

PUBLIC HEARING
WEST SHORE INTERIUM ZONING/MORATORIUM ON DEVELOPMENT
JUNE 1, 1992
7:00 P.M.

Council present: Funke, Pedersen, Vergeront, Karstens, Kersich

Others present: Mars Scott, Dexter L. Delaney, Caroline Miller, Gary L. Clark, Roger B. Nutter, Thelma Nutter, Rich Stripp, Jerry Sorenson, Curtis Nelson, Rich Forbis, Earl Whittington, Gary Cooley, Wendell Burrowes, O.J. Miller, Frances Reid, Carl A. Seifert, Marlene Doolittle, Jack B. Mercer, Robert Ricketts, Dixie Belfield, Gem H. Mercer, Trig Kvande, Bernie Tingle, John Campbell, George Cunningham, Florence Cunningham, Liz Stevens, Bill Stevens, Betty Coriell, Earl Coriell, Keith Nelson, Virginia J. Nelson, Al Suneson, Gerald Newgard, Carl Martinson, Richard Mabee, Barbara McCrea, Russell Stone, Irene Marchello, Lou Marchello, Bill Coffee, Dick Schultz, C.B. McNeil, JoAnn McNeil, Don Groves, Alice Groves, Bob Nolan, Mark MacDonald, Bob Fulton, Roy L. DeVore, Ron Buzzard, Bonnie Manicke, Becky Pickerill, Jerry Sorenson, Phil Grainey

Mayor James W. Jones presiding;

OPENING:

Grainey-At the previous council meeting, I presented a summary of the history of the West Shore zoning process. In conclusion, I stated the zoning process was defective in 1984 and in 1987. I recommended the council proceed to establish once and for all zoning for the West Shore area of the City of Polson. Included in that recommendation was that the city consider interium zoning and proceed with establishment of final zoning for the West Shore. Interium zoning, by statute, requires notice which has been done both by publication and notice of mailing to all West Shore property owners. The notice provided for an interium zoning public hearing. The purpose of this hearing is to consider public comment on the establishment of interium zoning for the West Shore. The notice also set forth a procedure to initiate the process for permanent zoning in the West Shore area. Another alternative available to the council at this time is to consider passing a moratorium which is permitted, as I view it, by statute and more particularly as expanded upon by case law interpreting that statute. The permanent zoning process requires a public hearing which will be held June 8 at 7:30 p.m. Once that hearing is conducted, the council will proceed to adopt a final zoning ordinance. This ordinance will be presented June 15 for the first reading with a second reading conceivably taking place July 6. At that point in time, assuming there are no problems or difficulties with that process, a final zoning ordinance for the West Shore area of the City of Polson would be adopted and approved. I suggest at this point in time, in order to simplify tonight's process, they recognize permanent zoning will proceed over the next three weeks and restrict tonight's discussion to consideration of interium zoning. I am aware of the fact there are a number of people, particularly those property owners and business owners on the west side of the highway, who have expressed some concern that this process is leaning towards a more restrictive zoning for the commercial establishments that exist on that side of the highway. I, for one, have not heard any such comment from any member of the City Council leaning in that direction. Anything is possible, but to some extent those concerns are unjustified. With that, Mr. Mayor, we should open this up for public comment on the interium zoning question.

PUBLIC COMMENT:

Dexter Delaney-Mars Scott and myself are here tonight representing Caroline Miller, a West Shore property owner to be affected by the City Attorney's proposal of adopting some method of interium zoning. I don't think it is any secret that the catalyst for this whole debate arising probably was the anticipated use of Mrs. Miller's property when she bought it about four years ago and her current plans to

