

**POLSON CITY COUNCIL MEETING MINUTES  
CITY HALL COUNCIL CHAMBERS  
MONDAY, MAY 16, 2005, 6:30 P.M.**

**ATTENDANCE:** City Council – Lou Marchello, Mark MacDonald, Jules Clavadetscher, Mike Maddy Tom Corse, Dan Morrison. Mayor Randy Ingram presiding. City Attorney James Raymond absent. Others Present – Irene Marchello, Doug Chase, Marc Carstens, Al Suneson, Fred Sego, Elsa Duford, Tony Porrizzo, Dorothy Preston, Helen Gryde, Joann Reksten, Linda Reksten, Mike Lies, Margie Hendricks, Rory Horning, Linn Carlson, Dennis Duty, Jeff Gallaton, Kristin Smith, Wil Mavis, Mark Robinson, Surey Robinson, Joyce Combs, Dino Combs.

**PUBLIC HEARING**

**Councilman Marchello vacated his council seat for the following public hearing.**

**ZONE CHANGE REQUEST FROM LOW DENSITY RESIDENTIAL TO RESORT ZONING 184 ROCKY POINT ROAD LOU AND IRENE MARCHELLO:** Joyce Weaver, City Planning and Zoning Official, noted that if this zone change request is approved it would be an amendment to the Polson Development Code and would change the City's zoning map. She stated that the Council is familiar with this subject from previous meetings and proceeded to present a summary of her report. The result of the City County Planning Board meeting on April 12<sup>th</sup> was a vote of four to one with three members abstaining, giving a recommendation to deny this request. Lou Marchello's property is located on the northwest of the City limits and directly north of the Bear Harbor Condominiums. The applicant is requesting a zoning district change from Low Density Residential Zoning District (LRZD) to the Resort Zoning District (RZD). The applicant enclosed a copy of Resolution #446, which states that the property was zoned T3, which is Tourist Commercial Zoning and was annexed through Resolution #440 in 1984. Ordinance #525 dated March 7, 1994 repealed the previous Polson Development Code Title XI in favor of the present Polson Development Code we are operating under today. Other letters of support for including this property in RZD zoning are part of the staff report that was provided to Council. Page 3 of the report provides an analysis. The applicants' property is a City lot, currently in LRZD zoning, containing 1.25 acres, with access to Rocky Point Road, which is a public street. The property has a mean average slope of 8% or less, and has an allowable maximum impervious lot coverage of 35%. With RZD zoning approval the lot could possibly be developed to 75% impervious lot coverage. The property is currently delineated as LRZD on the City's zoning map, the same as the adjoining lot to the north, and the lot to the south is Bear Harbor Condominium which is designated as Resort Zoning District. LRZD allows for one single-family dwelling structure with one water and sewer connection per lot. RZD can have multiple family structures and allows for up to eight dwelling units per acre but not multiple single-family dwellings. Letters of support were provided by Jerry Sorenson and Clinton J. Fischer. On June 1, 2004 the Board of Adjustment gave their recommendation for approval of the variance for the guesthouse that is on the property with conditions, and on June 21, 2004 City Council approved the recommendation. As of this writing the City Planning Department has no documentation that the conditions of variance approval have been met. She noted that City Attorney James Raymond gave his interpretation, which is included in the staff report. As RZD this lot will not meet the required 12' wide (10' with extra plantings) landscape buffer along its south property line, which would be between two properties in RZD zoning because a road/driveway can cross a buffer but cannot be an inclusion within a buffer zone.

Staff analysis and conditions state the following. 1. Water and sewer are existing to the lot. 2. The fire department had no issues. 3. The specific conditions, regulations and standards shall be reviewed and mandated upon official application for specific development permits, such as but not limited to maximum percentage lot coverage, density, access, number of structures, buffers, setbacks, views parking, parkland dedication, lakeshore protection buffers, etc. 4. Before a zone change is final, the applicant shall complete all conditions of the Board of Adjustment variance approval of June 1, 2004 or get a waiver from said conditions from the Board of Adjustment. 5. Proof of completion or waivers are to be submitted to the Planning Department for their files. 6. Applicant, for the record, is to answer the twelve questions of the attached "LOWE": 12 point test. 7. The applicants, owners and successors, agree to indemnify and hold the City harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the development and/or performance of work under this approval. The applicant, owner is an agent of the City, as a Council Member. 8. Approval does not constitute, guarantee, or imply approval of any prospective use. Also, any additional conditions determined to be necessary by the Board of Adjustment and or City Council.

