

REGULAR COUNCIL MEETING
MAY 18, 1992
7:30 P.M.

Council present: Pedersen, Vergeront, Karstens, Kersich

Others present: Gary Cooley, Karen Cooley, Robert Ricketts, Julie Young, Gary Clark, Pam Atwell, Bonnie Manicke, Alvin McCrea, Barbara McCrea, C.B. McNeil, Virginia Nelson, Keith Nelson, George Cunningham, Florence Cunningham, Caroline Miller, O.J. Miller, Carl Seifert, Bob Fulton, Ron Buzzard, Gene Nobles, James Boyle, Jerry Grey, Jerry Sorenson, C.H. Nelson, Roger Nutter, Thelma Nutter, Mary Egarr, John Egarr, Mark MacDonald, Henry Courville, Richard Mabee, Ayrton Pickerill, Phil Grainey

Mayor James W. Jones presiding;

MINUTES: Kersich amended the May 4, 1992 minutes as follows; Page 2, paragraph 2, "Probationary Police Officer"...Salary of \$1447.56/month to be included in the motion. Page 5, paragraph 4, "Community Development Appointments"...Confirm these are three year appointments. The minutes of May 4, 1992 were approved as amended.

COUNCILMAN MAHONEY RESIGNATION: Mayor Jones read the following letter of resignation from Councilman George Mahoney;

Dear Mayor and Councilmembers, I resign my position as councilmember of Ward II. I feel my constituents would be best served by someone able to devote more time. I enjoyed working with all of you, even the times we failed to agree. As a taxpayer, I thank you for your willingness to be a public servant. Sincerely, George R. Mahoney, Ward II

CHRISTIAN CHURCH REQUEST FOR ADDITIONAL PORTABLE HANDICAP PARKING SPACE: Mayor Jones said the Polson Christian Church was requesting a second portable "Reserved Parking Only" sign to be used on Sundays and for occasional weekly activities to allow their handicapped people access to the church. Pedersen confirmed they were paying for the sign and stand. **Motion Pedersen, second Karstens to approve the Polson Christian Church request for a second portable "Reserved Parking Only" sign at their expense. Motion carried unanimously.**

CAPITALIZATION RESOLUTION: Pedersen said the Clerk had requested increasing the amounts for capitalized expenditures as follows; Machinery and Equipment from \$200 to \$500, Buildings and Other Improvements from \$500 to \$1,000. Kersich asked if there was any bottleneck on expenditure approvals having the lower limits. Devlin said it was not the time factor, rather the amount. Most places did not capitalize items under \$500. Kersich said if the amount were kept low, the Council could remain involved in the expenditures. Karstens concurred with Kersich and preferred matters be brought before Council regarding public expenditures and public money. **Motion Kersich, second Karstens to leave capitalization amounts as they are. Motion carried unanimously.**

RESOLUTION 584-RECORD RETENTION SCHEDULE: Kersich said a copy of the retention schedule (distributed and approved by Local Government Services Bureau, State of Montana Department of Commerce) had been given to all council for their review. They needed to solve the storage problem and could not keep everything forever. Devlin referred to Page 4 of 4, Municipal Clerk/Treasurer/Finance Offices, Item 41-Tape Recordings; Retention period listed was three months after minutes, report or other record is produced and approved. She noted Grainey's earlier suggestion on this was that, once the official minutes were adopted, the recordings not be saved. Kersich said this was only a matter of a couple of weeks and felt this was not enough. He preferred the period remain at three months. Vergeront referred to Page 1 of 2, Municipal Fire/Police Departments, Comment column; and asked what "Use restricted to official use only" meant. He was of the understanding all documents were a matter of public record. Grainey said this most likely referenced arrest records and pertained to

review by the judge, law enforcement officers or prosecutors rather than public dissemination. The City did not prosecute felonies, only misdemeanors, so the first portion of Item #6 was inapplicable to city use. He was not sure a limitation to official use only, regardless, in this instance was appropriate; it was public record and the public had access to that information. Pedersen referred to Page 3 of 4, Municipal Clerk/Treasurer/Finance Offices, Item #29-W-2 Forms; The State had a five year statute so he did not understand how they could adopt a four year retention period and, secondly, Social Security still searched records approximating eight years back so he personally suggested keeping those for eight years at this time. He also questioned the three year retention on time reports in the matter of overtime inquiry. Grainey said he did know the statute of limitations on this, but he guessed it would not exceed three years. Pedersen confirmed it was three years. **Motion Kersich, second Pedersen to approve Resolution 584-Records Retention Schedule amending W-2 r tention period to eight years. Motion carried unanimously.**

Karstens said as the Council approached the new budget, many of these items noted using a microfilm/microfiche system and it would be wise for them to look into some sort of system that could work for the City and also alleviate storage problems for those items that could be jacketed.

PETITION FOR ANNEXATION-RESOLUTION 585-R.LYNN COOPER AND MARILYN E.

COOPER: Fulton said this property was east of the Doris Taylor property recently annexed into the city. The Coopers had agreed to pay for the eleven feet of sewer extension beyond Taylor's such that both would share in the cost of bringing sewer to that piece of ground. The sewer extension was currently being reviewed by the Department of Health and should be back in the next month or so. **Motion Vergeront, second Pedersen to approve the Petition for Annexation for R. Lynn Cooper and Marilyn E. Cooper (Resolution 585). Motion carried unanimously.**

WEST SHORE ZONING: Karstens said he would like to propose a time saving measure. All council had been provided with copies of letters received on the West Shore zoning issue. He would like to have these letters entered into the minutes in total. **(Note: Letters are herein incorporated by reference and copies attached to the minutes.)** Perhaps this would shorten the discussion somewhat, although he did not want anyone to feel they did not have the right to speak. To this end, he did not want to rehash the contents of the letters and proposed only new issues be raised at this time. He assumed C.B.McNeil would be the spokesman for that particular area and would present most of the data.