continue her development of her soda fountain/restaurant business called the Polka Dot Bear as well as to install an RV Park in the area. We would be perfectly happy to reserve the bulk of our argument until such time as a general public hearing takes place on the issue of permanent zoning. The basic issue here revolves around the question as to whether, right now, the City of Polson has adopted T-3 zoning designation as applies to my client's property. That property, about 3-1/2 acres in size, used to be known as the Lakeview Trailer Court and has been in my client's ownership for about four years (since 1988). The threshold issue is whether there is any real need, at least with respect to my client's property, to consider any element of interim zoning in any event. Considering the history of the use of the property, the legislative history of the city council of Polson and everything that has happened in between. Briefly, I will trace that through, primarily to indicate why we express our opposition to any zoning change, interim or permanent, as applies to Mrs. Miller's property. Initially the property was used as a tourist cabin/motel facility for a great many years, probably dating back to the 1920's. In 1984, the city council, admittedly rather ambiguously, indicated it's intent to adopt a T-3 zoning designation which fits Mrs. Miller's anticipated use of the property as a 23-24 unit RV Park in addition to the Polka Dot Bear business. Essentially, it is very clear in 1987, Ordinance 459 and 460 were passed designating the area as T-3 zoning. It's pretty fundamental in zoning law that once the city council speaks and acts, the public can rely on that. That is exactly what occurred, not only in 1984, but in 1987 when the T-3 zoning designation was adopted. Moreover, in November of 1989, the city council recodified its' ordinances; again adopting the T-3 zoning designation for Mrs. Miller's property. She has done nothing wrong and I have the feeling that a great many of these proceedings presuppose she is somehow on trial. In 1988 she purchased the property from Dave Drum's interests; relying on the published T-3 zoning designation the city council of the City of Polson had adopted. She is entitled to do that. In all the intervening years, from 1984 to 1988 when she bought the property, no one seemed to raise a voice against the T-3 zoning designation. Until approximately mid April of 1992, no one appeared to raise a voice against the T-3 zoning designation as it applied to Mrs. Miller's property. There is a pretty well established maxim of law that if someone has a complaint they are not encouraged to sleep on their right to make a complaint and no one made a complaint. She purchased her property in 1988 for approximately \$185,000; to this date (relying on the T-3 zoning designation) she has invested an additional \$100,000 or more to establish the Polka Dot Bear business and proceed with various plans for an RV business, again, without any complaint. She appeared here, before the council, September 9, 1991 and announced she wanted to build an RV Park and no complaint. No complaints arose until approximately April 15 of this year when she was absolutely flabbergasted to learn, for the first time, that a lot of people in the area now are going to challenge the zoning designation adopted by the city council and on which she had an absolute right to rely. We have accumulated information that may be of interest to the council, not only in considering the issue of interim zoning, but in considering the issue of the existing zoning designation of our client's property. A petition (approx. 120 signatures) stating support for Caroline Miller's RV park, a letter from Larry Young (former property owner) indicating former property use and a site plan for the proposed RV park were submitted for record, the first two submitted to demonstrate there was nothing new or unusual about Mrs. Miller's approach to the use of the property. It is not only consistent with the T-3 zoning designation, but it is consistent with the past use of the property over a great many years. She bought the property in good faith, relying on the existing zoning. She proceeded on to a very substantial investment in the City of Polson and her commercial business with the expectation of development in two phases, the Polka Dot Bear Soda Fountain/Restaurant and secondly the RV park. She received a building permit through her contractor on November 7, 1991 in connection with the construction of the Polka Dot Bear business (copy submitted for record). We have heard a great many comments, at least secondhand, from a great many people opposing Mrs. Miller's project. It is my understanding that most of the people live in that immediate area on the West Shore between the lake and the highway. When those people built their homes there, they built them knowing the

Lakeview Trailer Park was there and had been used as a trailer park or motel for a great many years. No effort was made to reverse the T-3 zoning designation by those people, or for that matter, by anyone else until about six weeks ago. In addition, it seems to me the fundamental integrity of zoning should be that when the person finds out what the zoning designation is they can rely on it. I'm surely not faulting the city attorney for trying to resolve a very difficult problem, but the notion of interrupting Mrs. Miller's development of her property by an interim zoning measure or by changing the zoning leads to all sorts of problems for the City of Polson. It has been suggested by the people opposing her project that they should not have to go to court to sue the City. By the same token, these people would try to impose the same burden on this lady who has done nothing and perhaps impose that same burden on the City of Polson. With that, we urge that the zoning remain the way it is, the council reject the notion of interim zoning and that, at least with respect to Mrs. Miller's property, she continue to enjoy the present zoning designation T-3.

Keith Nelson-I live on property adjoining the controversial property. My dad bought property there in 1946. We built our home there in 1963 or 1964. When our home was built, the property was zoned by the county as R-1 with a grandfather clause for the trailer court. In 1984, when we were annexed into the city, I sat in this very chambers and heard all the council agree what was in the records of the council meetings. If this council had followed through, as they intended, to have a second reading and have it signed by the mayor, we wouldn't be sitting here today. It had gone through the whole review process, I sat at many meetings, I own property between the two highways and gave up a C-2 rating on that property because I was promised this trailer court would cease to exist as soon as it went out of business and it was to be R-1 property. Mr. Delaney says we are fighting Mrs. Miller, we are not. We have nothing against Mrs. Miller and realize she has a legitimate claim, but I think the council has to realize we have a legitimate claim and we had a claim three years before Mrs. Miller. As far as the 1987 ordinance goes, this changed property zoning without a public hearing. I had no knowledge of a trailer court until I heard it by the grapevine this year. We were not aware anything was going on.

