

**POLSON CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
MONDAY, JUNE 6, 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 present. Others Present: Rick Johnson, Rory Horning, Irene Marchello, Toni Krebsbach Young, Carol Jones, Margie Hendricks, Dennis Duty, Elsa Duford, Bruce Campbell, Hub Dykstra, Bob Williams, Brenda Williams, Gerry Browning, Ethan Smith, Doug Chase, Tony Porrazzo, Tom Maloney, Bonnie Manicke.

PUBLIC HEARING: POLSON DEVELOPMENT CODE AMENDMENT – DENNIS DUTY – ALLOW GUESTHOUSE AND/OR GARAGE ON LOTS ONE ACRE OR LARGER, WITH CONDITIONS, IN LOW DENSITY RESIDENTIAL ZONING DISTRICTS, WITHIN THE RESORT RESIDENTIAL OVERLAY DISTRICT: Joyce Weaver, City Planning and Zoning Official, referred to her staff report attached to Council's agenda. She noted that this amendment was an application from Dennis Duty who is present tonight representing Northwest Holdings LLC and was heard by the City County Planning Board on May 10, 2005. The CCPB gave their unanimous recommendation of approval on the proposed amendment to the Polson Development Code as stated on pages 4a and 4b of her report. The proposal is to allow lots containing one acre or larger to have one guesthouse and/or a detached garage in the front yard, outside the setback areas, in Low Residential Zoning Districts that are within a Resort Residential Overlay District only and such lots cannot be further subdivided. The staff analysis and recommendations state that, after review of the application, plans and additional information concerning the proposal, the Planning Department and the CCPB gave their recommendation of approval to the City Council for this PDC amendment with the following conditions. 1. In zoning districts of LRZD and RROD specifications and standards, a single guest house and/or a detached garage shall be allowed in front yards, outside the setback areas for lots of one acre or larger. 2. A deed restriction shall be placed on the property deed and recorded, that such guesthouses cannot be used as a rental or lease or generate any form of payment or compensation for use, and it shall be used on a temporary basis by the residents' guests. A lot with a guesthouse cannot further be subdivided. A copy of the recorded deed restriction shall be submitted to the Planning Department before any permits will be issued. 3. A guest house shall share the property's driveway and shall not require a separate access. 4. Only one water and sewer connection per lot is allowed. 5. A guesthouse and/or a detached garage shall comply with all other standards and specifications of its zoning district. 6. An applicant is required to answer the twelve questions of the attached LOWE 12 Point Test. 7. The applicants/owners/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 not an agent of the City as a Council member.

Councilman Corse asked why the CCPB recommended restricting only one water and sewer hook up per lot and not allowing separate services for the guesthouses or garage. Joyce Weaver replied that LRZD zoning allows only one water and sewer hook up per lot. It restricts the owners from subdividing the lot by record or not and could allow them a way to evade the need to comply with the subdivision review process. She noted that the CCPB's discussion and intent was that the guesthouse or garage be considered an extension of a bedroom with facilities on their property, as if a person had five bedrooms in a large house. Mayor Ingram asked for comments from proponents.

Dennis Duty stated that they initially presented this proposal to the CCPB, asking that it be allowed in the LRZD zoning. The CCPB was not comfortable that it would work in all parts of the City, so they compromised that the property be within the Resort Residential Overlay District, which is only in the vicinity of the golf course. Their main interest is to allow the guest houses in the Mission Bay Preserve where the lots are larger and the owners have expressed interest.

Councilman Clavadetscher asked if they will allow the guesthouses on the larger lots along Hawk Drive. Dennis Duty replied that it would be restricted to Resort Residential Overlay Districts and the only requests have been from the owners of five acre tracts. If someone wanted to have a guesthouse on the large tracts on Hawk Road and Brown's Lakeview Tracts, it could be permitted by the City. Mission Bay has designated certain places where guesthouses could and could not be placed and the only ones allowed at this time are the front lots in the Mission Bay Preserve. Councilman Clavadetscher said his concern is that a detached garage is vague and

lends itself to potential scenarios for abuse, at least in terms of appearance. It could be any kind of structure since there are no definitions or restrictions. He asked if these are addressed in subdivision covenants, conditions and restrictions or is it something the City should address. Dennis Duty replied that Mission Bay addresses those issues in their Covenants Conditions and Restrictions, so he is not uncomfortable with it. There are several places in the City, mostly along the lakeshore, where you see garages in the front yard and the rear yard faces the lake and that applies in the Mission Bay Preserve. Mayor Ingram asked for comments from opponents.

