

**POLSON CITY COUNCIL MEETING MINUTES
CITY HALL COUNCIL CHAMBERS
MONDAY, APRIL 18, 2005, 7:00 P.M.**

ATTENDANCE: City Council – Lou Marchello, Mark MacDonald, Jules Clavadetscher, Mike Maddy and Dan Morrison, present. Tom Corse absent. Mayor Randy Ingram presiding. City Attorney James Raymond present. Others Present: Tony Porrazzo, Karen Sargeant, Doug Chase, Willis Mavis, Tim Marquart, Sherri Marquart, Mike Corcoran, Linn Carlson, Bob Williams, Jim White, Ken Siler, Rick Johnson, Rory Horning, Lee Manicke, Bob Fulton, Bonnie Manicke.

CONSENT AGENDA:

- A. APRIL 4, 2005 CITY COUNCIL MEETING MINUTES**
- B. RESIGNATIONS – STREET WORKER WILLIE COGDELL MARCH 30, ASSISTANT CLERK CHARLENE HAPEMAN-STAGE APRIL 15 POLICE OFFICER ERWIN LOBDELL – MAY 6**
- C. PROMOTE TERRY GEMBALA FROM PART TIME FIRE DEPARTMENT JANITOR TO STREET WORKER POSITION AT \$9.18/HR. SIX MONTH PROBATION STATUS**
- D. ADVERTISE FOR PART TIME ASSISTANT CLERK**
- E. RESOLUTION #891 – ANNEXATION - 303 SKYLINE LANE BY TUCKER**
- F. TONY PORRAZZO AND ASHLEY WALKER TO ATTEND LIFT STATION MAINTENANCE SCHOOL, IN RENO, NV 4/20-23 APPROX. COST \$225**
- G. KAREN SARGEANT TO ATTEND PLANNING FOR FIRE PREVENTION & EDUCATION, IN BOZEMAN 4/25-28 APPROX. COST \$150/X**
- H. JOYCE WEAVER TO ATTEND EFFECTIVE COMMUNICATION SKILLS & COPING WITH ANGRY PUBLIC, IN MISSOULA 5/24, APPROX. COST \$170**
- I. PROCLAMATION THAT THE CITY OF POLSON IS THE OFFICIAL BARBECUE CHAMPIONSHIP OF THE STATE OF MONTANA**
- J. PROCLAMATION THAT THE SECOND WEEK OF AUGUST SHALL BE RECOGNIZED AS POLSON FESTIVAL DAYS.**

Mayor Ingram read the consent agenda and asked if there are comments on any of the items. Elsa Duford asked to correct the last paragraph of the public hearing minutes, which stated that the DeVries moved out last summer. It should state that the City neglected to maintain it since the DeVries moved out. **Motion made by Councilman MacDonald, seconded by Councilman Marchello, to approve the consent agenda as presented with the correction to the minutes on page 4 to remove “last summer” as requested by Elsa Duford. Motion carried unanimously.**

STREET CLOSURES FOR ANNUAL VALLEY CRUISERS CAR SHOW IN AUGUST: Mayor Ingram noted that Jim Sohm called to remove this item from the agenda. Councilman Marchello clarified that the events they have planned will require street closures on Friday, August 12 and Saturday, August 13. Jim Sohm couldn't be here tonight because he is meeting with the Mission Valley Speedway organizers for the Sunday, August 14th event. He agreed that they have time to defer the street closures until the next meeting. **Motion made by Councilman Marchello, seconded by Councilman MacDonald, to table the street closure request by Mission Valley Cruisers until the next meeting. Motion carried unanimously.**

SECOND READING OF ORDINANCE #604 TO VACATE CITY RIGHT OF WAY OFF OF HILLSIDE COURT AS REQUESTED BY ADJACENT PROPERTY OWNERS RODRIGUEZ AND MARQUART: Motion made by Councilman Morrison, seconded by Councilman Marchello, to approve the second reading of Ordinance #604 to vacate the City right of way off of Hillside Court, between 15th Avenue and 16th Avenue, as requested by adjacent property owners Rodriguez and Marquart. Elsa Duford said she inquired about this and gave all the information at the last meeting, giving her reasons for not wanting it to be done this way. She asked if Council has read the information she provided and the contract the City had with them for protection of their property. She noted that a copy of Ordinance #604 was not available until 4:30 this afternoon and it has been considerably changed from Resolution #888, which was the intent to abandon the right of way. It also doesn't say anything about protecting her property from the runoff. It states that the title to be passed shall be subject to the continuing condition to restrict and control runoff therefrom. It has nothing at all to say about future damages that could occur to her property if it is not maintained. She reminded Council again of the law that she mentioned to Council at the last meeting and she also discussed it on the phone with Mayor Ingram. She disagrees with the City putting a meter on that water line because the City provided free water all those years for the DeVries to water it. It would not be right to take it out for anyone else to use for the same purpose it was put there. She mentioned at the last meeting how the Rodriguez were treated by the past administration and it has continued with this because the City is not taking responsibility that they are required to maintain that street. She read part of the City Council meeting minutes from 1989, which she got from Mrs. Rodriguez, when she wrote a letter to the City. She addressed that letter to the Mayor and City Council of Polson. The letter stated as follows, “these two lines are to express our feeling of how my husband and I feel about this little street that is next to our property that is 9th Street. We feel that the City of Polson should remove