On April 12, 2005, the City County Planning Board, with a vote of four to one with three abstaining gave a recommendation to deny this zone change request. At the CCPB the applicant stated that he would not be adding to the City water situation since his property is on its own well, and the lot is attached to City sewer. Mayor Ingram asked for comments from proponents.

Lou Marchello, stated that they have been going over this issue for quite some time and he is asking to get the equivalent zoning back as when the property was annexed into the City. It was said in 1994 that it was changed and they applied for building permits at that time as T3, which was changed on his application by the building inspector. There were other properties that were changed in 1994 and then changed back to resort zoning. For example Bear Harbor was changed back to Resort Zoning. Chad Scheidecker's property was annexed at the same time and was Resort Zoning, it was a single family dwelling and is still resort zoning, and was never changed to Low Residential Zoning. He is asking for the zone change but will try to meet the conditions. They have already built their own road so there is access for the fire department.

Councilman Corse asked if Lou Marchello has any plans of developing this property as a typical use in a resort zoning. Lou Marchello replied no, and stated that it is his property and they have a living trust for the children to inherit the property. It is for the children and that's the only thing they are going to do with it. They will live on it throughout their lifetime and go from there, it is for his three children, when they pass away.

Councilman Maddy asked if the Council gave him an exception to the LRZD zoning to bring the guesthouse into compliance. Lou Marchello agreed that they had. Councilman Maddy asked, then why is he wanting to change the zoning and asked if he had completed all the conditions that were imposed. Lou Marchello replied that he followed all the conditions that were put there except for the deed restrictions. He provided Council with a copy of the deed restrictions, which he noted was prepared by Kirby Christian. If they go back to RZD zoning they don't need the deed restriction. Councilman Maddy stated that is not what Council agreed to previously, but the deed restriction was required regardless of zoning. Lou Marchello replied that the deed restriction has been prepared and can be filed. Councilman Maddy asked if the deck has been removed. Councilman Marchello replied that the part of the deck that encroached is gone except for two feet. There has to be an access of two feet, and noted that it was built according to Building inspector Ron Melvin's instructions. Councilman Maddy replied that the Board of Adjustment's gave him specific instructions what to do. They didn't tell him to go to Ron Melvin to get advice. Lou Marchello said he is referring to when he originally built it. Councilman Maddy said the deck was supposed to be completely gone. Lou Marchello replied that the deck is not completely gone. Joyce Weaver clarified that the conditions are in their packet on pages 13a, 13b, 14a and 14b. Councilman Corse asked if he is planning on removing the deck. Lou Marchello replied that if the deck is removed they have no access from the front. He could remove another foot but there are two sliding glass doors, which locks the property from the inside. Councilman Maddy asked if he remembers how they got to this point. Lou Marchello replied that he has been around it a lot of times. Councilman Corse suggested the locks and doors could be changed. He stated that he is unhappy with the fact that the deck has not been removed in accordance with the conditions of the variance that they were granted. He was under the impression that the decking, beams and rails would be removed and that was designed to comply with the Lakeshore Protection Ordinance and that hasn't happened. Lou Marchello replied that 85% of the deck is gone. Councilman Corse replied that 100% should be removed. Irene Marchello said they have an issue with the deck because they have two sliding glass doors that access the deck. She asked what they could do because they have small grandchildren and she is concerned about the safety of having sliding glass doors without at least a catwalk to wash windows and provide safety. Councilman Corse suggested they remove the sliding glass doors and put in windows and screens. Irene Marchello replied that they would remove it if they had to but she hoped they could at least have a safety rail because otherwise it is useless. Councilman Corse replied that it shouldn't be there. Lou Marchello replied that they have to work something out with the carpenter because part of that structure is also tied in to the north side of the house. That's why they haven't gone any further with that but they did take the decking off except for just a little walkway. Irene Marchello noted that they left the catwalk for safety reasons.

Mayor Ingram asked if anyone has looked at the road. Lou Marchello replied that Fire Chief Tom Maloney looked at it and didn't have any problem with it. They still have to do some more work on the road because the machinery broke down and there is a cost factor involved. He made a wider spot at the end so vehicles can turn around and Tom Maloney told him it was fine. Mayor Ingram asked if there are further comments from proponents or opponents.