C.B.McNeil-For the record, he did not appear before the council in the elected office which he held, but solely as a private citizen, resident and homeowner together with his wife in the area of the West Shore which was annexed by the City in 1984. Secondly, in the capacity of the elected office he held, he was prohibited by law from representing anyone. The West Shore zoning was on the agenda at his request as described in his letter to the council. He wished to state, and the City-County Planning Staff affirms this statement, that never before had the City of Polson or the City-County Planning Board ever had a tract of land come under its' zoning jurisdiction where the City had, by its' own initiative, changed the zoning from R-1 to any classification which allowed mobile homes, trailers, RV's or campers. Specifically, he was asking the City to repeal Ordinances 459 and 460. The basis for this request was 1) The City's own records would show Ordinances 459 and 460, when in enacted in 1987, were enacted by mistake. The City's own Administrative Officer, Joe Menicucci, came to the Council in 1987 saying the Council had acted formally in 1984 following public hearings, but the ordinance was never signed. Joe represented to the Council that what had been passed was a T-3 unrestricted zoning for the West Shore area and specifically the tract to which the comments are directed, historically the Lakeview Hotel, owned by Dave Drum at the time of annexation by the City, at the time of the 1984 action by the Council, at the time of the 1987 passage of the ordinances and presently owned by Carolyn Miller (purchased in 1988). 2) In his opinion as a private citizen, and this was jurisdictional as well as fundamental, because there was no notice and no public hearing held in 1987, the two ordinances he was asking the

council to repeal were not valid. Municipal zoning ordinances were very simple in that they clearly provided no zoning ordinance shall be valid unless there first shall be held a public hearing upon the issue of the ordinance to be adopted. There were no public hearings held in 1987. There never have been any public hearings held on the question of the specific ordinance of the adoption of a T-3 unrestricted. The only public hearings held were in 1984, committees were appointed, at the conclusion of which I believe the council minutes reflected a T-3 special condition was voted upon. The ordinance drafted by the city attorney at that time reflected a T-3.1 and it provided for hotels, motels and marina. It expressly did not include trailers, mobile homes or RV campground. I personally ask, and my wife joins with me, that the City repeal the 1987 ordinances and adopt the ordinance that followed the public hearings in 1984. I believe the City Attorney may have the opinion that the 1984 ordinance was not validly adopted because there was not a second reading. I don't know what would preclude the City Council from having a second reading on what was clearly the ordinance that was intended to be adopted at that time. We are not insensitive to the predicament this places upon the present owner of that property. We are fully aware that when she bought her property in 1988, the books showed Ordinance 459 and 460 allowed a use which she is asking the City-County Planning Board to adopt which is an RV Park. We submit those ordinances were adopted by mistake and were not valid because no proper public hearings were held.

Carolyn Miller-When I bought the property, it was zoned as such and I don't think you can go back and take away somebodys' zoning when they have been planning a project for years. It has been a motel all these years, the building could still be turned into approximately ten units if need be. She did not see the purpose of this, what was in the past was not her fault or anyone else that came into the city. The city had to keep growing, it could not stand still. She felt she was doing the city a favor by putting in something nice. She did not see what everyone objected to. If they would rather have a casino there, she would give it to the Indians. There was no complaint about the restaurant when it went in. There was a used car lot proposed across the highway. She did not understand why they were picking on her.

Phil Grainey-Over the course of the last week or so, I have undertaken the process of reviewing the history of what has happened with the West Shore zoning. As a result of that, I felt it necessary to prepare a memorandum to the Council analyzing this history with subsequent exhibits of reference attached to better describe what I perceive to be the current status of the situation. I would suggest to the Mayor that a duplicate copy of this be made available at City Hall for public inspection. I have attempted to go into careful detail to outline the history of what has occurred with the West Shore zoning. The memorandum seeks to point out to the council the arguments that have been posed, both by Mrs. Miller and by the adjoining property owners, and to describe the rationale the best I perceive it to be behind each of those arguments. The conclusion I have reached, and so advised the council by this memorandum, is the entire history of the West Shore zoning process is defective. The process in 1984 was defective by virtue of the absence of any kind of a signed document implementing the passage of an ordinance as well as the absence of a second reading required by law to adopt an ordinance. At the same time, I also agree and concur with what C.B. McNeil just stated in that the 1987 process was also defective. It was defective because it was presented to the council under some representations by the then City Administrative Officer, Joe Menicucci, as to what the effect of it was. It was presented to the council essentially as a housekeeping measure to fill the void of the absence of any documentation or the absence of a piece of documentation because it didn't exist and it set forth a conclusion or zoning specification that is, in my opinion, inconsistent with what the city council intended to do in 1984. Secondly, as Judge McNeil has just suggested, it is defective, in my opinion, because of the absence of the public hearing process in the course of the presentation in 1987. My conclusion and recommendation to the council is the entire process is defective. This council is left with the problem of having to address a situation it did not create, nevertheless, it must deal with it. There are a number of things the council can look at to determine what is the right course of action; 1) Sit back and let the situation

