

PUBLIC HEARING
JUNE 8, 1992
7:30 P.M.

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

Others present: Bill Stevens, Carl Seifert, Caroline Miller, Dexter Delaney, George Cunningham, Florence Cunningham, Roger Nutter, Thelma Nutter, Gary Clark, O.J. Miller, Ken Burton, Jim Oman, Virginia Oman, B. Todd Henry, C.B. McNeil, JoAnn McNeil, Gary Cooley, Dick Matejovsky, Robert Ricketts, Bernie Tingle, Tom Tingle, Earl Coriell, Betty Coriell, Sigurd Jensen, Ross Jensen, Carrie Jensen, Alvin McCrea, Barbara McCrea, Virginia Nelson, Keith Nelson, Al Suneson, Bill Coffee, Bert Schultz, Bob Fulton, Lou Marchello, Irene Marchello, Barbra Stone, Russell Stone, Alice Groves, Don Groves, Earl Whittington, Gene Nobles, James Boyle, Richard Scheidecker, Mary Egarr, John Egarr, Donald Dubuque, Dick Wollin, Jack Heglie, John Campbell, Ron Buzzard, Roy L. DeVore, Marilyn Trospen, Connie Cummings, Aryn Pickerill, Jim Funke, Bonnie Manicke, Phil Grainey

Mayor James W. Jones presiding;

PUBLIC HEARING: Grainey said this was the noticed hearing for purposes of considering a permanent zoning ordinance for the West Shore. At the last meeting of the council, an interim zoning ordinance was passed pursuant to previous notice published in the paper and mailed to residents of West Shore area. Purpose of this meeting tonight is to receive public comment regarding zoning decisions which will be made within the near future by this council regarding permanent zoning for the West Shore area. There are two processes ongoing relating to the Caroline Miller proposal to install her RV Park. Zoning is one of those matters as well as the subdivision review process. The subdivision review process currently stands as this; Mrs. Miller submitted her subdivision review application for consideration by the Lake County Planning Board. A hearing was conducted in regard to that and as a result of that the City-County Planning Board recommended to Mrs. Miller that she reconsider some aspects of her subdivision proposal. Based upon correspondence received from her attorney, she does intend to do that and resubmit her application with some revisions apparently for subdivision approval. My understanding of that situation at the present time, is that she has three weeks from May 26 to submit her revised application. That has to be reconsidered by the City-County Planning Board. I understand another hearing may be conducted in regards to that resubmittal and that the Planning Board may, at that period in time, resubmit its' recommendations back to the City Council relative to the subdivision aspect of this process. That is an ongoing process independent, and related of course, but independent of this zoning process. The purpose of this meeting tonight is to receive public comment regarding the West Shore zoning. I would suggest to the Mayor and Council that it allow public comment and individual comment regarding, not only, what you would desire zoning on your particular property to be but what you would desire for zoning on other properties within the West Shore area. That is not limited, necessarily, to residents or property owners within the West Shore but anyone who has comments or suggestions to this council as to what you believe to be the proper result of permanent zoning for the West Shore, this is the time to submit that comment. There has been ample review and discussion regarding the history of zoning on the West Shore. Obviously, there is a multitude of opinions about consequences of that history. This council has heard all of it and I'm not sure further comment regarding the history serves any particular productive purpose this evening. Given the fact this council has elected to proceed with permanent zoning on the West Shore, I would suggest your comment be directed towards what you believe to be the proper result of this new zoning process.

Dexter Delaney-Last week we did explore some of the undisputed historic facts involving the evolution of zoning on the West Shore and particularly the problem Mrs. Miller faces in connection with the current interim zoning and with what her opponents would request of

