

CITY OF POLSON COMMISSION
AGENDA
(New Agenda format per 2014ORD#005)

COMMISSION CHAMBERS

FEBRUARY 2, 2015

7:00 P.M.

1. CALL TO ORDER

Mayor Knutson

2. PLEDGE OF ALLEGIANCE

Mayor Knutson

3. APPROVAL OF PROPOSED AGENDA

Mayor Knutson

4. PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC NOT ON THE AGENDA (address items to the Chair. Commission takes no action on items discussed

5. CONSENT AGENDA

- a. Claims January 15-28, 2015
- b. City Commission Meeting Minutes January 21, 2015
- c. Wal-Mart Utility Easement-Water Out lots 1 and 2

6. CITY MANAGER COMMENTS

City Manager Mark Shrives

OLD BUSINESS

7. APPROVE SECOND READING OF ORDINANCE 2015-ORD #001 ADOPTING CHAPTER 2, ARICLES 7 AND 8 OF THE CITY OF POLSON BOOK OF ORDINANCES.

City Manager Mark Shrives

8. APPROVE THE RESOLUTION AND ATTACHED SERVICE PLAN OF THE CITY COMMISSION OF POLSON ESTABLISHING A SERVICE PLAN FOR THE CITY.

City Manager Mark Shrives

NEW BUSINESS

9. APPROVE THE AGREEMENT BETWEEN THE CITY OF POLSON AND MONTANA WEST LLC. FOR THE PLACEMENT OF UTILITIES WITHIN THE CITY RIGHT-OF-WAY. IT IS UNDERSTOOD, THIS AGREEMENT WILL NO LONGER BE IN EFFECT AFTER THE CITY ADOPTS AN UPCOMING EXCAVATION ORDINANCE.

City Manager Mark Shrives

10. PRESENTATION OF CONCEPTUAL PLAN OF SOCEER COMPLEX AND ANNEXATION OF THE POLSON YOUTH SOCEER BOARD PROPERTY

Joslyn C. Shackelford, Polson Youth Soccer Board

11. ADJOURN

Mayor Knutson

For doc #s from 119689 to 119762

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Fund	Department Name (Account)	Vendor #/Name	Description	Amount
1000 General All-Purpose Fund	351030 City Courts	999999 POLSON CITY COURT	FACILITIES-REIMBURSE	85.00
1000 General All-Purpose Fund	351030 City Courts	3791 POLSON CITY COURT FINES	COURT-PAY CHARGEBACK	225.42
1000 General All-Purpose Fund	410200 Executive Services	000023 GULL PRINTING	ADMIN-NOTE CARDS/ENV	220.00
1000 General All-Purpose Fund	410360 Municipal Court	2379 RELIABLE OFFICE SUPPLY	COURT-SHARED HP BLK	16.00
1000 General All-Purpose Fund	410360 Municipal Court	4203 MJC & MCCA	COURT-JH CONF REGIST	35.00
1000 General All-Purpose Fund	410400 Administrative Services	999999 MATTHEW SISLER	ADMINISTRATION-FIRE	40.00
1000 General All-Purpose Fund	410500 Financial Services	2379 RELIABLE OFFICE SUPPLY	FINANCE-EXTRNL HARD	71.47
1000 General All-Purpose Fund	410500 Financial Services	2379 RELIABLE OFFICE SUPPLY	FINANCE-FILE FOLDERS	5.00
1000 General All-Purpose Fund	411200 Facilities (Shared Costs)	000011 MISSION VALLEY POWER	FACILITIES-CITY HALL	231.00
1000 General All-Purpose Fund	411200 Facilities (Shared Costs)	000011 MISSION VALLEY POWER	FACILITIES-FIRE HALL	139.88
1000 General All-Purpose Fund	411200 Facilities (Shared Costs)	000011 MISSION VALLEY POWER	FACILITIES-HVAC SYST	1,556.03
1000 General All-Purpose Fund	420140 Crime Control and	000023 GULL PRINTING	POLICE-MC CREA BUSIN	49.95
1000 General All-Purpose Fund	420140 Crime Control and	4296 JUAN MASO	POLICE-K-9 SUPPLIES	31.90
1000 General All-Purpose Fund	420140 Crime Control and	4296 JUAN MASO	POLICE-K-9 SUPPLIES	28.95
1000 General All-Purpose Fund	420140 Crime Control and	4296 JUAN MASO	POLICE-K-9 SUPPLIES	18.92
1000 General All-Purpose Fund	420140 Crime Control and	3025 FIRST BANKCARD	POLICE-1 PR MICROSPI	65.53
1000 General All-Purpose Fund	420140 Crime Control and	4605 THIRD EYE TECHNOLOGIES	POLICE-WORK ON COMPT	117.50
1000 General All-Purpose Fund	420140 Crime Control and	000666 WESTERN POLICE SUPPLY	POLICE-UNIFORM JACKE	509.72
1000 General All-Purpose Fund	420140 Crime Control and	001675 HARTFORD CHEMICAL	POLICE-TEST KITS	118.87
1000 General All-Purpose Fund	420140 Crime Control and	2379 RELIABLE OFFICE SUPPLY	POLICE-AAA BATTERIES	18.47
1000 General All-Purpose Fund	420140 Crime Control and	4788 G. W., INC	POLICE-STREAMLIGHT T	326.40
1000 General All-Purpose Fund	420140 Crime Control and	000085 SOUTHSHORE VETERINARY	POLICE-ANIMAL IMPOUN	474.52
1000 General All-Purpose Fund	420140 Crime Control and	000085 SOUTHSHORE VETERINARY	POLICE-ANIMAL IMPOUN	211.50
1000 General All-Purpose Fund	420140 Crime Control and	000085 SOUTHSHORE VETERINARY	POLICE-ANIMAL IMPOUN	195.50
1000 General All-Purpose Fund	420140 Crime Control and	2379 RELIABLE OFFICE SUPPLY	POLICE-DETECTV OFFICE	16.82
1000 General All-Purpose Fund	420140 Crime Control and	2379 RELIABLE OFFICE SUPPLY	POLICE-FILE FOLDERS	10.00
1000 General All-Purpose Fund	420140 Crime Control and	2379 RELIABLE OFFICE SUPPLY	POLICE-SHARED HP BLK	15.99
1000 General All-Purpose Fund	420140 Crime Control and	2379 RELIABLE OFFICE SUPPLY	POLICE-SHARPIE TWNTI	24.18
1000 General All-Purpose Fund	420140 Crime Control and	000282 QUILL CORPORATION	POLICE-MISC SUPPLIES	37.95
1000 General All-Purpose Fund	420140 Crime Control and	000017 TOTAL SCREEN DESIGN	POLICE-BADGES	47.16
1000 General All-Purpose Fund	420140 Crime Control and	2074 VERIZON WIRELESS	POLICE-CELL PHONE SE	284.59
1000 General All-Purpose Fund	420140 Crime Control and	4684 WASH N' GO, LLC	POLICE-VEH WASH NOV	134.21
1000 General All-Purpose Fund	420230 Care and Custody of	000552 LAKE COUNTY SHERIFF'S	POLICE-DEC 2014 PRIS	3.00
1000 General All-Purpose Fund	420400 Fire Protection and	000708 NATIONAL FIRE PROTECTION	FIRE-MEMBERSHIP RENE	165.00
1000 General All-Purpose Fund	420400 Fire Protection and	4067 FIRE APPARATUS REPAIR LLC	FIRE-AIR SYSTEM REPA	763.72
1000 General All-Purpose Fund	420400 Fire Protection and	000259 PETER BISHOP	FIRE- PB TRAVEL MEAL	92.00
1000 General All-Purpose Fund	420400 Fire Protection and	3665 JODI O'SULLIVAN	FIRE- JO TRAVEL MEAL	92.00
1000 General All-Purpose Fund	420400 Fire Protection and	4533 KEVIN STRAUB	FIRE- KS TRAVEL MEAL	92.00
1000 General All-Purpose Fund	420400 Fire Protection and	000750 JOHN A. STEVENS	FIRE-REPAIR ALLEY LI	60.00
1000 General All-Purpose Fund	420400 Fire Protection and	000026 POLSON AUTO PARTS, INC.	FIRE-STAR BITS & DRI	8.20
1000 General All-Purpose Fund	420400 Fire Protection and	4159 REXEL INC, d/b/a PLATT	FIRE-BATTERIES FOR S	94.01
1000 General All-Purpose Fund	420400 Fire Protection and	000975 MONTANA STATE VOLUNTEER	FIRE-STATE FF DUES	45.00
1000 General All-Purpose Fund	420400 Fire Protection and	000020 PROVIDENCE HEALTH &	FIRE-FAIRCHILD FF EX	47.00
1000 General All-Purpose Fund	430240 Road and Street	001305 CUMMINS NORTHWEST, INC.	STREETS-MISC PART	117.53
1000 General All-Purpose Fund	430240 Road and Street	000011 MISSION VALLEY POWER	STREETS-CITY SHOP	261.04
1000 General All-Purpose Fund	460430 Parks	000011 MISSION VALLEY POWER	PARKS-CITY PARKS	219.50
1000 General All-Purpose Fund	460430 Parks	000011 MISSION VALLEY POWER	PARKS-KERR DAM/BALL	2.08
1000 General All-Purpose Fund	460430 Parks	000011 MISSION VALLEY POWER	PARKS-SACAJAWEA LIGH	9.07
1000 General All-Purpose Fund	460430 Parks	000011 MISSION VALLEY POWER	PARKS-STORAGE SHED	62.70
Total for Fund:				7,497.28

For doc #s from 119689 to 119762

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
2020 Police Municipal Services	420140 Crime Control and	000094 DON AADSEN FORD	POLICE-PURCHASE FORD	14,200.00
2020 Police Municipal Services	420140 Crime Control and	001071 ST. PATRICK HOSPITAL	POLICE-CASE 214CR002	184.89
			Total for Fund:	14,384.89
2210 Parks/Salish Point	460430 Parks	000080 FLATHEAD NEWSPAPER GROUP	PARKS-ADVERTISEMENT	308.70
2210 Parks/Salish Point	460430 Parks	4657 CHAR-KOOSTA NEWS	PARKS-COLOR AD	440.00
			Total for Fund:	748.70
2219 Parks Donations	460430 Parks	3025 FIRST BANKCARD	PARKS-SHOP UPGRADE S	411.71
			Total for Fund:	411.71
2222 Park Donations -	460430 Parks	3025 FIRST BANKCARD	PARKS-37 LOCKING LIN	240.00
2222 Park Donations -	460430 Parks	3025 FIRST BANKCARD	PARKS-SAFETY ROPE	117.70
			Total for Fund:	357.70
2390 Drug Forfeiture Fund	420140 Crime Control and	4843 LAKE COUNTY SHERIFF DTF	POLICE-PORION OF CA	571.58
			Total for Fund:	571.58
2394 Building Code Enforcement	420500 Protective Inspections	2074 VERIZON WIRELESS	BUILDING-CELL PHONE	32.41
			Total for Fund:	32.41
2401 Light Maintenance	430263 Street Lighting	000011 MISSION VALLEY POWER	FACILITIES-STREET LG	1,351.08
			Total for Fund:	1,351.08
2402 Light Maintenance	430263 Street Lighting	000011 MISSION VALLEY POWER	FACILITIES-STREET LG	754.40
			Total for Fund:	754.40
2720 Police Donations	420140 Crime Control and	3025 FIRST BANKCARD	POLICE-FLOWERS FOR B	32.95
			Total for Fund:	32.95
2810 Police Training Fund	420140 Crime Control and	2654 WADE A. NASH	POLICE-WN TRAVEL MEA	74.00
			Total for Fund:	74.00
2820 Gas Apportionment Tax	430240 Road and Street	4813 CUSTOM FABRICATIONS	STREETS-WORK ON PLOW	1,100.00
2820 Gas Apportionment Tax	430240 Road and Street	000241 NORMONT EQUIPMENT CO.	STREETS-JOMA CORNER	171.26
2820 Gas Apportionment Tax	430240 Road and Street	4355 TITAN MACHINERY	STREETS-DISC	96.00
2820 Gas Apportionment Tax	430240 Road and Street	4813 CUSTOM FABRICATIONS	STREETS-BLADE FOR RE	190.00
2820 Gas Apportionment Tax	430240 Road and Street	000241 NORMONT EQUIPMENT CO.	STREETS-JOMA CORNER	171.26
2820 Gas Apportionment Tax	430240 Road and Street	4426 ISTATE TRUCK CENTER	STREETS-VARIETY PART	88.37
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-SQUEEGEE	5.59
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-WHL CHRGR, B	245.38
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-HOSE END, EA	20.36

For doc #s from 119689 to 119762

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-FITTING	19.04
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-HEATING NOZZ	63.65
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-HEATING NOZZ	-63.65
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-SNOW PLOW AL	156.11
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-COUPLER,HOSE	74.23
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-LOCKNUT	49.00
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-HOSE,HOSE EN	54.08
2820 Gas Apportionment Tax	430240 Road and Street	000026 POLSON AUTO PARTS, INC.	STREETS-FITTING RETU	-1.68
2820 Gas Apportionment Tax	430240 Road and Street	4849 JOHN DEERE FINANCIAL	STREETS-ASST FASTNER	28.71
2820 Gas Apportionment Tax	430240 Road and Street	000543 NORCO INC	STREETS-OUTER LENS	25.00
Total for Fund:				2,492.71
5010 Golf Fund	460446 Golf Course -	3025 FIRST BANKCARD	GOLF MAINT - 2.0X LE	14.38
5010 Golf Fund	460446 Golf Course -	3025 FIRST BANKCARD	GOLF MAINT-8 TERMINA	46.40
5010 Golf Fund	460446 Golf Course -	3025 FIRST BANKCARD	GOLF MAINT-PARTS	29.35
5010 Golf Fund	460446 Golf Course -	3025 FIRST BANKCARD	GOLF MAINT-TERMINAL	169.92
5010 Golf Fund	460446 Golf Course -	2323 R & R PRODUCTS, INC.	GOLF MAINT-OIL, COMP	204.52
5010 Golf Fund	460446 Golf Course -	000011 MISSION VALLEY POWER	GOLF MAINT-GOLF SHED	220.83
5010 Golf Fund	460446 Golf Course -	000011 MISSION VALLEY POWER	GOLF MAINT-60 HP PUM	14.17
5010 Golf Fund	460446 Golf Course -	000011 MISSION VALLEY POWER	GOLF MAINT-155 HP PU	10.57
5010 Golf Fund	460446 Golf Course -	000011 MISSION VALLEY POWER	GOLF MAINT-BAYVIEW P	52.58
5010 Golf Fund	460446 Golf Course -	000026 POLSON AUTO PARTS, INC.	GOLF MAINT-PRIMARY W	6.33
5010 Golf Fund	460446 Golf Course -	000026 POLSON AUTO PARTS, INC.	GOLF MAINT-PRIMARY W	6.33
5010 Golf Fund	460446 Golf Course -	000026 POLSON AUTO PARTS, INC.	GOLF MAINT-BARRICADE	15.70
5010 Golf Fund	460446 Golf Course -	000026 POLSON AUTO PARTS, INC.	GOLF MAINT-CHAIN-ROL	18.99
5010 Golf Fund	460446 Golf Course -	000026 POLSON AUTO PARTS, INC.	GOLF MAINT-METRICTAP	2.99
5010 Golf Fund	460446 Golf Course -	2074 VERIZON WIRELESS	GOLF MAINT-CELL PHON	136.17
5010 Golf Fund	460447 Golf Course - Pro Shop	3025 FIRST BANKCARD	GOLF PRO-ADVERTISING	40.00
5010 Golf Fund	460447 Golf Course - Pro Shop	000011 MISSION VALLEY POWER	GOLF PRO-PRO SHOP/ST	333.24
5010 Golf Fund	460447 Golf Course - Pro Shop	000076 LINK'S MANAGEMENT, INC.	GOLF PRO-GOLF PRO CO	184.05
5010 Golf Fund	460447 Golf Course - Pro Shop	000316 WALLACES GOLF SHOP	GOLF PRO-CITY SHARE	122.27
5010 Golf Fund	460447 Golf Course - Pro Shop	000316 WALLACES GOLF SHOP	GOLF PRO-CITY SHARE	59.97
5010 Golf Fund	460447 Golf Course - Pro Shop	000603 FLATHEAD VALLEY GOLF	GOLF PRO-MARKETING P	3,000.00
5010 Golf Fund	460460 G. C. Restaurant O & M	000011 MISSION VALLEY POWER	GOLF REST-T10204 MET	88.42
Total for Fund:				4,777.18
5210 Water Fund	430530 Source of Supply and	000011 MISSION VALLEY POWER	WATER-WELLS, BOOSTER	2,746.57
5210 Water Fund	430530 Source of Supply and	000011 MISSION VALLEY POWER	WATER-RIVERSIDE LIFT	112.31
5210 Water Fund	430530 Source of Supply and	000011 MISSION VALLEY POWER	WATER-RIVERSIDE REST	12.14
5210 Water Fund	430530 Source of Supply and	000011 MISSION VALLEY POWER	WATER-WELLS 6 & 7	595.78
5210 Water Fund	430550 Transmission and	2007 UTILITIES UNDERGROUND	WATER-BALANCE OF INV	3.93
5210 Water Fund	430550 Transmission and	2520 CITY OF POLSON BUILDING	WATER-BP FOR INT. IM	27.00
Total for Fund:				3,497.73
5310 Sewer Fund	430630 Collection and	3103 JIM MORELLI ELECTRIC LLC	SEWER-LAGOON DOOR, L	137.50
5310 Sewer Fund	430630 Collection and	000011 MISSION VALLEY POWER	SEWER-PUMP & LIFT ST	3,935.79
5310 Sewer Fund	430630 Collection and	2007 UTILITIES UNDERGROUND	SEWER-BALANCE OF INV	3.92
5310 Sewer Fund	430630 Collection and	2520 CITY OF POLSON BUILDING	SEWER-BP FOR INT. IM	27.00
5310 Sewer Fund	430640 Treatment and Disposal	4804 MARK SHRIVES	SEWER-MS TRAVEL MEAL	184.00

For doc #s from 119689 to 119762

Fund	Department Name (Account)	Vendor #/Name	Description	Amount
5310 Sewer Fund	430640 Treatment and Disposal	000620 ANTHONY G. PORRAZZO	SEWER-AP TRAVEL MEAL	184.00
5310 Sewer Fund	430640 Treatment and Disposal	2247 ASHLEY WALKER	SEWER-AW TRAVEL MEAL	184.00
5310 Sewer Fund	430640 Treatment and Disposal	4158 BRANDON PARKER	SEWER-BP TRAVEL MEAL	184.00
			Total for Fund:	4,840.21
			Total:	41,824.53

CITY OF POISON
Fund Summary for Claims
For the Accounting Period: 1/15

Fund/Account	Amount
1000 General All-Purpose Fund	
101000	\$7,497.28
2020 Police Municipal Services Levy	
101000	\$14,384.89
2210 Parks/Salish Point	
101000	\$748.70
2219 Parks Donations	
101000	\$411.71
2222 Park Donations - Restricted	
101000	\$357.70
2390 Drug Forfeiture Fund	
101000	\$571.58
2394 Building Code Enforcement	
101000	\$32.41
2401 Light Maintenance District #19	
101000	\$1,351.08
2402 Light Maintenance District #20	
101000	\$754.40
2720 Police Donations	
101000	\$32.95
2810 Police Training Fund	
101000	\$74.00
2820 Gas Apportionment Tax Fund	
101000	\$2,492.71
5010 Golf Fund	
101000	\$4,777.18
5210 Water Fund	
101000	\$3,497.73
5310 Sewer Fund	
101000	\$4,840.21
Total:	\$41,824.53

56.

**CITY OF POLSON
CITY COMMISSION MEETING**

Commission Chambers

January 21, 2015

7:02 p.m.

ATTENDANCE: Mayor Heather Knutson, Commissioners Campbell, Erickson, Morrison, Siler, Southerland, and Turner, City Manager Shrives, City Clerk Cora Pritt

Others Present (that voluntarily signed in): Elsa Duford, Rick LaPiana, Bonnie Manicke, Tony Porrazzo, and Andrew Speer

CALL TO ORDER: (00:10) Mayor Knutson called the meeting to order. The Pledge of Allegiance was recited. Roll call was taken.