degenerate further into litigation. My opinion about that is if the council takes the position there is a T-3 special zoning ordinance or there is not a T-3 special zoning ordinance that will inevitably result in litigation by one side or the other. The process will not be resolved in the near future and it will result in a substantial expenditure of money by both the City and interested parties who become involved in that litigation. As a result, I recommended to the Council what I think is the better approach, for the Council to reinstate the zoning process on the West Shore and to do it right. I have set forth what I think is a logical time frame. I have also suggested to the Council it needs to take into consideration the existence of the existing subdivision review process regarding this property and I have essentially suggested to the Council it pass a resolution this evening to initiate the zoning process on the West Shore. In addition to that, it initiate a process to create interium zoning which essentially amounts to the establishment of a moratorium on further development on the West Shore area pending final resolution of a new zoning process. There are certain requirements, under the law, that must be fulfilled in order to do both of those things. As far as the interium zoning ordinance, it requires the passage of a resolution to initiate that process. That does not amount to the final establishment of an interium zoning ordinance or a moratorium, but it does give notice of the fact the council will consider an interium zoning ordinance and a moratorium. A hearing to consider that moratorium will be conducted June 1. The City is obligated to conduct a public hearing regarding this zoning suggestion. I have suggested in the memorandum this be conducted June 8. It requires some publication and public notice to interested parties. At the conclusion of the public hearing, it is up to the council to prepare a proposed zoning ordinance, review it and pass it at two readings of the City Council. If the time frame is followed, a final zoning ordinance for the West Shore could be approved as early as July 6. I welcome anyone who has thoughts about this to examine my memorandum and, hopefully, concur the City is in the corner here and must make the logical choice and do the right thing as best we perceive it. The best way to go about this is to minimize the prospect of litigation and to proceed with getting the process done correctly. To that end, I have prepared a resolution (Resolution 583 read into minutes).

Carolyn Miller- No one was notified of this meeting and my counsel couldn't be here. I don't think it fair to adopt something without my counsel present.

Phil Grainey-Your attorney did send a letter last week stating that if the council intended to act on anything this evening, he would like to receive some notification of that. Although council has no particular obligation to do so, to respond to that or defer action at his request, as a matter of courtesy I did call your attorney and let him know, precisely, of my recommendation.

Carolyn Miller-It was done very quickly.

Phil Grainey-The council is not compelled to defer action on the basis of a request from one particular individual. This matter needs to move forward. I advised your attorney of my recommendation at his request as a courtesy to him.

Carolyn Miller-I spoke to him this afternoon; he couldn't make it up here. I don't think there was enough notice given to anyone; I never got a letter at all. I don't think it should proceed forward until we have a chance to examine everything.

Tom Vergeront-Will the moratorium return everything to zoning as it was in 1984 before annexation took place?

Phil Grainey-Not at all. The moratorium simply freezes development. Final outcome of zoning will not be completed until after that hearing process and readings before city council.

Tom Vergeront-With regards to the zoning process and public hearing, there is usually notice that zoning is being changed from "a" to "b". What do we use as a starting point?

Phil Grainey-I don't think you do. Everybody recognizes there are two sides to this debate, that everybody has an opinion about what the zoning is and there is a substantial divergence of opinion. One of the objectives of this new process is to start fresh. Establish the zoning once and for all through the new process. That does not mandate a determination in advance of what the zoning was before. That process, if it occurred, would only result in litigation.

Tom Vergeront-As the Zoning Board, we won't know where the request is coming from.

Phil Grainey-People in the audience will come forth and give their opinions, it will be a new process and the council will not be hung up trying to sort through old issues.

C.B.McNeil-The action that I have requested the City Council to take is consistent with the advice the City Attorney has given. Phil's conclusion is that the 1987 proceedings are not valid. He also stated his opinion that the 1984 city zoning proceedings were not validly completed. If the City's effort at zoning the West Shore annexed property was not valid, nothing that it did could have invalidated the zoning that Lake County had imposed upon that property at the time the City annexed our property. I don't see how you can reach any conclusion but that if the City is going to start over, and I don't disagree with that approach although I wish the City would adopt what it did in 1984, it should do it right. Evidently Mrs. Miller complains she didn't get any notice today, but neither did anyone else get any notice in 1987 when the council adopted the ordinance that I am today asking you to repeal. By repealing 459 and 460, the council would be biting the bullet, acknowledging the advice that your City Attorney has given you that those proceedings were not valid, and then adopt the resolution the City Attorney has recommended to proceed from here and do it right. I think the inquiry of Councilman Vergeront is terribly appropriate. Where is the City starting from? Are you starting from a moratorium period where that property is T-3 unrestricted and then go back to R-1 or special conditions, or are you zoning it starting with what it was when the City started this process (R-1) and then consider the proposals that come in? I submit that because your legal council has advised you that everything the City did wasn't done right, the ordinance on the books today is invalid, should be repealed, adopt the emergency zoning whatever that may be. One real important reason for doing that is that during the interim period, and during the moratorium, the property concerned is zoned as it was when the City started its' process. One very good reason for that is the present owner of the property went to the Zoning Board of Adjustments last fall and asked for permission to put a mobile home on that property for her caretaker/manager to reside in. By a unanimous vote, the Zoning Board said no. That mobile home was moved on there a week ago, May 6, it is still there, and it has all the appearance of being hooked up for a permanent residence. So it is a very valid inquiry from Councilman Vergeront-Do we start where it was when the City messed up or do we start from some other zoning? I submit it would be inappropriate for the new zoning procedure to start from an invalidly adopted zoning regulation. The regulation in existence when the City started this process was R-1 and that is where it should start for your new emergency procedure.

