

**POLSON CITY COUNCIL MEETING  
CITY HALL COUNCIL CHAMBERS  
MONDAY, JANUARY 3, 2005, 6:30 P.M.**

**CITY COUNCIL PRESENT:** Lou Marchello, Mark MacDonald, Jules Clavadetscher, Mike Maddy, Tom Corse, Dan Morrison. Mayor Ingram presiding. City Attorney James Raymond present.

**OTHERS PRESENT:** Ken Koopmans, Sherry Koopmans, Tony Porrazzo, Roger Noble, Elsa Duford, Dave Sheesley, Dennis Duty, Margie Hendricks, Marietta Cindy Johnson, Ron Grogan, Vicki Cannon, Jeff Young, Tom Maloney, Gayle Siemers, Doug Chase.

**PUBLIC HEARING**

**WELLHEAD PROTECTION OVERLAY DISTRICT REVISIONS - ROGER NOBLE ENGINEER FOR LAND AND WATER CONSULTING, INC.:** Mayor Ingram introduced Roger Noble and noted that this second public hearing was scheduled on this topic as requested by the public. Roger Noble stated that although the number of people attending this meeting is a lot less than the previous public hearing, it is still a very important issue for all of the City residents. He reviewed the history which supports that this study has been in progress for a long time. March 2, 2000 he worked with John Campbell to prepare a grant proposal which they submitted to the Department of Environmental Quality, to assist with funding for the wellhead protection delineation. DEQ approved the proposal and awarded the grant to the City of Polson. They received the go ahead on February 13, 2001 when they started this source water protection project. Through that period they worked initially to develop the first document which is called the source water delineation and assessment report consisting of three basic components. The document was submitted to DEQ for approval on July 16, 2002 and was subsequently approved. The City of Polson, the Lake County Commissioners and the Lake County Planning office entered into discussions to come to agreement on the designation of the County land surrounding the City limits of Polson. Through that process the initial Wellhead Protection Overlay District was revised and the document was made available to the public for review on October 19, 2004. The Source Water Delineation Assessment Report that is being presented tonight has been approved by the Department of Environmental Quality with the exception of some boundary line adjustments that were made to follow property lines, roads and fence lines, which they worked on with the Lake County staff.. The DEQ approval letter commends the City for preparing an extensive and thorough report.

Elsa Duford expressed her concern that there have been nine public hearings since October 4, 2004 and information presented has changed and is sometimes conflicting. She referred to a summary of facts which she compiled that have been presented at these meetings and asked why the City would want to decrease the protected areas. Roger Noble replied that the areas that are not included in the WPOD are not considered to be in the aquifer status. Previously the designated areas were established by using a cookie cutter approach and today they have new scientific methodology to determine the aquifer areas.

Ron Grogan said he spoke with Tony Porrazzo about the cemetery well and asked if the Council is aware that in the summer months the well draws down significantly. Roger Noble replied that the City has monitored other wells, Hib Hansen's is one that they recorded for a period of time and found that there was no significant effect. Ron Grogan replied that John Campbell would dispute that and feels that there is an affect on the surrounding wells and those areas should be included on the charts to show that they are being drawn down. Water and Sewer Superintendent Tony Porrazzo clarified that the DEQ authorizes establishing areas of wellhead protection to protect wells from contamination but not to protect or influence the water supply or its source. The City cannot legally place land in a wellhead protection zone which would limit the property owner's use of the land, unless it can be scientifically proven that it would be a source of contamination for an existing well. It cannot establish a wellhead protection zone for future well sites. Roger Noble stated that Hib Hansen's well was monitored by the City for three years and the data was provided to DEQ.

Elsa Duford stated that the current wellhead protection zone in the Polson Development Code states that it is based on a hydrology study and shows that all the water at the old mill site flows to the existing wells which would still be flowing the same way. Roger Noble replied that the study is obsolete and was not based on scientific data. It was a subjective not an objective approach. Elsa Duford replied that the public is given information and they rely on it. She questioned why gravel mining is allowed in the current Wellhead Protection Zone. Councilman Maddy clarified that the wellhead protection zones extend outside the City limits of Polson and the County's zoning codes are less stringent than the City's. Joyce Weaver agreed that gravel pits are not allowed in any of the

zoning districts within the City limits of Polson, which are more restrictive than the wellhead protection overlay districts. Councilman Maddy stated that Polson Ready Mix is outside the City limits and in the County's Wellhead Protection Zone 2 which requires a certain amount of land as buffer. He further stated that the City cannot legally overprotect land because of laws regarding taking issues and the wellhead protection zones have to be in the defined aquifer.