APPROVAL OF PROPOSED AGENDA (1:11)-Commissioner Turner motion to approve the proposed agenda. Commissioner Erickson second. City Commission discussion: none Public comment: **Andrew Speer** questioned the placement of the Public Comment on Significant Matters to the Public Not on the Agenda. Mr. Speer's comment was that he felt it would be better served to put this item at the end of the agenda. **Elsa Duford** commented that when she looked up 2014ORD#005 on the City website there was no narrative. Mayor Knutson stated that that would be fixed. **VOTE: Unanimous Motion carried**

PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC NOT ON THE AGENDA (4:47)-none

CONSENT AGENDA: (5:42) a. Claims January 1-14, 2015, b. City Commission Meeting Minutes January 8, 2015. Commissioner Southerland motion to approve the Consent Agenda. Commissioner Morrison second. City Commission discussion: Commissioner Turner questioned the charge from Lake County Solid Waste for an annual fee. City Manager Shrives answered this is an annual fee that is a charge per dumpster. Public comment: Elsa Duford thanked Commissioner Campbell for clarifying the number of wells during the January 8, 2015 meeting. **VOTE: 1 abstain, 6 ayes Motion carried**

CITY MANAGER COMMENTS; (9:41) City Manager Shrives gave the following comments:

February 9, 2015 will be a work session to discuss the Planning Department fees. The meeting will begin at 6:30 p.m.

February 2, 2015 will be the next regular scheduled Commission meeting.

February 3, 2015 there will be a work session. The topic will be the Water Compact. The attorney for the Water Compact will be in attendance to explain the document. This work session will begin at 6:00 p.m.

On March 4th & 5th, 2015 the City Manager will be attending a City Manager/Mayor forum.

March 8-12, 2015 the City Manager has been asked to attend an insurance conference. This is in conjunction with his appointment to the Montana Municipal Interlocal Authority (MMIA) Board.

City Manager Shrives requested that the March 16, 2015 City Commission meeting be moved to March 23, 2015. The Commission approved this request.

Customers will soon be able to pay by credit card on-line. Currently credit cards must be paid over the counter. It will begin with Utility payments and then include other payments.

The new Heart & Soul plaque has been placed in the Commission Chambers.

City Manager Shrives read the following press release about Polson Bay Golf Pro Cameron Milton:

WMCPGA YOUTH PLAYER DEVELOPMENT AWARD

Cameron Milton, PGA

Cameron Milton is the PGA Head Golf Professional at Polson Bay Golf Course. Polson Bay is a 27-hole municipal facility with approximately 600 adult and junior pass-holders located in Polson, MT. Polson is a town of 5000 people located on the Flathead Indian Reservation and adjacent to the southshore of Montana's Flathead Lake.

Cameron has been selected for multiple reasons. First, he continues to expand his junior golf offerings, annually touching over 200 children of diverse ethnicity and socio-economic backgrounds in rural Montana. Second for his being resourceful in attaining local grant funding for the programs he offers, keeping costs extremely affordable for his programs. Additionally, Cameron's funding of an annual \$1,500--\$2,000 high school scholarship through his Junior Master's Golf Tournament. Most importantly to the committee, Cameron showed a commitment in 2014 in developing and implementing programs that go beyond the "drop off" camps that most facilities offer...including Polson Bay prior to 2014. These programs promoted family golf experiences and transitioned Polson's juniors from the camps to the golf course. Highlighting Cameron's 2014 offerings were: **Polson Junior Camp**--- A FREE camp that touches up to 150 juniors, offering basic instruction to school age children in etiquette, full swing, chipping and putting. The camp culminates in a Drive, Pitch and Putt competition that includes medals and potluck BBQ for participants and their entire family. Camp participants also receive a certificate of completion and camp "Grip It and Rip It" t-shirt. **Polson Advanced Camp**--- Offered to middle and high school aged juniors. The purpose of this camp is to refine the player's technique and improved course management skills for those players wishing to play competitively. The camp uses a variety of PGA Sports Academy curriculum and is funded through a grant from the Mission Valley Elks Lodge. **Tuesday Drop-In Lessons**--- Open to all players, including juniors. Instruction was offered from 6--7 pm every Tuesday evening in June for the nominal fee of \$10. **Sunday Afternoon Family Golf**--- An adult plays 9--holes with cart for \$15 as long as they are playing with children...kids play free. **Afternoon Driving Range Promotion**--- An adult and child receive 2 medium buckets and 2 soft drinks for \$10 and is available daily from 1--5 pm. **Challenge the Pro's**--- An event pitting the PGA Professional staff against the 2014 Men's Match and Stroke Play Champions in a four--ball format. Through pledges enough money was raised to cover all expenses for PBGC's two junior entrants in the Drive, Chip and Putt Sectional qualifier At Kayak Point as well as the expenses for one junior who then qualified to compete in Salt Lake City. Clearly Cameron Milton is a leader in our Association in the promotion and implementation Of Youth Player Development Programs. His energy and enthusiasm for kids at Polson Bay GC is infectious and he has succeeded in creating a welcoming atmosphere of inclusion that promotes golf as a family activity in Polson, Montana. The committee is proud to forward Cameron Milton, PGA as our Youth Player Development Award winner and find it difficult to believe there could be another professional who accomplished as much in youth player development as Cameron in 2014.

Andrew Speer asked for clarification on the work session to be conducted February 3, 2015. Will there be representation from both sides of the subject matter present and will each side get to present. Mayor Knutson replied that yes both sides will have an opportunity to address the Commission and the public is welcome to attend.

APPROVE AMENDMENT #6 TO THE AGREEMENT FOR ENGINEERING SERVICES BETWEEN THE CITY OF POLSON AND ANDERSON-MONTGOMERY CONSULTING, INC. IN THE AMOUNT OF \$14,390.00 BRINGING THE TOTAL CONTRACT AMOUNT TO \$239,290.00. (17:02) City Manager Shrives presented this agenda item. The Water Department Looping

project will be going out for re-bid. This amendment is to cover the additional design work that will need to be done. Also, the Confederated Salish & Kootenai Tribe have granted an easement by the KwaTaqNuk to replace the large pipe that will be brought to Council at a future meeting. This task order is so the work by Paul Montgomery can be completed. **Commissioner Southerland motion to approve Amendment #6 to the Agreement for Engineering Services between the City of Polson and Anderson-Montgomery Consulting, Inc. in the amount of \$14,390.00, to bring the total contract amount to \$239,290.00. Commissioner Turner second.** Commission discussion: none Public Comment: Elsa Duford asked if there was a map that shows the location of the project. Mayor Knutson answered that the map was provided at a previous meeting. Mayor Knutson further explained that the area is the Salish Point area. **VOTE: Unanimous Motion carried**

DISCUSS SALE OF ALL BEVERAGE LIQUOR LICENSE. (20:18) Agenda item was presented by Finance Officer Cindy Dooley. At the December 15, 2014 meeting of the City Commission, the Commissioners unanimously approved a motion to declare the All Beverage Liquor License (ABL) as surplus property and to come back to the Commission with a plan for the sale of the license. The City Golf Course Enterprise Fund has held the ABL as an asset since 2002 and purchased it for \$55,000. The ABL has been used in the City's golf course restaurant and on course beverage cart since that time. The ABL allowed the City to provide liquor as well as beer, wine and other alcoholic beverages. Periodically the Department of Revenue updates Periodically the Department of Revenue updates their list of liquor license sales. The most recent sale of a Lake County ABL was approved on November 25, 2014 in Ronan for \$75,000.00. Montana is on a quota system for All-Beverage Licenses, Beer Licenses and Restaurant Beer and Wine Licenses. The number of each of these types of licenses allowed is based on the population of the incorporated city for cities and the county population less the city populations for licenses outside the city limits. Currently based on population the City can have 6 ABLs. The City currently has 10 ABLs, as licenses issued prior to March 7, 1947 are allowed to be renewed. So the City is at full quota which means an entity wanting an ABL must purchase that license from an entity that already owns one. Currently, the City's license is the only ABL license that would be for sale in the City that the staff is aware of. The City has several choices regarding the serving of alcoholic beverages at the Golf Course for the upcoming golf season. The City can continue to use the ABL up to the time of the purchaser receiving temporary operating authority; or use the ABL until the existing hard liquor inventory is gone and then put the ABL into non-use and immediately apply for an On-Premises Beer License with Wine Amendment. Even though the city of Polson is at full quota for Beer licenses, as a municipality the City itself can receive a beer and wine license for use at a golf course without quota restrictions. If the City "shelves" the ABL, then sales of liquor would be discontinued at that point. From the time that the City places the ABL in non-use, there is basically a period of twelve months to sell the license. There are several methods that can be used to sell the license. 1) The City can advertise the license for sale at a set price such as \$100,000. 2) The City can ask for sealed bids with a minimum bid or reserve of \$55,000 and award the license to the highest bidder or 3) The City can hold a live auction also with a reserve of \$55,000 and award the license to the highest bidder. All methods would include placing a legal advertisement in the local paper and running ads in the tavern association newsletters and other restaurant and bar publications. The entity that is awarded the license must then submit an application to the Department of Revenue for a change of ownership and change of location and be approved by the department prior to the sale being completed. After discussion with management, it is management's recommendation that the City hold a live auction with a reserve of \$55,000. Mayor Knutson asked about floating the license. Finance Officer Dooley answered that the City could float the license but only to an area that can accept a

float. City Manager Shrives comments that the other piece of this that needs to be considered is the golf course restaurant. Roger Wallace did run the restaurant this past year but the restaurant did lose money, not as much as in previous years but it did lose money. Bottom line, Roger will not see a profit from running the restaurant this coming year. One of the reasons is the City is paying \$62,000.00 for employees. The main focus is providing service for the golfers. If the City continues to run the restaurant, then the service will have to change. From a business point of view it will be the right thing to do, but from a customer service point of view it will not be a good thing. **Roger Wallace** stated that the operational model for the coming year, due to the payroll expense, a snack bar is being considered. The menu would be cut to six to eight items. Also, the catering of events would be stopped. If someone wanted to have an event at the golf course, they would have to bring in the food from an outside source. City Manager Shrives commented that there is consideration of bringing someone in that would want to run a restaurant. Commissioner Turner asked if a restaurant board had ever been considered. This board would be responsible for overseeing the running of the restaurant. City Manager Shrives replied that he would like to bounce these ideas off the golf board and get their input. The important thing is to provide the best service that we can. Commissioner Turner commented that he agreed with Roger about reducing the menu to just six items. This would assist in cutting some cost. Roger Wallace also commented that the other issue is that the fresh food product produces too much waste and therefore is too high of a cost. This will be cut out too. Mayor Knutson commented that this is a good direction to be moving in. Serving the individuals that come in on a daily basis, choosing the items that they would most likely want to eat and then provide for the walk-ins that is a good way to go. This should help in becoming more efficient in the operations. Commissioner Turner asked how many people are on staff during the summer busy season. Roger replied there are 3 cooks and 6 wait staff. Mayor Knutson then recapped the liquor license is to do an open auction with a reserve of \$55,000.00. Commissioner Turner asked about the areas that the license could get floated to. Finance Officer Dooley answered that it would be in markets located in eastern Montana such as the Town of Geraldine. A lot of those towns are smaller. Commissioner Campbell asked if Cindy recalled what year Polson lost the gaming. Commissioner Turner thought it was either 2006 or 2008. City Manager Shrives commented that the goal is to get at least what the City paid for the All Beverage License. That is why the reserve is being set at \$55,000.00. Mayor Knutson asked about the live auction. Would it also include on-line? City Manager Shrives stated that the individuals would need to be present at the auction. **Dennis Duty** asked to be heard. His comment was that it is important to get someone that is qualified to purchase the license. City Manager Shrives explained that that is the next part of this, looking at the pre-qualifications. Commissioner Turner stated that if someone is going to have to be pre-qualified then they should be able to bid on-line or over the phone. Mayor Knutson asked if someone wanted to bid, could they send someone to the auction to represent someone. City Manager Shrives answered that the City is not going to determine who can purchase the license. The Department of Revenue will ultimately determine who can purchase the license. **Andrew Speers** commented that the internet is an awesome tool and could bring a large amount of bidders. City Manager Shrives stated that the mechanics and logistics will be determined and we will move forward.

Mayor Knutson gave one final detail per the new format, the selection of agenda items that need more detail and which ones would be more action minutes. The audio recording will be made available on-line on the City's website. Per the Ordinance, the audio will now be the official minutes of our meetings. Commissioner Campbell requested agenda item numbers six and seven have more written detail. Mayor Knutson reminded everyone that since we are moving to the audio as our official minutes, it will be more critical to have anyone speaking come to the podium and state their name and which ward they reside in.

Commissioner Turner had one more comment on Agenda No. 7. Since the City is going to sell the All Beverage License, just start the new season selling only beer and wine. Mayor Knutson also commented on selling off the liquor inventory. Finance Officer Dooley replied that the liquor can only be sold to the public. The inventory could be sold as full bottles at the same cost as the liquor store. It cannot be sold to other establishments. The City would not want to hold on to the inventory.

Mayor Knutson asks for a Motion to Adjourn. (52:34) Commissioner Campbell motion to adjourn. Commissioner Turner second. VOTE: Unanimous Motion carried.

ADJOURN: 7:55 p.m.

Heather Knutson, Mayor

ATTEST:

Cora E. Pritt, City Clerk

**CITY OF POLSON
CITY COUNCIL
AGENDA ITEM SUMMARY**

Agenda Item Number: 50. **Consent Agenda**
Meeting Date: February 2, 2015
Staff Contact: Eric H. Mulcahy, AICP
Email address: bp@cityofpolson.com phone: 883-8214

AGENDA ITEM SUMMARY:

Wal-Mart Stores, Inc., 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 is requesting that the City of Polson accept easement and water main for a segment of water line (See Exhibit B of the attached Utility Easement. The water line has been installed to City Standards and has been reviewed by Tony Porrazzo, City of Polson Sewer and Water Supervisor.

BACKGROUND:

As a condition of the Preliminary Plat for the Wal-Mart Subdivision along with the construction of the Wal-Mart store in Polson, Wal-Mart installed water main that serves the existing facilities and future lots associated with the Preliminary Plat. Dedication of the easement and segment of water main will address one of the conditions for final plat which will follow at a future City Council meeting.

ANALYSIS:

Tony Porrazzo inspected the installation of the water main and has reviewed and approved the proposed easement. Mr. Porrazzo is satisfied that the water main meets City standards.

STAFF RECOMMENDATION: Staff recommends acceptance of the easement.

SUGGESTED MOTION: Will be part of the consent agenda motion.

When recorded return to:
Laura Sever Blanco
Gust Rosenfeld, PLC
One East Washington, Suite 1600
Phoenix, Arizona 85004

Polson, MT #2607-01

UTILITY EASEMENT

Water – Outlots 1 and 2

THIS UTILITY EASEMENT is entered into as of the _____ of _____, 2015, by and between WAL-MART STORES, INC., a Delaware corporation, 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 (hereinafter referred to as "Grantor") and the City of Polson, Montana (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor previously granted a private water line easement pursuant to that certain Utility Easement dated August 8, 2013 and recorded on August 16, 2013 at Instrument No. 530621 in the Official Records of Lake County, Montana (the "Original Easement");

WHEREAS, Grantee has requested that the easement granted under the Original Easement be granted instead to Grantee.

WHEREAS, Grantor is the owner of that certain tract or parcel of land in the City of Polson, County of Lake, State of Montana, legally described on Exhibit A attached hereto and made a part hereof ("Grantor's Property"); and

WHEREAS, Grantee has requested from Grantor and Grantor is desirous of granting to Grantee, a utility easement for installation, maintenance and repair of water pipe line at, over and under certain portions of Grantor's Property as identified on Exhibit B attached hereto and made a part hereof ("Easement").

NOW THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant to Grantee an Easement for installation, operation, maintenance and repair of a water pipe line at, over and under certain portions of Grantor's Property as identified on Exhibit B attached hereto and made a part hereof with the following conditions:

1. **Original Easement.** The Original Easement is hereby vacated and is of no further force and effect.

2. **Easement.** Grantor hereby grants to Grantee an Easement for the extension of utilities that may be needed for making underground utility connections for the installation, operation, maintenance and repair of a water pipe line. Such Easement shall be at the location indicated on Exhibit B attached hereto and made a part hereof. Grantee agrees to repair any damage caused to the Easement Area or the surrounding area that is a result of any construction, or the acts of negligence of Grantee, its customers, employees, invitees, or contractors in extending, maintaining, or repairing the utility line. In the exercise of such rights, Grantee shall not take or cause to be taken any action which would constitute a material change to the original civil engineering plan for the Grantor's Property and Grantee shall use reasonable efforts to minimize to the extent reasonably practicable any damage to or interference with the use and employment at any other tract or of any business conducted thereon. Grantee shall exercise its utility extension rights in such a manner that will cause minimal disruption to the on-going business operation of Grantor.

3. **Use.** The Grantee, through its officers, employees and agents, shall have the right to enter upon the Easement Area in such a manner and at such times from the date hereof as may be reasonably necessary for the purpose of conducting, building, laying, patrolling, replacing and maintaining thereon the water pipe line and its appurtenances, including such repairs, replacements and removals as may be from time to time required. Said right shall be perpetual. Any utility extension lines shall be laid so that the top thereof shall be buried not less than thirty inches below the natural surface of the ground.

4. **Maintenance.**

(a) Grantee shall restore the surface(s) of the Easement Area to their original condition immediately following any of Grantee's permitted activities within the Easement Areas, so that Grantor, its successor and assigns shall have the free and unobstructed use thereof, subject to the rights of Grantee herein provided. Grantee will make no unreasonable interference with such use of the surface of said lands by Grantor, its successor and assigns.

(b) Grantee, upon the initial installation, and upon each and every occasion that the same is repaired, renewed, added or removed, shall restore the premises of the Grantor's Property, and any such buildings or improvements disturbed, to a condition as they were prior to any such installation or work, including the restoration of any topsoil.

(c) If, in an emergency, it shall become necessary for Grantor to promptly make any repairs that otherwise would have been the responsibility of the Grantee, or if the Grantee shall fail to adequately maintain the Easement Area as provided herein, then Grantor, at its sole option, may proceed forthwith to have the repairs made and pay the cost thereof, and to receive reimbursement therefor from the Grantee within thirty (30) days after a written request for same. In such instance, Grantor shall provide the Grantee with oral notification of its intention to make such repairs or the occurrence of such repairs, at the earliest practicable time given the nature and extent of the emergency.

(d) Maintenance shall not take place in the months of November and December of each year.

(e) Said Easement Area shall not be a staging area for heavy-duty equipment or other materials.

(f) One lane for ingress and egress in the Easement Area shall remain open at all times.

5. **Indemnification and Insurance.** Grantor, its successors and assigns, will not be responsible for damage by others to said utility line. Grantee shall indemnify, defend and hold harmless Grantor for any damages or liability to persons or property that might arise from the use, construction, operation or maintenance of the Easement and associated lines by Grantee, its agents, employees, contractors, or anyone authorized by Grantee, up to the amount of the statutory liability limit.

6. **Hazardous Waste.** Grantee (hereafter the indemnifying party), its successors and assigns, shall indemnify and hold harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, expenses, and costs including, without limitation, reasonable attorney's fees, of any settlement or judgment and claim of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Grantor, its successors and assigns by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Substance (as defined hereinbelow) resulting from the operations of the Grantee upon or under any parcel of land owned by Grantor including, without limitation, any losses, liabilities (including strict liability), damage, injuries, expenses, and costs, including, without limitation, reasonable attorney's fees, of any settlement or judgment or claims asserted or arising under, as amended, the comprehensive Environmental Responses, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, any so-called federal, state or local "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Substance.

7. **Duration.** The agreements contained herein and the rights granted hereby shall run with the title to the Easement Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, sublessees and assigns; subject, however, to the provisions of Paragraph 1 above.

8. **Relocation.**

(a) Grantor reserves the right to modify or relocate the utility lines and associated easements, at the expense of Grantor, provided any such modification or relocation does not prevent adequate delivery of such utility services.