C.B.McNeil-I want the record to be perfectly clear I am not addressing the council in any official capacity or in the capacity of the elected office I hold and I do not represent anyone else although I do have the permission to speak for my wife. Mr. Delaney has suggested that his client is on trial. That is quite simply not the case. Our complaint is with the City of Polson and the City Council for its' previous mistakes, inaction and nonaction. First I want anyone that is west of the highway to understand my comments are directed solely to the strip of property between Highway 93 and Flathead Lake. It is a residential area. When the City of Polson annexed us, it had been zoned for many years by Lake County as R-1 (residential). I must disagree with Mr. Delaney's conclusion as to what happened after that. The Lakeview Motel had ceased for many years to exist as a motel. Under the Lake County zoning ordinance that was in effect at the time it ceased to operate, if it ceased to operate for ninety days it reverted to R-1 and that former motel was lawfully R-1 at the time this council annexed our part of what is now the City of Polson. In 1984, the city undertook to zone the property where we live. It undertook that pursuant to Montana law that requires public hearings. When this council conducted the public hearings, as Mr. Nelson has correctly outlined, the city council minutes clearly reflect an intention by the council to adopt a zoning for Mrs. Miller's property (was then Dave Drum's property) that was a T-3 special condition. The special condition was created for Mr. Drum to allow condominiums, hotels, motels, marina development, but just as important, it did not allow trailers, RV's or mobile homes. Those uses were excluded for the simple reason Drum didn't want that. I am sure most of you are aware of his background as one of the founders of Kampgrounds of America. He didn't want that for a KOA. He wanted it to be used in conjunction with his convention center and wanted it for condominiums. Nobody opposed that. Nobody opposed it for the obvious reason it did not include any kind of usage or development on that property that would be detrimental to a residential living area. So the council

passed that. Because of an error by the city attorney, he had an ordinance drafted, but it didn't get signed by the mayor and there wasn't a second reading. We will never know why it didn't, but that was an error by the city or we wouldn't be here today because it would then have been zoned under a condition that no subsequent owner would ever have tried to put an RV Park into a residential area. In 1987 Mr. Delaney suggested when the city adopted the zoning ordinance citizens sat on their rights. There is a reason we sat on our rights. The zoning was adopted in 1987 in contravention to state law which clearly provides no zoning regulation shall be valid unless there is first public hearing. There was never a public hearing of any kind that preceded 1987 adoption of the ordinance in effect today and there has never been a public hearing on Ordinances 459 and 460 allowing T-3 unrestricted. That is the very reason your city attorney has advised this council that that ordinance is invalid. We submit that the proceedings of the city being invalid, that that property is the same as it was when were annexed which is R-1 (residential). Unfortunately, because of the City's mistake, this has come down to a posture where it has the appearance that the longtime residential owners there are against Mrs. Miller. That is not the bottom line gentlemen. The bottom line is we were residential when you brought us into the city and if you had done what you tried to do in 1984, it would still be residential and Mrs. Miller would never have had any idea to put an RV Park in that residential area. What we are asking the City to do is to give us the same protection you afford every citizen of the City of Polson in any and every residential area of this city. You don't allow trailer houses, residential RV's, fifth wheel trailers used as a residence or mobile homes in a residential area and that's what we were when you brought us into the city and that is what we are asking you to keep us. I would also like to state for myself personally, and for my wife, I don't have any problem with Mrs. Miller's Polka Dot Bear Ice Cream place and I don't want to see the City of Polson be exposed to any greater liability than perhaps they already are. I do not want to see the mobile home that is out there now or any other RV's in our residential area. None of my comments are directed to the commercial and T-3 properties across the highway. I don't have any problem with those. The highway clearly segregates the residential area from the commercial area and it should stay that way.

Caroline Miller-I had Mr. Young out there to look at the property and he was very pleased with what I had done with the house. He lived there for 22 years. He had moved the garage right next to the Nutter's property (where the fence is now) and told me he had 14 trailers parked in that one spot. How can they say there was never trailers there? We have people who said they lived there at one time and I can get letters from them if need be. What I'm objecting to is that nobody ever told me anything, I never got one letter from anyone. I spent two years in my planning, I did a lot of hard work before I got here and when I got here I found a can of worms. I bought it subject to the zoning. I had a free title on it showing there was nothing to delay me from going ahead. I spoke before the meeting last August and nobody told me I couldn't have that. I have letters from Sorenson and Fulton approving my plan and nobody ever said anything when there were commercial signs up in connection with "For Sale" signs that the property was not commercial so how can you go back and take that designation away from them? It's not right. If you take it away from me, you have to take it away from the people across the street because it was done at the same time. As far as R-1, there was nothing signed. I've been in real estate for 28 years and, to me, you go by the records, what's signed and not by somebody's verbal saying. I feel I should keep my zoning without having any fight at all.

