

POLSON CITY COUNCIL MEETING - CITY HALL COUNCIL CHAMBERS
MONDAY, FEBRUARY 5, 2001 7:00 P.M.

Council Present: Tom Vergeront, Mark MacDonald, Clint White, Roberta Thick, Fred Funke, Dan Morrison. **City Attorney James Raymond present.** Mayor Mike Lies presiding.

Others Present: Ron Buzzard, Glenn Timm-Leader, Lee Manicke, Jack Corn, Joe Hovenkotter, Deborah Hayden, Ric Smith, Bob Fulton, Tim Hinderman, Tony Porrazzo, Linda Noble, Monte Sipe.

7:00 P.M. - HIGHWAY 93 IMPROVEMENT PROPOSAL - INFORMATION: Joe Hovenkotter, staff attorney for the Salish Kootenai Tribes, said he was directed by the Tribal Council to contact the local government entities and other community agencies to notify and announce the agreement that was reached between the Federal Highways Administration, the Montana Department of Transportation and the Salish Kootenai Tribes, a concept for construction of the U.S. Highway 93 project. Copies of the agreement were made available to Council at a previous meeting. He noted that larger graphics from the report are available if the City would like to use them for presentations. He gave Council a review of how they came to the agreement and the Tribal Council's intentions and request to work together with the City and noted that the estimated time of construction is 2005 or 2006. He asked Council, as he did the County Commissioners, to give their approval to meet with staff and elected officials if that is appropriate, to start to investigate ways that the local governments and the tribes can work together to hopefully develop some unified proposals to return to MDOT and FHWA with, for the three miles of Highway 93 that are left to be designed in Polson. He proposed that initially it would be very timely to proceed and start talking about non motorized transportation thru Polson and compile an inventory of all transportation facilities for the area starting on the South Shore, the Ducharme fishing access to the East Shore Route, extending as far west as Kerr Dam, south to Caffrey Road and north to Rocky Point walkway. This would give an opportunity to talk about facts, rather than the abstract, which has proven to be a more successful approach. He invited the City to participate in developing an inventory of transportation facilities on the south of Flathead Lake and to develop a plan for non motorized transportation throughout the Polson area and along the South Shore of Flathead Lake. If they have success with that, which would be simpler than the highway design, they can then spring from that to talking about Highway 93. MDOT requires that non motorized transportation be taken into account but they have not as yet developed a plan for the Polson area. This gives the local governments an opportunity to seize the initiative and develop a plan. If they can come to a unified approach it would be more forceful in convincing MDOT what needs to be constructed. Also, he has been discouraged with the advancement on lakeshore issues, particularly with Salish Point where there is some disagreement between the City, County and Tribes, over ownership interests. He feels this is an opportunity where there is a third party who can provide some funding that would motivate the parties to solve the issues in ways that are mutually beneficial. He asked that Council provide a response and get their approval to talk to appropriate staff and representatives of the City of Polson to try to plan some kind of follow up meeting to decide how they want to proceed. Vergeront asked if it is the Tribes' preference for the highway to go through the City instead of a bypass. Hovenkotter said the Tribes have not decided that yet. He has not read the Carter and Burgess EIS report prepared in 1994 and 1995 for the Polson area. He remembers that the City of Polson did not object to the bypass design but he does not know if they ever stated affirmative approval. The Tribes did object to a bypass design and MDOT selected the bypass design as the preferred alternative. Therefore, no two of the three entities agreed on any one alternative. Their official preferred alternative in the Environmental Impact Statement is that Highway 93 remain on the existing alignment. But he believes that the Tribes are very open

minded in discussing all of the issues at this time, of the three miles in Polson and the eleven miles from Ninepipe to Ronan. Vergeront said he and the Council voted twice, in two different administrations, in favor of the bypass alternative, for Highway 93 to go around Polson. He asked if that decision will have to be rehashed again. Thick said it appears that a committee will be formed to work together as was done by Skillings & Connelly with the other parts of Highway 93. The meetings were organized and went through a process to come to a consensus. Hovenkotter said that if the local governments can come to a unified concept in what they want to do, this is an opportunity to approach MDOT and FHWA and state that this three mile Polson project is at an impasse and all the local entities have agreed on what to do, which would break the impasse, but it has a cost. This would maximize federal resources from the Highway Trust Fund flowing into the community for the benefit of all government and is an opportunity that Council can seize. Vergeront said the discussion and bypass votes took place over a two year period. Hovenkotter said his legal analysis is that because none of the governments agree MDOT cannot construct anything outside of the alignment without the City's approval. And because they do not have Tribal Council approval they cannot proceed, therefore there is still an impasse in Polson. According to state statute the City has veto power if they do not agree with what the state is planning. However, it does not authorize the City to be the sole authority. Particularly in Polson where there is an overlay of a Federal Treaty and a state enabling act and subsequent state law. It is different in Indian Country, it always is. The Mayor and Council thanked Joe Hovenkotter for his presentation.

