

City Council Members File Suit Requesting City Follow the Law

Three City Council Members filed a law suit today asking the Court to direct the City of Missoula to follow the law. The Council Members believe that the supporters of the rezoning effort have circumvented the governing statutes and ignored the City's own regulations. "I filed this lawsuit because the City is attempting to rezone the city without complying with the law. We really wish those who are trying to force this new zoning to densify the City would simply follow the law," said Renee G. Mitchell, City Council Member for Ward 5.

Additionally, Mitchell said, "When changing zoning the City's own ordinance requires that the Planning Board and City Council shall be guided by and adopt findings of fact based upon the following:

1. Whether the zoning is compatible with the growth policy;
2. Whether the zoning will lessen congestion in the streets;
3. Whether the zoning will secure safety from fire and other dangers;
4. Whether the zoning promotes the health and general welfare;
5. Whether the zoning provides adequate light and air;
6. Whether the zoning will prevent overcrowding of the land;
7. Whether the zoning will avoid undue concentration of population;
8. Whether the zoning facilitates the adequate provision of public services;
9. Whether the zoning gives reasonable consideration to the character of the district;
10. Whether the zoning gives consideration to the particular suitability of the property for particular uses;
11. Whether the zoning was adopted with a view toward conserving the value of property; and,
12. Whether the zoning will encourage the most appropriate use of land throughout the jurisdiction."

"I sat through hours of Planning Board meetings and never once were these criteria considered as the extraordinary number of changes in the proposed new zoning regulations were approved. The majority on the City Council has voted not to consider these criteria and the state law during their review of Title 20, so we had no alternative but to ask the court to order the City to follow the law. Without the benefit of such an analysis and notification of how the proposed changes will specifically affect each property owner, it is impossible for citizens to participate in this massive rezoning project," said Mitchell.

The lawsuit asks the Court to determine the City violated State law and City regulations while conducting the process to rewrite or rezone the entire City. "Those interested in cramming this rezoning effort through without adequate notice and informed public participation have been playing semantic name games," according to City Council Member for Ward 5, Dick Haines. "Calling the process a 'simple rewrite' of current zoning regulations does not change the fact that the rezoning supporters are changing density requirements, allowable uses, and many other factors that will greatly affect the residents' property rights and value."

"The residents of Missoula should be fully informed about all of the proposed changes and the impacts on their property before the City takes action on this rezoning proposal," said Lyn Hellegaard, City Council Member for Ward 4. "So far, the proponents of this effort to densify the City have not provided full disclosure on the impacts this rezoning would cause."

She explained that she and the other City Council Members who filed this suit attempted to resolve these issues within the normal meeting process. However, she said, “so far, the supporters of this rezoning effort have ignored our pleas that they follow the law and provide Missoula residents with adequate analysis, information, and notice.”

The City Council Members contend that when the residents of Missoula bought their homes, they had an expectation that the density, building heights, open space, views, etc., would remain according to the current zoning regulations and if the City changed the zoning, there would be full disclosure to the public prior to those changes being implemented. “Sending out a meeting notice without identifying exactly how each property specifically will be affected by all of the proposed changes in the rezoning ordinance is not adequate notice or public participation,” according to the City Council Members.

State zoning law requires the City to use certain mandatory technical criteria when adopting or changing zoning regulations and zoning districts. The purpose of these criteria is to ensure that the City does not impose arbitrary and capricious regulations on property owners using ad hoc local criteria that are not sanctioned by the state legislature when it originally gave cities the zoning power. Despite many hours of review by the City’s Planning Board/Zoning Commission and now discussion at the city council, never have these mandatory criteria been mentioned, much less used, in deliberations by the zoning commission or in the Office of Planning and Grant’s (OPG) staff report, which the commission relied on for information on the extremely long and complex new zoning ordinance.

The three City Council Members that brought the suit contend that the mandatory review criteria must be used by the Zoning Commission, OPG, and the City Council to review the new ordinance. If these criteria are used, there will be a clear, common basis for analysis and discussion of the changes proposed in the new ordinance. It will also be much easier for the City Council to focus on, and citizens to understand, the potential impacts of those changes on land use in Missoula, the rights of property owners, and the quality of life for all Missoula citizens.

The lawsuit requests a Writ of Mandate, which is a remedy that allows the District Court to direct the City of Missoula to follow the law. In *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974), the Supreme Court ruled against the City of Missoula when the City refused to follow the State zoning laws. “This is yet another case where the City is ignoring the law,” said Art Wittich, Bozeman attorney for the Petitioners. “We are fighting to protect constitutional and statutory rights for citizens to have full disclosure, adequate notice, and the right to fully participate in any efforts to rezone their property.”

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