

**CITY COUNCIL MEETING MINUTES  
CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, FEBRUARY 1, 2006 5:15 P.M.**

**ATTENDANCE: City Council: Bruce Agrella, Mark MacDonald, Jules Clavadetscher, Mike Lies, Tom Corse, Fred Funke. Mayor Randy Ingram presiding. City Attorney James Raymond present. Others Present: Virginia Hertz, Phyllis Ferguson, Joann Hess, George Hess, Melva Stirm, Suzanne Luepka, Bill Wilkins, Rick VanVoast, Ken Siler, Greg Hertz, Dale Engstrom, Carlene Engstrom, Carlene Engstrom, Dick Scott, Melodie Scott, Cindy Johnson, Margie Maclay Hendricks, Elsa Duford, Tony Porrazzo.**

**PUBLIC HEARING**

**BUILDING AND PLANNING DEPARTMENT STAFF REPORT PLAN FOR PROVISION OF SERVICES AND ANNEXATION OF WILKINS AND JENSEN PROPERTIES ADJACENT TO SKYLINE #3 ADDITION:** Mayor Ingram asked that the public keep their comments on the annexation of the Jensen and Wilkins property try to keep it to three minutes. He clarified that another public hearing will be scheduled by the City County Planning Board when they make their application for a subdivision. City Planning and Zoning Official, Joyce Weaver, noted that her Staff Report containing the City's Plan, per MCA 7-2-4707, was approved by Council on January 18 and made available for the public to review on January 19<sup>th</sup>. Written comments were received until Friday, January 27<sup>th</sup>. The revised plan was prepared for this meeting and made available for review on Monday, January 30<sup>th</sup>. She clarified that item 4 of Resolution #913 mentions a 45 day protest period after the public hearing which applies to the property owners. She asked if Council had any questions on her staff report. No questions were asked and Mayor Ingram asked for public comments, first from proponents, then from opponents of the proposed annexations.

Jack Duffy stated that he was hired by Wilkins and Jensen to provide some preliminary ideas for their property and subdivision development and offered to answer any questions related to the project. No questions were posed.

Steve Jensen, Jensen Backhoe, Inc., stated that he wants to develop his property into a subdivision with big lots, which will have lower overall impact. The City currently has a water reservoir tank on his property. He would donate that land to the City and include a total of 2 ½ acres surrounding the tank, so the City could place a booster station and another reservoir tank to facilitate expansion and maintenance of the existing tank. He feels that his proposal is a benefit to the City without adding a high volume of homes. If Council doesn't approve the annexation then he will build the subdivision in the County with septic systems. They have to be refused by the City before they can propose a subdivision in the County. Because of the issues with the City's water system they agreed not to sell lots in the subdivision until the City has a new source of water. He has no intention of putting anyone under pressure. With the growth in the area there is land in the County that can't be used for development, which goes from five, ten to twenty acre sized tracts, so the growth has to be in the City. Growth is important for us because construction is an important part of our industry. The houses will draw people and then it usually follows that other industry develops. He thanked Council for their consideration.

Bill Wilkins stated that ten to twelve years ago, their property was brought into the Polson Master Growth Plan as an area for planned development. With that in mind he is surprised that people act surprised that the annexation and subdivision might be applied for. He understood that some of the current Council actually were on the Council when the Master Plan was approved.

Ric Smith expressed his support of the annexations and asked that Council also support it, since the developers are willing to work with the water issues and not proceed with the development until there is another source of water. Enlightened communities throughout the Rockies realize that growth will be here. They are annexing properties and aggressively looking for a source of water and ways to do that, in order to concentrate growth in areas to prevent sprawl. The Bitterroot area is a good example of an area that hasn't done that planning and the valley is full of development with individual wells and septic tanks, which is not desirable. It makes sense to annex properties into the City where services can be provided.