CITY COUNCIL MEETING

CITY COUNCIL MEETING MINUTES JANUARY 16, 2001: MacDonald said he read the minutes and found no corrections. **Motion MacDonald, second Thick, to approve the City Council Meeting Minutes of January 16, 2001 as printed. Motion carried unanimously.**

MISSION BAY PHASE VI - AMENDMENT TO PRELIMINARY PLAT APPROVAL: Sipe said Northwest Holdings LLC, developer of Mission Bay, is requesting Council approval of an amendment to Mission Bay Phase VI which was given preliminary approval in 1997. The developer is proposing to realign the lot lines and include in Phase VI what was preliminarily approved as Phase 7 and a portion of phase 8, for development of 17 single family lots. Sipe referred to Council's agenda attachment of his staff report dated January 26, 2001 which he read. It included the Review Procedure, Proposal, Staff Analysis and Staff Recommendations. Lies clarified that all access would be off of Hawk Lane. Sipe referred to the drawing of the proposed subdivision and explained that the lots will be smaller like those in Phases III and IV. **Motion White, second Thick, to grant preliminary approval of the Mission Bay Phase VI amendment, and that the conditions from the preliminary approval of the Mission Bay Major Subdivision shall apply to this proposed amendment along with the additional staff recommendations conditions of approval, as presented. Motion carried unanimously.**

BEAR HARBOR @ EAGLE BAY CONDOMINIUM PROJECT - PHASE I - FINAL PLAT APPROVAL: Sipe provided a copy and read the Bear Harbor @ Eagle Bay Condominium Project Staff Report dated August 3, 1999, a copy of which he provided to Council with their agendas. The report included Review Procedure, Project Personnel, Property & Area Description, Project Description, Design Elements, General Discussion Issues/Conditions and the Staff Recommendation that Council approve the final plat with the five conditions of approval as proposed. He referred to the plat showing what area is being presented for final approval. He noted that .53 acres of Parkland is being provided which is a little above what is required by state statute. After review of the West Shore Water System Proposal, a modification was made from an 8" to a 12" water main in order to accommodate hook up to the City water lines. At that time the

subdivision's water main lines will be dedicated to the City. MacDonald asked and Sipe confirmed that the buildings have eight units each. Campbell asked Sipe to clarify when the water hook up fees would be collected. Sipe said it needs to be determined because the water main is a private main at this time and will be charged from the wells' and holding tanks with a pressurized system. It will have connections off that line into the two units, having eight each with two additional 2" lines for fire suppression. Because this is a private system there will be no connection fees assessed at this time. He recommended that the fees be assessed at the time that the Phase II development is approved which is when the subdivision is required to hook to City water as stated in the preliminary approval. At that time Phase I will be abandoned from the wells for domestic purposes and will also be tied into the City water system. He recommended that the assessments for the water connections be paid by the developer when Phase II is approved. Campbell said he does not want to attach it to Phase II because there is no guarantee that Phase II would ever happen. He recommended that the fees be assessed when the main gets connected to the City's system but at this time the City would provide the meters because the property is in the City limits. Harry Green said that Sipe told him that they could not build Phase II until connection to the West Shore Well is available, at the same time John Campbell is saying there is no guarantee that it would be hooked to the well. Campbell clarified that he said there is no guarantee that there will be a Phase II. Green said all the phases they have planned may be accommodated by the West Shore Well System but it is not important that Phase II is not tied to the West Shore Well because they have signed a hold harmless agreement and they are not expecting the City water system to be available. Although they hope it will be there and will hook up to it if and when it is available, he does not remember that being a part of the approval. He asked that requirement to connect to the West Shore Well not be a stipulation of Phase II approval. They would still engineer to connect to the West Shore Well and the City system and would continue to do that. If they had the opportunity to develop another pump house and continue to accommodate their private system they would hook up to City water when it is available. They would not want the stipulation that they could not develop Phase II or Phase III based on the fact that the West Shore Water System was not available yet and asked that it be made clear that it is not a stipulation. Sipe said that is condition 11 of the conditions of preliminary approval which states that the developer shall extend City water to serve all units within the subdivision and that the City will not be responsible for costs involved with this extension. The City may allow a multi-family water system for Phase I, if approved by the City Water & Sewer Department and the DEQ, to address Phase I units which have been approved. Condition 12 of the preliminary approval states that all units within the development must connect to the City water system at such time that water is available. Condition 13 of the preliminary approval states that the developer shall submit a hold harmless agreement to address the issues of supplying water to this development. The document must be signed by both parties and notarized. Green said they have provided that to the City but he did not interpret that to mean that he cannot build Phase II because the water is not available from the West Shore Well and that Phase II must be using the City's system. They have designed the water system and met engineer standards to be able to connect to City water and it is their goal to hook into City water as early as Phase I if they can. But he never interpreted that nor would he have agreed to handcuff himself to any further development based on the fact that there was no West Shore Well. The fact that they can provide a private water system that meets the needs of the subdivision, he would not agree to the fact that they could not do any more development if the West Shore Well is not available. He asked that it be clarified and be of record right now. Sipe noted that the Bear Harbor property is in the City limits and the Polson Development Code requires all development within the City limits to connect to City water and sewer. The City also has an ordinance in effect that restricts