Carolyn Miller-Mayor, may I ask you why, after it was posted commercial zoning when for sale for five years before I bought it, they didn't object then? Why did they wait till now to object to the zoning?

Mayor Jones-Mrs. Miller, I can't answer your question.

C.B.McNeil-I can. Mrs. Miller filed her application for subdivision review process April 1, 1992. That is the first time I learned that the City Council had adopted a T-3 unrestricted. We had followed the proceedings very carefully in 1984. Many of our neighbors attended the meetings and everyone was satisfied when the Dave Drum proposal was adopted by the Council. He never did ask this Council to adopt any zoning that would provide for an RV Park. He wanted condominiums. He asked the Council to adopt a T-3 special condition, or that was the compromise that was worked out, so it could be hotels or motels so

they could be rented out. Nobody out there opposed that. I believe that everybody in the area annexed by the City thought it was until Mrs. Miller submitted her subdivision review process a month ago.

Keith Nelson-I have been in on the start of this. I owned the property when we came into the city, I sat through all of the meetings and the records will show I had some input on it, and when the Council passed the zoning as T-3 with special provisions and my friends and neighbors who sat on the Council told me this is what it would be, I believed them. I remember the commercial sign, but I didn't pay any attention to it because I thought that couldn't be. I also saw an advertisement of Dave Drums' in the paper for some property for sale, probably Bear Harbor, which listed "with city water" and I also thought that couldn't be. If we didn't respond when the property was sold, it wasn't because we weren't aware of it but we thought the Council had done their job.

Kyle Karstens-Jerry, do you have a county map as zoning existed in 1983-84?

Jerry Sorenson-The map on the wall to your right, showing the C-2 triangle across the road which was Jack Heglies and everything else on the lakeside was R-1.

Kyle Karstens-Also, there was another C-2 out there, wasn't there?

Jerry Sorenson-There is a resolution that changed the property that Earl Whittington was talking about.

Kyle Karstens-No other changes than those two?

Jerry Sorenson-The only other one that I am aware of is the Bear Harbor property, changed to T-1.

Keith Nelson-I also had some property (at the time of the hearings) across the road from me between highways which was zoned C-2 by the County. I didn't want development in there, but I felt I would be taking a loss on the value of the property by zoning it R-1 because nobody would ever build a house between two highways. I agreed to zone mine R-1 if the Lakeview property was zoned the same. A diagram of some nice condos was presented in connection with the convention center they wished to put in and I went along with it; so now I end up with property that was zoned C-2 zoned R-1 and the Lakeview property that was R-1 is now T-3.

Phil Grainey-With all due respect to what Judge McNeil has just suggested, I think the better course is to proceed as I have suggested. One of the concerns I have is that the process has been wrong, wrong in 1984 and wrong in 1987, and by taking some action to repeal an ordinance that may or may not have been validly adopted this council would fall into the same trap the prior council had in 1984 and allow themselves to be exposed to additional argument that the proper process of notice has not been accomplished. For that reason, if in the new zoning process, a new zoning ordinance is adopted then anything that preceded it will be repealed. It will be done after notice, after public hearing and after two readings of the new ordinance. I think the City minimizes its exposure to more problems by this process than by taking some action this evening that may be in violation of the very thing we are trying to fix.

Roland Pedersen-For some time, my contention has been that both parties have reasonable grievances, however, somebody goofed up bigtime on behalf of the City; I could name names, but there is no point in this, it happened. I think a new beginning, even though this will leave unhappiness on both sides, is in order and I am going to move for adoption of the resolution presented by Phil Grainey.

Tom Vergeront-So it is your contention, Phil, that everything out there is zoned bare land?

Phil Grainey-My contention and recommendation to the City Council is that the Council does not need to take a position on that if it initiates a new zoning process. Now there may be disagreement on

that, but my contention is that the Council does not need to make a determination on that and, if it does, it only allows itself to be subjected to litigation by one side or the other, that party being in disagreement with the conclusion that we reach. There are substantial arguments posed by both sides and, for that reason, my recommendation, also taking into consideration litigation issues and potential, is to start the process over, allow the public input and go from there. To answer your question Tom, I think it's unnecessary at this point in time, it may become necessary if we end up in court, if we initiate the process fresh to make that declaration.

Bob Ricketts (Owner-Three Dog Down, across the street from the new development)-I'm a businessman and I like to deal in facts. I look across the street right now and what I see is an improvement over what I have seen for the last year and a half. As a businessperson, I ask the council to move with the greatest speed possible to resolve this. To a new business getting off the ground, cash flow is everything, and we could be signing its' death warrant if we stall, even if we find for Mrs. Miller.

Gary Cooley (Owner-Lone Wolf Gallery)-I'm concerned because I'm zoned the same as Mrs. Miller and I want to know how this will affect me. I bought the property knowing it was T-3 and I plan on hooking the garage and house together and turning it into a nicer place than it is right now.

Keith Nelson-With respect to moving quickly, I believe this is what got us into the jam already because at the time everything was going ahead full bore to get the convention center over there with Dave Drum.

Mayor Jones-The dates are set forth in the resolution for the process.

Carolyn Miller-I think it's very unfair of you to pass anything tonight without my having my counsel. I thought this would just be discussion.

Mayor Jones-The time to bring your counsel is to the public hearings June 1 and June 8.

Carolyn Miller-Yes, but the way they are now they want a moratorium so I can't even go forward. I don't think that's legal.