Dexter Delaney-If I heard Judge McNeil's comments correctly, I think it maybe is symptomatic of some of the problem in the area. I suggested in my opening remarks that when the city council clearly was considering T-3 zoning in 1984, the public at large should have known about it and especially in that area. I also suggested that that same thing was true in 1987 and that the people who now object so strenuously to this, slept on their rights between 1984 and sometime in April of 1992; eight years they said nothing. Judge McNeil indicated that apparently the reason they slept on their rights was because there was no public hearing or something to that effect and,

therefore, they made no objection to the then clearly existing T-3 zoning. I don't think you can have it both ways. If the City Council of the City of Polson says Mrs. Miller's property is clearly zoned T-3, and it did, and the published ordinance in the City of Polson says it's T-3 zoning with no special conditions attached at all, how can you justify not raising an objection simply because, in the dark past, there is a contention of not having some kind of a hearing process. The accomplished fact is, then, in 1987, in 1988 (when Mrs. Miller bought the property) and in 1989 (when the city codified its ordinances) this is unconditionally T-3 zoned property, something on which Mrs. Miller was entirely entitled to rely. There is one further comment about the concept of zoning I would like to make. Zoning is passed for two purposes; to guarantee people in an area that undesirable uses will not be put to property in that area, but it is also to guarantee to people in that area they can use their property for exactly what the city council said it's zoned for. We would, again, oppose any proposition of interium zoning or change of zoning for reasons we have just given.

Russell Stone-I am new to Polson; I have been here a month. I am really confused by this. I don't know these two gentlemen who spoke before, but it sounds like they want to blame the City Council on something that really should be their responsibility, they live in that area. I've been a property owner for many years and when you receive your property tax statement, it tells you what your property is zoned. If the city council made a mistake, then it is our responsibility to make sure the city council does their job. We're the ones who put you there. It is our responsibility to make you people do your job the way we want you to do your job. If this didn't happen, maybe you people did make a mistake, but we're here supposedly to rectify that mistake by pointing them out to you. Obviously, the property owners in that area chose not to do that. I don't know Mrs. Miller or the two gentlemen who spoke. I know one person in this room, Rich Stripp, because he helped me unload my truck when I got here. I'm really confused by this. Mrs. Miller bought the property to use as T-3 zoning and now somebody is trying to say "no you can't use it for that".

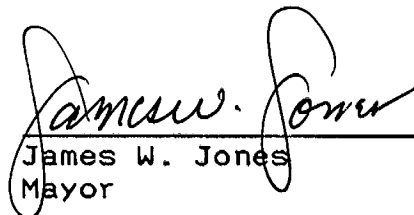
Barbara McCrea-I've lived on the West Shore for 24 years and I have been through all of the 1984 situation. At that time, the city council ruled a T-3 special. It was to exclude trailers, RV's and that type of situation and it was to be developed into condominiums and Mr. Drum's convention center within a two year period. If it was not developed within that two year period, it was to revert back to R-1 which they were when they were annexed into the city. We were not aware in 1987 of any changes. We were not notified. The area where we live is R-1, it is in close proximity to Mrs. Miller's. We were not notified on our taxes that Mrs. Miller's land was being changed in any way. I would like to go on record as being opposed because of a lot of other things that are going to happen down the road as far as traffic, water and the situation that is going to develope.

Gem Mercer-I would like to maybe inject a little common sense into this argument. All the people there in the R-1 are friends of mine, I respect their wishes, their properties should all be left as it is. This property that Mrs. Miller is trying to develope, the word "trailer park" or "trailers" has been used rather slurringly. I was in the RV business for many years. This is going to be a high class, needed trailer park in Polson. This is the type of person who comes in with a \$60-100,000 unit, they're respectable people, they spend money in Polson, they create no nuisance, no noise, have no effect on any of the residential property whatsoever. Polson is very short on commercial space. We need to utilize it in that way. This absolutely will not hurt any of the R-1 properties. If anything, down the road, it will increase their value.

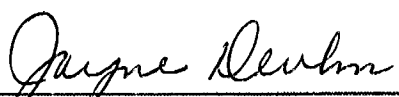
Keith Nelson-When I walked out of the meeting in 1984 after the city council had voted all of these conditions (1984 minutes), I thought it was all done. I trusted my city council. They were going to take care of me. I don't think it is my responsibility to check every ordinance they pass to make sure it is done. This is why we elected them, to handle our business. As far as enhancing our property values, I can see our property values dropping way down, especially

those who live right next door to them. I've heard that property values are going to go up, no matter what, but it is all a relative thing. Real estate is location and if you're living near a trailer park, your values aren't going up.

PUBLIC HEARING WAS CLOSED BY MAYOR JONES.


James W. Jones
Mayor

ATTEST:


Jayne Devlin
City Clerk