Tony Porrazzo, City Water and Sewer Superintendent, stated that he is largely in favor of this annexation because Steve Jensen has offered to give the City the land it needs for one of the projects in the grant cycle, which is to upgrade the pressure system in Skyline #3 subdivision. Also the reservoir tank in that location is in bad shape and needs to be worked on. He plans to put an additional tank on that site and upgrade the water pressure system to get adequate fire flow in that

area, which has been a health and safety issue. The tank currently drains into a swale, which is the retention area and holds the runoff, which at times has overflowed knocking signals out and flooding. Not having adequate drainage area is the same problem the City has with other tanks. With a development in that area, the nearest place to drain that tank is the irrigation ditch at the south end of Jensen's property, requiring an easement and wouldn't make sense. The 2 ½ acres lines up with an existing park for Skyline #3 and would make a nice sized park for the residents of Mission View Drive. It makes sense to him to approve the annexations.

Mark Nunlist noted that as the past president of the Lake County Building Association he is a proponent of responsible concentrated growth around Polson. He agrees that sprawl could be a problem in Polson and the City should think about the consequences of their actions and do the best job of planning that they can.

Bob Noel stated that he moved to Polson from central Montana. He related a quote made by John Kennedy who stated that, "The future belongs to those who can change and adapt". He feels that there are many areas in parts of Montana that have seen the decline of services and places for their children to work and grow up and keep people in the area. They found it refreshing to be in Polson where people want to move to, and has places to live and jobs for their children and relatives. He suggested the City keep growth under control, in a business fashion, instead of developing land in the country with sewage systems. He questioned if there was any real reason to deny these annexations, other than to stop growth. He felt that growth will come and be here and that is positive and he wondered how anyone could be opposed to organized growth.

Bob Fulton stated that it is important to realize that this annexation offers an opportunity to solve some long-term problems the City has had. As long as he has been a City Engineer for Polson, the pressure and flow constraints in Skyline Addition #3 have been unsolvable. He believes that this annexation will provide an opportunity for the City to help in the solution of that long-term problem. He stated that he echoed Tony Porrazzo's comments. Currently there is no place to put a water reservoir tank, which has been identified as one of the City's needs. Also, there is no place to put a pressure booster station that the City has to have in order to solve some of these problems, not only for local residents but for the residents on JB Drive who have complained about pressure for twenty years. He encouraged the Council to consider this annexation request positively.

Mayor Ingram asked for comments from opponents.

Dale Engstrom stated that he lives at 58 Mission View Drive, which is immediately adjacent to the property being proposed for annexation. His neighborhood will be greatly affected and the annexed property will become part of that neighborhood. Two summers ago the Mission View Drive residents ran out of water because the houses are at the same level as the water tank. Their jet pumps were pumping air for nearly a week. Last summer the new well was installed, which has helped. But the pipe is small and doesn't provide much water. The City obviously has to look for a new water source. He was happy to hear that Bob Fulton and Tony Porrazzo, who spoke previously, addressed those problems. Their concern is that they don't want to see another development there until there is adequate availability of water and sewer for those homes. Mayor Ingram clarified that these are subdivision issues and if and when there is a proposed subdivision, there will be another public hearing. Dale Engstrom stated that Skyline #3 has no fire hydrants, which is a concern and it is good to hear about plans for a new pressure system. It would be good if hydrants were installed, then their insurance rates would go down. They have a similar concern about sewer, which he will address further during the subdivision review. He understands that Polson's sewage treatment facility is at or maybe past capacity, so there needs to be an upgrade of that facility for additional capacity. The water from the West Shore well is not reaching his house because they live on top of the hill. They aren't receiving what they should and they worry that annexing more property will exacerbate that problem. They have a serious problem with the traffic situation in their neighborhood because Mission View Drive goes down a steep hill and ends up on a blind corner on Skyline Drive. Traffic coming from either direction usually goes faster than it should and in the winter time the hill gets slick and cars slide down that road, making it a very dangerous situation. He is not against expansion or growth, they are good things, but they should think about where they are allowing growth in Polson. There seem to be holes in the City limits which are not growing or filling in with subdivisions, while the City is expanding outward from the edges. Examples are areas below the Skyline Drive and below the high school, which are not being developed. He suggested that the Council could promote the idea of making it more dense within the City limits, without annexing more property to it.