Elsa Duford asked what the reason is for shortening the wellhead protection zones. Roger Nobel replied that because there is no chance of contamination of the water source in some of the previously designated WPOD areas, which has been scientifically proven. Elsa Duford asked how that compares to the hydrological study which was used to establish the wellhead protection zone that is currently in the PDC. Councilman Maddy noted that science methodologies change and assured her that the report has been approved by DEQ which is the agency that requires periodic updates to wellhead protection zones. Roger Noble stated that the WPOD zones that have been delineated now are areas that contribute to those individual wells based on the actual aquifer characteristics, which is important for the City to protect its wells. Elsa Duford agreed that this is an important issue and stated that is why there is concern being expressed by the community. She asked if the water would flow more rapidly in the South Hills area because it is primarily made up of gravel. She felt this new zone should not be changed in haste before all the questions that have been presented are considered. The City's primary concern should be to provide good quality water, so it can survive and grow.

Water and Sewer Superintendent Tony Porrazzo clarified that the State of Montana mandates that the City performs scientific studies by professionals to establish wellhead protection zones. The City expended a considerable amount of money over the years and hired Roger Noble who is a professional and has done a thorough job using current scientific methods to prepare this report and protect the City's wells which is in the best interest of everyone. He noted that well #1 will most likely die because it is in the wrong location to be able to build a treatment facility and with only two years left on the permit it has a bleak future. The West Shore well is in the County and with their cooperation a wellhead protection zone has been designated to protect it using the latest scientific methods. The City will be updating the wellhead protection zones in six to nine years because it is required by law.

Elsa Duford, relating to another topic, said she would like to thank Water and Sewer Superintendent Tony Porrazzo for his extra effort to provide her with a summary of the wastewater facility plan update on Friday, December 17th. Although it didn't give her or the public enough time to review the summary of the full report prior to the public hearing which was held on December 20th.

No further comments were made. The public hearing was closed at 7:00 p.m..

## **CITY COUNCIL MEETING MINUTES**

**CONSENT AGENDA:** Motion made by Councilman Marchello, seconded by Councilman Corse, to approve the consent agenda. A. City Council Meeting Minutes of December 20, 2004. B. City County Planning Board Reappointment of Mark MacDonald. C. December 2004 Claims #87447 to #87669 for a total of \$112,379.90 as presented. Motion carried. Councilman MacDonald abstained.

**ORDINANCE #602 - FIRST READING - TO ACCEPT AND APPROVE THE WELLHEAD PROTECTION OVERLAY DISTRICT REVISION AND AMEND THE POLSON DEVELOPMENT CODE:** Motion made by Councilman MacDonald, seconded by Councilman Morrison, to approve the first reading of Ordinance #602 to accept and approve the Wellhead Protection Overlay District Revision, prepared by Roger Noble of Land and Water, Inc.. Councilman MacDonald noted that the report was well done and it is necessary in order for the City to protect its wells. Councilman Corse stated that he believes the report was prepared and based on the best available science to date. Motion carried unanimously.

**MISSION BAY VILLAGE PHASE I - FINAL PLAT APPROVAL - RESOLUTION # 887 ANNEXATION - MISSION BAY VILLAGE PROPERTY:** Joyce Weaver, Planning and Zoning Official, noted that Council granted preliminary approval for Mission Bay Village Phase I on May 17, 2004. She referred to the original preliminary staff report which was provided to Council for review with their agendas. The letter of preliminary approval includes the conditions which needed to be completed for final plat approval. She confirmed that the developers have met all the conditions as stated in the preliminary approval. Based on that information she gave her recommendation to Council for final plat approval. Motion made by Councilman Morrison,

seconded by Councilman Corse, to approve the final plat for Mission Bay Village Phase I as presented. Councilman Clavadetscher asked what the possibility is for future community facilities as mentioned on page 4. Dennis Duty replied that there is an area designated for future amenities which will be built. They are considering another workout facility or potentially another park that would have picnic areas, basketball courts or those types of facilities are all being considered as possibilities. They are sure that some types of amenities will be built in that designated area. Councilman MacDonald asked if the 146 lots will all have Lake access. Dennis Duty replied that all the 146 lots will have Lake access and will have the same restrictions for use as the other phases currently have. He clarified that these restrictions will be placed on the deeds and the plat as well. **Motion carried. Councilman MacDonald abstained. Motion made by Councilman Corse, seconded by Councilman Morrison, to approve Resolution #887 to annex the Mission Bay Village property as petitioned. Motion carried. Councilman MacDonald abstained.**