you as permanent zoning. I think the record that the Clerk is keeping should be absolutely clear, this in reality is a matter of honesty. It is not an issue about rezoning the West Shore. It is an issue about rezoning Mrs. Miller's property. That is the only issue the council, or for that matter, the Planning Board has really heard any substantive discussion about. Without going into all of that background we discussed last week, in terms of the history of that situation, suffice it to say Mrs. Miller having made a substantial investment of something approaching \$300,000 did so relying on the then existing T-3 zoning which we propose should be the permanent zoning, at least as applies to her property, and perhaps for the entire West Shore. The focus of our position, obviously, is the plight with which Mrs. Miller is now faced having made that large investment of money, a substantial investment of time and a great deal of investment of ingenuity and other similar resources relying on the zoning which the City of Polson passed which was in effect for at least five, and very likely eight years, and which should be in effect today. We submitted to the council and to the clerk a list of names who signed a petition favoring the zoning of Mrs. Miller's property continued as T-3 zoning. I have an updated list which I will file with the clerk which contains 21-22 additional names which essentially means approximately 140 citizens of the City of Polson have endorsed her application to be zoned T-3. The one terrible word people are always reluctant to use in proceedings like this is "litigation". It has been bandied about to some extent but no one has ever honestly advised the council just what that might entail. So what are the consequences of either zoning Mrs. Miller's property T-3 or not zoning it T-3, reducing the zoning designation to a point where she can't establish the RV Park which she has had planned. It is worthwhile, to examine those consequences. I am not here as matter of threat, I am here to try and share some thoughts with you which I have on that connection and which I would urge you discuss with Mr. Grainey, the City Attorney, to test the validity of what I might have to say. Suppose Mrs. Miller's property is restored to its' previous zoning designation of T-3. She is allowed to proceed to build her 23-24 unit RV Park in conjunction with a business she already has going, which is already permitted, her soda fountain business. Suppose that happens. What are the realistic consequences of that? What does the City face with this? What do the adjoining property owners face as a result of that? The most immediately affected property owner is obviously her next door neighbor who has been very vociferous in his opposition to her application for an RV Park. What did that property owner and others in the neighborhood look at and face in past years? A dilapidated, decaying old fashioned trailer court as they were known in the 1920's and 30's. This time of year starting to get brown, later on an abundance of weeds and an eyesore on the landscape. Mrs. Miller has, to this date, removed a number of those buildings and has a plan in place which she pledges to carry through, if she's allowed, with her construction project to substantially beautify that entire tract which is about 3.5 acres in size (putting in lawn and shrubs, taking down a remaining older building, terracing the lakeshore frontage and substantially adding, not only to the aesthetic value of her property, but the neighborhood in the City of Polson generally). That is something no one can laugh off as being inconsequential. She has already put \$100,000 in that project after paying \$185,000 for the property. With that in mind, she pledges in good faith to continue to do this, to make that a kind of showplace. As a pledge of her good faith, even in the face of an temporary ordinance that says she can't proceed with an RV Park, she has committed herself to go to some substantial expense in submitting a redesign to the Planning Board complying with every one of the substantive objections advanced at the Planning Board meeting. She will do every reasonable thing to ensure an RV Park will not impact her neighbors. I would, therefore, ask you to ask Mr. Grainey, under those circumstances, how can it honestly be said that anyone's property has been diminished in value. How can it honestly be said anyone has been adversely affected by Mrs. Miller's development of that 3.5 acre tract comparing it only a few years ago with what it used to look like. That is one of the consequences the council will have to consider in the event it adopts T-3 zoning. What will happen on the other hand, and I truly don't mean this in any threatening sense, if she has no other alternative after spending \$300,000 she is faced in a position of not being able to develop T-3 zoning in the sense of an RV Park. What will happen to the business

she has going? That was just one phase which you permitted, you the City of Polson permitted, of a two stage development which was dependent for its' success on the second stage. She can't make it on a soda fountain in that location and yet you have permitted her to spend a \$100,000 for a business that is going to fail for the want of a second phase. That is a serious consideration. Her only alternative, under that situation, (and she does not want to do this, she did not hire me to institute a lawsuit, she hired me to speak on her behalf to try to reason with the council of the City of Polson as a matter of fairness and equity) if she has no other choice but to risk the substantial loss of the investment then she has to litigate it and in two counts as lawyers say. To challenge the validity of any ordinance in court that would deprive her of her right to build an RV Park and to file an action for damages against the City of Polson for the loss, not only of her investment, but the reduction in the value of her property by reason of the City of Polson depriving her of what was clearly a vested zoning right. Gentlemen, that is simply a reality. She will have no other choice. She is willing to make any reasonable compromise. If there is something reasonable no one has thought of that would mitigate some of the objections or, at least, soften the blow to some extent, she will also do those things as well as long as they are reasonable inconsistent with what she understood to be her well established legal right which you gave her in adopting T-3 zoning in the first instance. The final comment I would have to advance to you without going through all of the history of the T-3 zoning is to echo something someone said in the audience last week. "Is Polson going to be the sort of community that would invite an investor, developer, businessperson into the community relying on its' published zoning, have them make that substantial investment and then expect them to walk away from it?" Obviously, that is clearly inequitable. Mrs. Miller, in conclusion, isn't asking you for anything you didn't already give her when you adopted T-3 zoning. She is willing to settle for something less in the sense of making reasonable compromises and accommodations, but beyond that she has an absolute right to rely on what you gave her, a T-3 zoning designation. If you were to reenact T-3 zoning for her property, or give her a grandfather clause or a nonconforming use right, I would submit to you that when she is through with her proposed development that is going to do nothing but enhance property values and living conditions and the aesthetic look of the area in the after situation after that is accomplished. The neighbors won't suffer, the citizens of Polson won't suffer and the taxpayers of Polson won't suffer and for that reason I would most strongly urge you thoughtfully consider reinstating the T-3 zoning designation and in testing the validity of the remarks I have just made you talk to Mr. Grainey about this. Get his legal advice as to what the options may well be. You should only conclude that you should reestablish the T-3 zoning designation for Mrs. Miller's property.

Bob Ricketts-I do agree with what just was said. Let's work together. I look across now and see improvement from a dilapidated, rundown motel which was an embarrassment to the entire community and I feel what has been done this far is of value to the community. I also have a great concern about the liability to the city if T-3 is not reinstated. I also speak for Rocky Shriver, the owner of the property by lease.

Mary Egarr-He said the project would not make our area deteriorate in any way, but I would like to state we have had large trucks of all sizes going down Shoreline Drive at a pretty good rate of speed delivering goods to the restaurant and I think it has already begun to deteriorate the value of our property.

