

REGULAR COUNCIL MEETING
OCTOBER 19, 1992
7:30 P.M.

Council present: Funke, White, Pedersen, Vergeront, Karstens, Lies

Others present: Don Whiting, Shawn Wilson, Bob Fulton, Mike Tucker, Phil Grainey, Jerry Sorenson, Bonnie Manicke, John Campbell, James Boyle, Leo Schroeder

Mayor James W. Jones presiding;

MINUTES: The minutes of October 5, 1992 were approved as printed.

ORDINANCE 519-ZONING CHANGE LOTS 1,2 3-BLOCK 1-LAKESHORE

ADDITION: Motion White, second Funke to approve Ordinance 519 amending the zoning for Lots 1, 2 and 3 of Block 1 of Lakeshore Addition from R-1 to T-2 on the first reading. Motion carried unanimously.

ORDINANCE 517-WATER CONNECT CHARGES: Motion Karstens, second Lies to approve Ordinance 517 amending the water connection charges on the second reading. Motion carried unanimously.

ORDINANCE 518-ADOPTION OF TECHNICAL CODES: Motion Funke, second White to approve Ordinance 518 adopting current technical codes for the City of Polson on the second reading. Motion carried unanimously.

RESOLUTION TO AMEND THE WATER SERVICE AREA: Grainey said a committee meeting to discuss several thoughts on the water service area had resulted in the resolution before them redefining the water service area. Karstens said Pedersen had a valid concern previously about providing services outside the city without some type of return. He wished to add language to the resolution before them providing that the council had discretion to review water applications on a case by case basis or size basis to limit the number of service hookups that would be provided to that piece of property. Referencing the next agenda item on the Joy water application, he noted there was seven acres involved. If they limited the number of hookups to large parcels of land it would alleviate Pedersen's concern about having 4-5 different parcels each with water and a septic tank and drainfield. Possibly they could allow one hookup per five acres. Pedersen reiterated that if they gave away the water, they had no leverage for annexation nor sewer hookup. They were, in reality, in the property tax business. Possibly Karstens suggestion was okay in that if they limited the number of hookups per parcel, people would be forced to subdivide. Karstens said they would also be impressing upon the people they did not want a septic tank and drainfield within the water service area. White felt the issue should be tabled till these concerns were addressed. **Motion White, second Funke to table the water service area resolution to committee until the November 2 council meeting. Motion carried unanimously.** Campbell noted the third paragraph of the resolution referenced the "discretion of the City Council on a case-by-case basis". Karstens suggested an item #4 stating "the City may allow hookups based on the size of the parcel". Campbell said a case-by-case basis at the discretion of the council would allow for some flexibility depending upon the circumstances of each application. White said they needed something stated in black and white. Karstens agreed since councilmembers changed and the decisions along with them. Sorenson said language should be added also to allow Campbell to recommend a main be installed in place of a service connection. Grainey said the resolution did address easements for installation of mains or service lines under #2. Pedersen said he wished to see the terms on number of hookups, etc. spelled out

to prevent a difference in what was granted on an individual basis. Grainey suggested adding language to paragraph four imposing limitations on the number of hookups but emphasized discretion and flexibility should remain in force on a case-by-case basis. Pedersen asked Grainey to cite some cases where that would be needed. Grainey said one of the things they were doing with this resolution was reserving the option to require easements for mains as well as waiver of the right to object to annexation should it become clear their septic systems were failing. They may be giving water in the short term sense but they were preparing the way for extension of the city sewer system and annexation process. Campbell emphasized they were not always able to provide sewer where water could be provided and yet they would be setting things up for annexation and sewer extension in the future as Grainey indicated. Pedersen said if water were granted, however, and a septic system put in at the time, they would not wish to hook up to sewer in their lifetime. Campbell still felt they should set themselves up for sewer extension. Hillcrest was a good example of septic systems failing and sewer extension now taking place. Vergeront asked if the additional language would be included on the water application. Grainey said it could be done in a handout. Campbell said the application contained such language. The problem was the agreements had never been filed with the property so they transferred from owner to owner. Grainey agreed they would have a hard time transferring unless filed with the property. Vergeront asked if the old agreements could be filed. Grainey said he had not seen the document, however, they must be acknowledged to be filed. If the original owner still owned it and they were acknowledged, it could be filed. If there were subsequent owners, it was not recordable. Sorenson said Nellis intended to define the service area within the planning process and his objective was not to allow land divisions within that service area once they were in operation (provide for prior planning).

