

**POLSON CITY COUNCIL MEETING MINUTES  
CITY HALL COUNCIL CHAMBERS  
MONDAY, APRIL 4, 2005, 6:30 P.M.**

**ATTENDANCE:** City Council – Lou Marchello, Mark MacDonald, Jules Clavadetscher, Tom Corse, Dan Morrison, present. Mike Maddy absent. Mayor Randy Ingram presiding. City Attorney James Raymond present at Council Meeting. Others Present: Tim Marquart, Sherri Marquart, Linn Carlson, Joyce T. Weaver, Brenda Williams, Bob Williams, Elsa Duford, Tony Porrazzo, Marty Corse, Mike Corcoran, Shelly Wheeler-Burland, Ethan Smith, Bob Fulton, Rory Horning, Doug Chase, Bruce Campbell, Cindy Willis, Bonnie Manicke, Cindy Johnson, Margie Hendricks, Elsa Duford, Tim McGinnis, Jens Gran, Rick Skates, John Stromnes.

**PUBLIC HEARING: RESOLUTION #888, INTENT TO ABANDON PUBLIC RIGHT OF WAY OFF OF HILLSIDE COURT AS REQUESTED BY ADJACENT PROPERTY OWNERS MARQUART AND RODRIGUEZ.** Mayor Ingram asked for comments from proponents followed by opponents regarding the proposed City right of way abandonment.

Tim Marquart stated that they have been working on this abandonment for a year, getting the survey done. Since they purchased their home from the DeVries they have been mowing and watering the right of way between their property and their neighbors Mr. & Mrs. Rodriguez. He assured Council that they have no intentions of building on the property proposed to be abandoned and will continue to water and mow it as they have done in the past. They will try to keep anyone from getting hurt since sled riders use the hill and safety is their biggest concern. Sherri Marquart stated her agreement with her husband's comments.

Bob Williams, said his reasons why this request should be approved. Everyone in the area has very nice lawns and the fact that the City has refused to take care of the property over the years creates an eyesore and violates City ordinance with respect to weeds. Also, Josephine Rodriguez has a showcase yard and she and her husband have taken care of the property for years, therefore he feels they should have that land. The City doesn't show any interest in it and it has created more of a liability and has kept them from really enjoying their property and it is really important when you buy property that you are able to enjoy it. All the controversy that they have had through the years concerning that lot has weighed heavily on their emotions. The City hasn't shown any leadership in this property, and hasn't come up with any resolutions for it, which has really created a hardship on them. Therefore he feels the City should approve the abandonment for a lot of reasons.

Elsa Duford asked if Councilman Clavadetscher has seen the pictures Mayor Ingram took of the area years ago when he wasn't on the Council. Councilman Clavadetscher said he didn't see the pictures but has visited the site and is familiar with it. She stated that she is not really an opponent but wanted to bring some things to the Council's attention. She didn't receive a notice by mail as was stated that she would when the fee increased to \$200 for the abandonment process in October 2002, to include cost of mailing notices to affected neighborhoods. It was stated at that time that part of the process requires notifying the public by direct mailing which would be sent to the affected neighborhood and also to cover the cost of legal notices in the local paper. She is addressing the petition itself and the sign offs and also that there was an error in the February 22<sup>nd</sup> meeting. She read her written statement as follows. The February 22, 2005 agenda item #5 was said, by James Raymond to be a mistake, due to the inclusion about Hillside Court. Resolution #888 agenda states "to vacate alley". It is a street. Also it is a mistake that this is a portion of 16<sup>th</sup> Avenue. There are more problems. Lot 1 is 142 feet and lot 3 is 140 feet according to the plat map the surveyor was using. The drawing by Carsten's shows different lot lengths. 16<sup>th</sup> Avenue is a dead end and the area shown divided is 9<sup>th</sup> Street, changed to 10<sup>th</sup> Street, it is not a portion of 16<sup>th</sup> Avenue. There is a special water line put in by the City solely for the purpose of watering this "grassy swale" which the City constructed in 1987 to slow or stop the City's water run-off damaging our property. The building inspector's comments are incorrect. My home building and land is adjacent to the street proposed to be vacated. My property and I will be directly adversely affected. Did the building inspector view this area on site? It is unclear why the County road department and the Sheriff have written comments on this City street proposal. Bill Baron states on 12-9-2004, "this proposed subdivision" and further "if this subdivision is recommended for approval, etc.". What subdivision?