Phil Grainey-This action does not establish a moratorium tonight. This resolution initiates the process towards consideration of the moratorium. That consideration will take place June 1. Vote will be taken at that time after hearing and comment and only at that time could the council enact a moratorium.

Carolyn Miller-Why does that happen to be the same time the council is to discuss my RV Park?

Phil Grainey-The thing that everybody recognizes here is that that is the issue. Your attempt to establish an RV Park is the issue.

Carolyn Miller-But I am zoned for camping.

Phil Grainey-Therein lies the debate and there are a number of people here who disagree with you.

Carolyn Miller-I think we ought to settle it between us and our attorneys and the council should wait until that is settled.

Phil Grainey-Hopefully, this council feels otherwise.

Motion Pedersen, second Kersich to approve Resolution 583 initiating a new zoning process for the entire West Shore area of the City of Polson. Motion carried unanimously.

Jerry Sorenson-I would like to ask for clarification from Phil that the subdivision review process go forward as scheduled.

First Citizens Bank

150,000.00 (73.95%)

Security State Bank

350,000.00 (100.40%)

Note: First \$100,000 on public funds are secured by FDIC.

Pedersen asked if this met the percentage. Manicke said they had to provide 50% of the asset to capital ratio and she had reviewed these for compliance. Motion carried with Kersich abstaining.

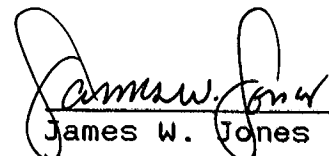
APRIL CASH REPORT: Manicke said there were no negative balances this month. Motion Vergeront, second Kersich to approve the April cash report. Motion carried unanimously.

NOTE: All evaluations are due in the Clerk's office by May 29.

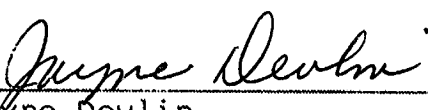
NOTE: Karstens asked how the sewer extension was proceeding in Skyline Addition. Jones said they planned to start tomorrow. Karstens said there had been another application up there so they might have to dig a little bit farther.

NOTE: Kersich asked how they filled Mahoney's position. Vergeront said they needed to advertise. Jones said they could, but it wasn't required. They had 30 days to appoint someone who would fill the position until the next municipal election.

Meeting was adjourned at 8:44 p.m. Next regular council meeting will be June 1, public hearing to begin at 7:00 p.m. and regular council meeting to commence at 7:30 p.m.


James W. Jones
Mayor

ATTEST:


Jaime Devlin
City Clerk

226 Shoreline Drive
Polson, Montana 59860

May 12, 1992
Polson City Council
P.O.Box238
Polson, Montana 59860

Gentlemen:

We as adjacent property owners directly next to the old Lakeview Motel property on the West Shore, would like to go on the record as objecting to what we feel is an illegal zoning designation on said property. As we see it, the T-3 zoning is illegal on three grounds.

1. It was zoned by the County as R-1 with a non-conforming or "grandfather" clause, as it had been the site of a tourist court since the 1920's. It ceased to operate as such in 1985. It should have reverted back to R-1 at that time.
2. When it was annexed into the City in 1984, Dave Drum was granted a T-3 "Special" zoning to be used in conjunction with a new convention center that was to be completed by September 1986. The convention center was never even started. Again it should have reverted to R-1.
3. In September 1987 the City Council" as a housekeeping measure", even though it was questioned by one council member, changed the zoning to a straight T-3. This was done with no public notice to adjacent property owners and no public hearing. This was not legal.

This property has lain idle since 1985. In August 1991 the present owner Caroline Miller, made application for a single family mobile home/trailer to be placed on the property. After a majority of the West Shore property owners in the neighborhood voiced their disapproval, the application was denied.

On May 6, 1992 a trailer was moved onto the property and connected to water, electric, and sewer. This was done even though the planning board will not hold its initial meeting on a proposed RV park for this property until May 19, and a public hearing on May 26.

We respectfully request that the present City Council correct this zoning classified error to that approved by the Council in 1984 and that no building permits or further development be allowed on said property until this matter is resolved.

Very truly yours,

Roger B. Nutter
Roger B. Nutter
Thelma V. Nutter
Thelma V. Nutter

540 Shoreline Drive
Polson, Montana 59860

May 17, 1992

Mayor Jim Jones
Sir:

We purchased our home on Shoreline Drive, within the boundaries of the city of Polson, designated as R-I zoning. We were informed that a T-3 Special had been allowed to Mr. Dave Drum.

The West Shore Zoning Ordinance passed by Council in 1984 allowed a limited parcel to hotel motel and marina facilities provided they tied into the planned convention center. Mr. Drum's architect's drawings, drew no opposition from the West Shore residents at this time.

The T-3 which allowed for bars and restaurants were noncompatible to the R-I residential in existence on the West Shore at the time.

It seems to us that Mr. Drum's T-3 Special should have reverted back, as provisions for Mr. Drum's planned convention center did not materialize.

This property had a nonconforming use under the Lake County Zoning Ordinance and as a Grandfathered use, when Mr. and Mrs. L. Young operated a modest motel business at that time.

Caroline Miller's removal of the existing motel buildings should have removed any nonconforming Grandfathered use of this property in a R-I zoned area and public hearings should have been held to determine its future use.

We and our neighbors inspected all of the existing buildings, at the time of Caroline Miller's public removal of said buildings and all were your usual motel units. There were no recreation or restaurant facilities on the premises. The West Shore Ordinance found bars and restaurants as noncompatible use of this area.