C.B.McNeil-I speak only for myself and for my wife, I do not speak in any official capacity with respect to the elective office I hold. My comments are directed only to the property which lies on Flathead Lake between Highway 93 and the lake and between the bridge and the Diamond Horseshoe. We do not have any problem whatsoever and take no position with respect to the zoning as proposed either in the interim plan or any other plan with respect to the property west of the highway. We support the recommendation by the Polson City Planning Board, in which capacity you sit tonight, to recommend to the Polson City Council the adoption of interim ordinance 514 as a permanent ordinance. We

further support the provision in that interim ordinance which will allow Mrs. Miller's Polka Dot Bear Ice Cream Restaurant to continue to exist as a pre-existing use subject to only one condition and that is the condition that we respectfully request the removal of the fifth wheel trailer which is being occupied as a residence on that property. The reason for that request is that the trailer is totally inconsistent with the residential nature of the area which I believe is the intent of this Board with respect to interim Ordinance 514. I cannot resist the temptation to respond to some comments concerning litigation made by Mrs. Miller's attorney. The City made two mistakes. In 1984, the mistake was the failure by the city attorney to have properly prepared and signed by the city council the ordinance which clearly was adopted in the motion made in the 1984 minutes and there was not a second reading. Had that been properly done, there is absolutely no question the Dave Drum property, now owned by Mrs. Miller, would have been T-3.1, special condition, hotels, motels and marina. It would have excluded restaurants, bars and certainly would not have included mobile homes, trailers or RV's. When Mrs. Miller bought her property, she would not even have thought of the use she now proposes for that property had it not been for the City's mistake in 1984 in failing to properly complete that procedure. In 1987, the City made another mistake in adopting the ordinance allowing T-3 unrestricted without any public hearings. I am confident that is the reason the City Attorney has advised the City Council to do it over again and do it right this time. What are the consequences of the City's mistake. There are only two possible consequences as I pointed out to the Council in my first letter two months ago. Either Mrs. Miller is not going to be able to build her RV Park or she is and what was a residential area when the City annexed this property will have a trailer park in it. If you adopt the interim plan, the interim Ordinance 514, then the City will have to account for its' 1987 mistake with Mrs. Miller. If the City permits the development of Mrs. Miller, then she gets her way with her trailer park and all of the residents that were taken into the city with the West Shore annexation will no longer have an R-1 property, we will have R-1 except there will be a trailer park in it and that is the other consequence. I believe the course which has been followed in the proposed rezoning of this area is the proper course and that is to adopt Ordinance 514, allow the restaurant by way of mitigation of potential damages to the City to continue to exist providing the trailer is removed.

Keith Nelson-I keep hearing a recurrent theme of how the businesses are going to suffer and how we are supposed to attract businesses. I have lived in Polson off and on since 1944 and if there is one thing that attracts people to Polson, the bottom line is that it is a nice place to live. I know many of my neighbors have come up from Regal Springs and there because it is a nice place to live. We have improved our property (shelter belt), it has cost me a lot of money just to maintain a nice residential area. I think the City Council should look at this aspect of it rather than a commercial aspect because its' people who want to live in Polson and the area, and these are the people who live here year round and are supporting commercial enterprise, tourists add some, but there has never been any tourist oriented business that has survived solely on the tourists. I ask the Council to consider our position as residents and the position of all of the city residents who can have their property threatened by this type of action.

Russell Stone-I'm a business owner in Polson. I'm more confused tonight than I was last week because I went down and looked at the properties. The only property which would be directly affected is the one right next door. Someone said previously that if the RV Park went in, it would deteriorate their property values. As I drove along the frontage road, I saw a lot of things which would deteriorate the properties. Some of the properties are lovely and well kept, some aren't. One piece of property had old car parts in it, there was a boat sitting in the yard covered up with a tarp from the lumber yard, there were three RV's parked along that street and people that live out there are saying they don't want any RV's in their neighborhood but they are parked in their front yard. That really confuses me. It sounds like it is okay for me to do it but I don't want anyone else to do it. I moved here recently, I grew up in Montana in a small community like Polson and that is the reason I moved back here. I

think we have a real hornet's nest here and I'm really disappointed that the proponents and opponents cannot get together and work something out. People need to relax, back off and listen to each others' position. My position is that Mrs. Miller's property should be zoned T-3. She was given a building permit, she was given the authority some time back and then it gets yanked out from underneath her. I'd be madder than hell if I had \$300,000 invested in a piece of property and the City Council said you're dead in your tracks right now. My feeling is if this goes to litigation, the City of Polson is going to own a piece of property and I don't want my taxes going to buy Mrs. Miller's property. I think it should be turned back to T-3.

Thelma Nutter-I live next door to Caroline Miller's property. Last week some people were asking "Why now?" have we waited this long to oppose this sort of thing. According to all of the background, we thought we lived in an R-1 residential area. We thought that this property was R-1. In 1991, August of last year, you received a request from Caroline Miller to install a single family dwelling trailer on her property. We were the only ones who were notified because we live next door but when the other neighbors found out about it, we came down enmass and that request was denied unanimously. If we didn't want one trailer in our neighborhood, we certainly don't want 23. A compromise has been suggested. I suggest a compromise that you make it R-1, she can subdivide it into three of the most beautiful building lots (lakefront lots) in town, she has enough water to do that, the City in turn would receive much more in property taxes from three nice developed residential homes than they would from a seasonal RV Park and she would receive more on her investment. Some of the property owners there now pay more property taxes than she does. As for the petition that has been submitted, I think you'll find there aren't any property owners from that area who signed that petition. I talked to someone today who said they wouldn't mind it in their neighborhood. I asked if they would want it next door. They said no. We want R-1.

Earl Whittington-I'm interested in what is going to happen to the other side of the road. Whenever we bought that property a few years back it was zoned C-2 and, for the record, I'd like to see it go back to C-2 on that side of the road.

Councilman Kersich-Earl, I might respond to that. We are in the process of having somebody come in to revamp our total zoning and growth plan for the City of Polson. I'm sure that will be looked at in the near future.

