether this might be parkland dedication. He also addressed riparian issues with concern that the 'other body of water' including irrigation ditches. MBIA would like the smaller irrigation ditches eliminated. He explained Irrigation Districts had control over the irrigation ditches and not the City of Missoula. The Irrigation Districts could change the direction of the ditches and the developer could petition the districts to change the flow of the ditches; it required a variance to bridge a ditch. He wanted a clearer definition of 'other body of water'.

Councilman Wiener asked if the riparian issue was in the riparian standards or definitions. Ms. Means stated it was in the definitions.

B. Ordinance rezoning property located at 2012 North Avenue from RM2.7 (residential multi-dwelling) to C2-4 (Community Commercial – Intensity Designator = 4). The property is legally described as Lots 25 and 26 Block 1 of Car Line Addition No. 2 and Lot 12 Block 12 of South Side Addition, located in Section 29 of Township 13 North, Range 29 West, P.M.M. ([memo](#))—Regular Agenda (Tim Worley) (Referred to committee: 05/24/10) (REMOVE FROM AGENDA)

Tim Worley gave a [presentation](#) on a request to rezone property at 2012 North Avenue:

- The property is located west of the intersection of Johnson Street and North Avenue.
- It is currently zoned RM2.7 (residential multi-dwelling) and the applicant requested to rezone the property to C2-4 (community commercial) even though Hellgate Tool to the east is zoned C1-4.
- The basis of the rezone is to address a current zoning violation and to allow for limited commercial auto repair.
- C2-4 permits construction sales and service, general motor vehicle repair and manufacturing production and industrial service.
- It is staff's opinion that zoning this property to C2-4 would interrupt the trend from having more intense commercial uses east of Johnson Street to less intense at Hellgate Tool and then residential from 2012 North Avenue to the west.
- C2-4 is not consistent with the Comprehensive Plan.
- Staff and Planning Board recommended denial of the rezoning request.

The floor was open for public comment:

Tom Orr passed around [pictures](#) of the property. He stated this property had been used as a rental property for hobby auto repair. He explained that the property taxes were more than what the applicant received for renting his property and the applicant would like to be able to get enough money so that this property could sustain itself. Chair Jaffe wondered how this was possible because the property taxes were \$173.00/month. Mr. Orr explained that the storage rental for the storage units did not cover the property taxes. Mr. Orr added that the size of the lot would define the intensity of the use and zoning this property C1-4 would not work because this lot was too small. He stated that the applicant wanted the current zoning designation to continue for limited commercial use.

The floor was open for discussion:

- 1) Councilwoman Mitchell asked if the storage units predated the zoning. Tim Worley did not know the history behind it but stated the mini storage could have been added through a conditional use permit. Councilwoman Mitchell inquired whether or not there was drain separators installed for the auto repair. Mr. Orr stated the person who rents the property had been instructed to follow the obligations of the zoning, but he did not know if the person had done this. Mr. Worley shared that the Heath Department checked for water separation quality issues and there was nothing that was violating the water quality ordinance or permitting requirements.
- 2) Councilman Childers stated this was a matter of grave concern when the property was operating under a variance and yet none of the conditions were being met. Mr. Orr replied that the applicant had tried to get this property rezoned for awhile.
- 3) Councilman Haines wondered if the property was in compliance. Mr. Worley stated that it was not in compliance; if the applicant had complied with the CoBOA ruling in 1986, the applicant would only be able to have a warehouse but not an auto repair use. If this request was not approved the matter would be turned over to the enforcement section and be subject to the CoBOA ruling of 1986 regarding landscaping requirements. Jim Nugent stated the county variance had to be enforced by the county, however it could be superseded by the landscaping requirements ordered by the county variance with subsequent zoning.

- 4) Councilwoman Walzer wondered what the difference was between C1-4 and C2-4. Mr. Worley answered that C1-4 zoning was motor vehicle limited which would be any auto shop that changed fluids or lube and brake check service and C2-4 zoning was motor vehicle general which would be any auto shop that did body work or major repairs.
- 5) Chair Jaffe was concerned that the property was granted commercial use provided certain conditions were met but those improvements were ignored and now the applicant was requesting for a higher intensity commercial than was allowed. He added that approving the higher intensity commercial use could allow for more degradation in the future. Chair Jaffe asked when was this property was rezoned to commercial use. Mr. Worley responded that the variance request was approved in 1986, the complaint came in 2007, and OPG did not address this until 2010.
- 6) Councilwoman Mitchell asked if the applicant would be subject to the landscaping requirements under Title 20 if the zoning were changed. Mr. Worley said they would and that the applicant would be subject to all of Title 20 including landscaping along the western edge and screening and buffering standards particularly to the western edge because of the residential area.
- 7) Councilman Wiener asked if any of the neighbors returned a protest letter. Mr. Worley received only one comment letter and no formal protest.

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. Discuss the implications of the Sonata Park court case ([memo](#)).—Regular Agenda (Bob Jaffe) (Referred to committee: 03/08/10)

VIII. Adjournment

The meeting adjourned at 11:40 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.