WATER SERVICE-JOY PROPERTY: Tabled till November 2. (Reference above.)

GOLF CART PATH: Lies said a map had been provided showing the proposed cart path. The path would be built on an existing 30' water and sewer easement. He had several requests for the path. Warren Frame offered to supply the gravel, barriers would be put at both ends and the path would be wide enough for carts and a walkway. Vergeront asked about the existing fire hydrant. Lies said it was on the corner at the end of the water line. Karstens said the 30' utility easement was supposed to be deeded to the City of Polson according to the filed plat. That had never been done. It would actually benefit Lies to deed that easement because 1) he was paying taxes on it and 2) there was a liability issue. The path would alleviate pressure off the other cart paths and, once it was deeded to the City of Polson, the repair and maintenance could be managed from the Golf Fund. White did not have a problem with that. Pedersen asked if Superintendent Funke was aware of the proposal. White was not sure, but he felt the golf fund could afford it and there would not be a great deal of maintenance. Lies said it would be brought to grade level to facilitate maintenance. White asked if he would deed it to the City. Lies said he could. Campbell asked that Warren Frame contact him prior to starting the work so he could make sure the manholes were brought to proper level at the same time. Lies said they could probably run the path between the water and sewer lines so this should not be a problem. Motion White, second Pedersen to approve a graveled golf cart path and walkway at th proposed location provided the 30' utility easement is deeded to the City of Polson. Motion carried unanimously.

RESOLUTIONS OF ANNEXATION-FIORENTINO'S AND FREELAND: Grainey said there were three Petitions for Annexations attached to the agendas as well as a map of the properties described. The Freeland lot had been deeded out of trust; the remainder of the property had been submitted to the BIA with a request for release from trust. He had been in contact with BIA officials as to

whether they could proceed with the annexation process without BIA participation and approval. The question had come up before when working on the waterline easement. He had been told there was no rule or regulation that would prohibit an annexation process going through even though the property remained in trust status. The concern the Council should address was at what point in time did this property become annexed and what conditions did they wish to impose on that annexation process. Apparently Fiorentino had agreed to place water and sewer lines on the property. If the property was not ultimately released from trust status, the Council needed to consider whether they wished to annex it into the city in the absence of a payment-in-lieu of tax provision. He had prepared a draft resolution (read into the minutes) which provided for annexation upon removal from trust status. He had discovered that the release from trust status was being sought on a lot by lot basis. One of the things they had to be concerned about under this procedure for annexation was the property had to be adjacent to existing city property. It seemed to him it all had to be released to consolidate the package of petitions for annexation. If the council was concerned about the taxation issue, release of all the property should be imposed as a condition of annexation. Jones thought Freeland had a separate petition. Grainey said his petition was separate, however, there appeared to be a strip of land (easement) between Freeland and the city owned by Fiorentino. Until that easement was annexed, Freeland was not adjacent. White said they should approach the annexations as their attorney advised. He did not feel they could do anything at this time. Karstens was surprised the BIA solicitor had no objections. Grainey said it surprised him, too, but cautioned them there was nothing in writing to that effect. Pedersen felt they should be annexed only when they came out of trust. Sorenson said initially Fiorentino's wanted to take one lot at a time out of trust. Upon working with Paddy Trusler, it had been determined there was no suitable place for sewer systems. Trusler had encouraged them to look at this option (annexation with extension of city sewer). Sorenson asked Grainey if it was legal to condition annexation on the status of a piece of property. The best thing to do was to try to work with Fiorentino's to bring this into the city, help pay for water and sewer as described by the resolution whether it was trust or fee in hopes it would eventually become fee land. Grainey said there were other examples of property within the city to which water and sewer had been extended (Kwataqnuq) based upon agreements for payments-in-lieu of taxes. That had not been proposed in this case. In the absence of that, it was incumbent upon the council to insist the property come out of trust. Rosemary Fiorentino had informed him she had buy-sell agreements on several of the lots with non-tribal members and, to sell them, they had to come out of trust so that did not seem to be a problem with her either. Another thing to be considered was that, as trust property, it was not subject to subdivision review. If the council would not consider annexation until all property was out of trust status, they should then require subdivision review. Sorenson said the county's position was they would take what they could get in terms of water and sewer as opposed to killing that possibility by haggling over subdivision review. White said if the lots were coming out separately, there would be no subdivision. Sorenson said, under Montana state law, it would still be considered a subdivision. Jones asked if she was only bringing out those lots outlined in black. Grainey said that was the case; the lots above (most, if not all) had already come out of trust and been sold. She wished to tell those with whom she had buy-sell agreements that water and sewer would be available upon annexation. It was unusual to pass a resolution of annexation that did not take place immediately, but they needed to be cautious here. Pedersen suggested direct correspondence with Rosemary Fiorentino requesting the utility easement be deeded to the city and, until such time, they were not adjacent to city property. Grainey said R. Fiorentino was adjacent, however, Freeland alone was not. Jones said that was the location of the water line. Campbell said it was and they had access to the easement, but not ownership. Karstens questioned the status of the road as the lot deeds as they came