a number of their cement blocks, which blocks us from our driveway. I see where our neighbors are able to get through there to go up to their property to get to that street. I feel that is unfair to us as we are taxpayers also. I am not saying it should be opened all the way but that it be fixed so we can get to our house". Elsa Duford said she would further comment on that because she was there before Mrs. Rodriguez wrote this letter. She was trying every which way to get the City to remove the cement parking blocks because it had her blocked off at the top and bottom and she couldn't get to her house. She was outside and heard Mrs. Rodriguez talking to Bill Giffin from the Street Department and Joe Menicucci, who was the City's Administrative Assistant under Mayor DeVries. She told them they couldn't block the access to her property and they replied that they knew that, although they were reluctant to remove those concrete barriers so the Rodriguezes could get to their driveway. She wanted the current Council to know how the Rodriguezes who are nice people, have been mistreated by the City and she is very much opposed to it.

On this and the previous agendas there has been reference to Hillside Court and that it is a portion of 16th Avenue, which she mentioned in her letter that it is not a portion of 16th Avenue, it is it's own street. So the ordinance doesn't have the correct information. On the new public request form it states that anything has to be submitted complete by Wednesday noon preceding the Council Meeting and no additional handouts will be accepted at the meeting. She received the ordinance at 4:30 today, so it doesn't meet the requirements for the agenda item request form. She feels Council should table this and do more in depth research for the closure of this street. She spoke to City Attorney James Raymond and Mayor Ingram that this is a contract, an agreement that the City made with them. Maybe Marquarts' understand what their responsibility will be but she seriously questions whether Rodriguezes know what their responsibility will be and that the City's liability will now be put on them as a couple. DeVries have used the City's property and sold it to Marquarts' and it was not their property. She doesn't think it is proper that the DeVries can sell public property for their private benefit. She asked that this issue be looked into further before anything is done on the street and in the meantime the City still has its responsibility according to that statute, to maintain it, to mow it, to water and to trim the trees just as it says in the Montana codes, that the City is responsible to do. The City doesn't have any other new solution for the storm water coming off the hillside and that was the solution at the time, it has worked and has helped. She doesn't think it is fair to Marquarts' even though they are gaining property, to make private citizens responsible to do the work of the City crews, which is what the result will be. She was told previously that the selling point is that it would increase their property value but she feels it would also increase their taxes, increases their maintenance and increases their liability. She wants the Council to set this aside until they have more clarification on this issue. This Ordinance proposed tonight, does nothing as far as the contract the City made with them (Dufords) to settle the claim to protect their property. She asked Council to table the approval of Ordinance 604 and further investigate it.

Tim Marquart said he wanted to reiterate the fact that they have talked to Rodriguezes about this property at length. They paid almost \$900 to have it surveyed and are well aware of what is involved here. They are not looking at this to raise their property value or anything else. All they want to do is help and keep it nice and neat for the neighborhood. Rodriguezes yard is beautifully landscaped with flowers and it would be ashamed to have it go to weeds. Tim Marquart stated that they have been there two years as of April 2005. Both years they have had people drive over the cement barriers that are blocking the top and bottom of the right of way and drive through to the bottom. Also both years they have had kids sled riding down the hill and the road comes off of 15th Avenue and around the corner with pine trees on both sides and they go out onto the road. His main concern is safety. He and his wife have talked with the Rodriguezes about putting up fences on both ends, to stop cars from going down there, with gates so both of them could get to their property. He asked that Council approve Ordinance #604 because this has gone on for a long time. All they want to do is to water it and mow it every year. He knows that Rodriguezes spend a lot of time out there, sometimes all day long, but he has no problem with taking care of it, watering it, whatever has to happen to make this go through. Being watered and having grass grow there will stop any runoff from going down there. He believed that it was in 1987 that Elsa Duford had the problem with runoff and now it is a grass lot, that's all it is. He doesn't plan on building anything on there or doing anything with it, other than making it safe and keeping it neat for the neighborhood. He asked Council to approve Ordinance #604 and get this over with.

Bob Williams said he agrees with ElsaDuford. Josephine Rodriguez looks to him lots of times for counsel and he agreed to talk for her tonight. He agrees 100% with Elsa Duford. He thinks that she got this document tonight, which is a legal contract. He hasn't had a chance to read it and certainly he hasn't had an opportunity to take it to an attorney to see if it is legal. It is his understanding from listening to Elsa Duford that there is some legal considerations, not only for liability which he is sure that Josephine or Elias don't understand. He thinks they should have an opportunity to take this, not only because she wasn't notified last week, there's not proper notice here. Tonight, getting that document, a legal contract, at 5:30 tonight, a couple hours before this meeting, not having an opportunity for anybody to review it. As far as the Rodriguezes he thinks it is a violation of due process. He agrees with Elsa that everybody seems to want to get this over with, but he thinks these

people need to get an opportunity to see what they are getting into. They don't fully understand it and it would be a violation of their rights in this matter.