We as tax payers and residents of Polson feel a desperate need of a comprehensive city plan and a strong zoning ordinance that will take in consideration the infrastructure of this fast growing city.

Very truly yours,

John H. Egarr
Mary F. Egarr

c.c. city-county planning
city Attorney

May 14, 1992

Mayor Jim Jones and Polson City Council

Re: Zoning of former Lakeview Cabin Court on West Shore

When the West Shore was annexed into the city in 1984 we were given assurances by the City Council that our property would be protected by zoning ordinances limiting development on the former Lakeview Cabin Court property.

The proposed R1 zoning was changed to T3 with restrictions after lengthy debate and was satisfactory to Dave Drum, the West Shore residents and the City of Polson.

Without our knowledge, this zoning was changed in 1987 and we are now faced with a trailer court project that will decrease our quality of life, lower our property values and has already caused considerable mental anguish.

We appeal to the present city council's sense of justice and fairness to correct this 1987 mistake by zoning this property T3 with restrictions as intended in 1984.

If the council does not recognize the 1984 ordinance as written to be the document that changed the zoning of the West Shore, then there was no change in zoning in 1984. The West Shore property then remained zoned in 1987 as before annexation and has never been legally changed. The 1987 ordinance does not legally change any zoning as it does not follow the legal procedures required to change zoning. The map "Exhibit C" is no more valid than the 1984 ordinance it was based on. The 1987 ordinance was prepared from this "Exhibit C" map with no written documentation and therefore is not a valid ordinance.

Without recognition of the 1984 ordinance as written, there has been no legal change in zoning of any properties on the West Shore since annexation.

Sincerely,

Keith W. Nelson
Virginia J. Nelson

Keith W. Nelson

Virginia J. Nelson
242 Shoreline Drive
Polson, MT. 59860

cc: Mayor Jim Jones
Tom Vergeront
George Mahoney
Roland Pedersen
Larry Dersich
Fred Funke
Kyle Karstens

Howard and Ayron Pickerill
364 Shoreline Driv
Polson, MT 59860
May 11, 1992

Jim Jones, Mayor
City Hall
Polson, MT 59860

Dear Jim,

As a resident of Shoreline Drive area of the city, we are asking the city council to correct the errors in zoning the property, known as the old Shoreline Motel, which mistakenly slipped through the many responsibilities of the city fathers. We feel the T-3 with restrictions was intended to revert to R-1 if Drum did not build his proposed condominium within 18 months. It did not lead residents to believe that three years later it would be recorded as T-3 without proper notification to the residents in this area.

It is unfortunate the problem was compounded by a succession of errors in 1987 when it was labeled T-3 with no restriction and not R-1, and in 1988 when Caroline Miller purchased it under this incorrect zoning label. We believe the proper solution is to return to the beginning of the problem and record the property R-1 as was intended by the original zoning board, members of the city council and the neighborhood.

Thank you for your attention and solution to this problem.

Sincerely,



Howard and Ayron Pickerill

cc: City Council

900 Shoreline Drive
Polson, MT. 59860
May 12, 1992

Polson City Council
P.O. Box 238
Polson, MT 59860

Gentlemen:

We request the City take prompt action on the zoning problem of the West Shore Property annexed to the City in 1984 at the next council meeting May 18, 1992.

We have been land owners on the West Shore since 1965 and remember the decision made by the City in 1984 to change the R-1 Residential zone to a T-3.1 special condition zoning designation when Mr. Drum wanted to develop the property now owned by Mrs. Caroline Miller into a Motel-Convention Center. The T-3.1 special condition restricted the development of Mr. Drum's parcel of land to a hotel, motel and marina facility only, provided they were part of the planned convention center. It was my understanding at the time that Drum was given a two year period in which to do this development.

Since the development was not begun by 1986 in connection with the convention center and since the document to make this change remained in Atty. Don Peterson's file unsigned, the parcel in question should have remained R-1 Residential.

However, we understand the zone was changed in 1987 to a T-3 unrestricted zone allowing bars, restaurants, trailers, etc., which we believe are not compatible with the R-1 Residential zoning. This was done just before the time Mrs. Miller purchased the land from Mr. Drum and without public hearings prior to the change as required by law and with no notification to the West Shore property owners.

Therefore, it is my understanding that by law the T-3 unrestricted zoning ordinance adopted in 1987 is not valid. We respectfully request that this error by the City be corrected and that the West Shore zone be returned to the R-1 Residential status. The very least that might be considered is a T-3.1 special condition allowing only motel, hotel and marina facilities, however I believe the time and conditions for this have passed.

Unless the City takes prompt action this problem can only escalate.

Sincerely,

Alvin W. McCrea
Barbara A. McCrea

Della M. Wipplinger
Fritz G. Wipplinger

Alvin W. McCrea
Barbara A. McCrea
Fritz G. Wipplinger
Della M. Wipplinger

cc: Mayor Jim Jones
Tom Vergeront
George Mahoney
Roland Pedersen
Larry Kersich
Fred Funke
Kyle Karstens

MAY 12 1992

254 Shoreline Drive
Polson, MT 59860
May 11, 1992

Dear Mayor Jones:

I request the City Council correct an "administrative error" made by the City Council in 1987 concerning the zoning of the land occupied by the former Lakeview Cabins. This property was zoned T-3 WITH RESTRICTIONS in 1984 upon the annexation to the city for the construction of condominiums in conjunction with the proposed convention center. However, the development was not built within the specified period of time and the zoning was to revert to R-1 after the demise of the Lakeview Cabins.