Dick Scott, stated that he recently moved to Polson and he is not an opponent for development, because he believes it is inevitable that development would happen. He doesn't feel that the City is up to speed with what it has. Infrastructure is pathetic, particularly water. He lived in many places

in his life and never had water pressure that he couldn't water his lawn without putting in a pressure pump, which he believes is a fault of the City. He lives on the corner of Mission View Drive and Skyline Drive and has observed that the traffic would be ridiculous if there was more development in that area. There needs to be more ingress and egress in other areas than just the existing access. They all know that Skyline Drive is very scary in the winter because it is very narrow and steep. He hopes that these developments are good and they will cause better planning. He is very concerned about the current traffic situation and the water situation and that these problems will get worse with these developments and he hopes that their problems with traffic and water will be improved with the planning of these subdivisions.

Carlene Engstrom, stated that she lives on Mission View Drive and understands that the pressures of growth are immense in Polson, people do want to live here. Growth is going to happen and it needs to be planned and needs to be smart. She needs more understanding as to what the City sees as its growth plan. She participated in the engineer's focus groups this summer and last year about planning Polson's growth. She urged that Council consider putting a hold on annexations since they approved a major annexation last fall. She asked that Council look into developing and insuring taking care of what we have in our City limits. She asked if once the City annexes an area into the City if that implies that City services are going to be available to that property. Mayor Ingram replied that he will ask the City Attorney to answer that questions as part of the Council's deliberation.

Melva Stirm, 43 Mission View Drive, stated that the residents of Skyline #3 signed a petition and provided the Council with copies. She thanked the Council and Mayor for their dedication in doing this thankless job. Their concerns address Joyce Weaver's staff report, the letter on page 3 and 4 of the plan, The General Provisions of Subdivision Regulations of Lake County, under jurisdiction B. states that when a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review process and annexation procedures whenever possible. She asked why the annexation is being proposed without first going through the subdivision review process. Mayor Ingram replied that there will be a subdivision process, and agreed that annexation should be done together whenever possible. However, this annexation is occurring as an annexation with provisions for services, which is one of the ways that property can be annexed. Joyce Weaver clarified that the Jensen and Wilkins property is outside of the Polson service area, therefore they could not proceed to subdivision review without the issue of the infrastructure being addressed first, which can't be addressed before they are annexed into the City. Jensen and Wilkins' property is inside the Polson Master Plan but outside of the service area, therefore, in order to address their infrastructure they had to go through annexation first. The City County Planning Board rejected Wilkins and Jensen's subdivision application until the infrastructure issue was addressed, which is the process we are following now. Melva Stirm said she understood that the City is currently in the process of completing an impact study, and asked why they would annex more property into the City limits before the study is complete. Mayor Ingram replied that it would be Council's decision.

Greg Hertz, said he is in the middle, and feels the subdivisions would be a great addition to the City and makes a lot of sense in the long run, adding one hundred acres. He feels that Wilkins and Jensen will do a great job having large lots in their subdivisions and it will be a great place to raise a family. However, he has a few concerns about the annexation. The condition to identify a new water source should be defined as to what that new water source is, whether it is enough to service those lots or other specific criteria. As mentioned previously, the annexation seems premature and should wait a few months. The adoption of a new growth policy would hopefully lead into some public discussions including updating the outdated 1993 Polson Development Code. He is in favor of growth, being a retailer in Polson as manager of Super 1 Foods, more people and houses are good for him, but sensible growth is important. He felt we should wait a little bit on this particular subdivision and get through some of the issues, although he wouldn't want to see the subdivision developed in the County.