(b) In case of the opening of a public road or street to or upon Grantor's Property, then any portion of such line interfering with the proper construction and maintenance of such road or street shall be adjusted accordingly by Grantee, at its expense, so as not to interfere with such road or street.

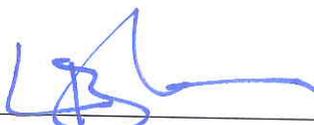
9. **Headings.** The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

10. **Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

GRANTOR:

Wal-Mart Stores, Inc., a Delaware corporation

By 

Its Vice President of Real Estate

State of Arkansas

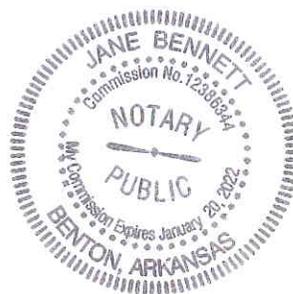
County of Benton

The foregoing instrument was acknowledged before me this 9th day of January, 2015, by L. B. Johnson, a Vice President of Real Estate of Wal-Mart Stores, Inc., a Delaware corporation, on behalf of the corporation.

(Seal and Expiration Date)



Notary Public



GRANTEE:

The City of Polson, MT

By _____

Its: _____

State of Montana

County of Lake

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, the _____ of the City of Polson, Montana, on behalf of the city.

(Seal and Expiration Date)

Notary Public

EXHIBIT A

Legal Description of Grantor's Property

EXHIBIT A

Page 1 of 2 Pages

PROPOSED NEW WAL-MART PROPERTY

LEGAL DESCRIPTION

That portion of that parcel described in Document No. 474198, records of Lake County, Montana, being in the East 1/2 of Section 11, Township 22 North, Range 20 West, Principal Meridian, Lake County, Montana, more particularly described as follows:

BEGINNING at the northeast corner of that parcel described in Document No. 474198, records of Lake County, Montana, said point also being the northeast corner of that tract of land denoted as Parcel-B on Certificate of Survey No. 5202, records of Lake County, Montana; thence along the east line of said parcel, South 05°01'36" West 652.78 feet; thence South 00°34'52" West 70.41 feet; thence South 08°15'46" West 106.60 feet; thence South 00°34'52" West 331.15 feet to the beginning of a 271.25 foot radius curve to the right; thence along said curve through a central angle of 32°01'52" an arc length of 151.64 feet to the northeasterly right-of-way of U. S. Highway No. 93; thence two courses along said right-of-way, North 51°36'38" West 58.62 feet and North 71°41'22" West 24.15 feet; thence North 29°24'28" East 15.93 feet to the beginning of a 186.00 foot radius non-tangent curve, concave northwesterly, having a radial bearing of North 64°33'42" West; thence northeasterly along said curve through a central angle of 24°41'35" an arc distance of 80.16 feet; thence North 00°44'43" East 59.52 feet; thence North 50°10'01" West 63.44 feet; thence North 89°15'17" West 303.63 feet to a point on the northwesterly right-of-way of U. S. Highway No. 93, said point being on a 2765.00 foot radius non-tangent curve, concave northeasterly, having a radial bearing of North 52°59'39" East; thence northwesterly along said right-of-way and along said curve through a central angle of 12°14'15" an arc distance of 590.56 feet; thence continuing along said right-of-way, North 14°25'47" West 48.18 feet; thence continuing along said right-of-way North 28°26'37" West 195.49 feet; thence continuing along said right-of-way, North 32°14'25" West 49.98 feet; thence continuing along said right-of-way, North 22°25'20" West 172.22 feet; thence leaving said northeasterly right-of-way of said U. S. Highway No. 93, and along the northerly line of the above-said Document No. 474198 and Parcel B of Certificate of Survey No. 5202, North 82°23'31" East 1022.99 feet to the **Point of Beginning**, containing 17.660 acres of land.

Certificate of Surveyor

S. R. Smith
S. R. Smith

MT Registration No. 4740S

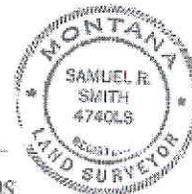


EXHIBIT A

PROPOSED NEW WAL-MART PROPERTY DETAIL

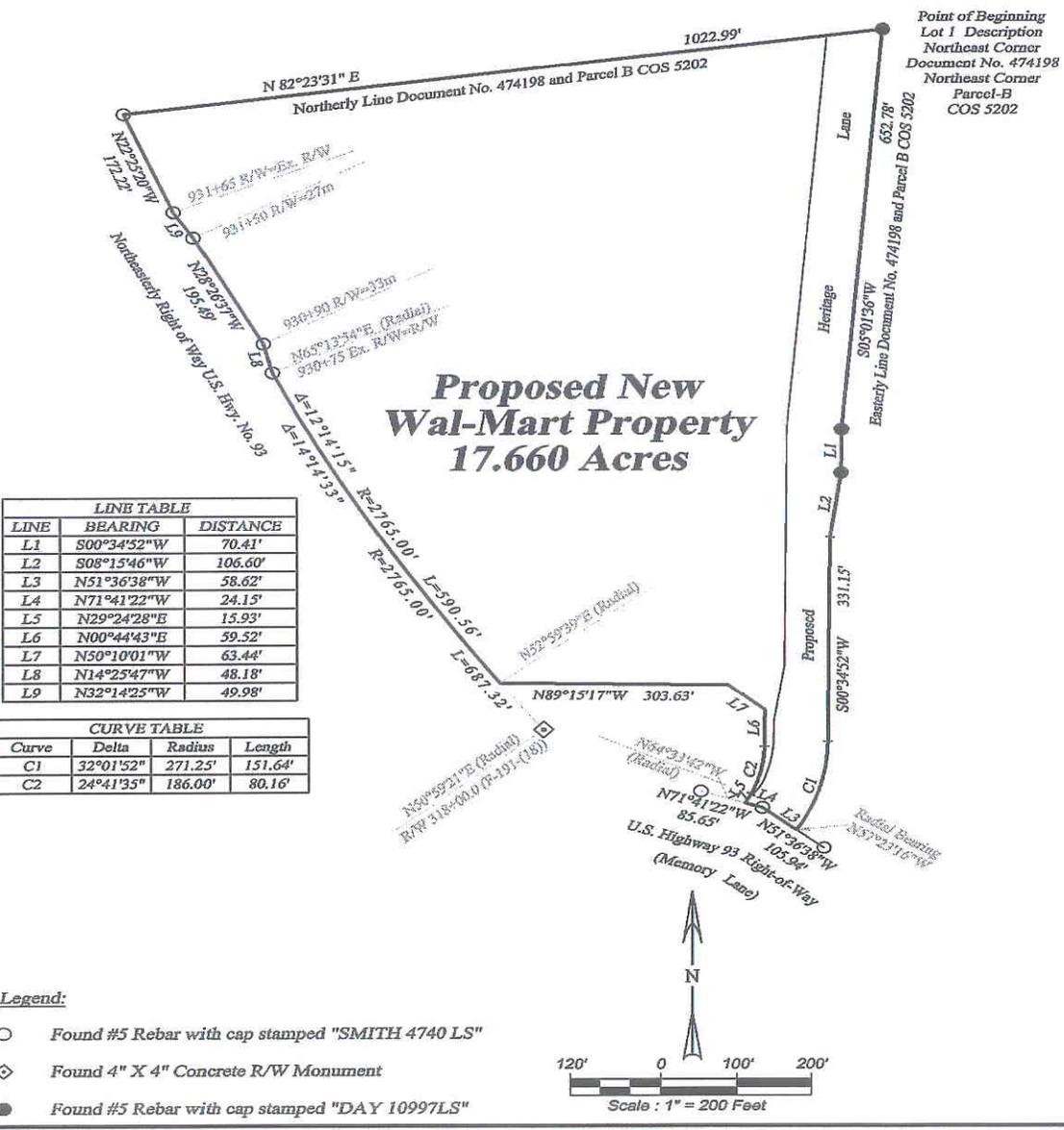


EXHIBIT B

Legal Description of Easement

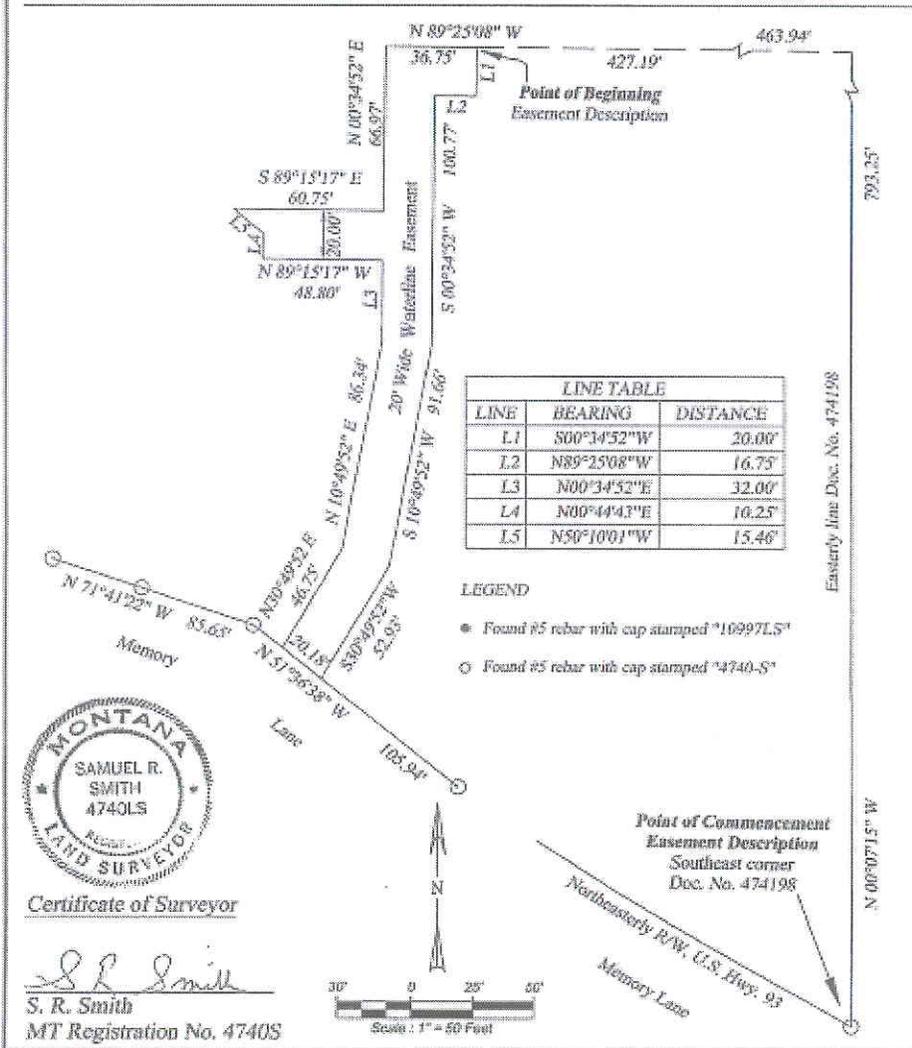
EXHIBIT B

WATERLINE EASEMENT

EASEMENT DESCRIPTION

That portion of the East 1/2 of Section 11, Township 22 North, Range 20 West, Principal Meridian, Lake County, Montana, more particularly described as follows:

COMMENCING at the southeast corner of that parcel described in Document No. 474198, records of Lake County, Montana; thence along the easterly boundary line of said parcel, North 00°07'15" West 793.25 feet; thence North 89°25'08" West 427.19 feet to the **POINT OF BEGINNING** of the easement being described; thence South 00°34'52" West 20.00 feet; thence North 89°25'08" West 16.75 feet; thence South 00°34'52" West 160.77 feet; thence South 10°49'52" West 91.60 feet; thence South 30°49'52" West 52.93 feet to the northeasterly right-of-way line of U.S. Hwy. No. 93; thence along said right-of-way line, North 51°36'38" West 20.18 feet; thence North 30°49'52" East 46.75 feet; thence North 10°49'52" East 86.34 feet; thence North 00°34'52" East 32.00 feet; thence North 89°15'17" West 48.80 feet; thence North 00°44'43" East 10.25 feet; thence North 50°10'01" West 15.46 feet; thence South 89°15'17" East 60.75 feet; thence North 00°34'52" East 66.97 feet; thence South 89°25'08" East 36.75 feet to the Point of Beginning.



**CITY OF POLSON
COMMISSION AGENDA ITEM SUMMARY**

Agenda Item Number 7 (Motion) Adopt Chapter 2, Article 7, Eminent Domain and Article 8, Code of Ethics
Meeting Date: February 2, 2015
Staff Contact: Mark Shrives.

AGENDA ITEM SUMMARY: This Agenda Item requests City Commission adoption of Chapter 2 Articles 7 and 8 of the City of Polson Book of Ordinances. This will be the second reading of this Ordinance. The first reading was January 8, 2015

BACKGROUND: Several months ago it was proposed to review and recodify the City of Polson Municipal Code. Rather than rewrite the entire code and then adopt all of the code at one time, based on staff recommendation, the City Commission directed that we move forward with the recodification process and adopt the new code in pieces when completed.

ANALYSIS: Chapter 2 Articles 7 and 8 discuss Eminent Domain and also a City Code of Ethics. City staff has also reviewed the additions and changes and have provided their input.

FINANCIAL CONSIDERATIONS: None

STAFF RECOMMENDATION: Staff recommends approval of the 2nd reading of the Ordinance

SUGGESTED MOTION: *I make a motion to approve the 2nd reading of Ordinance 2015-001 adopting Chapter 2 Articles 7 and 8 of the City of Polson Book of Ordinances.*

ATTACHMENTS:

1. Ordinance with Chapter 2, Articles 7 and 8

ORDINANCE 2015 ORD#001

**AN ORDINANCE TO ADOPT
CHAPTER 2, ARTICLE 7. EMINENT DOMAIN AND
CHAPTER 2, ARTICLE 8, CODE OF ETHICS
TO THE CITY OF POLSON BOOK OF ORDINANCES**

WHEREAS, the City Commission of Polson has determined that it is in the best interests of the citizens of Polson to reestablish, rewrite and reauthorize the Ordinances of the City;

WHEREAS, the Commission recognizes the most expeditious way of adopting such Ordinances is by adoption in a near sequential manner over a term of months to give the Commission and the public time to review the material;

WHEREAS, it appears in the best public interest that the following ordinances be adopted for the City of Polson;

NOW, THEREFORE, BE IT ORDAINED by the City of Polson that the following Articles of the Ordinances of the City of Polson be adopted in full as attachments hereto:

ARTICLE 7. EMINENT DOMAIN

ARTICLE 8. CODE OF ETHICS

The clerk is hereby instructed to codify this Ordinance and to place the same in the Book of Ordinances of the City of Polson.

Date: 01/08/2015

First Reading: 6 ayes nays 1 absent

Date: 02/02/2015

Second Reading: ayes nays abstentions

Effective Date:

Mayor

Attest:

City Clerk

ARTICLE 7. EMINENT DOMAIN

Sec. 2.07.100. Initiation of condemnation.

Sec. 2.07.110. Effect of resolution.

Sec. 2.07.120. Eminent domain procedure.

Sec. 2.07.130. State law superseded.

Secs. 2.07.140-2.07.199. Reserved

Sec. 2.07.100. Extent of power.

- A. The city shall have the power, known as eminent domain, to condemn and take property for all public purposes and city uses and purposes. The extent of the power and authority shall not be limited to the uses described in MCA title 70, chapters 30 and 31 (MCA 70-30-101 et seq., and MCA 70-31-101 et seq.) and Urban Renewal Law, MCA Title 7, Chapter 15, parts 42 and 43 (MCA 7-15-4201 et seq. and MCA 7-15-4301 et seq.); but shall be limited as follows:

1. *Prohibiting eminent domain for economic development.* Notwithstanding any other provision of law, neither the city nor any of its subdivisions shall use eminent domain to take private property for economic development without the consent of the owner.
2. *Economic development.* The term "economic development" means the use of powers of eminent domain to acquire private property for private use in the implementation of an urban renewal project or similar redevelopment plan.
3. *Prohibiting transfer of condemned property to private parties.* Notwithstanding any other provision of law, private property acquired through eminent domain without the consent of the owner shall not be dedicated, sold, leased in substantial part, or otherwise transferred to a private person, partnership, corporation, or any other entity for a period of ten years following the acquisition of the property by the city, except that property may be transferred or leased:
 - i. To private entities that are public utilities or common carriers such as a railroad or toll road; and
 - ii. To private entities that occupy an incidental area in a public project, such as a retail establishment on the ground floor of a public building.
 - iii.

Sec. 2.07.110. Initiation of condemnation.

The city shall initiate all eminent domain actions by the city commission passing a resolution declaring the public purpose for which the condemnation is being made, which resolution shall describe the property to be taken, and the extent of the interest condemned. The resolution shall authorize the city officials to proceed.

Sec. 2.07.120. Effect of resolution.

The passage of the resolution initiating condemnation and taking of private property for any public use declared in the resolution is conclusive as to the necessity of the taking.

Sec. 2.07.130. Eminent domain procedure

The eminent domain procedures shall follow the state statutes.

Sec. 2.07.140. State law superseded.

MCA 7-5-4106 is hereby superseded and the Urban Renewal Law as set forth in MCA Title 7, Chapter 15, parts 42 and 43 (MCA 7-15-4201 et seq., MCA 7-15-4301 et seq.), where inconsistent herewith is hereby superseded. It is the intent of this article that the city may take full advantage of the urban renewal law by following the procedures set forth herein and shall not be restricted in the exercise of powers of eminent domain for the purposes described in the urban renewal law by the provisions thereof.

Secs. 2.07.150-2.07.199. Reserved

ARTICLE 8. CODE OF ETHICS

Sec. 2.08.100. Declaration of policy.

Sec. 2.08.110. Definitions.

Sec. 2.08.120. Persons covered.

Sec. 2.08.130. Standards of conduct.

Sec. 2.08.140. Use of city resources.

Sec. 2.08.150. Treatment of the public.

Sec. 2.08.160. Conflict of interest.

Sec. 2.08.170. Confidential information.

Sec. 2.08.180. Gifts, gratuities and favors.

Sec. 2.08.190. Financial disclosure statement.

Sec. 2.08.200. Post-employment/service activities.

Sec. 2.08.210. Public notice required for former public official or employees/compliance with state law.

Secs. 2.08.220-2.08.999. Reserved.

Sec. 2.08.100. Declaration of policy.

The proper operation of the city government requires that public officials and employees be independent, impartial, accountable, and responsible; that governmental policies and decisions be made in the proper channels of the governmental structure; that public office and employment not be used for personal gain nor be used to harass, intimidate, or retaliate against citizens and other employees and officials; and that the public have confidence in the integrity of its government. The purpose of this code of ethics is to set forth standards of ethical conduct, to assist public officials and employees in establishing guidelines for their conduct, to foster the development and maintenance of a tradition of responsible, accountable and effective public service, and to prohibit conflict between public duty and private interest. Nothing herein shall be construed to relieve any employee or official of the responsibilities set forth in MCA 2-2-104, 2-2-105, 2-2-121, 2-2-131, and 7-5-4109.

Sec. 2.08.110. Definitions.

As used in this division, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- A. "Agency" means the city commission and all other agencies, board, committees, departments, and offices of the city, without exception.
- B. "Confidential information" means any information which is not available to the general public and which is obtained only by reason of an official's or employee's position.
- C. "Direct advantage" means a gain or benefit to the former public official or employee; the public official or employee's present principal or employer.
- D. "Employee" means all individuals employed by the city and its agencies, but does not include independent contractors hired by the city, city commissioners, or any municipal judge.