development of private wells within the City limits and requires connecting to the City water system. As this subdivision moved through the preliminary approval there was negotiation between the City and the developer and the City County Planning Board, being aware of the situation on the West Shore that the water is not available. It is a requirement in the Polson Development Code, that the developer is responsible for extending improvements to that project. Because the developer chose not to assume the cost of extending that service the City allowed the use of an existing well or drilling a well for Phase I only and specified that Phase II would trigger connection to the City system. The City agreed to this because it is working on drilling a well for the West Shore System and that there was no guarantee of when the water service would become adjacent to the property. Therefore the developer had to bear some of those responsibilities to extend water to that development, if he wants that development to happen. Green said they put up a hold harmless agreement and has no problem agreeing to hooking up to City water if it is available. If the water is not available they cannot be handcuffed to the point that they cannot continue to develop. They have done everything possible to make sure that the City was off the hook for any responsibility and then the City limits the development of Phase II when the West Shore Well is not available. They will extend the services and continue to work with John Campbell and agree to connect to the City water. He asked for clarification and stated that it was not his understanding nor would he ever agree to hamstringing himself to continue to develop. He will agree to hook up to the water service when it is available and will continue to engineer their project to connect to those services. They have already done that in Phase I and will continue to do that in Phase II but asked Council to not do this for the remainder of the development because it is not fair. Thick said she has no problem with requiring them to hook up only when water is available. MacDonald said the issue is that Green wants to continue to further develop even if water is not available. Thick said she understands that when he starts Phase II and City water is available then there is not an option of going to private wells at that point. Lies said Green has already agreed to condition 11 of the preliminary approval which states that private wells are allowed for Phase I only. Sipe said there are several issues, one is whether City water is available and the other is if the water service is adjacent to the property before he is required to use it. Green said in terms of a broad scope, if the City water is available they will hook to it and they have talked to John Campbell and feels there should be no question about their intentions for this development. They have stated multiple times that they want to hook to City water, but he would never have agreed to the fact they could not continue to develop based on that. It is a favorable situation for the City in terms of the tax base and also assured water hook ups. If the water is available they will hook up but he asked that the City not handcuff them to proceed with development of Phase II if it is not available. They have held the City harmless in terms of the water not being available and asked that Council not do this. Thick asked Campbell if he has a comment. Campbell said Council knows as much as he does and all he can tell them is that he expects the project to start this summer but he does not think that water will be available this year. Green said if things go extremely well with Phase I then they would try and get Phase II in the ground by Fall which would come on line for the season next year. He does not understand what the big deal is because they will have a water system and can go to another pump house or another reservoir and continue to develop, which is a win-win situation for the City also, from the standpoint of the tax base and additional water hook ups. He does not see the downside except for himself, the developer, who has all the money expended and not the ability to get it back. MacDonald asked if the available 13,000 gallons of water is sufficient for fire suppression in both Phases I and II. Green said they would develop another water system to take care of the next phase. MacDonald asked where that is written in the proposal. Green said they agreed to provide 13,000 gallons in the