Mayor Jones-We have to look at it now, this is the whole West Shore area.

Councilman Kersich-I was just trying to suggest an alternative.

Lou Marchello-I have been there for approximately twelve years. What Keith Nelson said about the work that he has done on the landscaping is a very valid point. That is a very beautiful area and very beautiful section that he has done. What Mrs. Miller is proposing is she is going to clean up the area and make it more aesthetically pleasing. When I moved into my property, there was an RV park right next door. I'd like everybody to go down and look at that property now. When I moved there, it was a very nice place, the grass was kept cut, no weeds, today I can't keep the weeds out of my yard because of all of the weeds that are on Bear Harbor property. It has deteriorated tremendously from what it was when I bought my property. Mrs. Miller is proposing to clean up her property, make it nicer, have an RV park that will help the area. These people are not going to be here twelve months out of the year. They are going to be here 3-4 months. It will help everyone in the area. If she can compromise and put shrubbery, a berm or whatever so it is not obtrusive to the rest of the owners on the shore, I think it will be helpful. I think the City should put it back to T-3.

Ayron Pickerill-We have lived on Shoreline Drive for thirty years and I feel, in response to Lou's suggestion, that many of us feel that what if in a few years Mrs. Miller's trailer court looks just like the

one next to you? If it was residential and had a nice apartment house on it like they are building down by the Diamond Horseshoe or divided into a couple of residential lots, then the people living there will probably keep it up, but when it is a business lot we all worry about what will happen in the future.

Gary Cooley-I bought my property as T-3, Mrs. Miller bought hers as T-3, I want mine to stay T-3 and I would expect hers to stay T-3. I can't see how she can buy something and have it changed on her. My vote is for T-3. I think the neighbors are wonderful people but it is back to that is what she bought, that is what she should get.

Tom Tingle-On the same token, it is a residential area, it was that before 1984 and should have been in 1987. We have the same argument. We have a right for that area to stay residential and all these people in the petition who stand up for it don't have to live by it, by increased traffic, the safety problems and all of the other things that go with a trailer park/restaurant type of thing. We have the same right, council decided this many years ago, to expect the same fair treatment from you people today.

Roger Nutter-Mrs. Miller has stated over and over again that she expects to have a nice RV Park and she is only going to have certain exclusive trailers/motorhomes in there. I've lived there quite a few years, when Dave Drum had the property and Mrs. Miller's had the property. I think I've seen it brushhogged once, they've got weeds 2-3' high, grass 2' high, the weed seeds come over on my property, I have to spray all of the time. She says she is going to do these particular things. Why hasn't she done this all the time she has had the property? When a person buys property, you expect them to keep it up. Everyone along there keeps the property up. One of the real estate people said that the RV Park was not a good investment for that piece of property and still she insists that she is going to put an RV Park there. What happens when the time rolls by that she gets tired of the RV Park, not enough income, the property sells and you have a can of worms again because you'll get somebody coming in there who will want to change it. It was R-1 property and there was a condition with Dave Drum that, in conjunction with a convention center, they would have hotels, motels and marinas. He didn't build a convention center so automatically it should have gone back to R-1 and I still don't see why we are trying to make a zone change. We should have a buffer zone between commercial and residential. I tried to buy a piece of property from Dave Drum so I would have that buffer zone. The highway is a perfectly good buffer zone. I suggest you people zone the other side of the road whatever you want to zone it and leave R-1 on our side of the highway. I can't see any reason we are trying to change this piece of property. Mrs. Miller was notified there was a problem with the zoning. She had time, at that time, to evaluate it and stop her building. She elected to continue on building and that is why she has investment in the property as such. She evidently figured she was going to go ahead and get the RV Park. I can't understand why we are speaking of zoning this piece of property anything but R-1.

Irene Marchello-What I don't understand here is that Mrs. Miller bought a piece of property here four years ago with the contingency that she would buy the property zoned T-3. This is 1992, the woman has invested all of this money and now we are discussing it before our city council. Why wasn't it discussed and why didn't the neighbors speak up in 1988? I think now the woman she be allowed to do it.

Virginia Nelson-I have talked with people that were on city council in 1987 and they were not aware the zoning was changed (I have some names) so how can we be aware if the very council was not aware?

Barbara McCrea-I have lived on my property for twenty-four years. I am speaking for my parents who also are part owners in the property, Fritz and Della Wiplinger, they have asked me to speak for them. I wanted to take exception with the fact stated it would not cost the taxpayers anything. When Dave Drum developed the property back in 1984 and T-3 special was only put on the property Mrs. Miller has now, it tripled our taxes because of the development of the sewer in this area for the main purpose of the convention center. I believe the

water situation there in the future will also cost me in taxes and I already have an artesian well 400' deep and I do not use the sewer system provided by the city because I already had my system put in. I don't feel I should pay in my taxes for Mrs. Miller's development.