- E. "Financial interest" means any ownership interest, contractual relationship, business relationship, or other interest which will result in a monetary or other material benefit to an official or employee, either tangibly or intangibly, which has a value of more than \$15.00, other than the official or employee's duly authorized salary or compensation for the official or employee's services to the city, and which interest is not common to the interest of all other citizens of the city. The following financial interest shall be imputed to be those of an official or an employee of the city: that of a spouse or child of an official or employee; that of any prime contractor or subcontractor of the city, in which the official or employee or any member of the official or employee's immediate family has any direct or indirect interest as the proprietor, by ownership of stock or partnership interest.
- F. "Immediate family" means spouse and children.
- G. "Improper governmental action" includes any action taken by an official or employee during the performance of the officer's or employee's duties, regardless of whether the action is within the scope of the employee's employment or the officer's duties, and that:
1. Violates the standards of conduct listed in section 2.08.130 and/or 2.08.140
 2. Violates the standards prescribed by Title 2, Chapter 2, of Montana Code Annotated (MCA 2-2-101 et seq.);
 3. Is intended to harass, intimidate, or retaliate against any other employee, official, or any member of the public for the conduct protected under this division or state or federal law;
 4. Violates a fiduciary duty to the city or its citizens; or
 5. Creates a substantial or specific danger to the public's health or safety.
- Improper governmental action excludes personnel actions, including, but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining. A properly authorized city program or budgetary expenditure does not become an improper governmental action because a reporting person dissents from or disagrees with the city policy or decision.
- H. "Officials" means all officers and members of the city's agencies, whether elected or appointed, whether paid or unpaid, whether permanent, temporary, or alternate, and that are not employees.
- I. "Personal interest" means any interest in the matter which would affect the action of the official or employee other than a financial interest, and other than an interest because of membership in, or affiliation with, but not employment by a social, fraternal, charitable, service, educational, religious, governmental, health service, philanthropic, cultural, or similar nonprofit institution or organization.
- J. "Transaction" means the offer of, or the sale, purchase, or furnishing of, any real or personal property or services, by or to any person or entity directly or indirectly, as vendor or vendee, prime contractor, subcontractor, or otherwise, for

the use and benefit of the city or of such other person or entity for a valuable consideration.

Sec. 2.08.120. Persons covered.

All city officials and employees shall be bound by this division. All officials and all employees shall be bound by this division. Upon initial employment and annually thereafter each employee, official and member of every board or committee shall verify that such employee, official and board or committee member has not and will not knowingly violate any provision of this division or the rules, standards of conduct or rules of ethics established by state law.

Sec. 2.08.130. Standards of conduct.

- A. Officials and employees have an obligation to act morally and honestly in discharging their responsibilities.
- B. Officials and employees shall conduct themselves with propriety, discharge their duties impartially and fairly, and make continuing efforts toward attaining and maintaining high standards of conduct.
- C. Each official or employee serving on a multimember agency is expected to devote the time and effort necessary to the successful functioning of such agency.
- D. No official or employee shall improperly use, directly or indirectly, the official or employee's city position to secure any financial interest or personal interest for said official employee, or others.
- E. No official or employee shall, for any reason, use or attempt to use the official or employee's position to improperly influence any other official or employee in the performance of such official or employee's official duties.
- F. No employee shall act in a private capacity on matters that they are directly responsible for as an employee.
- G. No official shall act in a private capacity on matters acted upon as an official.
- H. All officials and employees shall refrain from improper governmental action as defined in this division.
- I. No official or employee shall retaliate against any employee, official, or member of the public regarding an allegation of improper governmental action because that employee, official, or member of the public proceeded or is proceeding in good faith under this division including acting under section 2.03.580.D.

Sec. 2.08.140. Use of city resources.

No official or employee shall use, or permit the use of, city-owned vehicles, equipment, material, or city personnel for personal use of the employee or official or anyone else or to be used in any manner prohibited by state statutes or city ordinance. Except where expressly

allowed by written contract, no city automobile shall be used by a city employee or official going to or from home, except when such use is for the benefit of the city, as in the case of an employee on call outside of the employee's working hours.

Sec. 2.08.150. Treatment of the public and by the public.

City officials and employees represent the city government to the public. In their contact with the public, officials and employees must bear in mind their role as representatives of the city. Each member of the public shall be treated courteously, impartially, and fairly. All employees and officials shall, in the exercise of their official duties, refrain from taking any action, making of any statement, or authoring any document that is intended to harass, intimidate, or retaliate against any member of the public. Employees and officials have the expectation that they will also be treated courteously and with respect for their position. Harassment, intimidation or retaliation by a member of the public will not be tolerated and may lead to criminal prosecution.

Sec. 2.08.160. Conflict of interest.

- A. Nothing in this section shall be interpreted or construed to prohibit any official or employee from exercising their own individual legal rights as to their own personal interests in a transaction or matter pending before the city or any of its agencies, or to prohibit an official or employee from testifying as a witness in any administrative or judicial proceeding. However, no official or employee who represents their own personal interest before an agency of which they are a member or employee, or a member or employee of an agency to which the matter may be appealed, shall participate in the decision of that agency or the appellate agency.
- B. No official or employee shall engage in any employment or business which conflicts with the proper discharge of such official or employee's duties.
- C. No official or employee shall take or influence official action if the official or employee has a financial or personal interest in a transaction or matter with the city.
- D. If an official or employee has a financial or personal interest in the outcome of a transaction or matter coming before the agency of which they are a member or by which they are employed, such official or employee shall:
 - 1. Publicly disclose on the record of the agency, or to their superior or other appropriate authority, the existence of such financial or personal interest; and
 - 2. Except as authorized pursuant to 2.03.520.A and G, shall not engage in deliberations concerning the matter or transaction, shall be disqualified from acting on the matter or transaction and shall not communicate about such matter or transaction with any person who will participate in an action to be taken on such matter or transaction.
- E. No employee, whether paid or unpaid shall represent or appear on behalf of any individual or entity before any agency of the city, or take any appellate

proceedings from any action of such agency, either personally or through an associate or partner.

- F. No official whether paid or unpaid, shall represent or appear on behalf of any individual or entity in transaction or matter of concern to the agency on which that official serves, either before that agency or any other agency of the city, or before the city commission, or take any appellate proceedings from any action of such agency or the commission. Such representation may be made by the official's associate or partner, provided no reference to the participation of the involved official is made except for certification or other required identification on prepared documents. The involved official shall not engage in deliberations concerning a transaction or matter represented by an associate or partner, shall disqualify himself/herself from acting on the transaction or matter, and shall not communicate about such matter with any person who will participate in the action to be taken on such transaction or matter.
- G. A city commissioner or mayor, as authorized pursuant to 2-2-121(10), MCA, may take action despite a conflict of interest described in this section if that commissioner's or mayor's participation is necessary for the city commission to obtain a quorum or to otherwise enable the city commission to act. If so, the commissioner or mayor shall disclose the interest creating the conflict prior to performing the official act.
- H. This section does not absolve any official or employee from complying with Title 2, Chapter 2, MCA. Any official or employee with a conflict of interest under this section shall, in addition to other requirements in this section and when required by law, comply fully with the disclosure requirements of 2-2-131, MCA, and shall file this disclosure with the Montana Commissioner of Political Practices prior to acting.

Sec. 2.08.170. Confidential information.

- A. No official or employee shall, without legal authority, disclose confidential information concerning the personnel, property, government, or affairs of the city.
- B. No official or employee shall use confidential information to advance such official or employees' own financial or personal interest or the financial or personal interests of any other person.
- C. Nothing in this section shall be interpreted as prohibiting the disclosure of information required by law to be disclosed.

Sec. 2.08.180. Gifts, gratuities and favors.

- A. Legislative Intent. The intent of this section is to further implement the declaration of policy set forth in 2.08.100 and establish specific standards of conduct related to gifts, gratuities, and favors that are provided to a person because of a person's employment or official position with the city. These standards recognize legitimate governmental interests exist that allow an employee or official to accept a gift, gratuity or favor in limited circumstances without such acceptance being considered the use of public office for private gain. These interests include, but

are not limited to, establishing effective relationships with citizens, acceptance of professional and community awards for public service, and attending public events in an official capacity. At the same time, these standards make it clear that each public officer and employee holds such office or employment as a public trust.

- B. No official or employee shall accept a gift, gratuity, or favor from any person or entity:
 - 1. That would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
 - 2. That the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or
 - 3. Has a value of \$100.00 or more for an individual.
- C. An employee or official may accept a gift, gratuity, or favor that has a value greater than \$25.00 but less than \$100.00 for an individual only if such gift, gratuity or favor:
 - 1. Complies with 2.08.180(B)(1) and (2); and
 - 2. Is provided incidental to and in conjunction with a public event where the official or employee's attendance is in fulfillment of their official duties.
- D. An employee or official may accept a gift, gratuity, or favor that has a value greater than \$25.00 but less than \$100.00 for an individual only if such gift, gratuity or favor complies with 2.08.180(B)(1) and (2) and is provided incidental to and in conjunction with a public event where the official or employee's attendance is in fulfillment of their official duties.
- E. An employee or official may accept payment or reimbursement from a person or entity for necessary expenses such as travel, lodging, meals, and registration fees in excess of \$100.00 if the expense is incurred while representing the city and the reimbursement would not violate 2.08.180(B)(1) and (2). Reimbursement or payment for educational activities in excess of \$100.00 is permissible if the payment or reimbursement does not place or appear to place the official or employee under obligation, clearly serves the public good, and is not lavish or extravagant.
- F. Upon the acceptance of a gift, gratuity, favor or award, the recipient shall file a disclosure statement with the city manager. Such disclosure statement shall indicate the gift, its estimated value, the person or entity making the gift, the relationship to the employee or official, and the date of the gift. The disclosure statement is a public record.
- G. A gift, gratuity, or favor does not include:

1. Items or services provided an employee or official in their private capacity and without relationship to their employment or official position;
2. A prize received upon a random drawing at an event where the official or employee attends in their capacity as an employee or official, the drawing is open to all attendees, and receipt of the prize does not place the official or employee under obligation;
3. An award publically presented to an employee or official in recognition of public service; and
4. Compensation for officiating at a ceremony.

Sec. 2.08.190. Post-employment /service activities.

- A. Within 12 months following the date on which a former public official or employee ceases service to the city, a former public official or employee may not, without complying with the provisions of 2.08.200:
 1. Make any formal or informal appearance before, or negotiate with any decision maker regarding a transaction or matter which was under the former public official or employee's direct responsibility or which the former public official or employee participated personally and substantially; or
 2. Represent or act or appear on behalf of an individual or entity other than the city in connection with any a transaction or matter which was under the former public official or employee's direct responsibility or which the former public official or employee participated personally and substantially as a public official or employee.
- B. No former public official or employee may use any former city title, including on business cards, email, or stationery, except that such use is not prohibited if the former public official or employee clearly indicates service to the city is no longer ongoing.
- C. The provisions of this section do not absolve a public employee or official from complying with the prohibitions against contracting in 2-2-105(3), MCA, or the prohibitions against obtaining employment in 2-2-201, MCA.

Sec. 2.08.200. Public notice required for former public servants/compliance with state law.

During the first 12 months following the date on which a former public official or employee ceases service to the city:

- A. A former public official or employee desiring to perform an act restricted by 2.08.190. shall:
 1. File with the city clerk and with the city attorney not less than six business days prior to the appearance a written public notice of the former public

official or employee's desire to perform an act restricted under 2.08.190. Such written notice shall state in substance the purpose for which the former public official or employee wishes to act other than as required by 2.08.190 and shall also indicate the responsibility the former public official or employee held over the transaction or matter or the nature of the former public official or employee's participation in the transaction or matter.

2. At the onset of the appearance orally disclose to the decision maker all offices or employment held by the former public official or employee while serving the city and the responsibility the former public official or employee held over the transaction or matter or the nature of the former public official or employee's participation in the transaction or matter. The city clerk shall post the written notice in a publicly accessible location on the city's website.
- B. A former public official or employee desiring to perform an act restricted by 2.08.190 who cannot reasonably meet the six-day notice period described in subsection A of this section may appear before a decision maker only at a duly noticed public meeting where a formal record of the proceedings is made. At the time of doing so, the former public official or employee shall comply with subsection A of this section.
- C. Unless the act is otherwise prohibited by Title 2, Chapter 2, MCA, upon complying with subsections A or B of this section as appropriate, a former public official or employee is not prohibited from the activities proscribed in section 2.08.190. Nothing herein, however, shall be construed as authority to absolve any former public official or employee of their duty to comply with Title 2, Chapter 2, MCA..

Sec. 2.08.210. Reporting improper governmental action/rights/limitations/protected conduct.

- A. *General.*
1. The provisions of this section are intended to work in harmony with the City of Polson Employee Handbook and provide remedies in addition to those listed in the employee handbook. Under no circumstances shall the provisions of this division be taken as authorization for any official to take or order disciplinary action be taken against a city employee for whom that official does not have authority to discipline or take action against pursuant to the city Charter or law.
 2. Nothing herein shall be deemed to reduce or interfere with the rights of an employee, official, or member of the public under state or federal law regarding actions that may constitute an improper governmental action.
- B. *Right.* Every city employee or official shall have the right to report, in good faith and in accordance with this division, to a city official, employee or another government official pursuant to the procedures of this division information concerning improper governmental action.
- C. *Limitations.*

1. This section does not authorize a city employee or official to report information that is subject to an applicable privilege against disclosure at law, unless waived, or to make a disclosure where prohibited by law. The purpose of this section is to protect and encourage employees and officials who know or in good faith believe improper governmental action has occurred to report those actions in good faith and in accordance with this division.
2. An employee or official reporting of the employee or official's own improper action does not grant the employee or official immunity from discipline (including but not limited to termination or removal from office) insofar as the employee or official's improper action would be cause for discipline or removal from office.
3. This section does not grant an employee or official immunity from discipline (including but not limited to termination or removal from office) insofar as the employee's or official's reporting of alleged improper governmental action is found to have not been made in good faith or is found to have been made in an attempt to harass, intimidate or retaliate against the person who is the subject of the original allegation of improper governmental action.

D. *Employee/official protection and protected conduct.* The following conduct by employees, an official, or a member of the public is protected under this section if carried out in good faith:

1. Reporting sexual harassment or workplace violence pursuant to the city's policies;
2. Reporting any violations of title 2, chapter 2, of Montana Code Annotated, Standards of Conduct (MCA 2-2-101 et seq.) or title 49, of Montana Code Annotated, Human Rights (MCA 49-1-101 et seq.);
3. Reporting any violation of the state's or city's criminal laws;
4. Reporting violations of an employee's or official's fiduciary duties;
5. Reporting any other improper governmental action as defined in this division;
6. Cooperating in an investigation under this division, the city Charter, the city's personnel policies, title 49, MCA, or federal law, conducted by a duly authorized city employee or official or a duly authorized agent of the state or federal government; or
7. Testifying in proceedings or prosecution arising out of an improper governmental action.

CITY OF POLSON

CITY COMMISSION AGENDA ITEM SUMMARY

Agenda Item Number: 8 (MOTION) Approve Resolution of the City Commission of Polson Establishing a Service Plan for the City

Meeting Date: February 2, 2015

Staff Contact: Mark Shrives

AGENDA ITEM SUMMARY: Approve resolution of the City Commission of Polson establishing a Service Plan for the City. (Attachment 1)

BACKGROUND: The need for a Service Plan was identified when the City identified issues regarding a past annexation. The City Engineer was tasked to prepare an updated plan and a City Commission work session was held where the overall concept of the plan was discussed.

ANALYSIS: City staff is proposing that the Commission adopt a comprehensive services plan for annexation and development of the City. (Attachment 2) This plan is not new nor does it result in additional regulation of growth. Instead, it pulls together the current policies and individual service plans for the vital services provided by the City to its citizens. The plan was developed by the City Engineer in cooperation and support from the department heads. The service plan is required by State Law.

New Information – At the January 5, 2015 meeting, Commissioner Campbell asked some questions regarding the annexation forms. Those questions could not be readily answered without information from the City Attorney. That information has been gathered and is at (Attachment 3). In discussions with Commissioner Campbell, he is now satisfied with the additional information provided by the City Attorney. At the January 5th meeting there were a few changes made to the document and since that meeting, the City department heads have once again reviewed the document. All changes proposed are shown in the new document.

FINANCIAL CONSIDERATIONS: It is not anticipated that there will be any additional financial cost or impact to the City

STAFF RECOMMENDATION: Staff recommends approval of resolution.

SUGGESTED MOTION: *I MOVE TO APPROVE THE RESOLUTION AND ATTACHED SERVICE PLAN OF THE CITY COMMISSION OF POLSON ESTABLISHING A SERVICE PLAN FOR THE CITY*

ATTACHMENTS:

1. Resolution of the City Commission of Polson Establishing a Service Plan for the City
2. Provision of Services Plan
3. City Attorney Memorandum

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POLSON ESTABLISHING A SERVICE PLAN FOR THE CITY

WHEREAS, the City of Polson recognizes that Montana State law has established municipal governments for the purpose of providing local government services essential for sound urban development as well as for the protection of health, safety and welfare in areas either already being intensively used or undergoing development for residential, commercial, industrial, institutional and governmental purposes;

WHEREAS, an adopted service plan provides an outline for orderly growth through the use of uniform regulations such as building codes, planning, and zoning standards and an equal sharing of community resources and financial responsibility for those resources by people living in an area united by social, political, and economic interests;

WHEREAS, the City Commission anticipates future growth of the City in its jurisdictional area and in its population and such growth will place pressure upon limited public resources and services;

WHEREAS, the Commission is well aware that development within the City and along its borders will demand services that are not available at the present time and that to impose upon the current taxpayers additional burdens without direct benefits is unfair to its citizens;

WHEREAS, a healthy vibrant economy for the City requires the encouragement of growth and development, balanced with the costs to the citizens; and

WHEREAS, the adoption of a service plan for annexation and the development of the City is not only a requirement but a necessity and is held to be in the best interests of its residents and taxpayers.

NOW, THEREFORE BE IT RESOLVED, the City of Polson, hereby establishes the attached service plan for itself and for its future annexations as required by Montana Codes Annotated Title 7, Chapter 2, Part 46 "Annexation by Petition" and Part 47 "Annexation with Provision of Services". Such plan is to supersede and replace any previous service plan of the City.

BE IT FURTHER RESOLVED, that the Clerk of this Commission is instructed to place this Resolution in the City's Book of Resolutions and to publish and make available to the public the attached *Service Plan of the City of Polson*.

PASSED AND ADOPTED by the City Commission of the City of Polson, Montana, this ____ day of February, 2015.