We have since learned the zoning was made T-3 in 1987 without any public hearings or public opportunity to object.

Please see the zoning is made R-1 as specified since the development apparently underway is dividing our community and creating ill feelings.

Sincerely,

Curtis H. Nelson

Curtis H. Nelson

Copies: Concilman Vergeront
" Mahoney
" Pedersen
" Kersich
" Funke
" Karstens

420 Shoreline Dr.
Polson, MT 59860
May 11, 1992

Mayor Jim Jones
City Hall
Polson, MT 59860

Dear Jim:

You and the Council are faced with a difficult decision on how to properly handle the T-3 zoning dilemma on Shoreline Drive.

May I suggest a way that may help you determine and crystalize in your mind what would be best for the City of Polson? Simply close your eyes and visualize the west shore entrance to the city. After thinking of that location for a few moments ask yourself the question, "would a high density RV park be the best use of Mrs. Miller's property and would that use be compatible with the best interests of the City of Polson and nearby residents?"

Now on this line write down what you think would be the best use of Mrs. Miller's property. _____.

My own view is that a high density RV park should not be allowed in that prime location for some of these reasons:

1. There are other T-3 or C-1 uses of Mrs. Miller's property that would be better for the city and the adjacent R-1 neighbors. Some of those were spelled out in the Council's 1984 "special conditions" which were added to the T-3 zoning.

2. An RV park, if allowed, would add only a very small value to the improvements on which tax revenues are based. Hence, with little invested by the owner, there would be minimal taxes generated for city use. Be selfish for the city treasury!

As Mayor, you and the Council need some negotiating strategy to move you through this zoning decision. Next, you need to place yourselves in a position of strength that will sustain the support of the citizens who look to you for leadership. The central theme I want to suggest is that you strive to sustain the public trust. It generates public confidence for all your future programs.

May I suggest some possible actions? Make the problem go away on its own. (1) Quietly work to find as "incompatible", land use as an RV park. (2) Next, let it be known what you would find as "acceptable" land use. (3) If legal action is threatened by Mrs. Miller, counter with your threat of eminent domain acquisition by the city. (4) If you have to acquire the land, zone it the way the city wants it and then offer it up for resale. Quite possibly if the city takes a tough posture, Mrs. Miller may see the wisdom of negotiating zoning conditions that are acceptable to the Council. (5) My last point is that future development of the

west shore is inevitable. This includes a water system and comprehensive zoning.

These actions can and will be supported if fidelity is demonstrated by Council in the current zoning conflict. If however, the interests of the west shore citizens are brushed aside, then I see them rejecting all overtures to change and progress.

Hopefully, Jim, with your leadership of Council, the current zoning dispute can be turned into a "win-win" for all the parties and we can have the kind of progressive city we all want Polson to be. Jim, I have faith in you and the council members.

Sincerely,



Al Suneson

cc: Tom Vergeront
George Mahoney
Roland Pedersen
Larry Kersich
Fred Funk
Kyle Karstens

MAY 11 1992

May 8, 1992

Hon. Mayor Jim Jones ✓
City Hall
Polson, MT 59860

Dear Mayor Jones:

My letter is an appeal to the present members of our elected representatives; to wit: the Mayor and Councilmen, to correct an action taken in 1987 that inadvertantly changed an ordinance adapted in 1984 regarding the property formerly known as the Lakeview Court from T3 restricted to T3. This latter action was made without a public hearing, and therefore has no legal standing.

As one of the many taxpayers in our community, but one whose property valuation would be affected, the above appeal is made.

Sincerely yours,



Jack Heglie

CC To: Kyle Carstens
Roland Peterson
Larry Kersich
Fred Funke
George Mahoney
Tom Vergeront

May 15, 1992
Don Dubuque
464 Shoreline Drive
Polson, MT 59860

Dear Mayor Jones:

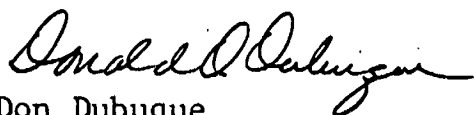
As a new resident on Shoreline Drive, my voice must be a quiet one. And yet, at this point in time, I feel there is a matter of principle at issue.

A 1984 council decision would appear to have granted T-3 special zoning to the piece of ground at present being prepared for an ice cream-delicatessen shop with spaces for 12 to 23 trailers. The special zoning had restrictions and it would seem to have been the mind of the council to have them abided by or that the land would revert to R-1 zoning.

A sequence of events, as yet unclear, kept the council's wishes from becoming a signed ordinance at that time even though public meetings had been held. A 1987 ordinance, a "housekeeping measure," was signed granting the property T-3 zoning without indicating the special restriction. - No public meetings were held; no input from concerned citizens was reflected. This appears to be the crux of the problem.

Should the clear intent of the 1984 council decision be carried out, or a lesser measure, signed, it is true, but not reflecting the council's clear intentions? I appeal to your sense of fairness to right this wrong and to take action to rectify the zoning.

Sincerely,



Don Dubuque

cc: Tom Vergeront
George Mahoney
Roland Pedersen
Larry Kersich
Fred Funke
Kyle Karstens

MAY 18, 1992

MAYOR & COUNCIL

IN REGARDS TO THE CURRENT PROBLEM ON THE WEST SHORE I OFFER THE FOLLOWING: IN 1984 THE SUBJECT AREA WAS CLASSIFIED AS A T-3 WITH RESTRICTIONS FOR USAGE. I FEEL THAT THE COUNCIL SHOULD UPHOLD THE 1984 DECISION AS THIS WAS WORKED OUT WITH THE PARTIES INVOLVED BY A PROCESS OF PUBLIC HEARINGS.