Al Suneson, stated that he lives at 420 Shoreline Drive, down the road from Lou Marchello. The Council heard this issue just one year ago. He noted that several weeks ago he inquired about

obtaining a building permit from the building department and Lita Fonda gave him a nice set of instructions he would need for the application process. When you are building something properly in the City of Polson, you follow the rules and he found that the building department is most accommodating. We are here tonight for the third time, first before BOA, then the City Council and tonight again before the City Council, because the rules were really not followed. He hears the words, difficulty, hardship, they didn't plan it and nervous. He would be nervous too. He believes that what they are talking about tonight is inappropriate building. Last year the City Council gave their permission to occupy the structure with the Marchello family. Now we have an application from the Marchello's to change the zoning which has no particular benefit except you can rent it out and make money. They could possibly make \$1,000 a week renting out the boathouse. There is a big difference whether it is family use or being able to rent it out. He stated that he lives down the street and if he doesn't have to get a permit and build a structure within fifty feet of his house, that's not right. We have two sets of values, rules for City Councilman, and rules for the rest of them. That's what Council has to decide. He thinks the City of Polson voters listen, watch and take note. He hopes that tonight they would call up their greater angels, wiser judgement and disallow any consideration of economic benefit for the Marchellos and any others who would come before them wanting to change the zoning on Shoreline Drive. It is LRZD, it was, it is and he recommends that Council does not change it.

Margie Hendricks stated that Mr. Marchello says he was mistakenly given the wrong zoning in 1994 when the Master Plan was completed. In 1996 Mr. Marchello applied for a permit to build a garage, giving the LRZD zoning. Mr. Marchello had ten years to attempt to correct his zoning before he applied for a permit to build a guesthouse in 2003. Yet in 2003 Mr. Marchello applied for a permit for a guesthouse to be built over his existing boathouse with a more advantageous RZD zoning and later claimed he didn't know what zone he lived in. He and the Council evidently placed the blame on the planning staff for not catching Mr. Marchello's mistake. At the May 10, 2005 City County Planning Board Meeting concerning a twelve unit condo complex to be built on Bayview Drive, Mayor Lies mentioned that it was incorrectly zoned when the Mission Bay was given their Resort Overlay zoning. It was intended that the zoning be applied to the east side of Bayview Drive to the area adjacent to the golf course. If the Council intends to address old mistakes in zoning the Bayview Drive mistake should also be addressed, if Councilman Corse said that Mr. Marchello's actions gave the Council a black eye. The June 21, 2004 City Council Minutes state that the deck of the guest house is in the Lakeshore Protection Zone which requires the deck to be removed and that another entrance be created. Also the deed restrictions need to be recorded that the structure will never be used, or be able to be used for commercial purposes. In his opinion this is giving a lot, Councilman Morrison agreed that is reasonable. Then Councilman Corse made the motion, seconded by Councilman Morrison, to approve the building and zoning conformance permit for Marchellos provided the following conditions are met. The conditions require a road, that the deck be removed to the point that it does not extend into the twenty foot Shoreline Protection Zone, and that a deed restriction on the property shall be recorded to prevent any commercial use. The restriction includes rental of the property today, and in the future.

Elsa Duford said she thinks a lot of people are unfamiliar with the zoning and how the different areas are zoned and rezoned and back and forth. She was at the BOA meeting also and recalls that the argument given in opposition was that the use was just for family, friends and guests. So they denied it because he already had that under LRZD zoning. The thing that is a concern because of all the zoning changes is even if this was granted to him then the next neighbor would ask for zoning and it could continue with the neighbors down the line. This would change the LRZD area into a commercial area, which would be very profitable for some people if they could do that. If you are going to have a family oriented community out there and let the zone change turn it into a resort commercial zoning area, then the people who live there will be adversely affected and their neighborhood is going to change. If this is just for family use as they stated, they already have that ability for use. This would be pertinent for people in other areas who are into the zoning changes and how they will be affected. Allowed use by his family already exists. Councilman Clavadetscher pointed out that his neighbor is the Bear Harbor Condominiums. Elsa Duford clarified that she was not familiar with the properties that had zone changes that Lou Marchello referenced was owned by Jensen's and Scheidecker.