December 6, 2004, the surveyor for Carstens was here looking for the survey pin on 15<sup>th</sup> Avenue by Marquardt's, which was formerly DeVries, rock wall, Mrs Rodriguez was with him. I visited with them. He couldn't find the pin where Dennis had been digging by that corner, telling Mrs. Rodriguez, who had seen Dennis digging, that it was right where he thought it was. It wasn't. The surveyor found it in the first tier of the rock wall, showing that the west side of the property, (rock walls), DeVries and their realtor sold to Marquardt's was way out on the City Street. Is this the reason for this abandonment? This was tried in 2003 when Mayor Ingram was here taking pictures of this grass street for the City Council. Marquardt's had requested an abandonment form in July of 2003. Marquardt's

were partially moved into DeVries house when they got a notice from the City to limb up the pine trees in 30 days. The trees were not a problem when DeVries lived there.

When Randy presented the pictures to the Council, I told them the history of why the City planted grass on it. Mayor DeVries volunteered herself and Dennis to mow and water it if the City would approve Joe Menicucci's plan, which they did. They moved out in May 2002 and she later hired a couple to mow. They mowed half of the street. Mrs. Rodriguez questioned them and they said that's what Pat told them to do, and Rodriguez were to mow their half. She called Pat asking why they were to mow half. She said Pat hung up on her. She asked the Mayor why her 82 year old husband was responsible to mow any of that street. I asked Kyle Karstens if the City abandoned it and he said no. Yet Pat was acting like it was already done. Tony was sent to Rodriguez's to tell them that there had been a meeting and the City was going to abandon that street and they were entitled to half and if they didn't want it DeVries said they would take all of it. What Meeting? Rodriguez weren't told of it. They said Tony was there on Friday. The City crew would be there on Monday to measure, and remove the water line. She asked if they were going to survey and they said they could measure 27 ½ feet from their line and that was their part. She said no, you survey the whole street. They didn't come on Monday or since then.

Has the same proposal been made again to Rodriguezes? If you don't want half they will take all. Is that why they signed this petition? The first time, she said Tony said all she needed to do was write a note to the City to start this. When she told me about it, I told her the City raised the fee to \$200. She said then Pat can start it and pay the fee since she is the one who wants this done. Were they pressured to sign this and take half or none?

Did DeVries disclose to Marquart's the property they sold them wasn't all theirs to sell? They advertised it for sale by owner and through Bayside who may be the agent involved in the sale. Was the sale misrepresented? Are they trying to gain this public property by the abandonment process? Marquarts need to take their problem back to DeVries and the realtor. Leave the grassy swale as it is, that was created to protect our property from run-off, which involved lawyers, and an insurance claim. The City could give the entire street to Rodriguezes, as partial compensation for the adverse acts taken against them, and reserve to the City the right to keep it tax-free, continue insuring it, and maintain it as it is the City's duty to do. It is in the public interest and taxpayers, not to pay future water damage claims on my property.

Elsa Duford read a letter she received from the City dated June 30, 1986. Dear Jim and Elsa, Bill Giffin, Bob Fulton and I met and discussed the runoff problem at your property. It is our belief that the situation would be greatly improved if the following actions are taken 1. Recommend to the City Council to close 10<sup>th</sup> Street between 15<sup>th</sup> and 16<sup>th</sup> Avenue. 2. Plant grass on the closed street area using Mirofy erosion prevention material. 3. Increase depth of the ditch on the south side of 15<sup>th</sup> Avenue. In addition it was believed that an asphalt curb should be constructed by you to divert water flow along your driveway entrance. If you have any questions concerning these suggestions, please don't hesitate in contacting me. Sincerely, Joe Menicucci, Administrative Assistant, carbon copies to Pat DeVries, Jim Jones, Fred Funke, Bob Fulton, Bill Giffin.

She read the following from the City minutes dated July 7, 1986 agenda item on closing 10<sup>th</sup> Street between 15<sup>th</sup> and 16<sup>th</sup> Avenue East. Due to a drainage problem which causes flooding and is inaccessible in the winter months, it was asked that this section of the street be closed. Motion by Funke, with second by Jones that the street be closed and the street department proceed with soil erosion prevention and seeding. Motion carried.

City Council meeting minutes fifteen months later, October 5, 1987, 15<sup>th</sup> Avenue Drainage Problem: Joe Menicucci advised that we are attempting to arrive at an amicable solution with regard to the drainage problem on 15<sup>th</sup> Avenue with Jim and Elsa Duford. The Dufords have retained attorney Don Peterson to work this out with the City. Bob, Joe, Bill and whoever else is necessary will be present at any such meetings. Councilman Seibert said the Dufords certainly are not the only ones in town with such a problem. The minutes were signed by Mayor Patricia DeVries and City Clerk Kathy Cox.