out one by one seemed to go only to the edge of the roadway. Grainey said the legal description of the property submitted for annexation seemed to go to the center of the road although the Fiorentino's property description and the BIA property description done by different surveyors were inconsistent with each other and that had to be clarified. Vergeront questioned whether it would be her road. Grainey said she had mentioned in her correspondence she wished to keep that a private road. Karstens said they needed to insure it did not belong to the BIA should the property owners want to pave it to city specs and bring it into the city in the future. Lies asked if the road were being constructed to city specs. Vergeront said they would not accept it until it was.

Grainey said he needed direction on what the council concerns were. What did they want him to do. Directions to Grainey included 1) insure legal descriptions of property submitted were accurate, specifically Mark Fiorentino. 2) Water and sewer easement be deeded to city? Campbell said it didn't matter whether the easement was deeded to Freeland or the city, they would still maintain access according to the easement agreement. If it were deeded to Freeland, they would collect taxes on it. Grainey said if the main concern was access on the easement to the west of Freeland, they should have a utility easement as well as a 60' road right-of-way easement between lots. Campbell said the utility easement to the west of Freeland's had been acquired through the BIA last year. 3) Tucker asked them to address the length of the road and dead end. For purposes of fire protection, that needed to be a cul-de-sac. Vergeront said there was no room for a 40' curve radius on the cul-de-sac at the end of the road. Sorenson suggested a "T". Tucker said there didn't appear to be enough room to meet turning radius requirements and suggested paving an extension of 1st Street East to connect with the proposed road through the subdivision connecting to the 30' utility easement and ultimately joining 22nd Avenue West in the Woodbine Subdivision. Sorenson said it was odd, certainly, and, if it went through subdivision review there would be some changes, but overall it looked pretty good. He recommended the city work as cooperatively as possible with the Fiorentino's since the lower lots couldn't put in sewer systems (couldn't meet setback requirements from the irrigation ditch) but the upper lots could. If they put in their own sewer systems on the upper lots, there would be no reason to consider annexation. Vergeront said they still needed water unless they wished to drill a well. White felt if it was brought out of trust, water and sewer paid for and annexed into the city it deserved consideration. Pedersen said there was still a fire protection concern. Vergeront noted people paid property taxes for fire protection. Jones asked if the 60' on the east end would be brought in as well. Sorenson suggested bringing that 60' in as well and providing a "T" for fire turnaround. It was asked whether that was an existing road. Karstens did not know whether they had the authority to petition to bring that road in. Other options were discussed. **Motion White, second Funke to table the Petitions for Annexation from Rosemary Fiorentino, Mark Fiorentino and Alex Freeland to committee for further discussion and direction. Motion carried unanimously. Committee consists of Campbell, Sorenson, Grainey, Pedersen, Tucker. Sorenson asked if the council was requiring the properties be brought out of trust or would leave that to the committee. Jones said they would leave that to the committee.**

GOLF CLUBHOUSE BIDS: White said the low bidder was Sawtooth Construction, owned by Gerald Reynolds, Florence, MT. at a base bid of \$215,000 plus six alternates. They wished to announce the apparent low bidder (letter) and enter into negotiations with them at this time. It was felt by the committee that the bid price could be reduced further by changes/deletions regarding the type of fixtures, switches, etc. without ruining the integrity of the building. The cuts and changes would be brought before the council for final approval. He added there was only one local bidder due to problems with bonding. Vergeront asked if the other contractors would be given the same opportunity to rebid with the changes. White said they were not rebidding the job.