Mayor Ingram noted that the application was signed by both the Rodriguezes and the Marquarts. Councilman Maddy asked Bob Williams that how he could be speaking for Mrs. Rodriguez who filled out an application that she wants it abandoned and he is saying that she doesn't want it abandoned. Bob Williams replied that he wants her to have an opportunity to review the document and she didn't know it was going to involve these kinds of things. Councilman Maddy asked why she isn't present to say she wants to withdraw her application. Bob Williams stated, she can not because she just had a stroke. Mayor Ingram said he talked to her today. Bob Williams replied that he might have talked to her but he took her to the hospital the other night and if they want to verify that they can. Josephine doesn't understand a lot of the legal issues here like Elsa was saying, like the liability, he is sure of that. She wants this thing resolved because she wants to take care of it and she doesn't want to see it go to waste like anybody would. The City should not be forcing an issue on these people that subject them to liabilities they don't understand. Everybody has to have an opportunity to take a legal document to review it. Mayor Ingram replied that the statement of liability is redundant in the ordinance because it is the obligation of every property owner in the City of Polson to maintain storm water drainage on their own property. Bob Williams replied that the City of Polson entered into an agreement with Elsa Duford and now they have modified that agreement. That means an attorney should look at it to see what liabilities the Rodriguezes are going to incur and he thinks that Marquarts should do that as well. Councilman Maddy said he understands that Marquarts are not withdrawing their application because Mrs. Marquart has not said she wanted to remove her application. Marquarts replied that they do not wish to withdraw their application and they talked to Mrs. Rodriguez on Saturday and she didn't say she wanted to withdraw the application. Bob Williams said this document presented tonight is new but they can do what they want.

Elsa Duford said one of the things mentioned was the watering. The City put the water line in for the purpose of watering that street and it was not on a meter and was part of the City's responsibility in connection with keeping that grass watered. She doesn't think that responsibility for the watering, for the purpose that it was created for, should be switched to Rodriguezes or Marquarts. They should not have to use their own water or even to use the irrigation water, to water the street to keep it working as a grassy swale. The City shouldn't pull the line out and shouldn't charge them for using it. If the City didn't charge DeVries when they were using that, why would the City charge anyone else, as a safety measure to protect the property. Councilman Maddy said he understands that when DeVries lived there it was a public piece of property now it will be a privately owned property. The City waters public property but does not water private property, it would be the same as their own lawn. Tim Marquart stated that they will be watering out of the irrigation ditch. Elsa Duford said the ditch is a questionable thing and might not always be there. Mayor Ingram asked the Marquarts if they are willing to take that risk. Marquarts replied that they are willing to take that risk.

Elsa Duford asked if Council knows the meaning of muniments, which is mentioned in number three of Ordinance #604. Mayor Ingram asked City Attorney James Raymond what the term means. City Attorney James Raymond replied that in this case it is the deed, and it is a generic word for documents or proof or evidence. Elsa Duford said she is asking because if this document was presented to the Rodriguezes she doesn't think they would know what it is. She asked if they received a copy of the ordinance. Mayor Ingram said he doesn't know if they have or not. Bob Williams said that is a point well taken. Elsa Duford said she feels that Council should table this. Bob Williams said he agrees with her.

Tony Porrazzo, water and sewer superintendent, stated that he spent about 45 minutes on the phone with Josephine Rodriguez in the last few days and she was rather upset about what is going on with this issue. She told him that she is 100% in favor of the street abandonment and already has plans for the property and told him about the design and what she is going to do and is very happy about it. After talking with her, he doesn't think she is opposed to the abandonment at all.

Mayor Ingram said he had a discussion with Mrs. Rodriguez today and he tried to explain to her as best he could, about what would be happening. He thinks he did a pretty good job of it and she called back and stated to him that they wanted to proceed. Councilman Maddy clarified that the ordinance will be effective in thirty days which gives her thirty days to contact the City if she wanted to withdraw her application. Mayor Ingram asked City Attorney James Raymond that if Mrs. Rodriguez contacted the City saying she chose not to go forward with the abandonment, can the City rescind the ordinance. He replied that what the Council can do, the Council can undo, right up to passing the deed and then it is accepted.

Elsa Duford asked if Mrs. Rodriguez talked to Mayor Ingram about a fence being down the middle of the property because the Marquarts mentioned fences at the top and the bottom of the property. Mayor Ingram replied that she didn't relay any specific plans for the property. Elsa Duford stated that Mrs. Rodriguez told her that she was worried about the big tree that is on the street, because it is rotten and