George Hess, 359 Mission View Drive, said he is not opposed to annexing these acres to the City, per se. The concern he has is one that all of those who live on Mission View Drive share, which is that they are getting a built in traffic jam with the small subdivision of their own where there is only one way in and out. Mission View Drive has a steep hill with a dangerous T intersection onto Skyline Drive. He sees an opportunity with this development that Skyline #3 Subdivision has a chance to get a water supply that will allow them to improve their fire protection, which is certainly desirable. They might entertain some kind of special improvement district if the water became available to improve their fire safety. Their major concern is traffic safety. Skyline #3 has thirty homes and ten lots that aren't developed. The proposed development typically yields two and a half cars per house, totaling 250 cars going through the east end of their subdivision. Mayor Ingram noted that tonight Council is hearing comments on annexation and there will be another public

hearing scheduled for the subdivision concerns. George Hess asked if the Wilkins and Jensen can use Mission View Drive as an access without subdivision review. Mayor Ingram clarified that there is a platted easement for access to both properties on the south side of Mission View Drive. George Hess expressed his concern for public safety with the truck traffic created by access to those properties. He feels that the access from Mission View Drive to Skyline Drive is very dangerous already, the County doesn't maintain it unless the City intervenes and he has a serious safety concern.

Joanne Hess stated that Bill Wilkins personally told her that his subdivision would be platted so that the spur road access would only be used for emergency vehicles, ambulances and fire trucks, otherwise it would be closed and no traffic would go through Mission View Drive from their subdivision. The Skyline #3 Subdivision is in itself contained and they don't want the traffic from the subdivisions. Mayor Ingram replied that those issues can be addressed at the subdivision review process, if and when that happens.

Elsa Duford, said she doesn't consider herself an opponent. She wanted to find out about the new east well on 15<sup>th</sup> Avenue that was shown on the map in Joyce Weaver's staff report plan. Mayor Ingram replied that there is no new East Well being proposed and it was an error by whoever produced that map. Elsa Duford asked what the stack of pipes on that property are for. Mayor Ingram replied that the pipes are for the work being done on the Westana Subdivision. Elsa Duford noted that the plan talks about the tendency that the entire municipality shares the tax burden for services. She asked if the City property owners will have to pay the cost of infrastructure upgrades to benefit proposed annexations, and what method the City intends to use to finance the extension of services. Mayor Ingram replied that the extension of services will be paid for by the developer. Currently there is one water service extended to Bill Wilkins house and there wouldn't be any need to extend services at this time. Elsa Duford said her concern was the new well shown on the map which Mayor Ingram clarified was a mistake. She asked if the City is responsible to provide services to an annexed area. Mayor Ingram replied that he will ask the City Attorney about that during the Council Meeting. Elsa Duford stated that growth must be affordable reasonable and fair to the existing residences and businesses. She thanked Joyce Weaver for including the words to the Montana Codes that were referenced. She noted that her additional comments have been submitted to Council as an attachment to the City Plan/Staff Report prepared by Joyce Weaver.

George Hess asked the City Attorney if undeveloped but platted access from the Mission View Subdivision to this raw land can be limited to emergency use only. City Attorney James Raymond replied that it would be a question in the subdivision application whenever it comes up. George Hess noted that there is an existing access to the east of Wilkins property and asked if they could be required to use that access now. Mayor Ingram asked the developers what their intended primary access point is, to move equipment in and out for earthwork. Steve Jensen stated that their subdivision is planned to use the spur off of Mission View Drive for emergency access only. Steve Jensen said he doesn't have another access to his property right now and would have to use that spur road at this time and Bill Wilkins has an access off of Skyline Drive to his property. Mayor Ingram clarified that they have a legal platted right of way access to their property through Mission View Drive. He suggested that George Hess contact Steve Jensen to work the problems out and clarified that if the road were to be improved it would be the developer's responsibility and would be addressed during the subdivision review. George Hess stated that the use is happening now before the subdivision is approved, but he will see what will happen.

Melody Scott, said she and her husband moved to Polson in September and the area is absolutely gorgeous, the area and people are wonderful. Her main concern is, living at the corner of Mission View and Skyline Drive, the traffic is unbelievable at all times of the night and the morning. Although they knew that before they moved in, it was not to the extent that it is now. They are concerned about the water pressure which has been addressed a number of times tonight. They have so many heavy trucks in the area with a lot of contracting and they know it will grow, they know that, it is wonderful, they are new, and feels that everyone should be able to live in an area like this. Their concern is about so much traffic that is there now and they have people skid down into their driveway. She asked that something be done about the road before lots are sold. They want to ward off any kind of fatalities because the potential is already there with the heavy trucks that are using the road.