She read additional public information from the Montana Codes 7-12-4136. Maintenance of improvements. Where trees have been planted or grassplots constructed and grass sown thereon or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements as the council shall deem suitable and proper. She noted that the Council voted to do this. She considers this an agreement, which the City made with her ex-husband and herself to prevent further damages to their property. She feels the Marquart's should take the problem back to the seller and the agent who sold them the property, which wasn't completely their property. She also feels that what has been done to Rodriguezes over the years by the past administrations, has made their lives miserable. For an 85 year

old man to be required, because an ex-Mayor said so, that he was to mow half of that hill, is absolutely unconscionable. She stated that Mrs. Rodriguez came to her one day when her husband was mowing the hill and it was very hot, she was so furious that if he got a heart attack mowing the hill, the City will really hear her scream. So this has endangered his life, his health and at the same time if it isn't maintained, if the water line is taken out, which was put there specifically to water that grassy swale, then it is possible for that street to dry out and it will act like a plastic sheet and the water will come right back down the hill. So she is opposed to it being removed. It should remain a grassy swale until some time in the future when there is a different means of controlling the water coming off of that hill. In the past they tried to be very reasonable and wait patiently for the City to get this taken care of until they forced them into a position that they had to hire a lawyer to get this taken care of. Then the City procrastinated for fifteen months before they even began to start. In 1987 just before they started this project is when Rodriguezes bought that house and their son moved there first. He used the side driveway to the property when Mr. & Mrs. Rodriguez were going to live in the basement. The City blocked their access to their driveway as soon as they moved in. Mrs. Rodriguez has told Mayor Ingram this story. She feels that a great injustice has been done to these people. She believes that if any of the street is given away it should be given to the Rodriguezes, because they are the ones who cared about it. He dragged his hoses up and down the hill, mowed the grass, and generally took care of it. These people have done nothing to warrant this kind of treatment from the past City staff or Council. Their yard is so beautiful that she has seen artists from the Sandpiper Gallery set up their easels and ask the Rodriguezes if they could paint their yard on their canvases. They are good honest decent people and they have been treated miserably. This is her plea to Council, do not change that from the grassy swale, keep it as it is, and it would be a real nice gesture of appreciation from the City Council if they put a sign there that said "Rodriguez Place".

Tim Marquart stated that the Rodriguezes have talked about this abandonment for a long time and this is something that they want as well, and he would be more than happy to mow that lawn. The first year there was a padlock on the well and they used it for watering only. Then they couldn't use the water for a period of time because of restricted watering hours. Currently they have set up a hose to draw water from the irrigation ditch to water all of that area. He and Rodriguez have taken turns mowing the whole property. The Rodriguez have told him that they wanted to split the property with them. They plan to leave it in grass and would do nothing different other than watering, mowing and taking care of it. They want it to look nice, that's all they want and that is the reason they started doing that in the first place. The DeVries did not mention the property line in the rock wall. They shared half the survey cost with the Rodriguezes, which was \$800 plus dollars. They just want to do the right thing, and they will maintain it and keep it watered and mowed and make sure not to flood Elsa's property.

Elsa Duford reminded Tim Marquart that it was the City's duty to maintain this street and what she read was on record. The City neglected to do their duty and she doesn't feel it is Marquarts' or Rodriguezes' responsibility to mow that lawn. On several occasions in the past they have asked the City to mow it when the City crew was in the area mowing Casa Heights and they did not respond. It is the City's responsibility and their job to do this and the City has neglected to maintain it since the DeVries have moved out.

Mayor Ingram closed the public hearing at 6:55 p.m.

### CITY COUNCIL MEETING

#### CONSENT AGENDA:

- A. MARCH 21, 2005 CITY COUNCIL MEETING MINUTES,
- B. PROMOTION OF ALAN BOOTH TO SARGEANT AND INCREASE HIS RATE OF PAY BY THIRTY FIVE CENTS PER HOUR,
- C. RESOLUTION #890 ANNEXATION OF LOT 3 BLOCK 2 FRELICH HEIGHTS REQUESTED BY LONNIE & MARGERY DURHAM,
- D. ALAN BOOTH TO ATTEND TRAINING SEMINARS; SARGEANT'S ACADEMY JUNE 27-JULY 1 IN BOZEMAN AND CRITICISM AND DISCIPLINE SKILLS FOR MANAGEMENT MAY 9 IN KALISPEL,
- E. HIRE CRYSTAL LAWRENCE AS METER READER SIX MONTH PROBATIONARY STATUS AT \$8.50 PER HOUR,
- F. THE DRAFT RESPONSE TO THE MARCH 24<sup>TH</sup> LETTER FROM POLSON CITIZENS FOR BETTER GOVERNMENT.
- G. MARCH 2005 CLAIMS

Mayor Ingram read the consent agenda.