**BUNKER'S GOLF COURSE RESTAURANT LEASE - GOLF BOARD RECOMMENDATION:** Mayor Ingram noted that the Golf Board members interviewed a number of people who were interested in the lease for the golf course restaurant. The Golf Board's unanimous recommendation to Council was Burton and Vicki Cannon who operate the Pizza Cafe in Ronan. **Motion made by Councilman Marchello, seconded by Councilman Corse, to approve the Golf Board's recommendation to work with Burton and Vicki Cannon, The Weicann Company, toward a contract agreement for the Golf Course Restaurant.** Councilman MacDonald asked and City Attorney James Raymond clarified that the current contract with Mary Asper states an affirmative obligation to the lessee to comply with all of the State of Montana regulatory codes relating to service of alcohol. Which has other ramifications one is to keep the food and alcohol generated money separate. He clarified that the City cannot sublet the City's alcohol beverage license. Councilman Corse asked, referring to page 3, which states that it gives the City the option to lower the management fees during the off season, which he interprets as some sort of a percentage payment and asked for his legal opinion. City Attorney James Raymond stated that he knows for a fact that the management agreement cannot be done on a percentage of the liquor sales. But he is not sure that is the term that is being suggested and will take a closer look at that during negotiations with the lessees. Mayor Ingram noted that City Attorney James Raymond would negotiate a contract which Council will have an opportunity to review. Councilman Clavadetscher asked if this proposal is for a year round operation. Vicki Cannon replied that they plan to serve lunch and dinner throughout the year and would also serve breakfast during the golf season. Mayor Ingram asked if there are any further questions or further discussion. **Motion carried unanimously.**

**MISSION BAY PRESERVE PHASE 2C - 11 WATER AND SEWER HOOK UPS - TOTAL OF 30 AVAILABLE FOR 2005:** Dennis Duty, representative for Mission Bay Preserve, stated that the agreement with the City of Polson for water and sewer hook ups is based on a calendar year. They have some urgency to get the power connected to that phase and water and sewer is part of the application they are required to submit to DEQ to obtain approval. Mayor Ingram asked and Water and Sewer Superintendent Tony Porrazzo stated that he has no issues with this request. **Motion made by Councilman Morrison, seconded by Councilman Corse, to approve eleven (11) water and sewer hook ups for Mission Bay Phase 2C, which is out of thirty (30) total available in 2005. Motion carried unanimously.**

**MISSION BAY PRESERVE - CONDITION 26 OF PRELIMINARY PLAT - SETBACKS REQUIRED ON PLAT AND IN COVENANTS - REQUESTING APPROVAL TO PROVIDE SET BACK IN CHART FORM - SAME AS FOR MISSION BAY VILLAGE:** Dennis Duty said they are proceeding with the final plat for Mission Bay Preserve. One of the conditions of the preliminary plat approval was to put the setbacks on the final plat. In the Mission Bay Village Council agreed that they could put it on the plat or in a form that would identify those setbacks. Part of the issue they have with putting it on the plat, is that if anything changes including Council's decision to change some sort of zoning, the plat is permanent and is of record forever, and the change of zoning would not be reflected on the plat. The other issue is that their covenants are generally more restrictive than the City's zoning code. By putting it on the plat it could give someone the wrong impression of the setbacks. With the larger lots in the Preserve they have had to change the setbacks and put more restrictive setbacks in place. Therefore, if the setbacks are on the plat they could be misinterpreted. They are proposing to do like they did for Mission Bay Village which is to create a diagram or spreadsheet for Lita and her staff to refer to. It would show the setback for each lot and any subsequent changes would be forwarded to the City's Building and Planning Department. For example if a variance is granted it is difficult for them to keep track of consistently.