No further comments were made. Mayor Ingram closed the public hearing at 6:05 p.m.

## **CITY COUNCIL MEETING**

**ANNEXATION OF JENSEN AND WILKINS PROPERTIES:** Mayor Ingram asked City Attorney James Raymond to respond to the question regard to the requirements of the City to

provide services to annexed property under these circumstances. City Attorney James Raymond replied that the City has an obligation in law to provide services to any annexed property, however, there are six or seven different ways that annexation can proceed. The type of annexation that is under consideration, contemplates that there be a plan, which Planning and Zoning Official, Joyce Weaver has done, for extension of services at some point in the future. He reviewed and approved the plan as to form, to the extent that the developers are not guaranteed a future subdivision and the cost of any extensions of services will be the responsibility of the developers or their successors in interest. Councilman Lies referred to a supreme court ruling around 1970 dealing with the City providing services to the Southshore Lounge. City Attorney James Raymond replied that he recalled that case, Polson vs. the Public Service Commission. That case didn't deal with annexed areas but referred to any parcel that was in the service area. The service area was defined as, among other things, lying adjacent to a public main line. Councilman Lies replied that the properties in question lie next to a public main line. Mayor Ingram noted that the City is required to provide service to properties within 500 feet of a water main. Water and Sewer Superintendent Tony Porrazzo clarified that the water main line is on Jensen's property where it comes out of the reservoir and into the Skyline #3 subdivision. City Attorney James Raymond stated that if the developers want to agree to waive their right to the service, he supposed they would have that right to do that. It is his sense that if they are aware of it, they can waive their right to it.

Councilman Clavadetscher noted that he has been on the Council for one year and since then he has been involved in a lot of issues because he wanted to try to solve them. He learned that there are no easy answers to the Council's decisions, including tonight's discussion. He wondered how a subdivision without sufficient fire protection and water pressure could be approved, and how did they allow building a high school without fire sprinklers. Although there is a great football field but no fire sprinklers in the school building. There are other issues that he wonders how these things happen. There is one overriding characteristic of the multiple problems that face this community, from all the infrastructure issues that he sees, at the very least, is lack of planning. He believes this government has an obligation to do better planning for the future. These annexations do two things, it helps correct existing problems, it provides land for temporary or permanent reservoir, to enable repair of the existing reservoir and land for a pump station to create necessary pressure. We can correct the fire deficiencies and the fire protection for the area residents that are living there. The second thing it does is allow the City to plan for growth. Without annexation, developments will have wells and septic systems and people and traffic will still be on Skyline Drive and in that area, and all the valid issues area residents have raised will still be there, but the City Council will have no way to deal with them. Wells and septic systems, traffic problems, no curbs, gutters and sidewalks, just to mention a few. The County requirements are so much less than the City requirements for subdivision development, and for roads that do not meet City codes. He will vote in favor of these annexations because he feels it is a necessary ingredient for the future planning of this community. To prevent some of the horrible mistakes in the distant past that have resulted from at least the lack of planning. **Motion made by Councilman Corse, seconded by Councilman Agrella, that Resolution #915 be approved with the provision that a deed restriction be placed, stating that the subdivision is dependent on the availability of a water supply adequate to serve the proposed subdivision.** Councilman Corse noted that the present Polson Master Plan was drafted in 1993. It was a document that many people looked at and spent a lot of time with and had good thought in drafting. In that document they anticipated the annexation of these properties and it is on the Master Plan as being a future part of the City of Polson. Councilmen Lies and Funke were on the Council at that time and they will recall that it was anticipated because it is part of the map. It was good, far reaching, well thinking, because it will reduce sprawl in the future and concentrate growth near the City where growth should be. Additionally, recently Lake County has proposed a radial type of zoning which this annexation fits hand in glove with. Also, if these properties were annexed with the gift of two and one half acres to the City, it would improve the water situation in that neighborhood. We need land to do that, otherwise it is likely that there will be no improvement. The property will be subdivided sometime, whether it is part of the City or County is up to future decisions. However, he would rather see it as part of the City so we can get some of the tax revenue. If the property is not part of the City of Polson, it would get none of the tax revenues.

