

Plat, Annexation and Zoning Committee Minutes

November 18, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

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

Member Absent: John Hendrickson, Jon Wilkins.

Others Present: Steve Adler, Jennifer Anthony, Rod Austin, Mike Barton, Ellen Buchanan, Joe Easton, Carma Gilligan, John Horner, Ruth Link, Jamie Ryan Lockman, Linda McCarthy, Philip Maechling, Roger Millar, John Newman, Jim Nugent, Tim Worley, and Denise Small.

I. Approval of Minutes

1. [September 30, 2009](#) were approved with the following corrections:

- Chair Jaffe proposed that the section in bullet 7, on page 2 that read: “Mr. Maechling responded that if the entire district protested and at least 51% of property owners agreed, then the owner could keep their property from being listed. However, individual owners could not prevent the listing of their properties if the majority of owners agreed to the listing” be changed to read “Mr. Maechling responded that if 51% of property owners in the entire district objected, then the owners could keep the district from being listed. Individual owners can prevent the listing of their property, but if it is determined eligible, it remains eligible for listing.”

2. [November 4, 2009](#) were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

Chair Jaffe noted that there would not be a PAZ meeting for next week unless Committee members had an objection.

IV. Consent Agenda Items

A. (Suspension of rules required) [Ordinance](#) extending the interim zoning of Parcels 1, 2, 3, and 4 of Dinsmore's Orchard Homes Addition No. 4, Tracts 7, 11, and 12 located in the SW ¼ of Section 19, Township 13 North, Range 19 West, P.M.M., commonly known as The Gables Subdivision for six months. ([memo](#)) – Regular Agenda (John Newman) **(REMOVE FROM AGENDA)**

Motion 1: The Committee recommends that City Council suspend the rules to consider setting a public hearing for extending the interim zoning for The Gables Subdivision.

MOTION 2: The Committee recommends the City Council set a public hearing on December 7, 2009, to consider adopting an [ordinance](#) extending the interim zoning of Parcels 1, 2, 3, and 4 of Dinsmore's Orchard Homes Addition No. 4, Tracts 7, 11, and 12 located in the SW ¼ of Section 19, Township 13 North, Range 19 West, P.M.M., commonly known as The Gables Subdivision for six months.

Chair Jaffe asked about suspending the rules. John Newman replied that Office of Planning and Grants (OPG) received this item on Friday, November 13, 2009, the November 16 City

Council meeting had been cancelled which resulted in this item coming to PAZ without a Council referral.

Stacy Rye **moved** to suspend the rules. The vote passed unanimously.

John Newman gave a [PowerPoint presentation](#) and noted the following:

- The Gables Subdivision was located in the Target Range/Orchard Homes area.
- Lot sizes ranged from 4,000 to 9,000 square feet, with approximately 30% of the property left open as common area.
- When this property came in it was annexed to permit flexibility in lot size and accommodate the amount of open space.
- Council approved the subdivision plat on May 22, 2006 and the property was annexed at that time. Subsequent legal protest required a supermajority in order to zone the property RLD4. That effort fell short so the property was annexed unzoned.
- After plat approval, it was discovered that the developer was considering alternative development plans that did not match plat approval. This was deemed an emergency, and the basis for interim zoning of the property as RLD4.
- Interim zoning was approved on June 15, 2009 and was due to expire on December 15, 2009.
- Permanent zoning has not been approved.
- The zoning extension was requested to provide more time to ensure the new zoning code meshed with the proposal.

Mr. Newman stated that the intended motion was for Council to set a public hearing to adopt an ordinance to extend the interim zoning and the public hearing would be on December 7, 2009. Chair Jaffe asked if the developer or his representative had been notified of today's hearing, and Mr. Newman believed so but could not confirm it.

Committee discussion:

- Ed Childers asked about the intended permanent zoning. Mr. Newman replied that the intent was to permanently zone the subdivision as RT10 and added that RLD-4 became RT10 upon adoption of Title 20.
- Stacy Rye asked if the six-month period was statutory and Mr. Newman replied that it was a State law. Jim Nugent reported that that two subsequent one-year extensions were allowed but each would require approval by a 2/3 vote. He also noted that 2 ½ years was the total time period allowed for extensions. Mr. Newman stated this would be the first extension requested. Ms. Rye asked why a six-month rather than one-year extension was requested. Mr. Newman replied that staff was working toward permanent zoning, which would take six months.