Bill Coffee-I am speaking as the President of the Community Development Agency. You have an opportunity before you to do something that this town desperately needs to have done. It is inconceivable to me that the City could be negotiating the hiring of a zoning consultant to deal with possible changes in zoning throughout the entire community and update the comprehensive plan and, at the same time, be hung upon this problem tonight. In all respect to the people who live out there, they talk about noise and they live underneath an airport runway and adjacent to a major highway. We talk about values and, as a realtor with over twenty years experience, it is my personal belief and the belief of many of the people in this business locally that area is under far greater pressure because of its' commercial value than because of its' residential value. All of those things aside, I would point out to you something that is historically true. Blanket zoning does not work. Blanket zoning hasn't worked in the past and will not work in the future. To zone that area R-1 is not going provide the people who live there with the protection they are looking for. To zone it T-3 isn't going to give anyone protection. Blanket zoning gives you protection until the dollars get big enough. When the dollars get big enough and somebody comes in and tries to overturn anything, then people like yourselves who have to make a decision are placed in a position where you have to take the situation individually. The City Council needs to deal with this as a unit. You are the City, you are the responsible party. But let's exercise responsibility and take responsibility for our future also. I think the thing that makes me the saddest in this entire thing is that I know, deep down inside, what Polson is going to become and yet this kind of divisiveness and contentiousness keeps us from getting there. I think that is too bad. I don't want to see that neighborhood destroyed and I don't want to see these people lose value in their homes. That is not my point, but there is a way to deal with zoning particularly in areas where you have this kind of pressure building; where there are changes coming, and it makes no difference to me or anyone else how long people have lived in that particular location, the changes are coming anyway. When we are at the same time talking about bringing in people to help us, update our zoning all across the community, would it be such a terrible thing for the City to tell people.. "Look, we're going to make some changes, we want your input and we want your involvement in the process. We want you to sit down with us and help us make this area protected so that you're protected and the people who come here in the future are protected, so the business community is protected and the people who want to see growth can do so in an orderly fashion." It's unfortunate that there are two problems here tonight because they keep coming together over the same piece of property and, ideally, they should be solved individually. One is Mrs. Miller's problem with the City and the other is the neighborhood problem with the City. Because they come together over one piece of property, everybody beats each other over the head with it. That doesn't solve our problem entering the future. What I'm trying to ask of you is to stand up as a group, as the City Council, take responsibility for the actions, whether you did them eight years ago or someone else did them, take responsibility for those actions and for the actions that need to be taken today and give the community a future where we can work together instead of being contentious and divisive and working against one another.

Ken Burton-I live up on 16th Avenue. I can understand and I can sympathize with the neighborhood on Shoreline Drive. There is a situation on 16th where commercial activity is going on on a residential property, it probably shouldn't be going on but for a neighborly situation we live together and work together on this thing. I think that is the most positive thing we do in this situation here. The problem I have is looking at this situation as a relative outsider. I've only been back in Polson for about six months now. I don't really know any of the parties closely involved. I met Mrs. Miller a couple of weeks ago. I know some of the parties on Shoreline Drive, but from my viewpoint, this looks like an issue of fairness. What is going to be fair in this situation. In the technicalities of

the law, perhaps there is some justification for turning the zoning back to R-1, but under principle of fairness it just looks unfair to me for the City Council to take an action when a party has moved this far along towards its' completion to overturn zoning. It seems very unfair, uncalled for. I think it is a real detriment to the business community. I have been accused of being pro-business and anti-residential in a situation like this, but if I was laying out zoning codes today Bob wouldn't have a huge sign on top of his building. There would be some signing ordinances. There wouldn't be satellite dishes in front of some of the yards around here. There wouldn't be commercial operations in a residential area. There are some things we just have to live with and things will change over a period of time. I don't think it fair to take someone, maybe because they are moving back to the area they are an outsider, or for whatever reason, and say we are going to overturn this because these people have spoken up and it just seems to be more...what? What is the rationale for overturning that, I don't understand it. It seems fair to let her have her trailer court, it's fair to make sure that the zoning doesn't allow anything like this to happen in the future, but I can't see the fairness of coming in at this late date, at this point in the process and rezoning properties. It bodes very poorly for the future of Polson if the City Council is allowed to overturn zoning that is in place for whatever reason. If we were going to go by the letter of the law, we could find some sort of flaw with most of the zoning in Polson. If we go on the basis of a legal problem in the past to do this, it sets a precedent in that aspect, too. I don't want my property zoned commercial, its' residential now, but we're not rezoning these people's property. Mrs. Miller seems to be very willing to make any concession possible to make it agreeable to them. I can't see any problem with cutting that road off there so they have their own little Shoreline Drive coming in from the Horseshoe. This seems to be an unfair action on the City Council's part. You have to act in a fair manner on this, that is your responsibility. Obviously, I am for this zoning. In one sense I believe it would be better to have that whole strip residential and keep these people happy back there, but in this situation it is not fair to hurt Mrs. Miller in this manner.

Jack Heglie-I have property across the road, as well as in the residential area, and mine was rezoned many years ago when it was still in the county. There is about 31.5 acres in there plus the property on the other side of the road. I can understand the situation we are in and nobody seems to want to bend on this. I think it is rather evident none of us are really enthused about having an RV Park there, but I am also looking at what happened up around Kalispell many years ago, that is, they had individual spot changes of zoning and they ended up with some of the biggest mess of junk there you ever saw in your life. Mrs. Miller's statement about what she is going to do I will take at face value, but Mrs. Miller is not going to own it forever. What we're concerned about is what happens after it's either turned over to someone in the family or she decides to sell it. Then we are right back where we were. You've got the situation where there is a little piece of property here which is going to be pleasantly landscaped and then it deteriorates to a bunch of junk. Experience we've had is we'd just a soon not see that. I'm sitting on that property and if it is going to go, it is not going to go as a little strip of junk here and there. In due time, Mr. Coffee mentioned, price pressure is going to build up to the point where somebody is going to sell it and they'll put something fairly decent on it. In the meantime, twenty years elapse and we'll have to put up with it. Course I may not be here then, but keep in mind what you are looking at is having a spot zone here, there and everywhere. Pretty soon, the entrance to Polson is going to look just like Kalispell coming in from the south.