AYES: _____ NAYS: _____ ABSENT: _____

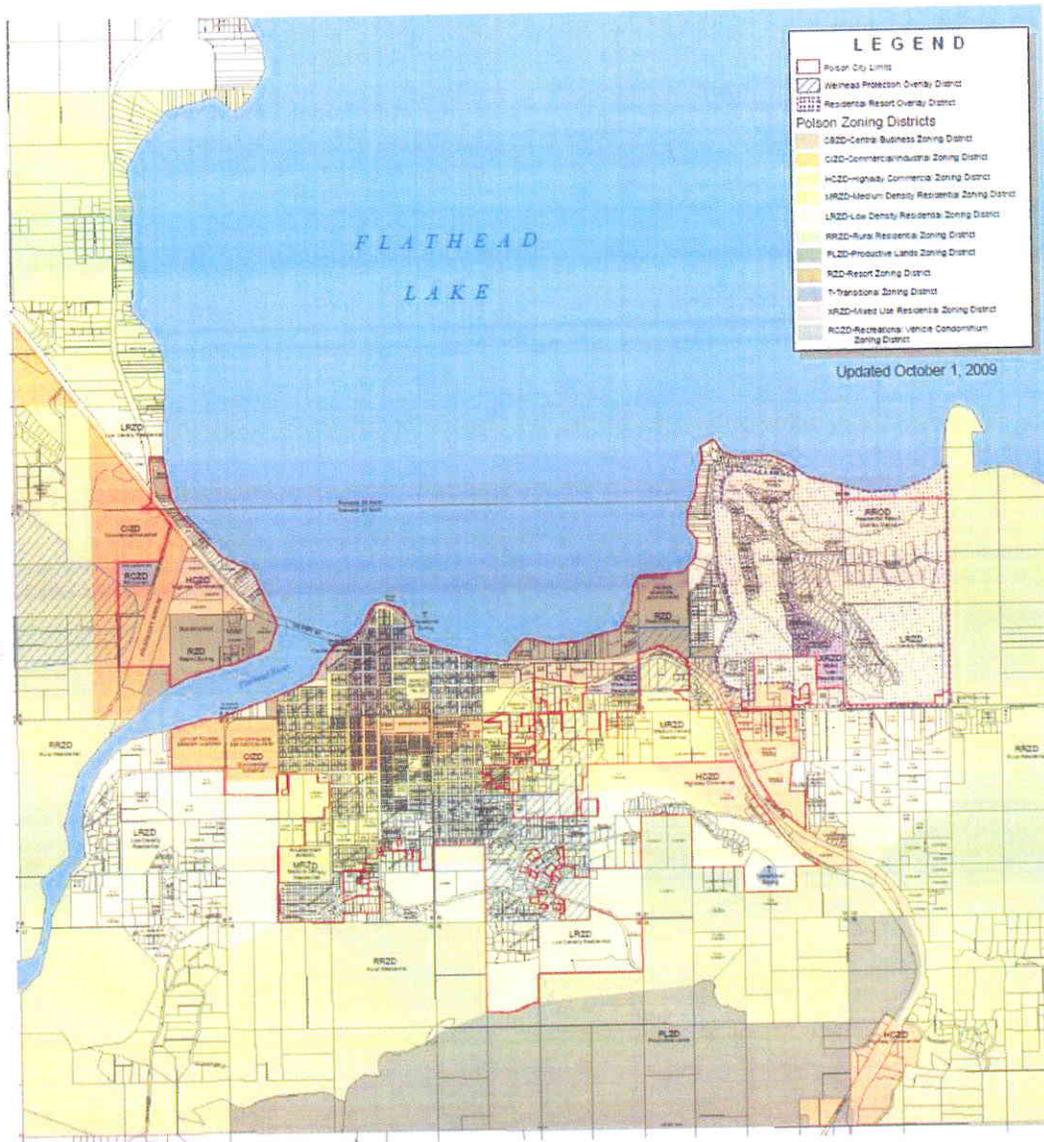
Heather Knutson, Mayor

Attest:

Cora E. Pritt, City Clerk

CITY OF POLSON

EXTENSION OF SERVICES PLAN



Adopted 2015

CITY OF POLSON
EXTENSION OF SERVICES PLAN

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CITY OF POLSON

EXTENSION OF SERVICES PLAN

INTRODUCTION

This extension of services plan is intended to be used as a guide for the provision of City services to those areas of the City not served at this time, and for territories to be annexed into the City. (See Exhibit A on page 26) The plan will serve three basic objectives:

1. To meet Montana statutory requirements for annexation of lands;
2. To provide a logical framework, in concert with:
 - o 2011 Polson Area Transportation Plan
 - o 2010 United States Census Bureau Data
 - o Polson Development Code
 - o Polson Growth Policy
 - o Lake County Growth Policy
 - o Draft Lake County Parks and Trails Plan,
 - o Lake County Subdivision Regulations
3. To establish policies which clearly identify methods of financing and extending municipal services and the party or parties responsible.

Statutory Requirements

In order to satisfy statutes 7-2-4731, M.C.A., "Plans and Report on Extension of Services Required," and 7-2-4732, M.C.A., "Contents of Plan For Extension of Services," the City of Polson is required to show how it will provide services to areas proposed for annexation. Specifically, such a plan must establish at least a five-year urban growth boundary based on availability of water, sewer, storm drainage, solid waste disposal, streets, police protection and fire protection.

If it becomes necessary to extend streets, water, sewer, or other, municipal services into an area to be annexed, the plan must set forth a proposed timetable for construction and show how the municipality plans to finance extension of these services. If the area to be annexed is currently served by adequate water, sewer and streets, and no capital improvements are necessary, the municipality must provide plans of how it intends to finance other services, mainly police protection, fire protection, and solid waste disposal, as well as how it will continue utility service.

The location of the urban growth boundary is determined by considering available undeveloped and underdeveloped lands in the context of existing municipal services and the logical extension of these services into undeveloped land. In addition, past community growth trends, as well as existing community growth stimulants and deterrents, are taken into consideration in projecting growth area boundaries.

CITY OF POLSON EXTENSION OF SERVICES PLAN

The proposed growth boundary should also conform to the adopted Growth Policy and, whenever practical, should use natural topographic features such as ridge lines, streams, or creeks as boundaries. If a street is used as a boundary, land on both sides of the street is included in the growth area.

Relationship to the Polson Growth Policy

This Extension of Services Plan, by reference, hereby incorporates the Polson Growth Policy, 2006. The Growth Policy has been used as a source of technical information presented in this document. The adoption and implementation of this plan will assist the City in achieving the goals and objectives of the Growth Policy.

CITY OF POLSON EXTENSION OF SERVICES PLAN

URBAN GROWTH BOUNDARIES

The urban growth area is the projected service area in which municipal services can or may be extended over a period of 5 -10 years, depending upon needs and demand. Boundaries of the urban growth area are established based on prevailing and anticipated growth trends, with consideration given to growth stimulants as well as growth deterrents or impediments. Population and economic trends that affect community growth or decline are also critical factors which should be analyzed in order to accurately establish urban growth area boundaries.

Economic Conditions and Population Trends

The **City of Polson** is in Lake County, Montana, United States, on the southern shore of the Flathead Lake. Polson is also on the Flathead Indian Reservation. Polson was incorporated on April 5th, 1910, and is the county seat of Lake County. The City was named after pioneer rancher David Polson. Flathead Lake is the largest freshwater lake west of the Mississippi.

As of the census of 2010, there were 4,488 people, 1,991 households and 1,150 families residing in the City of Polson. The population density was 1,084.1 inhabitants per square mile. There were 2,506 housing units at an average density of 605.3 per square mile.

There were **1,991** households out of which 31.1% had children under the age of 18 living in them, 42.7% were married couples living together, 13.2% had a female householder with no husband present and 39.5% were non-families. 34% of all households were made up of individuals and 16.7% had someone living alone who was 65 years of age or older. The average household size was 2.25 and the average family size was 2.86.

The population was fairly diverse with 25.6% under the age of 18, 8.7% from 18 to 24, 25.3% from 25 to 44, 20.9% from 45 to 64 and 19.6% who were 65 years of age or older. The median age was 39 years of age. For every 100 females there were 86.8 males. For every 100 females age 18 and over, there were 83.8 males.

The median income for a household in the City was \$21,870 and the median income for a family was \$30,833. Males had a median income of \$21,113 versus \$19,210 for females. The per capita income for the City was \$13,777.

mandates of what is now section 7-2-4403, MCA, was an error fatal to the City's power to annex.

Nilson, 190 Mont. at 347, 621 P.2d at 470. Thus, as the City of Great Falls did not comply at all with the mandatory requirements of the annexation statute, and the owner of the property did not consent to the annexation, it was declared void. In this context, the words "completely and strictly" were added in discussing the standard of substantial compliance with the annexation statutes.

¶ 19 Both *Gregory* and *Nilson* involved facts where the respective cities did not follow a mandatory statutory procedure at all. Thus, in those cases both of the phrases "substantial compliance" and "completely and strictly comply" were appropriate. In this case the City did comply with each and every one of the statutory mandates as we discuss below. It is the degree of such compliance that is called into question by the Plaintiffs.

¶ 20 The municipal annexation statutes contain numerous and detailed requirements

[99 P.3d 157]

for a city to annex property. Some of these, especially those concerning plans for the future, charge city planners to make subjective value judgments and statements of opinion. The cardinal considerations for requiring substantial compliance with the annexation laws are public notice and participation, particularly for those affected by a proposed annexation. *Gregory*, 187 Mont. at 136, 609 P.2d at 251. If all of the substantive and procedural requirements of the annexation statutes are included and complied with by a municipality in the annexation procedure, the law will necessarily have been followed. And, in addition, if each of the statutory mandates that contain a subjective component are considered and included in the required plans, i.e., substantially complied with, those citizens whose property is in the annexed area, as well as the residents of the entire city,

will have notice and the opportunity to participate. We hold compliance with the annexation statutes must be complete and municipalities must follow all of the directives of the statutes. Compliance must be substantial where a statute requires a municipality to exercise discretion in making its planning decisions. If there are no disputed issues of fact, this Court will review a district court's decision on whether there was compliance with the law *de novo*.

III. DISCUSSION

ISSUE ONE

¶ 21 Did the District Court err in concluding a recorded waiver of protest to annexation executed by a previous landowner is a covenant running with the land that precludes a current landowner from protesting annexation?

¶ 22 Under Montana's statutory scheme for annexation of land adjoining a city, a landowner has the right to protest a proposed annexation. This right is codified at § 7-2-4710, MCA, which reads:

Protest. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a

period of 1 year from the date of disapproval.

At the same time, a municipality may require consent to annexation as a condition of initiating service to a parcel of land. Section 7-13-4314, MCA, provides:

Annexation as a requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

¶ 23 In 1966, the City adopted a policy requiring that in order to receive City water and sewer utilities a landowner outside City boundaries had to agree to waive their right to protest a later annexation by the City. The waivers used by the City are entitled either "Consent to Annex Agreement" or "Waiver of Protest Agreement" (collectively referred to as waiver of protest agreements or waivers). Despite the difference in title, both waiver of protest agreements read as follows:

That for and in consideration of the sum of One Dollar and other good and valuable consideration (\$1.00 o.v.c.) to us in hand paid, and certain premises, mutual terms, covenants, provisions, conditions, and agreements, we do hereby waive any and all right to protest which we may have in regard to any attempt made or to be made by the City of Whitefish, Montana, to annex to and make a part of the said

City of Whitefish, and incorporate within its boundaries the following described real property situated in the County of Flathead, State of Montana, to-wit: ...

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We do hereby further agree that this covenant shall run to, with, and be binding upon the title of the said real property, and shall be binding upon our heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the above-described real property.

These waivers were properly recorded after being executed by previous landowners. The waivers were used by the City to invalidate protests submitted by current Property Owners. As a result, two of the areas no longer had a majority of property owners protesting annexation and the City annexed those areas.

¶ 24 The District Court concluded the waivers constitute covenants running with the land because the waivers were for the direct benefit of the property itself. The District Court also stated the statutory right of protest is premised on property ownership and that when such right was waived and recorded, it runs with the land. Finally, the District Court noted the consent requirements of § 7-13-4314, MCA, allow a city to extend water and sewer service to a specific tract of land if the owner of the land consents to annexation. The court held that because this statute is also tied to a specific parcel of land based on ownership, the waivers constitute a covenant that runs with the land.

¶ 25 On appeal, the Property Owners argue the statutory right to protest in § 7-2-4710, MCA, resides with the current landowner and therefore a recorded waiver executed by a previous landowner cannot invalidate a protest to annexation. They argue the statutory consent

to annexation authorized by § 7-13-4314, MCA, only applies to the initiation of service and therefore cannot transfer to subsequent purchasers. The Property Owners again cite *Pool, Gregory, and Nilson*, to assert that in order for such a waiver to be valid, the Legislature must expressly authorize municipalities to record these waivers by enacting another annexation statute.

¶ 26 The City argues such waivers are valid and binding on subsequent owners of the property because the waivers were executed by the previous owners to secure a benefit for the land, because the waivers were properly recorded, and because the language of the waivers indicates an intent that subsequent purchasers of the land be bound by the waiver. Finally, the City argues if future purchasers are not bound by the covenants, the entire process of development and subdivision of land would break down and property would have to be annexed one parcel at a time.

¶ 27 *Molitor* addressed an analogous situation in which a self-governing county enacted an ordinance requiring the payment of a fee to the examining land surveyor. *Molitor*, 190 Mont. at 520-24, 621 P.2d at 1103-05. The plaintiff asserted that under § 7-1-114, MCA, a self-governing entity must follow the state planning and zoning laws and therefore, the fee was improper because those laws did not expressly provide for such a fee. We disagreed, holding § 7-1-113, MCA, allows a self-governing entity to act even where there are controlling state laws as long as the local government's actions are not inconsistent with or "lower or less stringent" than state requirements. We held § 7-1-103, MCA, and § 7-1-106, MCA, both require that we give self-governing powers a broad interpretation.

¶ 28 The same reasoning applies to this case. Section 7-1-114(1)(a), MCA, requires the City to comply with the state annexation laws. Section 7-13-4314, MCA, allows the City to require consent to annexation for supplying its utility service. The waiver of protest agreements are executed to obtain this consent. Recording

the waivers in order to create covenants that run with the land and bind subsequent purchasers is not inconsistent with or less stringent than the state requirements. The purpose of § 7-13-4314, MCA, is to ensure that property owners outside a municipality can request utility service and to ensure that a local government can later require annexation in exchange for its utilities. Creating a covenant that runs with the land furthers these purposes. The alternative would be to require utilities to be disconnected every time a property changes hands so that the City can again require consent to annexation for its utilities under § 7-13-4314, MCA. Such a result is not contemplated by the statutory

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language of § 7-2-4710, MCA, or § 7-13-4314, MCA.

¶ 29 The Property Owners argue there is no statutory authority for such covenants. We disagree. Section 70-17-203, MCA, provides that "Every covenant ... which is made for the direct benefit of the property or some part of it then in existence, runs with the land." The plain language of this statute indicates the present waivers are allowed as they directly benefit the property. *Hampton v. Lewis & Clark County*, 2001 MT 81, ¶ 25, 305 Mont. 103, ¶ 25, 23 P.3d 908, ¶ 25. Therefore, the waivers are proper because the waivers directly benefit the property and are not inconsistent with or "lower or less stringent" than the state annexation requirements. We note here the Property Owners focused only on their statutory argument that the annexation statutes do not allow for such covenants. They did not argue the waivers do not meet all the necessary elements of a covenant running with the land. Therefore, we need not assess all the elements of covenants running with the land.

¶ 30 In sum, the District Court properly concluded the waiver of protest agreements recorded by the City constitute covenants that run with the land that comply with the state annexation statutes. These covenants are binding on subsequent purchasers including the Property

Owners joined in this case. Therefore, the City properly invalidated protests from these Property Owners and two of the areas annexed by the City did not have a majority of property owners protest the annexation.

ISSUE TWO

¶ 31 Did the District Court err in concluding the City could require consent to annexation for continued receipt of utility services by enacting City of Whitefish Resolution 98-43?

¶ 32 A number of tracts in the areas to be annexed have been receiving utility services since before 1966 when the waiver of protest agreements were initiated. In order to address the continuation of services to property that receives water and sewer utilities from the City, the City adopted Resolution 98-43 (the Utility Rule) in September 1998. The Utility Rule provides that upon notice to the property owner, the City can imply consent to annexation if the property owner continues to use the utility services. The rule reads in part as follows:

The City may, at any time, require a property owner's consent to annexation as a condition of continued sewer and/or water service. When the City determines to require such consent from a particular property owner, the City may notify the property owner, in writing, that the City seeks such consent, and that if such consent is not given, the City will require that the property owner discontinue receiving sewer and water service.... If ... the property owner has not, within ten (10) days, made firm written arrangements to discontinue sewer and water service, then the City shall be entitled to treat the property owner as having consented to annexation of his or her property upon expiration

of such 10-day period.... If the property owner consents to annexation [by failing to make arrangements to disconnect], then the City shall be entitled to disregard any protest that such property owner makes to a proposed annexation of his or her property.

This rule is based on 46 Op. Att'y Gen. No. 12 (1995) (AG Opinion) which held that municipalities can establish rules requiring consent to annexation for continuing service.

¶ 33 Pursuant to the Utility Rule, the City gave notice to the affected Property Owners that it would imply their consent to annexation if they failed to make written arrangements to disconnect from the City's utilities. Although numerous Property Owners protested the annexations in writing, few made arrangements to disconnect their utilities. Because they did not make arrangements as required by the Utility Rule, the City invalidated these protests and implied consent to annexation. When these protests were subtracted by the City, none of the five areas had a majority of landowners protest annexation.

¶ 34 The District Court held that § 7-13-4314, MCA, and the AG Opinion properly supported the City's position that consent to

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annexation may be required for receipt of continued utility service.

¶ 35 Analogous to their first argument, the Property Owners assert § 7-13-4314, MCA, does not provide statutory authority for the Utility Rule and that the City cannot by virtue of the rule equate receipt of services to consent to annexation. Further, the Property Owners disagree with the AG Opinion that a municipality can require consent to annexation as a condition of continued receipt of services. The City argues it properly relied on the AG Opinion when it adopted the Utility Rule.

¶ 36 The District Court is correct. The AG Opinion concludes a municipality "may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service." This conclusion is based on § 69-7-201, MCA, which governs the operation of public municipal utilities. This statute reads:

Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility.... The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

As the Attorney General noted, the provisions of this statute indicate a legislative intent to give municipalities broad authority to adopt rules for the operation of water and sewer utilities.

¶ 37 Specifically, § 69-7-201, MCA, makes clear a municipality has authority to establish rules regarding users outside its boundaries. Further, the "requirements of good practice which can be normally expected for the operation of a utility" must, by necessity, include rules governing continued use.

Therefore, § 69-7-201, MCA, gives a municipality authority to set rules for continued use of its utilities by users outside its boundaries. So, § 7-13-4314, MCA, allows a municipality to require consent to annexation in order to initiate service, and § 69-7-201, MCA, allows a municipality to make rules regarding the discontinuance and reestablishment of service. Therefore, a municipality may require consent to annexation for continued use as well as initial use.

¶ 38 Rules of statutory construction support this interpretation. We interpret related statutes to harmonize and give effect to each. *Chain v. Mont. DMV*, 2001 MT 224, ¶ 15, 306 Mont. 491, ¶ 15, 36 P.3d 358, ¶ 15. Different language is to be given different construction. *In re Kesl's Estate* (1945), 117 Mont. 377, 386, 161 P.2d 641, 646. Given these rules, the phrase "extension of service" in § 69-7-201, MCA, does not have the same meaning as the word "initiate" in § 7-13-4314, MCA. In addition, we avoid statutory construction that leads to absurd results if a reasonable construction will avoid it. *Chain*, ¶ 15. By allowing a municipality to demand consent to annexation as a requirement of continued service, all parties avoid the duplicative and unnecessary step of discontinuing service if the landowner wishes to continue to receive service and consent to annexation. At the same time, a landowner who does not want to consent to annexation can simply make arrangements to disconnect from service. We affirm the District Court's determination that the City complied with the state annexation statutes when it adopted the Utility Rule in Resolution 98-43 and thereby required consent to annexation as a condition of continued service.

ISSUE THREE

¶ 39 Did the District Court err in concluding that by following City of Whitefish Resolution 98-43, the City could imply consent to annexation from Property Owners who continued to receive utility services after the City gave notice requiring them to disconnect the utilities?

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¶ 40 Under the Utility Rule set out above, after notice property owners must make "firm written arrangements to discontinue sewer and water service" if they do not wish to consent to annexation. If a property owner fails to do so, "the City shall be entitled to treat the property owner as having consented to annexation." Further, the City is entitled to "disregard any protest" submitted by such a property owner.

¶ 41 The District Court held that because § 7-13-4314, MCA, does not require a specific type of consent such as express, written or implied, implied consent was a valid form of consent. The court also held implied consent was proper under § 28-2-503, MCA.

¶ 42 The Property Owners argue there is no statutory authority for implying consent to annexation under the annexation statutes. They also assert that under the contract statute regarding voluntary acceptance of a benefit codified at § 28-2-503, MCA, there can be no meeting of the minds given that the Property Owners submitted written protests. Finally, the Property Owners argue ambiguity and confusion in the City's letters prevented any meeting of the minds that would validate implied consent by the Property Owners. The City argues the implied consent provided for in the Utility Rule is allowed by § 28-2-503, MCA.

¶ 43 As already decided above, the Utility Rule properly requires consent to annexation for continued service. The rule simply establishes a procedure which puts the burden on the property owner to make written arrangements to disconnect if they wish to express their protest to annexation. Contrary to the Property Owners' argument, there is statutory authority for this approach. Pursuant to § 7-2-4710, MCA, a property owner's consent to annexation is implied if they fail to file written protest. Indeed, a property owner must file written protest under § 7-2-4710, MCA, in order to be counted towards a majority protesting annexation.

Section 7-2-4710, MCA, and the Utility Rule simply embody the procedure that once proper notice is given, both action and inaction constitute a decision. Finally, as the District Court noted, nothing in the language of § 7-13-4314, MCA, requires a specific type of consent regarding annexation. Therefore, the Utility Rule's procedure which implies consent from failure to submit written arrangements to disconnect upon notice from the City is acceptable.