Ed Childers made a **motion** to set a public hearing for December 7, 2009 to consider adopting an ordinance extending the interim zoning for six months. The vote passed unanimously. This item would go on the consent agenda.

V. Regular Agenda Items

A. [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) ([REMOVE FROM AGENDA](#))

MOTION: The Committee recommends the City Council adopt an [ordinance](#) amending Missoula municipal Code Title 20, the Missoula City Zoning ordinance and establishing Chapter 20.30 entitled "Historic Preservation."

Roger Millar presented an [amended draft](#) of the proposed Historic Preservation Ordinance dated November 17, 2009, that reflected the Planning Board (PB) recommendations, minus the *Plat, Annexation and Zoning Committee – November 18, 2009, Page 2*

underline/strikeout editing of the original Historic Preservation Commission (HPC) text. He noted the draft had been renumbered to follow the Title 20 numbering convention. In addition, a proposed amendment that would limit application of the ordinance to property individually listed in the National Register of Historic Places was shown in underline/strikeout format on page four of the draft. Mr. Millar noted David Strohmaier's [proposed amendment](#) to the same section of the ordinance.

Mr. Millar shared comments from Michelle Bryan Mudd:

- Page 3: Definition of "historic resource" did not match the definition on page 4, in Section 20.30.040. Mr. Millar proposed the deletion on page 3 and renumbering accordingly.
- Page 4: The language "and included in local inventory" should not have been struck from the proposed amendment because it was not redundant as had first been considered.
- Pages 8 and 10: For applications involving demolition or relocation, PB proposed language requiring an HPO decision within 60 days or 90 days for demolition and relocation, and if that application was not processed within that time, it was deemed approved. Page 10 noted the demolition delay period was for 60 days; however 90 days was allowed for an HPC decision. Mr. Millar recommended either changing the period on page 10 from 60 days to 90 days, or striking the parenthetical statements on page 8 that allowed for 90 days for demolition or relocation.

Dave Strohmaier made a **motion** to adopt the Historic Preservation Ordinance as amended by the Planning Board with the adjustments for numbering and the issues addressed by Mr. Millar.

Committee Discussion:

- Chair Jaffe addressed the issue of 60 days versus 90 days. Mr. Millar stated the goal was consistency in both places. He noted HPC proposed a 90-day period and that PB recommended 60 days but left the 90-day language, creating the inconsistency. He stated it was up to Council to decide; the time period should be consistent.
- Jason Wiener asked why the draft ordinance originally had a longer period for demolition and relocation. Mr. Millar responded that HPC wanted more time to work with property owners to find alternatives to demolition and relocation. He added that testimony coming out of PB expressed desire to spend less time waiting, so the period was reduced from 90 days to 60 days. He noted it was a question of what Council felt was an adequate time period for HPC and the community to negotiate with the property owner. Mr. Wiener asked about the outcome in the event a demolition delay was triggered and an alternative was found. Mr. Millar responded it could be any number of things. He stated that staff and PB wanted to provide, for property owners who wanted to "get on with it," certainty that a decision would be made in a timely fashion.
- Ed Childers stated interest in the issue of 60 days versus 90 days and asked for Philip Maechling's position. Mr. Maechling stated that while the length of negotiations might be uncertain, there should be an end to the process. He also stated the final decision was up to Council.
- Dave Strohmaier supported a 90-day period saying that 90 days to preserve important aspects of the community's heritage was in order.

Public Comment – Revising the waiting period from 60 days to 90 days:

Janine Caywood: The more time the better. Ninety days would be better than sixty.

Ed Childers clarified that the 90 days would apply to demolition permit too. Mr. Millar noted that the change would be on page 10, changing the 60 days to 90 days and leaving page 8 as written. Mr. Childers made a **motion to amend the main motion** to change both time periods to 90 days. The motion passed with nine votes of 'aye' and one vote opposed (Hellegard).

Stacy Rye made a **motion to amend the main motion** to restrict the ordinance to properties listed in the National Register.