Vergeront questioned whether it could be done this way. Grainey said Sawtooth Construction was the low bidder based upon consistent bid specs submitted to all contractors. It was conceivable that argument could be made, however, as White noted, the changes would apply to all bids across the board and Sawtooth would still be low bidder. Vergeront asked if Sawtooth had ever built anything of this magnitude. Leo Schroeder said they built Rattlesnake School in Missoula and did a good job on that. White said they were not giving him the bid, they were simply negotiating. Devlin said it was her understanding the contract must be awarded and change orders negotiated after that. Grainey said they were essentially awarding the contract based upon a successful bid and now they wished to negotiate some change orders. He asked how many days they had to award the contract. White said thirty. Grainey said what usually happened within that time period was investigation of bonding capability and references. He wondered if the bid specs mentioned anything about allowance for negotiating process prior to awarding the contract. White did not know. Grainey felt the objective (saving money and still get a good product) was good as long as they didn't have the other bidders coming back and claiming the bidding process was changed after bids were accepted and Sawtooth was given a unique opportunity to come back with something different. White did not look for that to happen and there was a \$16,000 spread between Sawtooth and the next bidder. They would have to go along with the building committee to bring the bid within the range the council had authorized they spend on the project. Rebidding would not solve any problems because the process itself cost money and they would not get any other bidders than those they had because of the bonding problems. They were not entering into a contract with Sawtooth, they were simply saying he was the "apparent" low bidder. Grainey said it was clear Sawtooth Construction was the low bidder. It would be cleaner to award him the contract with the understanding they wished to negotiate change orders which would amount to a reduction in the contract price. He had to agree with those change orders. To avoid the other bidders coming back to ~~them~~ and claiming the rules were changed in the middle of the bid process, that would be the best way. White said he had been told this was the way it was done. He noted the previous clubhouse had ended up in higher figures than the original bid. They were trying to do just the opposite. Grainey said the fact that he was low bidder would probably mean any argument from the other bidders would probably not go anyplace. He suggested a conference with the owner of Sawtooth Construction to ensure he had no problem as "apparent" low bidder and the change orders they wished to make. White said he had agreed with their proposals in conversations so far and had actually made suggestions for areas that could be cut. **Motion White, second Funke to approve the following proposal be made to Sawtooth Construction; "We are pleased to designate your proposal for the Polson Clubhouse Addition as the apparent low bid. It is the City of Polson's intent to enter into a Contract for Construction with your firm providing an equitable agreement can be negotiated to reduce the overall construction cost. Please negotiate directly with Paul Bishop, of Paradigm Architects, to arrive at a list of deductive proposals which can be reviewed and acted on by the Construction Committee and the City Council. Thanks for your participation in the bidding process. We look forward to working with you on a successful project."** Motion carried with Vergeront opposed.

MONITORING OF GROUNDWATER BELOW LIBRARY (OLD TANK SITE REMOVAL):

Devlin referenced the letter sent by the State Department of Health and Environmental Sciences requiring collection of water samples from four monitoring wells below the present library site. She noted (via the Clerk's Notes attached to their agendas) they had met with Becky Dupuis from Lake County Land Services to determine the cost of this monitoring. With the worst scenario of monitoring all four wells on a quarterly basis, the cost would approximate \$3,000 per year. She asked the council where they wished to expense this from since this was not a budgeted item for the current fiscal year. Pedersen said they

knew the threat existed at the time they removed the tanks in 1988 and there was always the option of the emergency budget provision. It should be taken from Facilities Administration and they could provide for the overexpenditure at such time as it was necessary. White objected the City of Polson spend up to \$3,000 for a paper trail. The tanks had been removed, the dirt excavated and everything possible had been done at the time to take care of the problem. They had no guarantee the data would prove the contamination came from the library site. If they did find something, what would they do about it. He said they should refuse any more holes being dug. Devlin said it was not about drilling another well at this time. It was about monitoring the existing wells. \$3,000 was the worst scenario. There was only one well that really showed any contamination and that would probably have to be monitored quarterly. White asked what they would do about it should they find contamination. Karstens agreed with White. Every time they turned around, they were being nickel and dimed. Federal regulations trickled down, state regulations trickled down and they paid the price. White said there were still tanks in the ground creating pollution that should be removed. Pedersen agreed with him totally. Fulton said, in fairness, the City did do everything they were asked to do with respect to removal of those tanks. Campbell said the state inspector stayed on the job until it was done. Devlin said the letter maintains it took the State this long to monitor the "plume of contamination" and determine what site it might be coming from. Lies asked if the State had approved the tank removal site. Campbell said they allowed them to backfill. Vergeront asked if this was in writing. Campbell said they monitored the entire excavation process. He said there were test wells all around being monitored. White asked who was paying for those. Campbell said they were on private property but the Superfund was probably paying for the monitoring. Devlin said, according to Dupuis, because of the date their tanks were removed, they were not eligible for reimbursement from that fund. Motion White, second Pedersen to approve sending a letter to the Department of Health and Environmental Sciences stating they had done everything they were supposed to by removal of the tanks, a state inspector had been present and they refused to do anything further. Motion carried unanimously.