¶ 44 The Property Owners' argument that no meeting of the minds occurred under § 28-2-503, MCA, misses the point. While it is true that implied consent can form a contract under Montana law as indicated by § 28-2-503, MCA, this statute is inapplicable here as the City was not seeking to form a contract with the Property Owners. The City was simply giving the Property Owners notice regarding their options. Indeed, no meeting of the minds was ever to occur and no contract was ever to be formed. Finally, any ambiguities in the letters from the City are irrelevant because no contract was to be formed. The Property Owners do not assert the letters failed to inform them that written arrangements to disconnect were required.

¶ 45 We conclude the City's procedure to imply consent as allowed in the Utility Rule is a proper method to determine if a property owner wishes to continue receiving City services or, in the alternative, wishes to protest annexation. We affirm the District Court's conclusion the City properly invalidated protests from users who did not make arrangements to disconnect from the City's utilities. Therefore, none of the five areas annexed by the City had a majority of property owners protest the annexation.

ISSUE FOUR

¶ 46 Did the District Court err in concluding the Property Owners could secure judicial review of the City's annexation procedures under § 7-2-4741, MCA, even though a majority did not successfully protest the annexation under § 7-2-4710, MCA?

¶ 47 The City argues the Property Owners cannot challenge the remaining annexation proceedings because a majority of property owners did not successfully protest. The District Court disagreed with the City and concluded:

The right to protest under Section 7-2-4710, M.C.A., and the right for judicial

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review for failure of the governing body to comply with the statutory procedures and requirements under Section 7-2-4741, M.C.A., are separate and distinct rights. Section 7-2-4710, M.C.A., provides that a majority of the real property owners who validly protest may stop or block annexation. Section 7-2-4741, M.C.A., is available after annexation and allows a majority of the property owners to seek judicial review to force or compel the municipal governing body to comply with statutory procedures. The relief available to [the Property Owners] is controlled by Section 7-2-4742, M.C.A., and appears to be limited to forcing conformance by the governing body. Since the rights are separate and distinct, clearly, failure to exercise the right to protest and a waiver of the right to protest, would not waive any property owner's right to seek judicial review.

¶ 48 The City asserts the Property Owners subject to a waiver of protest agreement cannot challenge the annexation because they bargained away that right in exchange for city services. The City also argues the Property Owners who were deemed to have consented to annexation under the Utility Rule cannot challenge

annexation because they impliedly agreed to accept city services in exchange for their consent.

¶ 49 The City also argues it is unfair to allow a property owner to consent to annexation to receive the City's services and then allow that same person to reverse their position and file suit against the annexation. The City argues if such action is allowed, municipalities will have to annex one property at a time in order to avoid costly litigation. The City asserts there is no societal benefit in making annexation even more difficult than it already is because municipalities still have to comply with Title 7. The City points out after discounting these Property Owners, there is no longer the required majority for judicial review under § 7-2-4741, MCA.

¶ 50 The Property Owners assert the District Court properly determined the right to request judicial review under § 7-2-4741, MCA, is separate from the right to protest annexation under § 7-2-4710, MCA.

¶ 51 The right to protest under § 7-2-4710, MCA, is set out above. Section 7-2-4741, MCA, reads:

Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is

located seeking review of the action of the governing body.

We interpret related statutes to harmonize and give effect to each and to avoid absurd results. *Chain*, ¶ 15. To hold that property owners must meet the protest requirements of § 7-2-4710, MCA, in order to request judicial review under § 7-2-4741, MCA, would fail to give effect to the separate language of § 7-2-4741, MCA. Such a holding would also mean newly annexed citizens of a municipality could not make sure the municipality substantively and procedurally complied with the annexation statutes. Such results are not in accord with the statutes.

¶ 52 Regarding the waiver of protest agreements, the language clearly indicates the Property Owners waived the right to protest, not the right to request judicial review. The waivers read:

[W]e do hereby consent to and waive any and all *right to protest* which we may have in regard to any attempt made or to be made by the City of Whitefish, Montana, to annex to and make a part of said City of Whitefish, and incorporate within its boundaries....
[Emphasis added].

Protest, as is indicated by § 7-2-4710, MCA, can be made before an annexation occurs. In contrast, the language of § 7-2-4741, MCA, indicates the right to request judicial review is activated after a municipality completes an annexation. Therefore, although the waiver of protest agreements unconditionally

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waived protest rights, the owners simply made no agreement regarding their right to demand judicial review.

¶ 53 We disagree with the City's assertion that the obligation of good faith and fair dealing implied in every contract requires the Property

Owners to refrain from interfering with annexation in any way. This obligation cannot be so broadly construed as to waive a statutory right to judicial review.

¶ 54 Regarding the consent implied by continued use under the Utility Rule, as discussed above in ¶ 44, we disagree that any contract regarding annexation was formed. The "offer" to continue service in exchange for consent was not an offer to enter into a contract, but was a means to inform the Property Owner how to register a valid protest. Therefore, these Property Owners did not waive their right to judicial review.

¶ 55 The judicial review allowed by § 7-2-4741, MCA, is how residents confirm the City's actions in annexing their homes comply with the law. We note the City does not dispute the Property Owners met the other requirements of § 7-2-4741, MCA. Therefore, we affirm the District Court's determination that although the Property Owners did not stop the annexation process under § 7-2-4710, MCA, they properly petitioned to assure the City met statutory annexation requirements of Title 7, Chapter 2, Part 47.

ISSUE FIVE

¶ 56 Did the District Court err in concluding the City met the statutory annexation requirements of Title 7, Chapter 2, Part 47?

¶ 57 The Property Owners contend the City's Extension of Services Plan (Plan) specifically violates the requirements of § 7-2-4731(1)(a)(i), MCA; § 7-2-4731(1)(a)(ii), MCA; § 7-2-4731(1)(a)(iii), MCA; § 7-2-4731(1)(b), MCA; § 7-2-4731(1)(c), MCA; § 7-2-4732(1), MCA; § 7-2-4732(2)(b), MCA; § 7-2-4732(2)(c), MCA; § 7-2-4732(3), MCA; § 7-2-4732(4), MCA; and § 7-2-4733, MCA. The Property Owners' challenge is the same with respect to the five areas to be annexed. Although we address each statute specifically below, we note, as did the District Court, the Property Owners essentially wish to establish the City may not annex their properties unless the entire

City pays for the extension of new water and sewer mains. As discussed more fully below, because the City has already planned and provided for sufficient water and sewer capacity for the annexed areas, because the City's policy to require private parties to pay for main extensions is allowable under § 76-3-510, MCA, and because the Plan sets forth how new mains can be provided, we hold the City's annexation Plan substantially complies with state statute.

¶ 58 We address the statutes out of numerical sequence, in order to more clearly present the parties' arguments.

A. Does the Plan include the statement regarding the extension of municipal services required by § 7-2-4731(1)(c), MCA?

¶ 59 Section 7-2-4731(1)(c), MCA, reads:

Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

....

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

The parties stipulated that the only municipal services at issue are water mains, sewer mains and roads, and that all other municipal services are adequately provided for in the Plan.

¶ 60 The Plan and the Addendum to the Plan (Addendum) document the extensive water and sewer mains and roads that already exist within the annexed areas. These water and sewer mains already exist in the annexed areas because the City has been

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extending its municipal services to properties outside its boundaries for over 80 years. Regarding anticipated municipal service needs for those properties within the annexed areas that do not have access to existing mains, the Plan states that construction of any new water or sewer mains will be paid for by the private party desiring the development. This has been the City's policy both within and outside City boundaries since 1977. The Plan also states the City has no plans to extend any new services into the areas to be annexed because the need for any additional water and sewer mains and roads will be initiated and driven by private demand and therefore cannot be predicted by the City. In addition, the Plan notes the City is not aware of any requests for and does not propose any capital improvements over the next five years that would be funded by a Special Improvement District (SID). Finally, the Plan notes that properties within the annexed areas that are currently served by their own wells and septic systems will remain on those systems until upgrades become necessary.

¶ 61 The parties stipulated the City's water plant and sewer plant capacities are already large enough to serve all properties in the annexed areas. In addition, the parties stipulated:

It is a reasonable possibility that one or more individual properties within the five annexed areas, as a result of future development of individual property within those annexed areas, developed to densities authorized by present Whitefish zoning, will necessitate the extension of the Whitefish municipal water [and

sewer] mains, within five years from the date of the annexation of the five areas.

The parties also stipulated it would cost approximately \$2.275 million to extend water and sewer mains to reach every property in all five of the annexed areas.

¶ 62 In holding the Plan meets the requirements of § 7-2-4731(1)(c), MCA, the District Court concluded:

[A] substantial number of lots within the five areas to be annexed already receive City water and sewer, or else have private water and septic systems. Those lots which are not currently receiving City water and sewer may connect at any time, and the City water and sewer facilities have adequate capacity to service those additional lots. The City has no plans to extend services in those annexed areas, as the services presently exist or are not being requested.

¶ 63 The Property Owners assert that because the City stipulated there is a reasonable possibility construction of water or sewer mains will be necessary within the next five years, the Plan does not comply with § 7-2-4731(1)(c), MCA, when it states the City has no plans for the extension of these services. They argue a statement that present services are sufficient is not enough to meet the statute's requirements. The Property Owners also argue the statute does not exempt its requirement for a plan when part of the area to be annexed already receives municipal services, when part of the area to be annexed is on a private well or septic system, or for when no one is requesting additional service. The Property Owners essentially argue the City must, as a part of its annexation plan, specifically show how water and sewer mains will be extended to all unserved properties within the annexed areas.

¶ 64 The City argues the Plan conforms to § 7-2-4731(1)(c), MCA, because it states in the Addendum the City has no plans to extend services at this time in each area. The City also asserts the Plan conforms to the statute because the Plan also states that if properties are developed, the mains and streets will only be extended when private parties request and pay for an extension. The City notes its longstanding policy, in accord with § 76-3-510, MCA, that developers and property owners who wish to extend a main are responsible for its cost whether inside or outside City boundaries. The City also points out that because of the existing extensive urban development in the areas to be annexed, water and sewer mains are already in place through or beside much of each area. Regarding roads, the City notes the Plan states the City will assume maintenance of all existing roads in the annexed areas. Finally, the City asserts it cannot

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predict future extensions because as the Plan states, new mains and roads are initiated by private demand.

¶ 65 We hold the Plan substantially complies with § 7-2-4731(1)(c), MCA. Even though the City agrees it is reasonable to expect that private landowners in the annexed areas may develop their property so that water or sewer main extensions become necessary in the near future, the statute does not require the City to address each specific property within the annexed area. Rather, the statute requires the City to set forth the City's plans for the extension of municipal services into the area. In this case, the City's plan regarding new water and sewer mains and roads is that the City does not intend to undertake any new construction unless requested and paid for by a landowner. This approach, when considered along with the agreed fact that the City now has adequate water and sewer plants, substantially complies with the statute for a number of reasons.

¶ 66 First, the City's policy to require private parties to pay for new water and sewer

mains and roads is permissible under § 76-3-510, MCA, which allows local governments to require developers to pay for the extension of capital facilities. Given this policy, the City does not initiate development, nor does the City finance development. Rather, such construction is only undertaken when a private property owner decides to request it and pay for it. Although the City can assist in the financing of construction by setting up a SID so local landowners can pay the costs over time, the Plan mentions the City is not currently aware of any requests for a SID.

¶ 67 Second, to the extent the City can influence the decisions of local landowners within the annexed areas on whether to develop their property such that new main extensions and roads are required, the Plan illustrates the City has already done so. The Plan includes the comprehensive City-County zoning applicable to land within one mile of the City boundary and the planning district applicable to land within four and one-half miles of the City boundary. The Plan also discusses the City's predictions and preferences regarding when and where growth will occur. This discussion addresses each possible development direction north, south, east and west of the City and also discusses the reasons for the existing development.

¶ 68 Third, because of the extensive development that already exists within the annexed areas in this case, this situation is distinguishable from annexation of a newly proposed subdivision. In the latter situation, the plans for the extension of services into the annexed areas would be coordinated with government approval of the subdivision itself as directed under Title 76.

¶ 69 Finally, as the parties stipulated, the City already has sufficient water and sewer capacity to serve each property in the newly annexed areas. This stipulation is critical because it indicates the City has in fact already addressed a very expensive component of extending new municipal services into the annexed areas. Therefore, no plan for expanding

the City's overall water and sewer capacity is necessary in the Plan.

¶ 70 In sum, contrary to the Property Owners' argument, § 7-2-4731(1)(c), MCA, does not require the City to extend services. Rather, it requires the City to set forth its plans as to how new services will be extended to the annexed area so that the public is informed before the hearings required by §§ 7-2-4707-4709, MCA. The City's Plan in this case complies with § 7-2-4731(1)(c), MCA, because it properly sets forth the City's plans for the extension of new water, sewer, and road services.

B. Does the Plan provide for future development in conformance with § 7-2-4732(2)(b), MCA?

¶ 71 Section 7-2-4732(2)(b), MCA, reads:

[The Plan shall] provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality

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for extending such services to individual lots or subdivisions.

¶ 72 The District Court held the Plan meets this statute because it sets out the City's policy to extend water and sewer mains only when the property owner pays the cost. The court also noted it would be unfair to current City residents if the City were to change this policy as the policy has always applied within City boundaries.

¶ 73 The Property Owners again argue the Plan fails to meet the statute. They argue the

specific statutory language requires the Plan to provide plans for when future utility lines "become necessary" even if not currently necessary. The Property Owners again point to the stipulation between the parties that it is probable new water and sewer mains will be needed within five years.

¶ 74 The City argues the Plan complies with the statute because the policy for future extensions is in line with the current policy to require the property owner to pay for the extension. The City also argues because it has water and sewer capacity to serve the annexed areas and a grid of mains beside or through the annexed areas that can be accessed for future development, its Plan complies with the statute.

¶ 75 We hold the Plan substantially complies with § 7-2-4732(2)(b), MCA, because it says that future development will have to meet the current "policies in effect" for extension of services and the policy is stated. In other words, the policy for landowners inside and outside the City is that new water mains, sewer mains, and roads will be financed by the property owner requesting the construction.

C. Does the Plan include a financing method in conformance with § 7-2-4732(3), MCA?

¶ 76 Section 7-2-4732(3), MCA, reads:

A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—

mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

¶ 77 The District Court held the Plan meets this requirement because the areas to be annexed are currently serviced by adequate water and sewer lines. The court also held the parties' stipulations indicated no capital improvements were needed.

¶ 78 The Property Owners argue the Plan fails to meet this requirement because no financing method is set forth and because, contrary to the District Court's holding, capital improvements will be needed in the future to extend water and sewer mains. The Property Owners assert the District Court mischaracterized the stipulations of the parties regarding existing services and ignored the fact that the parties also stipulated there is a reasonable possibility future development will require the extension of water and sewer mains. The Property Owners point out that the City stipulated the cost to extend water to all unserved lots in all five areas would be \$966,713 and the cost to extend sewer to all unserved lots would be \$1,308,387. The Property Owners also argue the City should not be able to rely on the fact that some of the newly annexed properties have their own septic systems or wells in order to avoid addressing plans for the extension of services to those properties that will need service in the future.

¶ 79 The City asserts sufficient financing methods are set forth in the Plan. First, the City points out the Plan provides that new extensions must be paid for by the developer or property owner. The City also notes it is also part of the Plan to provide for "Late-comers Agreements" which allow the City to partially reimburse developers' utility costs from other properties that connect to a new main extension within ten years. The Plan also allows for the formation of SIDs to spread the cost of a main extension over all the benefiting properties. The City argues it

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now has water and sewer capacity to serve the annexed areas even with new development. This capacity is currently funded by already established taxes and fees as set out in the Plan. Finally, the City asserts the Plan also sets out the current revenue sources for street maintenance.

¶ 80 We conclude the Plan substantially complies with § 7-2-4732(3), MCA. The Plan sets forth the City's plans for financing methods that sufficiently describe how needed improvements and extensions will be paid for in the annexed areas. Further, we will not disturb the District Court's decision that the annexed areas are "serviced currently by adequate water and sewage services [and] streets" and that no capital improvements are needed to provide the services stipulated by § 7-2-4732 and -4731, MCA, because the Plan makes clear the City has no plans to extend new services as discussed above.

D. Does the Plan include tax burden statements and voting methodology statements in conformance with § 7-2-4732(4), MCA, and § 7-2-4733, MCA?

¶ 81 Section 7-2-4732(4), MCA, reads:

In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

Section 7-2-4733, MCA, reads:

Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be

annexed in such election, the area may not be annexed.

¶ 82 The District Court held these two provisions must be read together. The court noted the Plan states the entire City will share in the tax burden for the services that will be provided. The court went on to hold that in this instance, because no new capital improvements were proposed in the Plan that would require a bond or a SID, no methodology for a vote was necessary.

¶ 83 The Property Owners argue the Plan does not comply with these sections. Essentially, the Property Owners argue that because the language of § 7-2-4732(4), MCA, requires a statement that the tax burden for municipal services is shared by the entire community, the City is responsible for paying for new sewer and water main extensions and new roads. As a result, the Property Owners assert the City's policy to require private parties to pay for new main extensions or roads must be void. Further, they argue the language of § 7-2-4732(4), MCA, prevents the City from using a SID to fund development because a SID is paid for only by those properties immediately benefited by the extended utility mains rather than the "entire municipality." They assert the City is evading the law by not proposing any new capital improvements in order to avoid the statutory requirements.

¶ 84 In support of their arguments, the Property Owners misquote § 7-2-4732(4), MCA. Their brief states: "The language of § 7-2-4732(4), MCA, requires that the `entire municipality must share the tax burden for the extension of water and sewer mains.'" This quote is in error because the statute actually reads as set out above.

¶ 85 The City argues the Plan complies because for each of the areas to be annexed, the Addendum states the entire community tends to share the tax burden. The City asserts § 7-2-4732(4), MCA, allows annexation without a methodology for voting because no bond issue is

necessary as no capital improvements were proposed.

¶ 86 We conclude the City's annexation Plan substantially complies with subsections 7-2-4732(4) and -4733, MCA. The Plan and the Addendum describe various funding sources and methods for financing each of the municipal services. The Plan and Addendum also describe the City's method of financing future extensions of water, sewer, and roads by following the policy that the developer or homeowner pays for the installation when needed. The Addendum also contains the statement for each annexed

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area: "Nevertheless, the entire community tends to share the tax burden for City services." Further, the Plan states the City has no plans for specific capital improvements related to the annexations.

¶ 87 These statements in the Plan make it apparent nothing about the annexations requires special or new funding sources. Instead, all municipal services provided to the newly annexed areas, including water capacity, sewer capacity, road maintenance, police and fire protection, storm drainage, garbage disposal, recreation, and other services, will be paid for by the general tax burden shared by the entire community. Any new main extensions or roads must be paid for by the party requiring the new construction. The tax burden for the continuing cost of all municipal services extended under the Plan is to be shared by all City residents. Therefore, the Plan complies with § 7-2-4732(4), MCA, because it sets forth the City's plan for the extension of municipal services such that no special funding sources are required to accomplish the annexations. As a result, no bond issue was necessary to proceed with the annexation as allowed under § 7-2-4732(4), MCA. Further, no voting methodology was required pursuant to § 7-2-4733, MCA, because no capital improvements were proposed by the City.

¶ 88 We disagree with the Property Owners' argument that § 7-2-4732(4), MCA, requires the City and its current residents "must" pay for new main extensions for annexed residents because of the Plan's statement the entire municipality tends to share the tax burden. As mentioned, the Property Owners misquote § 7-2-4732(4), MCA. "Must" is used in the statute to indicate the Plan must contain the required statement in order to annex without a bond issue. "Must" is not used in the statute to indicate the City is required to pay for new main extensions. Such an interpretation would directly contradict § 76-3-510, MCA.