Committee discussion on the amendment to the main motion:

1. Jason Wiener asked about the difference between a property that was individually listed and one that was determined to be eligible. Mr. Millar explained that a property that was individually listed had earlier received the eligibility determination, but the additional step of the actual listing was also taken and came with the property owner's consent to the listing. If consent was not given, the property would not be listed but eligibility, due to some historic or cultural significance, would remain on the record. Mr. Wiener asked if a listed property could subsequently be de-listed with a new owner's action. Mr. Maechling and Mr. Millar were not aware of that happening. Mr. Wiener asked how many properties were eligible but not listed. Mr. Maechling replied that the Catholic Block was eligible for listing and included in the Downtown Historic District. The entire block was determined individually to be eligible as a small district; however the Archbishop of Helena objected to the listing. Ms. Marler asked if the Catholic Block properties were the only ones in town that were determined eligible but were not listed. Mr. Maechling said that was correct. Chair Jaffe pointed out that the church was listed.
2. Ed Childers asked if "demolition by neglect" applied to the Catholic Block buildings so it did not need protection. Mr. Millar stated that two of the three buildings were in place and being used. He noted that the elementary school had received a demolition permit in advance of the draft ordinance.
3. Pam Walzer asked if this ordinance had been in place, could the City Shops, which were identified as eligible but not listed, still have been demolished. Mr. Millar stated that the same conclusion could have been reached. The same could have happened to the Catholic Block.

Jason Wiener made a **substitute motion** to Ms. Rye's amendment motion to restore the class of properties that were eligible but not listed. The Committee discussed the substitute motion:

1. Chair Jaffe stated support of Mr. Wiener's substitute motion noting that the ordinance simply allowed for time to make the necessary effort to save structures if possible.
2. Dave Strohmaier stated support for Mr. Wiener's **substitute motion** commenting that it and the ordinance did not guarantee an end result but put in place a process to ensure that alternative options were considered. He stated the substitute motion recognized the importance of a property receiving the determination of eligibility.
3. Renee Mitchell asked if there added costs associated with the appeals process. Mr. Millar explained that presently there were no fees in place, but there would be architect or planner fees associated with preparing submittals and attending hearings.
4. Ed Childers asked what constituted a good-faith effort, who determined if it had been made, and what happened if it was determined a good-faith effort had not been made. Mr. Millar replied that the initial determination was made by the HPC and that appeals would go to the City Council first and then possibly to the Courts. Mr. Childers asked if a property owner did not want to make a good faith effort and HPC then denied the request, would the process be pushed to the Court system. Mr. Millar replied it would begin with an appeal to Council.
5. Jason Wiener asked if there was a way to be more prescriptive in the ordinance about what was required or would it come down to a judgment call by a body of elected officials. He felt such a call was basically a last stop and was not appropriate. Mr. Childers stated that the neighborhood overlay, as defined in the ordinance, would cover all the bases in such a process. Mr. Wiener felt that confused the purpose of the overlay and that his amendment spoke to the process for individual buildings that have already gone through some process.

Public Comment on the inclusion of individual properties:

Linda McCarthy: (Missoula Downtown Association) asked if contributing properties were the same thing as listed or eligible properties. Mr. Millar responded that all of the properties in the Downtown District that were individually listed were also determined to be contributing to the overall district. The contributing aspect of a property was not relevant to a property's individual listing. Ms. McCarthy stated a desire to ascertain whether buildings that were not listed but were potentially eligible would go through the same process. Chair Jaffe reminded her that the only downtown properties that were determined to be eligible were those three on the Catholic Block. Mr. Millar added that everything else being talked about was already listed in the National Register.

John Horner: (Missoula Downtown Association, Vice President of Advocacy) asked if property owners had input over eligibility determination. Mr. Millar replied a property owner had say in eligibility but control over listing. A property could be determined eligible over an owner's objection but could not be listed over their objection.

Joe Easton: (139 East Main, LLC) understood that the **substitute motion** covered listed and eligible properties but not contributing resources and if that were the case, he would support it.

Ruth Link: (Missoula Organization of Realtors – MOR) urged Council to look forward, that this ordinance was not just for the present but for the future as well. She felt it was important to preserve the rights of property owners

Marilyn Marler requested clarification on an example of a downtown building that was considered a contributing resource and could be eligible but had not gone through the process. She wondered if anyone initiate the process. Mr. Maechling stated that while anyone could submit a nomination to the Keeper of the Register, a property owner's objection could keep the property from actual listing. In that case the property would be determined eligible. Ms. Marler asked if there were different processes for listed versus eligible properties. Mr. Maechling responded that the rules were the same for listed and eligible buildings.

The vote was taken on Mr. Wiener's substitute motion and failed with five votes of 'aye' and five votes opposed (Rye, Hellegard, Haines, Mitchell and Childers).