Margie Hendricks, said she is speaking as a private citizen. It appears insiders are privy to information that should be easily accessible to the general public. This lack of information to the public is relevant to the decision being made tonight, as to allow guest houses and puts an increased demand on water and sewer. Why isn't the City Council or the Water Committee providing the necessary information to allow an equal playing field to those who have legitimate claims to water and sewer. But because of lack of information, new annexation and new subdivisions are being given an unfair advantage. An example she is giving relates to sewer but could just as easily relate to water. April 23, 2003, a Facility Plan update was done by HKM an engineering consultant frequently used by the City. In the report, the total number of sanitary sewer connections as of February 2003 was 1,709. According to the report the remaining capacity in the City's existing wastewater treatment lagoons was approximately 427 additional sewer hook ups or equivalent. In June 2005 the City had 1,868 water users, therefore the City has used up 169 of the available water hook ups, leaving 268 hook ups. On December 14, 2004, John Campbell, former water and sewer superintendent, reported to the City County Planning Board that the number of empty lots in the City was 288. One would assume these empty lots would have the same priority rights as Mission Bay, who is claiming rights to about 140 additional hook ups. The City and Mission Bay lots together total 428 sewer and water hook ups. Many of those lots are adjacent to water and sewer mains and therefore the City is required to hook them up according to State law. The 288 City lots do not include lots on the West Shore, or the lots on the South Shore as far as Hellroaring, or whether one through twenty acres are considered one tap. One could assume what is now considered one tap could be subdivided into many more. The new 2004 Facility Plan Update refers to 575 non-residential hook ups, perhaps these are seasonal, like RV parks. In the new facility plan it uses 2.3% to estimate growth and therefore arrives at the capacity for the existing sewer facility. Her numbers for the growth from 2003 to 2004 are 3.5 % and 2004 to 2005 are 3.9%. Once the moratorium was removed the annexation of subdivisions began to come flooding into the pipeline. She wondered how anyone can seriously suggest the growth would be 2.3% annually. The City recently made an agreement with the Salish Kootenai Tribes to allow water and sewer hook ups to non City resident members of the Tribes. She asked where they are included in line. Now that the water moratorium has been lifted requests for hook ups are starting to flood in. Why does it matter that the City annexes and allows more subdivisions without sewer and water capacity to meet the demand? It matters in that there is no assurance that the City can legally meet the water demand. It matters in that those rushing to annex and subdivide have inside information that not only allows them to know what is available now is going to be a much better deal than what may or may not be available later. Those with existing lots should have the information that would let them have an equal opportunity to defend their rights to water and sewer. She lives on Hillcrest Drive, the street is in the County and has many houses with City water hook ups. The street has many sewer failures and there are many old septic systems that could contaminate the aquifer. The City has a mandate to try to get these kinds of areas into the City and hook up to sewer. If the homeowners on Hillcrest Drive knew of the possibility that they might not have an opportunity to hook up if they hesitate too long, or if they perceived that a new facility or lagoon that would need to be built may require a hook up at a much greater cost, would this information affect their decision? She thinks it would and feels that the City should have made the situation clear to the general population. Not to do so isn't fair.

Elsa Duford asked and Joyce Weaver clarified that this PDC amendment would not allow another water and sewer hook up for the guesthouse and/or garage but would extend the existing water and sewer service from the main house.

Mayor Ingram asked for comments from proponents, opponents or anyone who feels they didn't have an opportunity to speak. No further comments were made.

Mayor Ingram closed the public hearing at 6:50 p.m.