Russell Stone-I've heard two people comment tonight...What is going to happen when Mrs. Miller doesn't own the property? You people can take care of that, you can put restrictions on the property to make her maintain it, to make the next owner maintain it. Why do the business people appear, at least to some people in this audience, to not be as responsible as homeowners? We are, at least, as responsible and sometimes more responsible. We have businesses to maintain plus we have homes to maintain.

C.B.McNeil-Jim, I'd like to make two responses; one to the fairness and one as to why nobody spoke up in 1988. The fairness answer is right here...this is what that property was zoned when the City of Polson annexed the West Shore. This is the official zoning map of Lake County, Montana, it has been on the wall of the City Council Chambers since the City annexed the area. The property we are talking about was R-1. We were zoned R-1, no mobile homes, no trailers when the City annexed. In 1984 Dave Drum said he was going to put in a convention center, he wanted to put condominiums on that property and wanted to be able to rent so let me have hotels, motels and marinas. The council went along with it and we all went home and went to bed and slept comfortably. It was not until April 1 of 1992 that anyone out there in that residential area, it was residential legally by law and residential, in fact, by use, when Mrs. Miller submitted her application for the RV Park that was the first time anyone out there knew that in 1987 the City had adopted a T-3 unrestricted without any public notice and without any public hearing. Nobody knew about it, that's the reason nobody spoke up. Mrs. Miller would not be in the position she is in right now if the council, not this council, would have properly followed the publication and the notice requirements. The controversy simply wouldn't have happened because the 1984 action of this council would have been on the books, it would have been T-3 special conditions (hotel, motel) and that is the answer to the fairness question. The fairness question response is..."Who's going to suffer because of the City's mistake?" The City's mistake is the only reason there now is an application pending for a trailer park here. Should all the people out here who thought we were still in R-1 suffer because of the City's mistake or should the applicant who now wants to put a trailer park in there suffer because of the City's mistake. That can be addressed right now before any further damage is done. The other situation cannot be, that is irreversible. To the people in the real estate business; anybody who would publically say that the Nutter property is worth as much with a 23 space RV Park next door as it is without it is not being honest.

Gary Clark-I would just like to respond to that. If they think their property is going to be worth less money or is worth less money as it stands, what makes him think his property is going to be worth more if they build condominiums or a hotel, motel or marina on it?

Richard Scheidecker-My first concern is what is going to happen with the Drum property on the other side of the highway as far as zoning over there? It is zoned T-3 now, R.J.McDonald and Company just bought it and will it stay the same? I am for the T-3 zoning.

Caroline Miller-I just don't understand all of the this. I came to the City, they showed me on the map where it was T-3. I spoke to Mr. Menicucci today and he is looking up the date I came in here and told him what I wanted to do and he gave me permission, he said..."You don't need a permit for a business because you're zoned for it"...I followed through with it, I made my plans, I came to the council last August and everybody agreed I was zoned and could go ahead with it. I did not know any of this in 1984 had ever taken place, nobody ever mentioned it to me, I did not go to the records to look back there, if I did it wasn't signed so it wouldn't have meant anything to me. I go by what is on the record, that is what I went forward with. I have many, many compliments on my Polka Dot Bear, I have done it very nicely, I would do the trailer park very nicely. If the neighbors want to cooperate with me and tell me what they want, I will try to do it for them. I offered to put up a wall next to the Nutters but they didn't want a wall. What they failed to mention; I had a garage, laundry and two units right up against their fence, they tore down my trees without asking me and as soon as I moved those units off, they moved their house back to the edge of the property practically on my property line. Mr. Billmayer asked why I let those people build on my property line? I said I didn't, they asked for a variance from a 6' setback to 3'. I objected but the variance was granted anyway. I feel I have been treated very unfairly. Why am I the scapegoat? Why am I the one the council is going after? I did nothing wrong.

Mayor Jones-The council is not going after anyone here.

Caroline Miller-You're trying to rezone it.

Mayor Jones-We're trying to zone it and do it right, but we're not going after anyone in particular. We're not going after the other neighbors.

Roger Nutter-I'd like to respond to Mrs. Miller. Carl Seifert was taking care of her property while she was in California. I called him to ask for her phone number and told him I had trees on the property line with branches falling off, they damaged my truck. Drum never paid for the damage to the truck. I trimmed the trees twice with my own money and Carl Seifert told me he was selling his property, had an option out there, and Carl Seifert told me to cut the trees down, I'd come and help you but I have an option today. That is how the trees were cut down. I felt bad about it, as bad as anybody, but I never would ever go on anybody else's property and take them down. That basically is what has happened. She mentioned she had buildings over there next to the property, that is true, but we could see, down the road apiece, that these buildings would be removed because there was no profitable outfit going on at that particular time. I did move the house back to the property line. Our lot is only 65' wide. I moved the house back there so I could have a driveway to get down to the back of the property.

Florence Cunningham-I'm interested in the property on the other side of the highway and how far up does it go and is it all C-2, C-3 or T-3 and are there any restrictions as to what can be done on that? We heard they were going to put a used car lot out there which we don't want.