Lita Fonda, Building and Planning Assistant, stated that for clarification of her perspective, when she receives a zoning conformance application for residential development, she refers to the

standards in the Polson Development Code and she generally indicates on the approval that the owner is responsible for covenants and the stricter shall apply. With Mission Bay there has been such a history of variances and change so that has not always worked and it has taken up considerable time and frustration. The files she would conceivably have to go through are two to three feet thick, in order to try and find answers for questions. She would like to be able to refer to the Polson Development Code and often times she looks at the plat as well. So in her opinion if it isn't in the development code then it should be on the plat and noted that there are some plats that do show setbacks. She wants to be able to do zoning conformance by referring to the Development Code and the plat. She and Dennis Duty spoke earlier about a possibility that Mission Bay would take the responsibility to put any variances on the application or variation that might apply so the Building and Planning department doesn't have to take time searching the files. Joyce Weaver, Planning and Zoning Official clarified that their intent is to be sure that whatever they decide makes the information readily available to anyone referring to the Polson Development Code and the plat without having to do lengthy research. Mayor Ingram asked if they could record the setback information. Dennis Duty replied that they could do that, but he felt that although they review every house that is built in Mission Bay, there have been variances which were done after the fact. These variances applied to other lots specifically in phase two and three. The plat would not be accurate and they couldn't get all the signatures to record a re-plat. They would have to record each successive plat, but if Council wishes they would be willing to do that.

Lita Fonda stated that a chart is fine but it is important to have the set backs in the development code and or on the plat map. The City enforces the zoning code but does not enforce the covenants, she and her staff tell the owners that they are responsible to comply with the covenants. She clarified that on a project last spring she spent more than an hour researching a property that received a variance in 1999. If that variance information had been provided on the application or a copy attached then it would be considered without anyone having to spend hours of research trying to find it. Dennis Duty expressed his concern that someone might submit an application without his knowledge. In that case it could be returned to him for additional information. Lita Fonda responded that if it is not in the development code then it is not readily available to her.

Councilman Maddy agreed that the setbacks should not be on the plat because plats change. He suggested that the setbacks be recorded on the deed and changes could be recorded as a corrected deed. Dennis Duty said he is opposed to putting zoning restrictions on plats because in his opinion that is not where they belong, although he is willing to compromise in order to make it easier for the City staff. Councilman Maddy stated that the City does not enforce covenants and it should be up to the property owner and the developer to enforce covenants. The City should only enforce the zoning according to the Polson Development Code. Lita Fonda clarified that plats vary quite a bit and some have lines showing setbacks. Joyce Weaver asked that her department be notified of any variances pertaining to the properties in question. Dennis Duty said he would like to provide a chart with all the restrictions for every single lot. Lita Fonda said that is great and would help a lot but she also feels that information should be readily available to the public. Councilman Clavadetscher asked and Dennis Duty explained that as an example Missoula does not enforce covenants but does monitor variances which are placed on deeds. Mayor Ingram asked if they could take some time to discuss the issues and present Council with a compromise proposal at the next meeting. **Motion made by Councilman Maddy, seconded by Councilman Clavadetscher, to defer the request by Dennis Duty to change condition 26 of the Mission Bay Preserve regarding placement of setbacks on the plat. Motion carried unanimously.**

**HIRE POLICE OFFICER - BILL SMITH - JANUARY 18 - PROBATIONARY STATUS - PAY ANNUAL CLOTHING ALLOWANCE - TO REPLACE OFFICER TINA SCHLAILE WHO RESIGNED DECEMBER 31:** Police Chief Doug Chase noted that Tina Schlaile worked her last shift on New Year's Eve. Bill Smith has been through the Montana Law Enforcement Academy which saves the City from having to send him on a twelve week training session. He is scheduled to start work on January 18th and will go through a fourteen week field officer training while on the job and will be graded on his performance. He has experience in emergency medical services and is a member of a SWAT team. The Police Commission has given their unanimous recommendation for Council approval to hire Bill Smith as a probationary police officer. **Motion made by Councilman MacDonald, seconded by Councilman Marchello, to approve the police commission's recommendation to hire Bill Smith for a one year probationary period as a police officer at \$12.75 per hour and to pay his annual clothing allowance prior to his start date of January 18th. Motion carried unanimously.**

**RESCHEDULE CITY COUNCIL MEETINGS DUE TO HOLIDAYS - TUESDAYS JANUARY 18TH AND FEBRUARY 22ND:** Motion made by Councilman Corse, seconded by Councilman Clavadetscher, to approve rescheduling the City Council Meetings from Monday