Dave Strohmaier made a **substitute motion** that would apply the ordinance to all properties within historic districts, less the area covered by the Downtown Master Plan. Chair Jaffe asked if this amendment would apply to all properties within a historic district. Mr. Strohmaier replied that it would.

Committee discussion on the substitute motion:

1. Marilyn Marler asked where the historic districts were created in the ordinance. Chair Jaffe replied that the districts already existed. He noted that current zoning had no acknowledgement of the districts and this ordinance was trying to establish acknowledgement of their existence. Chair Jaffe asked what the objections were, other than property rights. Ms. Marler replied that property rights were important, but so was the issue of architectural changes. A property owner could express an architectural style on their property that might not necessarily detract from older structures.
2. Pam Walzer asked why the downtown area should be special. Other areas needed basic standards. She supported the inclusion of both contributing and noncontributing resources in a historic district because she felt that noncontributing resources affected a historic district. .
3. Jason. Wiener would not support Mr. Strohmaier's amendment because there was not enough specificity as to how districts, and properties within them, would be treated.
4. Ed Childers wondered why Mr. Strohmaier wanted to exclude the downtown historic district from his substitute motion. Mr. Strohmaier responded that first, it was in recognition of the process underway and secondly, it would hopefully encourage folks in other historic districts to develop additional design guidelines if they thought the Secretary of Interior guidelines were not adequate. Mr. Childers hoped to begin with focus on just listed properties and not to alienate property owners who would be helpful in the next phase of the process.
6. Lynn Hellegard stated concern for the property rights of Missoula's citizens and saw no purpose in including noncontributing properties. She was also concerned about protection of the downtown properties until something was set in place.

Public comment on inclusion of historic districts:

Ruth Link supported Ms. Rye's motion. In addition to the issue of property rights, she was concerned that the ordinance created one more barrier that people had to move around.

Carma Gilligan supported exemption of noncontributing properties from the ordinance.

Joe Easton was concerned that as written, the ordinance would give HPC and Council the ability to limit zoned entitlement under the guise of design or architectural appropriateness.

Linda McCarthy recommended consideration of only individually-listed properties, until approved design guidelines were in place.

Steve Adler feared that by not including districts there would not be a good enough sense of what would happen and how issues would be handled. There needed to be significant applications moving through the process to provide Council enough comfort to move forward. He noted that the district itself, comprised of multiple properties, was the resource.

Noncontributing properties should be included in order to preserve the integrity of the district as a whole. Mr. Adler noted that, in reference to individual property rights, the ordinance applied to approximately 7% of Missoula and that 93% of the city would remain wide open to property rights. He suggested that rather than applying the ordinance to all districts, perhaps it could be applied to only to the downtown area.

Janine Capert was concerned that exclusion of contributing resources from the ordinance would make it applicable to only a handful of properties and that it was critical to include historic districts. She felt an acceptable compromise would have the ordinance exempt noncontributing resources but included contributing resources. She also felt specific guidelines could become restrictive.

Jennifer Anthony supported inclusion of historic districts as well as both contributing and noncontributing resources. She requested that before final decisions were made, outside groups be brought in to make presentations and provide examples of how the process really worked.

Rod Austin stated that the downtown district deserved special consideration because it was such a large concentration of historic properties. He added that in the long run, historic preservation was an added plus for the economy.

A vote was taken on Mr. Strohmaier's substitute motion and failed with one vote of 'aye' (Strohmaier) and nine votes opposed. Ms. Walzer made a **substitute motion** to have the ordinance apply to all properties within districts, along with the revision to the language about character overlays. The motion failed with one vote of 'aye' and nine votes opposed.

The vote was taken on Ms. Rye's motion to amend passed with seven votes of 'aye' and three votes opposed (Strohmaier, Mitchell and Childers).

A vote was taken on the main motion as amended (to restrict the ordinance to properties on the National Register) carried with eight votes of 'aye' and two votes opposed (Hellegard and Haines). This will go on Committee Reports.

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. Conduct interviews and appoint members to the Design Review Board for the term commencing January 1, 2010 and ending December 31, 2012 ([memo](#)).—Regular Agenda (Kelly Elam) (Referred to committee: 11/09/09)

7. Conduct interviews and appoint two professional positions to the Historic Preservation Commission for the term commencing January 1, 2010 and ending December 31, 2012 ([memo](#)).—Regular Agenda (Kelly Elam) (Referred to committee: 11/09/09)

VIII. Adjournment

The meeting adjourned at 11:55 a.m.

Respectfully Submitted,

Denise Small
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.