THE 1987 DECISION WAS STRICTLY PRESENTED TO THE COUNCIL AS A HOUSEKEEPING MEASURE AND NOT WELL RESEARCHED AT THE TIME.

I HOPE YOU WILL CONSIDER THE LANDOWNERS AND THE PROCESS THAT WAS FOLLOWED IN 1984 AND CLASSIFY THE AREA A T-3 WITH THE RESTRICTIONS THAT WERE IMPOSED ON THAT DATE.

THANK YOU

Chris Malgren
CHRIS MALGREN

MAY 8 1992

P. O. Box 486
Polson, Montana 59860

May 7, 1992

Polson City Council
P. O. Box 238
Polson, MT 59860

Gentlemen:

This is to request that you please place the subject of the zoning of the West Shore property annexed into the City in 1984 on the agenda of the next council meeting May 18, 1992.

Specifically we request that the City Council repeal Ordinance No. 459 and No. 460 enacted in September 1987 and to then enact the ordinance as passed by the City Council in May of 1984.

This request applies only to the property formerly known as the Lakeview Motel and which was owned by Mr. Dave Drum at the time of annexation and which is now owned by Mrs. Caroline Miller.

By now you are all aware of the controversy which has arisen concerning this property which has resulted from an apparent mistake by the City which we now ask to be corrected for the following reasons.

At the time the City annexed this subject property and a strip of land along the lake shore, which includes our home and a dozen or so other private residences, the zoning classification which had been established by Lake County was R-1 Residential.

After annexation the City of Polson followed the procedure in Title 76, Chapter 2, Part 3 of the Montana Code Annotated, conducted public hearings as required by that law, obtained advice from the Lake County Land Services staff, received commendations and input from the then owner of the subject property and other landowners directly affected and then passed, at the May 21, 1984 meeting, a motion establishing a T-3 special condition zoning designation for the Drum property.

The T-3 special condition as passed by the Council provided:

In order for the property to be compatible with residential uses, Mr. Drum's parcel is limited to hotel, motel and marina facilities only, provided they are part of the planned convention facilities. Bars and restaurants, which are allowed in a T-3 zone, were believed to be non-compatible with residential uses already in existence.

Following the passage of that motion by the City Council, the then City Attorney prepared the ordinance which provided a T-3.1 special condition as outlined above and not the T-3 unrestricted classification for said property. Said ordinance then either remained in the files of the City Attorney's law office or was delivered to the City's offices and was lost at City Hall. A copy was obtained from the former City Attorney's files during the last week of April 1992 and is enclosed for your information because it clearly establishes the action of the City Council in 1984.

The September 1987 City Council minutes reflect that a subsequent City Attorney presented two ordinances relating to the West Shore annexation. The minutes state that the zoning for the area was adopted by the Council but the ordinances in final form were not presented until this time.

The minutes of September 8, 1987 also reflect that City Administrative Assistant Joe Menicucci indicated that the City Council formally adopted the zoning classifications as written by Lake County Land Services personnel Jerry Sorensen and Paddy Trusler, but the ordinances were never provided by former City Attorney Don Peterson. The City Council then passed Ordinances 459 and 460 which provided a T-3 unrestricted zoning classification for the subject property.

The representations to the City Council by the City's administrative assistant as stated in the Council minutes are not true. The Council had not adopted the T-3 unrestricted zoning for this property but in fact had voted to enact a T-3.1 special condition as outlined above. In addition, there were no public hearings conducted by the City prior to the ordinances adoption in 1987.

The law is clear that no zoning classification shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. In my opinion, as a private citizen, that law is jurisdictional and no zoning ordinance is valid unless the public hearing procedure is followed.

There has never been a public hearing held in relation to a T-3 unrestricted zoning classification as contained in the 1987

Ordinances 459 and 460 for the Drum - Miller property. The public hearings conducted in 1984 resulted in the action taken by the City Council in 1984 passing a T-3.1 special condition zoning classification for the subject property and it is that action which we ask the City to honor.

It is apparent to us that the City of Polson has two choices:

1. Do Nothing. This option will result in Caroline Miller continuing with the development of her R. V. Park. I personally observed the first trailer being placed on the subject property yesterday afternoon May 6, 1992. The other residents of the area annexed by the City are now forced to either initiate litigation to attempt to set aside the City's zoning ordinance and stop the trailer park or to do nothing and permit their property to become substantially devalued as a result of the downgrading of the former residential zoning to an unrestricted tourist service zoning by reason of mistaken action by the City Council and inaction by the former City Attorney.

2. Correct the Zoning. This option would repeal the Ordinances 459 and 460 and enact the ordinance passed by the Council in 1984 following the public hearing and proper statutory procedure. This option does require action by the City to enact or amend its zoning ordinance to provide for the T-3.1 special condition zoning classification previously approved by the City Council. This option would relieve the other landowners, now city residents, in the area annexed of the burden of initiating unwanted and expensive litigation. The result of this option would be that only the City and Mrs. Miller would be parties to negotiations or litigation to resolve the consequences of the City's mistake.

We respectfully request that the City Council correct the zoning classification for the subject property to that approved by the Council in 1984 following the public hearings as required by law, and that the City not allow any building permits or further development of the proposed R. V. Park until this matter is resolved.

Very truly yours,



C. B. McNeil
JoAnn McNeil

cc: Mayor, City of Polson
Polson City Attorney
City-County Planning Staff
Polson City Clerk