7:00 P.M. - CITY COUNCIL MEETING

CONSENT AGENDA: A. CITY COUNCIL MEETING MINUTES, MAY 16, 2005, B. JOYCE WEAVER 2005 MAP CONFERENCE – MIDWAY, UTAH (This item was withdrawn by Joyce Weaver prior to the meeting)C. MAY 2005 CLAIMS D. PROCLAMATION FLAG DAY JUNE 14, 2005 E. ROYAL LINKS CLASS ACTION RESPONSE: Motion made by Councilman Corse, seconded by Councilman MacDonald, to approve the consent agenda, items A. The City Council Meeting Minutes of May 16th with a correction to page 7, that Councilman Corse did not vote in favor but voted against the fee increase requested by Anderson Montgomery for the PER contract. Also a correction on page 1 that on June 1, 2004 the Board of Adjustments, not the CCPB, gave their recommendation for approval of the variance for the guesthouse on Lou Marchello's property at 184 Rocky Point Road. C. May 2005 Claims #88637 to #88945 for a total of \$324,880.46. D. To proclaim that June 14th is observed as Flag Day in Polson. E. Royal Links Beverage Carts lease, City's response to class action. Motion carried unanimously.

HOOPFEST STREET CLOSURES AND WAIVER OF OPEN CONTAINER – HOOPFEST COMMITTEE AND SOROPTOMIST INTERNATIONAL OF POLSON: Toni Young stated that the Soroptomists are proposing to have a beer garden on the Friday night of the Hoop Fest, on 4th Street East in front of Stageline Pizza. They would construct a double fenced area where people would be carded to get in and could not leave with an open container. They also plan to hire security to help them man that area from 5:30 p.m. to 10:00 p.m. Mayor Ingram informed Council that he and Police Chief Chase discussed these plans with Toni Young and asked if he is comfortable with their plans. Chief Chase said he is comfortable with their plans and asked that Kerr Radio compensate them for the overtime police coverage, as they did last year. Gerry Browning clarified that the Soroptomists are a 501C3 non-profit organization and are legally allowed to get an alcoholic beverage license from the State of Montana for a one day event. They have liability insurance coverage under the umbrella of the Soroptomists International. Councilman Corse asked and it was clarified that the open container law has not been lifted for the Hoop Fest event and the Soroptomists are only asking for that waiver for the fenced in area in front of Stageline Pizza for one night. **Motion made by Councilman Morrison, seconded by Councilman Maddy to approve waiver of the open container law for the proposed blocked off area on 4th Avenue, in front of Stageline Pizza, for the Soroptomists to have a beer garden on July 29 from 5:30 p.m. to 10:00 p.m. Also to approve the street closures from Highway 93 to 6th Avenue East, 3rd and 4th Avenue East and West, from Main Street to the alley from 5 p.m. Friday, July 29, through 7 p.m. Sunday, July 31, 2005. Motion carried unanimously.**

Councilman Marchello vacated his Council seat and took a seat in the audience.

ORDINANCE #608 – SECOND READING – CHANGE ZONE FROM LOW DENSITY RESIDENTIAL TO RESORT ZONING DISTRICT – 184 ROCKY POINT ROAD – LOU MARCHELLO: Joyce Weaver, City Planning and Zoning Official, stated that Council is being asked to consider approval of the second reading of Ordinance #608. She referred to page 13 of the City Council Meeting Minutes of May 16 when Council approved the first reading. The zone change is being requested by owners Lou and Irene Marchello for 184 Rocky Point Road from LRZD, Low Density Residential District to RZD, Resort Zoning District, with conditions as presented in the staff analysis. **Motion made by Councilman Clavadetscher, to approve the second reading of Ordinance #608, to change the zone from LRZD to RZD for 184 Rocky Point Road. Motion seconded by Councilman MacDonald.** Mayor Ingram asked if there is further discussion. Elsa Duford stated that she would like to repeat what she said at the last meeting, that there seems to be no reason to do this because he already has what he wants for his family with the variance he was granted. She felt it is possible that this change would open the doors to future lakeshore development.

Mayor Ingram asked Council to clarify their intent that all the original restrictions that were placed on the property when the variance was granted should remain. Councilman Maddy stated that is not on the agenda and there is no reason for that to change. The zone change is a different issue and he personally doesn't feel they should approve this request until those issues are resolved. Councilman Clavadetscher said he agrees that the conditions placed on the construction is another issue when they are talking about a zone change. If they want to raise the issues about the restrictions on the facility, that is another item and not related to the zone change situation. Mayor Ingram said he wanted to have that clarified.