Earl Coriell-One aspect of this thing that bothers me is the Planning Board input into this procedure. It seems strange to me that as much money, as much developing so far that has gone into this project and yet, just in the last two months it has gone to the Planning Board. I don't understand why the Planning Board wasn't involved in this earlier on. They did have one meeting a few weeks ago at which they did recommend some changes and recommended Mrs. Miller make some modifications and come back because it wasn't satisfactory the way it was. It seems strange, to me, that she hadn't known, before she got this much money into it, what was going to be allowed irregardless of the zoning. I think, and I'm not speaking for the Board, but they were significant modifications which means maybe 10-12 units may be more practical, road access is not realistic and a lot of these things. The zoning is a big factor and has to be considered but, if we're going to talk about compromise or things that might be done instead of, the Planning Board has a lot of input here in telling her what is acceptable. I know you can't make that decision tonight, the decision made tonight has to be modified or taken in conjunction with whatever the Planning Board determines is reasonable for this property, too.

Dick Wollin-As President of the Flathead Lakers, I would like to share some thoughts with you. This group has been concerned about protection of Flathead Lake for some 35 years now. I guess I've attended dozens up in the north half of the valley and very few on the south half of the valley dealing with water quality and land use planning, so welcome to the real world. You are now faced with a dilemma and a problem that's happened so often all around the lake and that is lack of long range planning. My appeal is not for one side or the other but to look at the possible planning Bill has alluded to and reaffirm the City's position, County's position and all of us to get involved with long range planning and look at what is happening to Flathead Lake. You are long overdue to get those things in order. Seven to eight years ago the President of the Freshwater Foundation from Minneapolis spoke to the Chamber saying we had 10-20 years to get our house in order before we're faced with the same kinds of problems every other part of the country is concerned about and that is land use around the water. Five years ago, Dr. Goldman from Lake Tahoe spoke to the Flathead Lakers and said we had only three years to get our house in order before we are faced with the same proposition as Lake Tahoe. Flathead Lake is the most densely populated lake in western Montana, it's higher than Lake Tahoe, higher than Lake Washington, it is highest in the nation. That should speak to everyone concerned about the quality of life around this lake. Dr. Goldman said to get our zoning in order, look what happened to Lake

Tahoe. I urge all of you to read the March issue of the National Geographic which talks about Lake Tahoe and what has happened to it. The Kalispell area is unbelievable in terms of the number of septic systems that are being put in, the way the land is being divided and the division now occurring between peoples. Regardless of how you solve this one, there are ways to solve problems other than through litigation. Of anyplace, Montana has a need to find ways to use experts to help resolve very difficult questions other than the two that are always suggested, a third one of conflict resolution is left out. My appeal to you as friends and neighbors-It's time to take a look and get involved in deciding what direction you want this community, as well as this end of the lake, to go. If you don't someone will do it to you. It's already happening. This question is a small part of the big question and what the land around this very beautiful lake will be used for. Flathead Lake is a part of creation. We have a responsibility to take care of that creation. Somehow, folks, you've got to find ways to solve problems together.

Dexter Delaney-I would have three comments to make and I assure you I'll make them briefly. First, Judge McNeil is wrong, entirely wrong, when he said this property is residential by law. It hasn't been since 1984, probably 1987 at a minimum, surely in 1988 when Mrs. Miller bought the property, it was zoned T-3. It was zoned T-3 for the last four years until last Monday night. There is no question about what the law is here. The law is what the City Council of the City of Polson voted the law to be, T-3. The second comment, and maybe a much more substantive observation if you will, is this; I think I hear virtually everyone here who spoke in opposition to Mrs. Miller's position say they kind of sympathized with her but, as Dr. Coriell said on the one hand, why did she spend all of this money before going through the subdivision review process. It is because the City of Polson told her her property was T-3 and issued her a building permit for her Polka Dot Bear. The planning review process didn't relate to the Polka Dot Bear Restaurant, it related to the RV Park proposed. I hope that is entirely clear. The second thing, of considerably more substance, is I think I hear everyone behind me in opposition to Mrs. Miller's proposal say this...They don't really object to the T-3.1 zoning designation (at least that seemed to be what Judge McNeil was saying speaking for a group). In other words, it's okay to build a hotel, motel, convention center or related activities on the property. Isn't that clearly a commercial use? There is a long range between R-1 and a commercial use. It's not a very far distance between that commercial use and T-3 because, in substance, what is the difference between an RV Park and a hotel, motel-convention center. All of those businesses cater to the traveling public, the respectable, decent, good citizen traveling public of this country. There really isn't much substantive difference except one-it means in September, or thereabouts of every year, that RV Park that Mrs. Miller will be operating if she's allowed to proceed with her project, will likely be either vacant or substantially vacant. That hotel, motel-convention center is going to be sitting there as a very well identifiable commercial project year round. As to the issues raised by three or four people concerned not so much with what Carol Miller is going to do with the property but what about the future. What is the guarantee the weeds are going to be mowed down, the place is going to be green and pretty looking? Probably the fundamental guarantee is an economic one. A piece of property that valuable in the future, especially with the development of Polson as a recreation tourist center, is very likely going to be very well cared for in any event. I would say to you here, if that is a problem, simply impose a condition to granting the T-3 zoning and allowing the RV Park that it be maintained to some reasonable identifiable level and she'll do it; and make that binding on her son and successors and interests forevermore. We can live with that. We again submit, in the interest of fairness, because you have already permitted it, she should be allowed to proceed with T-3 zoning and the development of her RV Park in conjunction with the first phase which you have already permitted, her Polka Dot Bear Restaurant.