¶ 89 Rather, the statute requires a statement the municipality "tends" to share the tax burden for services. "Tends" as used in the statute gives the City latitude to decide to finance new construction for newly annexed areas in accordance with § 76-3-510, MCA, which allows the City to charge individuals for infrastructure needed to specifically benefit their property. Again, we will not interpret § 7-2-4732(4), MCA, in a way that invalidates the plain language of § 76-3-510, MCA. Further, the City's policy to require the party requesting a new main extension to pay for it does not conflict with this statute because, as the parties stipulated, the entire municipality still tends to share the tax burden of the overall water and sewer capacity of the system, which are expensive and continuing components of supplying water and sewer.

¶ 90 As to the Property Owners' argument that the City is purposefully subverting the statute by not planning capital improvements, this argument fails to recognize the City has acted within its legal authority. Perhaps in hindsight one could argue from a planning perspective the City should not have extended services to properties without annexing them. Or perhaps the City should not annex without forming a SID so that all the newly annexed properties must pay for new main extensions to be installed immediately upon annexation even if such are not currently needed. However, hindsight does not guide our review. We only review whether the City's actions substantially

complied with the statute such that its annexation Plan properly informs the public how the extension of services into the annexed areas will be both planned and financed. We hold that it does.

E. Does the Plan contain a long range plan as required by § 7-2-4732(1), MCA?

¶ 91 Section 7-2-4732(1), MCA, reads:

Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend

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services, develop and add sections to the city.

¶ 92 The District Court concluded the City's Plan was in compliance stating:

[The Property Owners' position] flies in the face of present-day city expansion. [Their] position ignores the fact that development and resulting annexation are driven by property owners, not by the cities. Whitefish is no longer "Stumptown," when the City initiated development; now it is the landowner, who, wishing to maximize investment in land, is developing the land and thereafter seeking municipal services. Further, as noted above, the services in the form of water, sewer, and roads already exist in all the areas to

be annexed. There is no extension of services which can occur, beyond the individual landowner or developer paying to connect with the existing utilities.

¶ 93 The Property Owners argue there is no long range plan in the Plan and no statement showing anticipated development five years into the future. They assert the District Court improperly exempted the City from this unambiguous requirement and that the court's holding ignores the statutory directive. The Property Owners also argue that if the statute no longer fits the times, it is up to the Legislature to change it, not the District Court.

¶ 94 The City asserts the Plan conforms to § 7-2-4732(1), MCA, because it discusses factors likely to influence growth over the next five years by including sections entitled Economic Conditions and Trends, Physical Growth Trends, Impediments to Growth, Growth Stimulants, Prevailing Growth Patterns, and a map of the Projected Growth Area. The City also argues the Plan identifies three contemplated annexations that will occur within five years. Finally, the City argues the District Court correctly noted development and annexations are currently driven by property owners, not cities.

¶ 95 We hold the City's Plan substantially complies with § 7-2-4732(1), MCA, because it does include careful consideration of future needs. *Inter alia*, the Plan details two additional areas that will likely be annexed within five years. In addition, the part of the Plan discussing growth patterns by direction from the City mentions the City's preferred growth areas and notes where water and sewer mains would be most easily extended to facilitate new growth. This section also mentions that although the City anticipates growth, much of the growth that is expected to occur beyond the limit of current City services will most likely occur after more than five years has passed. The Plan also discusses anticipated growth influences over a period longer than five years. Finally, the Plan

makes clear the City, in conformity with a long existing policy, will not extend its services unless such is paid for by the developer. Therefore, again, to the extent the City can make long range plans without knowing the plans of private landowners, the Plan does so.

¶ 96 The District Court is wrong to the extent its holding implies the City can ignore the statutory mandate because "the times have changed." However, because the Plan itself substantially complies with the statute in this instance, we will affirm.

F. Does the Plan include a timetable as required by § 7-2-4732(2)(c), MCA?

¶ 97 Section 7-2-4732(2)(c), MCA, requires the Plan to set forth a proposed timetable for construction to extend streets, water, sewer, or other utility lines if such extension is "necessary." The District Court held that no timetable was required because no new utility extensions were "necessary." The court noted its agreement with the City that private development determines when extensions will occur and also noted the City has water and sewer capacity to meet the needs of the annexed areas.

¶ 98 The Property Owners argue a timetable is not in the Plan contrary to the plain language and that because the City acknowledges there will likely be development in the future, the Plan must have a timetable. They assert that even though development will be fueled by private entities, the City has an obligation to predict both the location and timing of this development. They point out the Plan is an informational document for the

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public that can be changed as predictions change.

¶ 99 The City asserts a timetable is only required when extensions are "necessary." The City asserts because it has no plans for new water or sewer services or for new roads, extensions are not necessary and therefore a

timetable is not necessary. The City argues it cannot predict future development by private parties more than it already has.

¶ 100 We hold the Plan does comply with § 7-2-4732(2)(c), MCA, because no timetable must be included in the Plan when no extensions are "necessary." Further, as mentioned, to the extent the City can predict or direct the timing of growth, the Plan does so by referring to the City's zoning requirements, by discussing factors influencing growth patterns, and by discussing possible growth directions outside the City.

G. Does the Plan include maps of the City's present and proposed boundaries in conformance with § 7-2-4731(1)(a)(i), MCA?

¶ 101 Section 7-2-4731(1)(a)(i), MCA, requires the Plan to include a map or maps showing the present and proposed boundaries of the municipality.

¶ 102 The Property Owners argue the Plan does not include a map of the present and proposed boundaries because the maps of the proposed boundaries are not in the Plan itself. The City asserts maps of the City are in the Plan and the proposed boundaries are shown on maps in the Addendum which includes a detailed statement for each specific area to be annexed.

¶ 103 We hold the Plan complies with § 7-2-4731(1)(a)(i), MCA, because the Plan includes maps of the City and because maps with a "proposed annexation boundary" for each annexation area are attached to the Plan in the Addendum so that any member of the public who wishes to know the proposed boundaries can easily determine such by reference to the Addendum.

H. Does the Plan include maps of the present and proposed streets and water mains in conformance with § 7-2-4731(1)(a)(ii), MCA?

¶ 104 Section 7-2-4731(1)(a)(ii), MCA, reads the Plan shall include a map of:

the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c).

¶ 105 The Property Owners assert there is no map meeting these requirements. The City asserts the Addendum maps show the existing streets, water mains, and sewer mains. The City also argues it did not have to show any proposed streets or utility mains on its maps because it is not proposing any as the areas to be annexed are already fully developed urban areas.

¶ 106 We hold the Plan complies with § 7-2-4731(1)(a)(ii), MCA, because the maps in the Addendum show the present streets, water mains, and sewer mains for each area to be annexed. Further, the Plan complies because no new streets or utility mains are proposed as discussed above.

I. Does the Plan include maps of the general land use in conformance with § 7-2-4731(1)(a)(iii), MCA?

¶ 107 Section 7-2-4731(1)(a)(iii), MCA, reads the Plan shall include a map of "the general land use pattern in the areas to be annexed." The Property Owners argue there is no such map included in the Plan itself and that the District Court erred in relying on the maps in the Whitefish City-County Master Plan (Master Plan). The City asserts the Plan includes such a map because Exhibit C to the Plan is labeled with zoning codes that correspond to the City-County zoning districts applicable to land within one mile of its boundaries. The City also asserts the Plan explicitly incorporates the Master Plan by reference in the introduction and by specific references in the Addendum.

¶ 108 We hold the Plan complies with § 7-2-4731(1)(a)(iii), MCA, because Exhibit C to the Plan shows the "Zoning Use Designations."

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These designations indicate general land use by showing already applicable zoning as adopted by Flathead County in coordination with the City. Further, while we hold there must be some map showing general land use patterns in the Plan as is done in Exhibit C, we agree with the District Court that the Plan can refer to the Master Plan for more detailed information.

J. Does the Plan include the statement regarding boundaries required by § 7-2-4731(1)(b), MCA?

¶ 109 Section 7-2-4731(1)(b), MCA, requires the Plan to include "a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735." Sections 7-2-4734 and -4735, MCA, address, as the District Court noted, "the location of the area to be annexed in relation to the existing city limits" and other boundary requirements. The Property Owners assert the District Court erred because it concluded the Plan complies with § 7-2-4734 and § 7-2-4735, MCA, even if it does not have a specific statement asserting that it complies as is required by § 7-2-4731(1)(b), MCA. The City argues the Addendum has such a statement for each of the areas to be annexed. The City further argues that because § 7-2-4734, MCA, and § 7-2-4735, MCA, contain at least six requirements, it is impossible to state complete compliance in one statement. Finally, the City argues it complied with § 7-2-4734, MCA, and § 7-2-4735, MCA.

¶ 110 We hold the Plan complies with § 7-2-4731(1)(b), MCA, because the Addendum contains the required statement for each of the annexed areas. Each of the five areas has a statement which reads: "CONCLUSION As shown in the preceding text, the area to be annexed meets the requirements of Section 7-2-4734 and Section 7-2-4735 MCA."

IV. CONCLUSION

¶ 111 In sum, the District Court correctly determined the City's procedures to invalidate protests based on waiver of protest agreements and based on the Utility Rule are proper.

Further, the District Court correctly determined the Property Owners retained their right to request judicial review even though they failed to successfully protest annexation. Finally, the District Court correctly determined the City's Plan conforms with the requirements of Title 7, Chapter 2, part 47. Therefore, the annexations at issue are proper and are effective as provided by statute. We affirm.

KARLA M. GRAY, C.J., PATRICIA O. COTTER, JIM REGNIER, and JAMES C. NELSON, JJ., concur.

Notes:

1. The Property Owners do not contest the City properly invalidated protests from current property owners who signed waiver of protest agreements.

CITY OF POLSON

CITY COMMISSION AGENDA ITEM SUMMARY

Agenda Item Number: 9 (MOTION) Agreement between City of Polson and Montana West LLC

Meeting Date: February 2, 2015

Staff Contact: Mark Shrives

AGENDA ITEM SUMMARY: Approve agreement between the City of Polson and Montana West LLC. (Attachment 1)

BACKGROUND: This agreement came about after discussion regarding the use of the City Right of Way (ROW) by various utility companies. Montana West LLC is the first utility that we have completed an agreement with. As was discussed previously, a new City Excavation Ordinance will be prepared for a future meeting and once it is adopted, it will replace this agreement and will encompass any utility requesting to complete work in the ROW. Montana West LLC negotiated this agreement as they had work that needed to be completed quickly and did not want to wait for the ordinance process to be completed.

ANALYSIS: This agreement and the future ordinance will put in place a better mechanism for the City to control the use of the ROW, and to ensure the City is allowed an opportunity to be involved in any activity related to the ROW and to ensure the City is adequately compensated for work in the ROW. In the future, the City will also be provided with appropriate maps showing all utility work, which will help avoid conflicts with future City Public Works Projects.

FINANCIAL CONSIDERATIONS: It is not anticipated there will be any additional financial cost to the City, but it is expected that fees collected as a part of this agreement and the future ordinance will be used to offset ROW costs and provide funding for accurate record keeping of utilities in the ROW.

STAFF RECOMMENDATION: Staff recommends approval of agreement.

SUGGESTED MOTION: *I MOVE TO APPROVE THE AGREEMENT BETWEEN THE CITY OF POLSON AND MONTANA WEST LLC. FOR THE PLACEMENT OF UTILITIES WITHIN THE CITY RIGHT OF WAY. IT IS UNDERSTOOD, THIS AGREEMENT WILL NO LONGER BE IN EFFECT AFTER THE CITY ADOPTS AN UPCOMING EXCAVATION ORDINANCE*

ATTACHMENTS:

1. Agreement

AGREEMENT

THIS AGREEMENT, dated this _____ day of February, 2015 by and between the **CITY OF POLSON**, a municipality of the State of Montana, 106 First Street E, Polson, MT 59860, (City) and Montana West, LLC, Western Montana CommunityTel, and Ronan Telephone Company, (Utilities);

WITNESSETH:

WHEREAS, the Utilities have placed and desire to place additional fiber optic cable and other telecommunications facilities within the platted right of way within the City;

WHEREAS, parties agree that the Utilities provide utility services as described in Section 69-4-101, MCA and are registered with the Montana Public Service Commission pursuant to Section 69-3-805, MCA;

WHEREAS, the parties further agree that pursuant to Section 69-4-101, MCA the Utilities have a right to reasonable use of the right of way;

WHEREAS, the City has not enacted an ordinance to adequately regulate the use of its rights of way by private persons and public utilities;

WHEREAS, the Utilities agree and understand that the City has a reasonable right and duty to its citizens to see that the right of way is secure and open to future users;

WHEREAS, the parties have reached an agreement concerning installation of utilities in the rights-of-way in the city;

WHEREAS, it is in the best interests of the public and the parties hereto to enter into this agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I.

The City agrees to allow the disturbance of and excavation into the street right of way that may be installed by utilities for the next six months, commencing November 1, 2014. Some disturbance and construction has already occurred with the permission of the City. A map of Utilities' current facilities

within the city is attached hereto and incorporated herein as Exhibit A.

Proposals for additional facilities are contemplated only and all facilities plans shall be submitted for review by appropriate personnel. The parties understand that there may be more or less additional facilities installed during the six month period, than are currently contemplated.

In the event that the City shall pass an ordinance that abrogates this Agreement, the terms and conditions of the Ordinance shall apply going forward from the date of the ordinance and the consideration paid pursuant to this agreement from November 1, 2014 until the date of the ordinance therefore shall be credited against the fees stated in the Ordinance. The permanent placement of vaults or other telecommunications equipment other than cable in the right of way shall be permitted after construction plans are submitted to the City Planning Department. The parties shall work cooperatively in determining the placement location of facilities.

II.

In consideration for the city's permission for the construction in the right of way as provided herein, the Utilities agree to pay City the total sum of \$900, payable on or before the 5th day after this Agreement is executed.

III.

City intends to propose and enact an ordinance by May 1, 2015 governing the issuance of permits for the construction of utility facilities in the rights-of-way. Such ordinance will apply equally to all companies constructing facilities in the rights-of-way, on a non-discriminatory basis. Utilities have the right to challenge the ordinance through administrative and judicial processes.

IV.

The Utility will exhibit its "best standard practices" in the location and burial of the fiber optic cable and other telecommunications facilities and to minimize the disturbance and settling of the right of way. The parties will work together to place the cable and other telecommunications facilities appropriately and Utility will notify City of its work at least 48 hours in advance, except in circumstances when

a service outage requires immediate restoration work by the Utilities. The fiber optic cable and other telecommunications facilities shall be placed in the right-of-way as mutually agreed by the City Staff and the Utility.

All fiber optic cable must be buried at least, 36" deep (or below any other existing buried facilities), and where possible have warning tape 18 inches above the cable. All work zones will be signed and managed in accordance with City standards. No open trenches will be allowed overnight unless specifically approved. Clean up and restoration shall be to original-like condition.

Utilities will indemnify and hold City harmless from claims in negligence for the activities stated herein. Utility will provide evidence of liability insurance to City in the minimum sum of \$1,000,000. All persons employed by Utilities shall be covered by workers compensation insurance.

IN WITNESS HEREOF, the parties have executed this Agreement on the date first above written.

CITY OF POLSON

Mark Shrives, City Manager

Attest:

Cora E. Pritt, City Clerk

Approved:

M. Richard Gebhardt, City Attorney

MONTANA WEST, LLC
WESTERN MONTANA COMMUNITY TEL, INC.
RONAN TELEPHONE COMPANY, A MONTANA CORPORATION

Jay Wilson Preston, CEO

10

**Annexation Proposal
Polson City Council
Monday, February 2nd, @ 7:00 P.M.**

Property Owner: Polson Youth Soccer Board
P.O. Box 1337
Polson, MT 59860
President Link Moderie (406) 270-1202

Technical Assistance: Alpine Landscape & Design, LLC
P.O. Box 25
Polson, MT 59860
Joslyn Shackelford (406) 240-9707
Mark Shackelford (406) 581-0293

Treasure State Concrete
36344 Glover Road
Polson, MT 59860
Dan Eastman (406) 883-8061

Property Description:

The 20 acre property is described as a portion of C.O.S. 7010 in Section 11, T22N, R20W, P.M.M., Lake County. The property is located in Polson's Medium Density Zoning District (MDZD). The property is located between the cemetery and Mission Valley Aquatics.

Proposal:

The Polson Youth Soccer Board is requesting annexation into the City of Polson. Annexing the 20 acre property will benefit Polson Youth Soccer by providing city services. The soccer complex will consist of 4 competition fields, viewing areas, concession stand, restroom, parking lot, and an entry and exit. The proposed access to the soccer complex will be through an easement provided by Mike Maddy, owner of the Ridgewater Development.

The property is zoned MDZD which is a suitable zoning district for the proposed use. Per the PDC, Chapter VII, MDZD: A special use permit (SUP) approval is required on private recreation areas.



CERTIFICATE OF SURVEY
 LOCATED IN PORTIONS OF THE SW1/4 SW1/4, SECTION 2, AND THE NW1/4, SECTION 11,
 T.22N., R.20W., P.M.M., LAKE COUNTY, MONTANA

DATE OF SURVEY: OCTOBER, 2013
 PURPOSE: BOUNDARY LINE RELOCATION
 RECORD OWNER: LAKE VIEW CEMETERY DISTRICT

533203

OWNER'S CERTIFICATE

WE, THE UNDERSIGNED PROPERTY OWNERS DO HEREBY CERTIFY THAT THE PURPOSE OF THIS SURVEY IS TO RELOCATE COMMON BOUNDARIES BETWEEN ADJOINING PROPERTIES OUTSIDE OF A PLATTED SUBDIVISION AS A RESULT OF A SURVEY PURSUANT TO SECTION 76-3-207 (1)(a) M.C.A.
 TRACTS A AND B ARE 20 ACRES OR GREATER, EXPOSURE OF PUBLIC ROADWAYS, AND ARE THEREFORE NOT SUBJECT TO SUBDIVISION REVIEW BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO M.C.A. 76-4-102 (1b).

John Rebo, President, Board of Trustees, Lake View Cemetery District

STATE OF Montana
 COUNTY OF Lake
 AS PRESIDENT, BOARD OF TRUSTEES, LAKE VIEW CEMETERY DISTRICT



JANET MANN
 Notary Public for the
 State of Montana
 Commission Expires 10/31/2015

THE SURVEYOR'S CERTIFICATION
 I, HEREBY CERTIFY THAT REAL PROPERTY TAXES ASSESSED AND LEVIED ON THE LANDS DESCRIBED
 WITHIN THIS SURVEY HAVE BEEN ASSESSED AND LEVIED AS REQUIRED BY SECTION 76-3-207 (3) M.C.A.
 DATED THIS DAY OF October, 2013
 Surveyor John D. Mann



LEGAL DESCRIPTION

TRACT A:
 A TRACT OF LAND IN THE SW1/4 SW1/4 OF SECTION 2, AND THE NW1/4 OF SECTION 11, TOWNSHIP 22 NORTH,
 RANGE 20 WEST, P.M.M., LAKE COUNTY, MONTANA, DESCRIBED AS FOLLOWS: THE TRUE POINT OF BEGINNING BEING
 THE SECTION CORNER COMMON TO SECTIONS 2, 3, 10, AND 11; THENCE N00°02'36"W 544.40' FEET ALONG THE
 WEST BOUNDARY OF SAID SECTION 2; THENCE S89°55'36"E 920.67' FEET; THENCE S00°20'49"W 108.03' FEET
 TO A POINT ON THE NORTH BOUNDARY OF PARCEL 8 AS SHOWN ON CERTIFICATE OF SURVEY NO.6884; THENCE
 S00°07'27"E 227.43' FEET TO THE W/16 CORNER OF SAID SECTION 2; THENCE S89°54'43"E 1653.19' FEET
 TO A POINT ON THE NORTH BOUNDARY OF PARCEL 8 AS SHOWN ON CERTIFICATE OF SURVEY NO.6884; THENCE
 N00°09'40"W 1321.18' FEET; THENCE N00°09'40"W 1321.14' FEET TO THE POINT OF BEGINNING, CONTAINING (42.66) ACRES MORE OR LESS, BEING SUBJECT TO AND TOGETHER WITH ALL APPURTENANT
 EASEMENTS SHOWN AND OF RECORD.

