

From: [Gwen Jones](#)
To: [Dave DeGrandpre](#); [Jordan Hess](#)
Cc: [Jim Nugent](#)
Subject: Fw: Legal Question as it applies to Expo Parkway Rezone
Date: Thursday, September 3, 2020 1:32:37 PM

Dave, I think this email exchange with City Attorney Jim Nugent should be included in the Expo Parkway record.
Thanks, -Gwen

Gwen Jones
Ward 3 City Councilwoman
606 Woodford St., Missoula, MT 59801
406 549-3295

Note: All emails to and from this address are in the public domain.

From: Jim Nugent
Sent: Wednesday, September 2, 2020 12:52 PM
To: Gwen Jones
Cc: Jordan Hess
Subject: RE: Legal Question as it applies to Expo Parkway Rezone

GWEN:

Yes, there are many more important factors that should be given more weight in your decision making review, analysis and conclusion.

Montana municipal zoning law set forth in section 76-2-304 MCA entitled "CRITERIA AND GUIDELINES FOR ZONING REGULATIONS" provides a source for general criteria and guidelines for general zoning consideration that could be helpful for identifying/explaining/providing justification for not giving any controlling priority to the split zoning classifications.

JIM NUGENT

From: Gwen Jones <GJones@ci.missoula.mt.us>
Sent: Wednesday, September 2, 2020 12:36 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Jordan Hess <JHess@ci.missoula.mt.us>
Subject: Re: Legal Question as it applies to Expo Parkway Rezone

Thank you Jim. So the hassle of having a split zone underlying scenario is at most highly secondary to other more important factors to consider for a rezone. -Gwen

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From: Jim Nugent

Sent: Wednesday, September 2, 2020 12:34:01 PM

To: Gwen Jones

Cc: Jordan Hess

Subject: RE: Legal Question as it applies to Expo Parkway Rezone

GWEN:

I believe that the Missoula Municipal Code provision you likely are looking for is subsection 20.01.100€ MMC. Provision 20.01.100€(3)(a) MMC states:

“3. The following regulations apply to existing parcels that are classified in two or more base zoning classifications:

- a. For existing and proposed uses and structures, THE MORE RESTRICTIVE PROVISIONS OF THE APPLICABLE ZONING DISTRICTS APPLY TO THE ENTIRE PARCEL EXCEPT WHEN ONE BASE ZONING DISTRICT APPLIES TO AT LEAST 75% OF THE TOTAL PARCEL AREA AND THE REMAINDER OF THE PARCEL IS LESS THAN 5,000 SQUARE FEET IN AREA. THE REGULATIONS OF THE ZONING DISTRICT THAT APPLIES TO THE LARGER PORTION OF THE PARCEL APPLIES TO THE ENTIRE PARCEL.” (emphasis added)

With respect to the inquiries at the conclusion of your email, the desired land use zoning district is what the rezoning focus should be. The existing underlying zoning does not control a rezoning consideration; although there could be citizens advocating for giving some weight to the actual current underlying zoning.

The applicable growth policy as well as nearby zoning designations would likely be examples of more important factors/elements to consider, than the underlying split zoning that should be clarified/corrected.

JIM NUGENT

From: Gwen Jones <GJones@ci.missoula.mt.us>

Sent: Wednesday, September 2, 2020 11:54 AM

To: Jim Nugent <NugentJ@ci.missoula.mt.us>

Cc: Jordan Hess <JHess@ci.missoula.mt.us>

Subject: Legal Question as it applies to Expo Parkway Rezone

Jim, I have a question regarding the Expo Parkway Rezone.

The current zoning does not align with the parcel lines, it overlaps into adjacent parcels. Accordingly either the lowest level zoning in each parcel must be applied to the entire parcel, or there is a lot line readjustment, or there is a rezoning.

In terms of the rezone, does the underlying complicated zoning situation which is not clean cut, but overlaps across the parcel lines - come into the analysis of deciding whether or not to grant a rezone? Does it matter at all what the underlying zoning situation is? Is that a factor to consider, or is it irrelevant?

Let me know if this is not clear. Thanks for any advice you have. -Gwen

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