Thelma Nutter-Mr. McNeil represents himself, he does not represent the group. We, as a group, eighteen of us, have submitted to you letters and petitions asking for R-1, not T-3 or T-3 special.

Earl Whittington-I'm confused here, I thought we were talking about the whole West Shore. I'd like to go on record as saying that the other side of the road hasn't been discussed at all tonight.

Mayor Jones-This is the time to do it.

Earl Whittington-I'd like to know your opinion and what you're going to do.

Mayor Jones-We can't give our opinions now.

Earl Whittington-Well, I'd like to know some opinions, if somebody else has got something to say about it. Two weeks from now you're going to say why didn't you say something about it and I want to know now.

Mayor Jones-There have been several here who have said what they want.

Councilman Karstens-I think we maybe lost the importance of a lot of this. We have just been striking at one particular issue here. This is for all that area, not just one particular piece of property. What happens here and what happens in the following weeks is going to have a bearing on all of that property and not just the Caroline Miller property. There may be some people, if they have comments as to other properties out there, should voice them now.

Earl Coriell-What is the difference between T-3 and commercial?

Mayor Jones-Phil, would you explain that because I have a problem with it myself.

Grainey-There are two types of commercial districts (C-1 and C-2) and it would be quite a lengthy process for me to try and distinguish every aspect of those. The T-3 zone was adopted as a tourist oriented type of zone.

Earl Coriell-What is allowed in commercial that is not allowed in T-3?

Grainey-C-1 is the central business district which would not be pertinent here. C-2 is a commercial district that allows any automobile related commercial uses which may include motels, tourist accommodations, supermarkets, grocery stores, vehicle dealers, auto accessory stores, apartment houses, office buildings, parks, mortuaries. T-1 allows commercial uses which are related to tourists including motels, hotels, restaurants, bars and other tourist oriented retail shops, office buildings, parks, apartment buildings. T-2 allows retail and service commercial uses including hotels, motels, retail shops, supermarkets, grocery stores and restaurants. Bars and taverns are specifically excluded from said district, however, service of beer and wine shall be allowed in conjunction with food served in restaurants. Parks and mobile home parks allowed. T-3 is a commercial district permitting those uses compatible with tourist services and existing character of the area. It is also the intent of this district to avoid strip development of the area and problems with traffic safety and congestion on the highway. Some commercial uses related to the servicing of tourists include motels, hotels, convention facilities, supermarkets, retail stores, restaurants, bars if in combination with a motel, hotel or convention facility, marinas, campgrounds and parks.

Earl Coriell-You said campground, does that include RV Park?

Grainey-There is no specific reference to RV Park as that term is defined. The question becomes; is an RV Park essentially a campground? In my view, at least, the two are so essentially similar that an RV park would have to be considered a campground.

Betty Coriell-Does that mean if it is T-3 there can be another bar out there?

Mayor Jones-In conjunction with a restaurant, yes.

Councilman Pedersen-I'd like to address Earl Whittington's question. My biggest concern, of course you know I objected, perhaps the most, about a car lot, is in T-3 there must be a frontage road. I personally consider it very important that we have a frontage road there to stop the look of strip as we see up and down and for highway safety. My understanding, and if I'm wrong and I hope I am, C-1 or C-2 means if that highway department will let you on there fifty places in that mile, that to me is a bad deal. That is my main concern for the airport side of the highway.

Earl Whittington-We talked to the Highway Department before we ever put those storage units up. One access existed and they gave us one more and said that was it.

Councilman Pedersen-For just your property?

Earl Whittington-Yes.

Councilman Pedersen-That, to me, is something very important to be resolved on that side. What is highway access, what are the limitations and what are the setbacks.

Barbara McCrea-If this means that whole section might be T-3, the Diamond Horseshoe Bar had a bunch of campers come down for a big deal. The noise till 2:00 in the morning was horrible, the people used the neighbors bathroom, the neighbors also had their canoe and several things stolen from their property, we watched skinny dippers off the neighbors dock which we also use and if you're going to open it up to T-3 all along that strip, you've got more of a problem than you realize now.

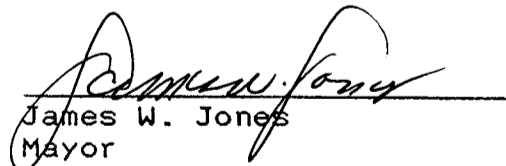
Grainey-It seems to me this council needs to set some direction and give some idea of where it is going at this point. The council has another regularly scheduled council meeting this coming Monday. The question at this point is whether you want to consider a first draft of the permanent zoning ordinance on the West Shore at this point in time which is what I originally suggested to you as being the time to consider that or maybe want to consider the subdivision review process. We're not going to get a report back from the Planning Board in time for that next meeting. I would guess we would get something back in time for the July 6 council meeting. Some decision needs to be made about where you want to go from here and instructions you care to give to me regarding preparation of any zoning ordinance.

Mayor Jones-Well, let me close the hearing and then we will go to council business.

Florence Cunningham-Does that mean, then, that C-2 on the west side of the highway stands or are we considering rezoning that?

Mayor Jones-That will be considered along with everything else.

PUBLIC HEARING WAS CLOSED AT 8:55 P.M.


James W. Jones
Mayor

ATTEST:


Jayne Devlin
City Clerk