**Mayor Ingram asked if there is anyone who feels they didn't get the opportunity to speak. No further comments were made.**

**Mayor Ingram closed the public hearing at 6:57 p.m.**

**7:00 P.M. CITY COUNCIL MEETING**

**Councilman Marchello returned to his Council seat.**

**LAW ENFORCEMENT MEMORIAL DAY:** Police Chief Doug Chase advised those present that Sunday, May 15<sup>th</sup> was Law Enforcement Memorial Day, a day that was set aside to recognize those who gave the supreme sacrifice in order for the communities, residents and visitors to be safe. Each year over 100 officers lose their lives in the line of duty and this year 153 officers lost their lives, which is one every 59 hours. On a local level the officers face dangers while responding to many fervent pleas for help. Domestic violence, drugs and alcohol in combination with weapons of any kind are a police officer's nightmare and are becoming more common. He displayed a table full of weapons including guns and knives, which he stated are only some that the City of Polson Police Department confiscated over the years from crime scenes. Pellet guns look just like the real thing and darkness compounds the matter and most of these weapons were confiscated during the hours of darkness. In his forty years of service in law enforcement he has experienced the loss of three officers and knows through experience that it is not if but when it will occur. Lake County has some of the best law enforcement officers, be it Tribal, Sheriff, Highway Patrol or the Polson Police. He realizes that the City of Polson has challenges of growth and that Lake County is being discovered, and there are problems nationwide, the problems in the methamphetamine field; they will face these kinds of instruments out in the field more and more. He thanked them for the opportunity to address them tonight and to salute all those law enforcement members who gave their fullest measure, their life.

**CONSENT AGENDA:** A. May 2, 2005 City Council Meeting Minutes, B. Joyce Weaver to attend post legislative clinic presented by the University of Law in Missoula. C. Transfer of ownership for A-Z Beer and Wine Liquor License at 6913 Southshore, owner William Glantz. D. Street Closure Request for June 18 and 19 for the Polson Main Street Festival. Main Street from Highway 93 to 3<sup>rd</sup> Avenue East and West to 1<sup>st</sup> Street. E. Return bond for improvements for Mission Bay Village Phase 1, \$185,700, F. Police Chief Doug Chase request to hire replacement for Erwin Lobdell by July 1. G. Anderson Montgomery increase in fee for engineering services by \$9,800. H. Proclamation that May 28<sup>th</sup> is Poppy Days in Polson requested by the American Legion Auxiliary. Councilman Corse requested that item G. be removed from the consent agenda for further discussion. Mayor Ingram agreed. **Motion made by Councilman Corse, seconded by Councilman Clavadetscher, to approve the consent agenda items A, B, C, D, E, F, and H, be as presented and to remove item G. for further discussion. Motion carried unanimously.**

**ANDERSON MONTGOMERY INCREASE IN FEE FOR SERVICES TO PREPARE PRELIMINARY ENGINEERING WATER REPORT BY \$9,800:** Councilman Corse referred to Scott Anderson's letter explaining why Anderson Montgomery wanted to increase their service fee by \$9,800 and stated that it is not persuasive to him. The contract negotiations should occur when the contract is modified, not when the work is done. He was not entirely impressed with the presentation they got on the water report. When the expert engineer stated that the citizens of Polson have done a more thorough job of examining the water supply than he has, he was somewhat taken aback. He asked Water and Sewer Superintendent Tony Porrazzo if he feels that this \$9,800 increase was earned by Anderson Montgomery and is a justifiable expense. Tony Porrazzo replied that he does feel it justifiable. He explained that when the City hired them initially it was to do a study on the distribution system. Later that request was changed twice, once for a modeling to be done by another firm which was Thomas Dean and Hoskins, who gave that information to Anderson Montgomery to work into the Preliminary Engineering Report. Then the supply and storage issues came along afterwards, because the public wanted input about the water supply. What Scott Anderson meant when he referred to the public doing a more thorough job of examining the water supply, was that he was not hired to do supply and did not research it the way Mike Cochrane did. Anderson Montgomery was hired to do a PER not a full blown hydraulic study, so in all the changes along the way, they did incur a lot more work and a lot more solution working that had to be done. Therefore a lot more hours were put in than what was originally requested. Councilman Corse asked if when they were asked to make these modifications and increase the work load, did they comment that it would increase the cost. Tony Porrazzo replied that since the City needed the information, Anderson Montgomery was told that the City would take care of the added cost. Councilman Clavadetscher said he shares Councilman Corse's concerns. He recalled that Council approved a budget for TD&H to do the modeling. Tony Porrazzo clarified that is correct and TD&H was paid separately for the modeling but including that modeling in the PER created the extra time and expense. Anderson Montgomery started out with a contract to write a grant to do an upgrade on the distribution system, because that was the City's main concern at that time. All through their water projects the City was being told that it needed to loop their lines and get storage. It has always been a problem and the project grew and it created more work. Councilman Clavadetscher said he understands that but he thought the City went to TD&H at the request of Anderson, so now they are asking for more money because TD&H was contracted at Anderson's request. Tony Porrazzo replied that they hired TD &H because they started doing that research on