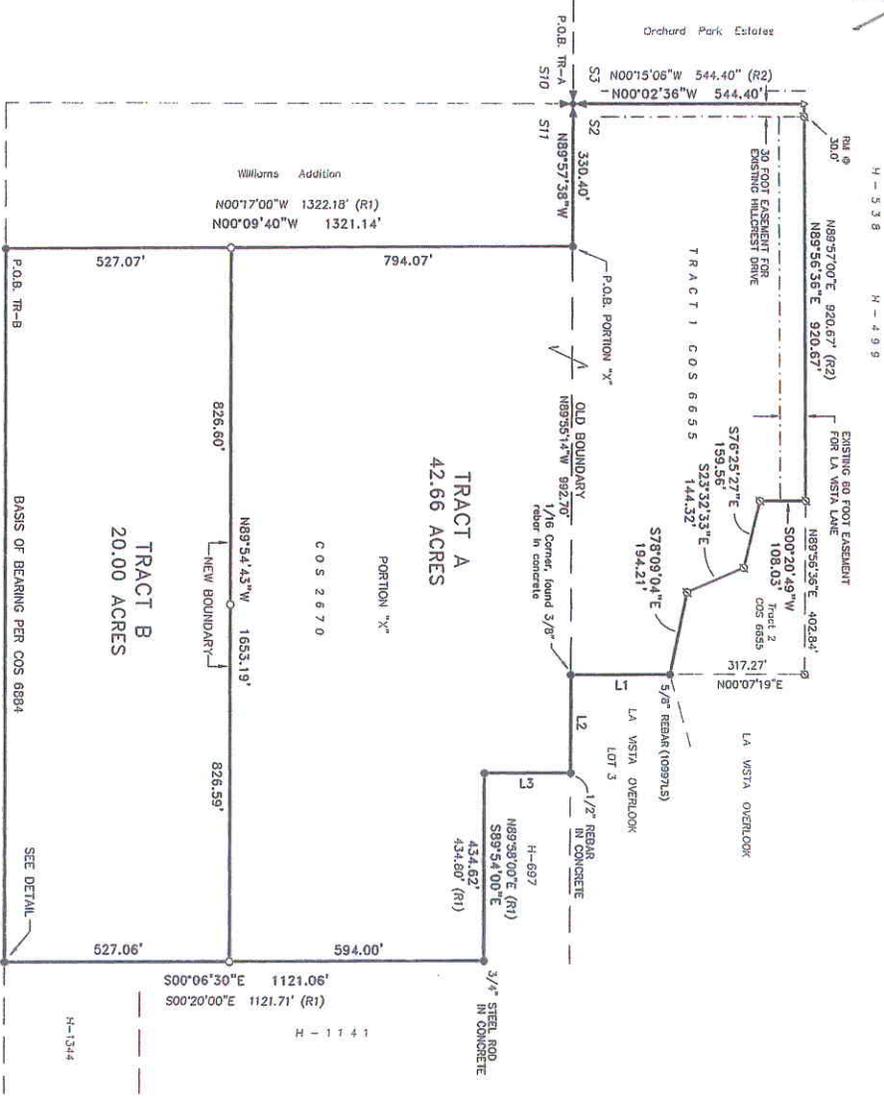
TRACT B:
 A TRACT OF LAND IN THE NW1/4 OF SECTION 11, TOWNSHIP 22 NORTH, RANGE 20 WEST, P.M.M., LAKE COUNTY,
 MONTANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SECTION CORNER COMMON TO SECTIONS 2 AND 11;
 THENCE S89°57'38"E 330.40' FEET ALONG THE SECTION LINE COMMON TO SAID SECTIONS 2 AND 11 TO THE
 TRUE POINT OF BEGINNING; THENCE S00°09'40"E 794.07' FEET; THENCE S89°54'43"E 1653.19' FEET; THENCE
 N00°09'40"W 1321.18' FEET; THENCE N00°09'40"W 1321.14' FEET TO THE POINT OF BEGINNING, CONTAINING (20.00) ACRES MORE OR LESS, BEING SUBJECT TO AND TOGETHER WITH ALL APPURTENANT EASEMENTS SHOWN AND
 OF RECORD.

PORTION "X" IS BEING RELOCATED FROM ONE TRACT OF RECORD AND JOINED WITH ANOTHER TRACT OF RECORD
 IN ANY SUBSEQUENT REAL PROPERTY TRANSFER AFTER THE INSTRUMENT TRANSFER ASSOCIATED WITH THE CERTIFICATE
 OF SURVEY ON WHICH SAID AREA IS DESCRIBED, UNLESS SAID AREA IS INCLUDED WITH OR EXCLUDED FROM
 ADJOINING TRACTS OF RECORD.

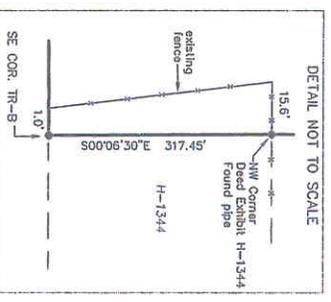
SURVEYOR'S CERTIFICATION
 I, John D. Mann, Surveyor, do hereby certify that the above description of the land is true and correct to the best of my knowledge and belief, and that I am a duly licensed and qualified surveyor under the laws of the State of Montana.
 DATED: 10/16/2013



EXAMINING MONTANA P.L.S. No.10993LS
John D. Mann
 DATE: 10/16/2013



LINE	BEARING	HDIST.	RECORD
L1	S00°10'22"E	227.43'	S00°23'10"E 227.69' (R2)
L2	S89°46'16"E	227.28'	S89°57'00"E 227.55' (R1)
L3	S00°05'09"W	199.57'	S00°00'00"E 199.81' (R1)



LEGEND

- SET, A 5/8"x24" REBAR W/OPC STAMPED "DUFFEY 15624LS"
- FOUND 5/8" REBAR W/OPC "DUFFEY 15624LS"
- FOUND 5/8" REBAR IN CONCRETE (NO CAP), OR AS NOTED
- △ DENOTES ANGLE POINT ONLY, NOTHING SET OR FOUND
- ✦ SECTION CORNER, FOUND 3-1/2" ALUMINUM CAP (M.D.O.H.)
- ✦ DENOTES OWNERSHIP THE

DUFFEY LAND SURVEYING	1/4	1/4
PO BOX 531	SEC. 2	SEC. 11
POLSON, MT 59860	T. N. 22	T. N. 22
406-883-1727	R. W. 20	R. W. 20

NOTE: No search has been made for encumbrances affecting this property and this survey does not purport to show all opportunity encumbrances.

33203 COS
 STATE OF MONTANA, LAKE COUNTY
 BUREAU OF LANDS, CLERK
 DATE: 1-15-2014
 SHEET 1 OF 1
 CERTIFICATE OF SURVEY NO. 2010RBA

Polson Youth Soccer Complex – Vicinity Map #1



Google earth

feet
meters

2000

800

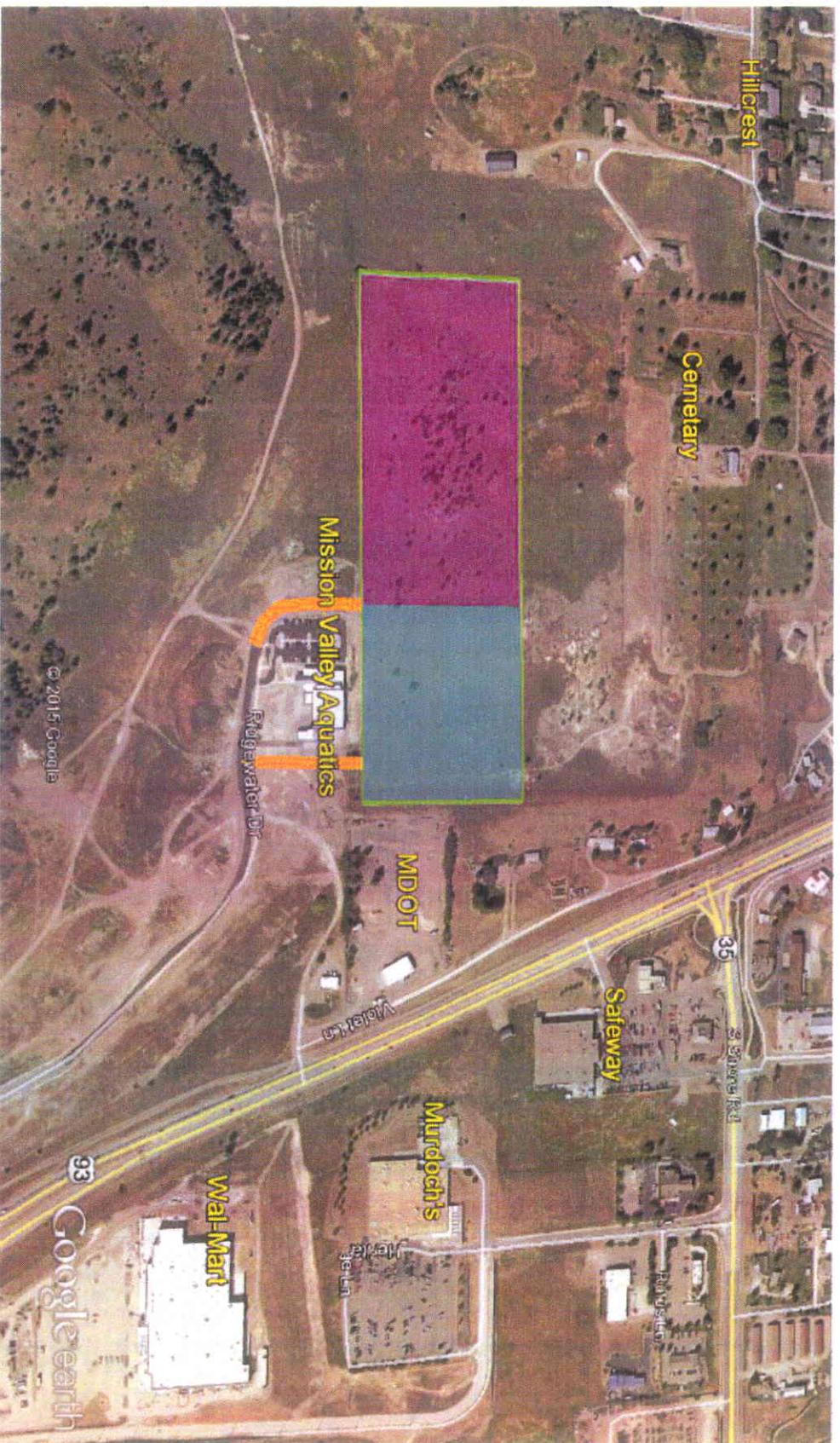


Legend



Proposed 20 Acre Property for Annexation into the City of Polson

Polson Youth Soccer Complex – Vicinity Map #2



Google earth



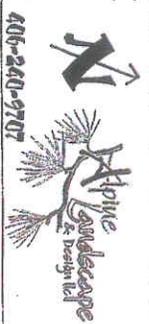
Legend

-  Proposed 20 Acre Property for Annexation into the City of Polson
-  Proposed Entry and Exit Roads
-  8.5 Acre area to be 4 Standard Soccer Fields
-  11.5 Acre area to be used in a Future Phase

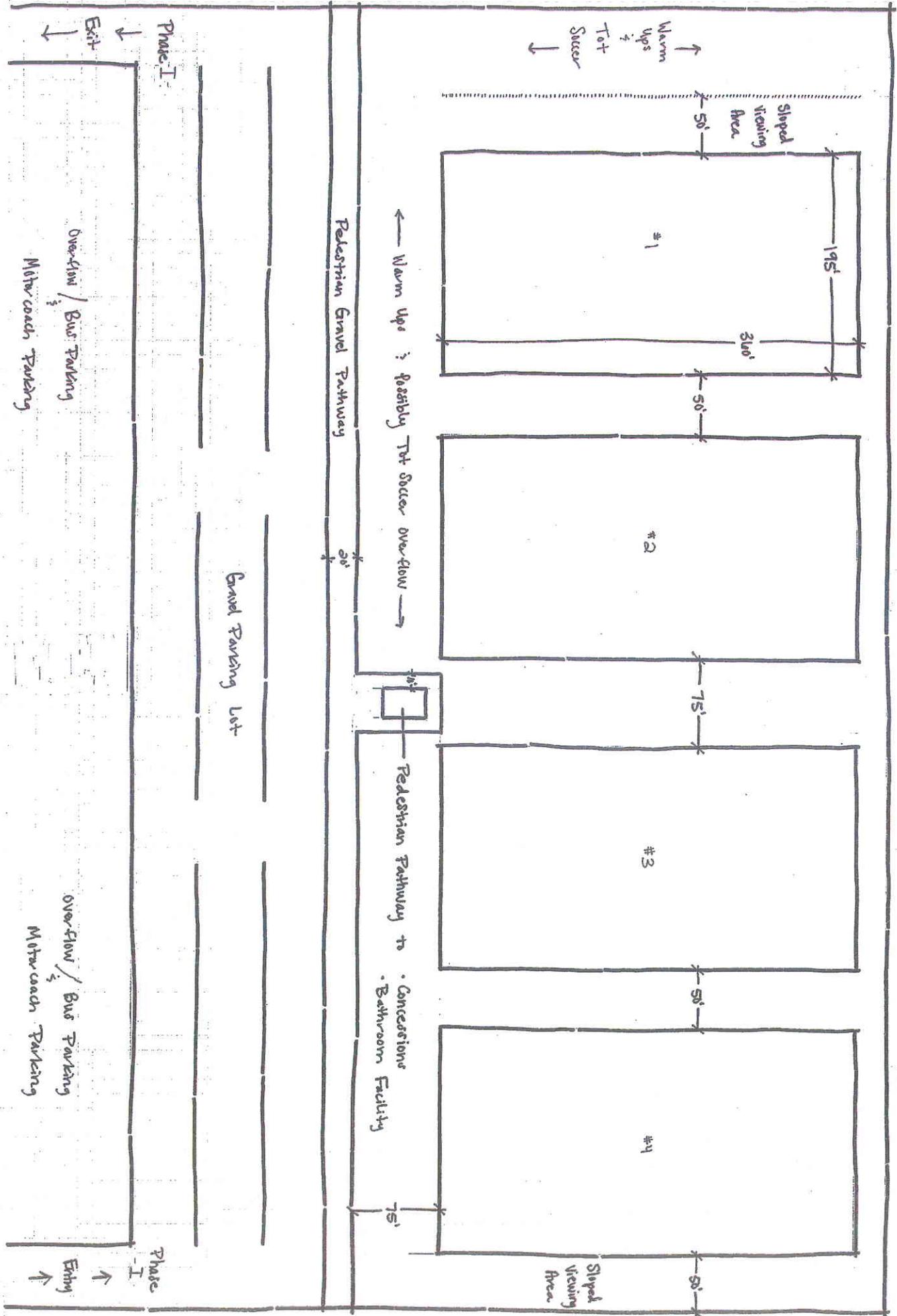
POLSON SOCCER COMPLEX

- 4 Fields
- Concessions with Bathroom Facility
- Parking Lot
- Pedestrian Pathways
- Warm Ups
- Tot Soccer Areas

Designed & Drawn by J. Shaverford
 Date: 1.24.2015
 Scale: 1" = 50'-0"

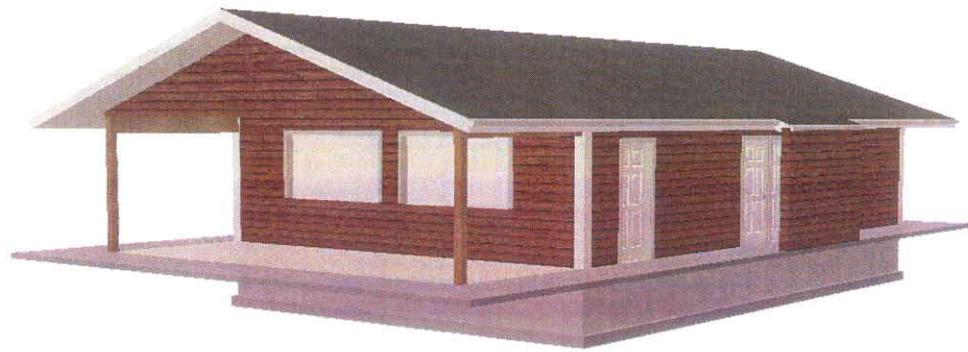


406-240-9707



Polson Youth Soccer – Concession Stand Concept Elevations

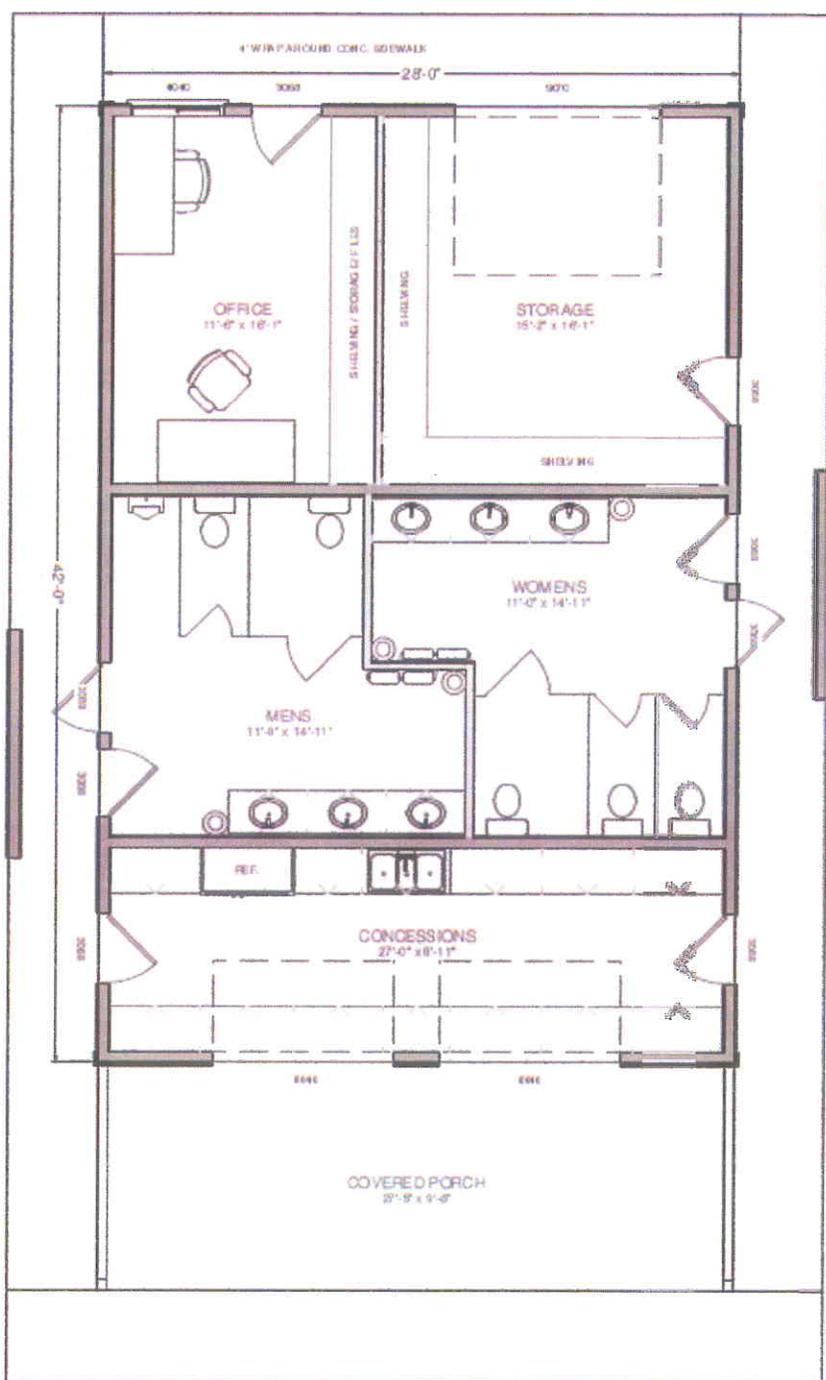
Front Elevation



Rear Elevation



Polson Youth Soccer – Concession Stand Concept



MAIN FLOOR PLAN
 NO SCALE 1,176 SQ. FT.