Councilman Corse stated that previously Council approved the building by granting a variance for one non-complying building and now they have two non complying buildings. Bob Williams asked how the zoning affects the restrictions and what benefit does it serve the Marchellos' if the restrictions stay in effect. Mayor Ingram agreed that he doesn't see the benefit. Lou Marchello replied that the point is that they annexed into the City of Polson with RZD zoning. They are

simply asking to get back the zoning that the City made the mistake on without informing them. He stated that he would not ask to change it if they were annexed as LRZD but the property was annexed as RZD and they have documentation on that which they have presented previously. They have complied with 90% of the conditions of the variance, except the deck issue which they are trying to resolve. The road is done and everything has been signed off and taken care of. Mayor Ingram clarified that if the zone change is approved the restrictions would still stand as a deed restriction and would apply to future owners. Bob Williams asked what benefit would it serve. Mayor Ingram replied he doesn't know. **Councilmen Clavadetscher, MacDonald and Morrison voted in favor. Councilmen Corse and Maddy voted against. Motion to approve the second reading of Ordinance #608 carried.**

RESOLUTION #893 – INTENTION TO CREATE HILLSIDE COURT SPECIAL IMPROVEMENT DISTRICT – STREET IMPROVEMENT: Mayor Ingram noted that he and Rick Johnson, a resident of Hillside Court, have been working with Lake County Commissioner Paddy Trussler to get this SID put together and have scheduled a public hearing for June 20th. The cost is estimated at \$24,000 to be split between sixteen homeowners and that amount reflects the City's \$6,000 contribution toward the street improvement project. **Motion made by Councilman Corse, seconded by Councilman Maddy, to approve Resolution #893 the City's intent to create a special improvement district to improve Hillside Court.**

Bob Williams stated that he had discussions with an attorney concerning this issue and would like to make some requests. One is to reserve all the rights that all the landowners may have against the developers. In that light he would like to see the City assign all of their rights that it has against Mr. Claffey, to all the residents of Hillside Court. So if any individual would like to go after Mr. Claffey they could do that if the City would sign their rights to them. He would also like to see a written explanation as to why this Council does not go after Mr. Claffey and asked if anyone present tonight can answer that question. City Attorney James Raymond replied that those issues were all litigated four or five years ago. Bob Williams replied that he is talking about the default that the City has against Mr. Claffey.

City Attorney James Raymond replied that there were several different Claffey families who were prior developers involved in developing Hillside I, which was later amended as Hillside II and then Hillside III, all of which have access onto Hillside Court street and only some of which lies in Hillside III. So he is not sure which Claffeys' Bob Williams is talking about. Hillside's I and II have long since been litigated. Hillside III was avoided litigation by striking a deal with the Claffeys, which they held up their end of by posting the bond. They had to either fix the road or forfeit the bond, which is what occurred.

Bob Williams stated that under the terms of the bond, if the Claffeys' didn't perform and the City had the right to take the bond to hire someone to finish the street. Rick Procopio was in line to do that, and if there wasn't enough money to finish the street the City had the right to go after Mr. Claffey for the required amount. It was a few years ago that City Attorney James Raymond defaulted Mr. Claffey for \$15,000 of which only \$3,000 was spent.

City Attorney James Raymond replied that the City did default Claffeys and seized their bond but all the monies were spent, only some was cash and the rest was in kind services, so he (Mr. Williams) is not entirely accurate in his statement. Bob Williams stated that \$3,000 was spent on material and the remainder was accounted for by Street Superintendent Rod Hanson. City Attorney James Raymond clarified that the City Street crew did the work and it was charged against the defaulted forfeited bond monies at whatever the going rate was at the time. Bob Williams stated that the point being is that he didn't finish the road and the City had an obligation to go after Claffeys if it wasn't finished. City Attorney James Raymond stated that he is not sure that that obligation exists. Bob Williams replied that under the terms of the default the City has the ability to go after Claffeys for any excess amount since the City used up \$15,000. That would reduce the amount that the residents would have to split between them to pay for the street improvement. City Attorney James Raymond said would have to look at the instruments to be sure.

Councilman Maddy asked how long the public has to appeal to the City Council on an issue which was addressed more than three and a half years ago. Mayor Ingram clarified that the bond was specific to Hillside III and would not do anything toward Mr. Williams and his neighbors costs. Bob Williams disagreed and stated that it would reduce about 300 feet of surface so the rest of the residents would have less to pay off. Mayor Ingram replied that is why the City is contributing \$6,000. Bob Williams clarified that if Hillside III were finished then this project would be 300 feet less.