MMIA BOND REFUNDING RESOLUTIONS: Pedersen thought this was covered in the original agreement. Manicke said it was and it was simply a refunding of the bond issues at a lower rate of interest. Motion Pedersen, second Funke to approve Resolutions 597 and 598 authorizing MMIA to refund the outstanding liability insurance bonds and outstanding worker's compensation program revenue bonds respectively. Motion carried unanimously.

SEPTEMBER CASH REPORT: Manicke said there were negative cash balances in the Boettcher Park Lifeguard and Red Cross Swim Program funds due to payment of quarterly taxes. Money was received in the Red Cross Swim Program fund on October 6 to bring that balance back to zero. Motion Pedersen, second Funke to approve the September cash report. Motion carried unanimously.

NOTE: Manicke said she would be looking into refunding at par of the outstanding balance on the Water Revenue Bonds, the Water Construction Project note and the West Shore SID bonds. She would have an amortization schedule for them at the next council meeting.

DOMESTIC ABUSE CANDLELIGHT PARADE: Jones said in observance of Domestic Abuse Month, they had been asked to allow a candlelight parade on October 24 from St. Joseph Hospital down Main Street to Security State Bank, down 3rd Avenue East to 1st Street East to the Lake County Courthouse. Motion Funke, second Pedersen to approve the designated parade route on October 24. Motion carried unanimously.

DONATION OF SICK LEAVE: Devlin said they had a request within the organization for donation of sick leave. They did not have a policy at this time. State law provided for adoption of that

policy by resolution. They had a copy of the county resolution before them as well as a sample resolution prepared for their adoption of same policy. Campbell said Lindy Peek had used up all available sick and vacation leave. He was going through a process for Social Security disability, a letter from his doctors stated that any physical labor would increase his problems and, until that disability went through, it would be nice to provide him a paycheck. Pedersen applauded the generosity, but stated they should have some limit. Funke suggested thirty days per employee. Devlin questioned whether this was thirty days per receiving employee or donating employee. Motion Karstens, second Funke to approve Resolution 599 allowing city employees to donate thirty sick days per year. Motion carried unanimously.

APPOINTMENTS: Motion Pedersen, second Vergeront to approve the following appointments;

Facilities Administration	Mike Lies
Golf	Clint White
Water/Sewer (2nd)	Mike Lies
City-County Planning Board (2nd)	Kyle Karstens

Golf Building and Expansion Committee	Bob Ford
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Highway 93 Study

ID Team	Kyle Karstens
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Sub ID Team	Mike Lies
	Bill Coffee
	Jerry Sorenson
	Lloyd Jackson
	Rich Forbis
	George Mahon y
	Don Smith
	Bob Fulton

Karstens requested he be included in the Sub ID committee meetings.

Motion carried unanimously.

PTI HEARING-RATE STRUCTURE: Pedersen said he had attended the rate hearing and given oral testimony supporting the "status quo" and secondly, a valleywide service area, in essence the Whitefish proposal. The hearing had been poorly attended.


ZONING CONSULTANT MEETINGS: Sorenson said the kickoff meeting went very well with perhaps 45 people spending better than six hours analyzing what they perceived as the problems of Polson as well as possible solutions. Nellis was putting a report together on that meeting which he would present to the council. The 45 people represented a good cross-section of the community although they missed the downtown business people and the contractors and would pursue representation from those groups.

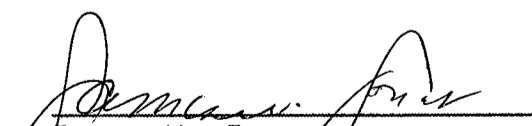
NOTE: Quarterly Budget Report (no questions)

NOTE: Fiorentino Subdivision committee meeting October 23 at 4:00 p.m.

Meeting was adjourned at 9:15 p.m. Next regular council meeting to be November 2 at 7:30 p.m.

ATTEST:


Jayne Devlin
City Clerk


James W. Jones
Mayor