Councilman Corse asked to address another issue prior to the consent agenda. He stated that at the March 21<sup>st</sup> City Council Meeting the Council approved an agenda sheet for people who apply to put an item on the agenda. He understands that some people who requested to be on this agenda refused

to complete that form. At the last meeting he gave the reasons why we have that form, which is to identify who is before us, to identify the issue and identify what they want the Council to do and to submit any documentation. He believes that these are very valid requirements and he doesn't think they should make any kind of exceptions. If someone wants to be on the agenda and wants to give Council documents, they should have to conform and complete the form, putting their statements on paper. Before the Council addresses the consent agenda, he would like to make a motion. **Motion made by Councilman Corse, to require all people who want to be on the agenda to fill out the entire form or their item will not be allowed to be on the agenda.** Councilman Corse clarified that they will have access, as they always have, under other public comments not on the agenda, however, the Council will not necessarily act on their request and they will not necessarily take the time to review their documents that they present.

Mayor Ingram informed Council that he did allow two items on the agenda that were not done by the agenda item request form that the Council approved at the last meeting. Since the Council did not make it clear that it had to be filled out in its entirety, he made the call to go ahead and place those items on the agenda. If it is the Council's desire that we hold fast to that, he apologizes to the Council for allowing the items on the agenda.

**Motion seconded by Councilman Morrison.** Councilman Clavadetscher asked if he understood the motion correctly, that the agenda request form must be completed in total and must be submitted on the Wednesday prior to the Monday council meeting. He asked if that relates to the items on tonight's agenda that were not completed on the form.

Councilman Corse clarified that whatever is on tonight's agenda is fine. He added that the person requesting to be on the agenda can fill the form out in person, fax the information or provide the information by telephone or e-mail. He noted that this form is not in any way meant to limit the public's access to this Council. The Council must have good data to make good decisions and they have to have time to review it, and that is all they are doing this for.

Bob Williams said he objects to this form. He feels that this Council has attempted to discredit the Polson Citizens for Better Government and he feels that the town's agenda thing is nothing more than qualifying that so Council can prepare for them and attack them, which Councilman Corse has shown that he is capable of doing that in the last meeting. In addition he objects to it because it wasn't noticed properly in the paper. This is a change in the City's public policy and rules and as such you have to notice it in the paper. People have to have an opportunity to review it prior to any motions being made on it. That is what he told Mayor Ingram in a letter this week, and that is why they refuse to fill it out, because it wasn't properly noticed, as the meeting last week was not properly noticed. They don't feel that any citizen should be qualified in order to get on the City Council's agenda. If they would like to present data, which they don't have in front of them, Council has the necessary tools to table the motion, review and reschedule it for the next meeting. Nobody would object to anything like that. But to put these arbitrary rules out to the public and qualify them just so they have an opportunity to prepare. The Council is not here to critique them. They are here to listen to their concerns. This isn't supposed to be an adversary panel, which is what they are making it and he doesn't think it's right. If Council doesn't want to notice it properly and give the public an opportunity to review the form prior to making a motion like this, they can do just that. Councilman Corse stated that he asked City Attorney James Raymond's opinion on this and he determined that the things that have to be noticed are written in the law and this is an administrative procedure, which is in their ability and capability, to set their own agenda.

Cindy Johnson asked if they will have access to the Council Meeting agenda prior to the Wednesday so they know to decide what they want to talk about. Mayor Ingram replied that the agenda is prepared and is ready for review the Thursday before the meeting, the items need to be submitted before it can be prepared. Cindy Johnson asked if the information would flow both ways. Mayor Ingram clarified that the last item on each agenda, titled other public comments not on the agenda, is always an opportunity for anyone to make comments.

Jens Gran said he feels the Mayor and Council are moving in the right direction and suggested that they adhere to the rule they created last time. It would make the Council more business like and more efficient, and it would cut the meeting time down, and they would be able to make a decision at the same meeting instead of dragging it on. Not only the Council's but it takes up the public's time to come to meetings. He hopes that they will stick to their guns and use this new format.

Rory Hornig said he doesn't live in the City but it is a shame that it got so adversarial between Council and its constituency because in order for them to do what they want to do, if its just to get something on the agenda, there is a cut off date, someone comes in they put it on, if its on Thursday it would not be on the agenda. You don't have to have a piece of paper to go through all that. If you just want to do it in a friendly way. Mayor Ingram replied that the form is perfectly friendly, it just