Councilman Funke said he knows Steve Jensen and Bill Wilkins well, and he appreciates the offer to give 2.4 acres to the City because we do need it to build an additional reservoir and booster pumping station there. He believes that the City does have an obligation to supply water when the property is annexed. Although he feels the donation of land to the City is good, he is against the annexation. Councilman Corse clarified that if the motion he made would pass, it would include a deed restriction, which would mean that they would not be able to add a subdivision until a new water source is found, so the water becomes a mute issue.

Mayor Ingram asked City Attorney James Raymond if it is his understanding that the motion as presented, prevents the subdivision of that property, until such time as a new water source providing adequate water supply is developed. City Attorney James Raymond replied that he has some reservations because he hasn't looked at the Public Service Commission Case in connection to this annexation. The motion made by Councilman Corse does cover the basis of the water issues that have been discussed.

George Hess stated that the motion would be more practical if it would also include a conditional connection to the City sewer service. Councilman Corse asked and Tony Porrazzo confirmed, that the City has adequate sewer expansion capabilities and further clarified that it would be the duty of the developer to connect to the City's sewer system and bear the cost of installing a lift station to get the sewage on top of the hill so it can flow by gravity to the City's sewer system. He noted that the same rule applied to properties along Highway 35, if the water main is within 500 feet of a property then they are entitled to a connection to City water, which applies all the way to Hellroaring. Most of the property owners on Highway 35 had their own wells and didn't want the City water service, but South Shore Lounge did want City water service which was settled in court.

Murat Kalinyaprak stated that the sewer growth study indicated that only 400 hook ups were available before the sewer system reaches its capacity. Mayor Ingram agreed that is the estimated number of hook ups before expansion of the facility is needed. Murat Kalinyaprak said he believes that as of now there are more than 400 lots in the City that have been approved. Mayor Ingram agreed that is probably correct but noted that is not the way they plan and it may be fifteen years before all those lots are developed and are using any portion of the sewer system. Murat Kalinyaprak stated that in his opinion the City should not approve any more connections if there are lots in the City limits that have not hooked up to City sewer. Councilman Lies explained that the City is not approving any more connections at this time, but annexing two lots.

Margie Hendricks asked if the law requires properties to hook into main lines that are on their property or within 500 feet, then wouldn't it be conflicting to state law to put a deed restriction on that property. Mayor Ingram replied that they already have one water connection to that property so the restriction is that they will not be able to subdivide the property until such time that the City finds an additional water source. Margie Hendricks clarified that state law requires Cities to provide water service to properties on the main line within five years. Councilman Corse replied that there will be no additional lots without the final approval of a subdivision. Right now there are two properties with two separate owners and one has one water service. Unless a subdivision is granted final plat approval there is no demand for water and they agreed they wouldn't do a subdivision until adequate water is found. The deed restriction would cover the unlikely event if they sell their property then it would apply to future property owners.

Steve Jensen stated that the City's water main goes through his property and the reservoir tank is also on his property. Technically, based on Don Young's lawsuit for water service to the South Shore Lounge, who received a six inch water service, if they went to court they would get water. They don't want to go to court and are trying to cooperate until the City gets another source of water. Councilman Corse noted that this applies to water and not to sewer service. If this did not become a City subdivision and is developed in the County, then every one of the houses would have a septic system, which environmentally is a much less desirable situation than providing service with the City's sewer treatment facility. Councilman MacDonald noted that there could be some engineering problems with the drain fields for the subdivisions.

Margie Hendricks stated that one year ago in December 2004, John Campbell gave a speech at the City County Planning Board, and said there are 288 lots that the City had to provide sewer and water hook ups to, some were ten to twenty acres. Those lots are along the main line going to Hellroaring and in town. The 400 sewer hook ups remaining was referenced in the facility update dated 2003 as an estimate using 2002 statistics. She calculated, that a year ago there were 257 sewer hook ups left. If two hundred plus lots which the state requires the City to hook up, there needs to be some planning as to how the City can meet these sewer obligations. Mayor Ingram replied that the planning would come through the facility plans and impact fees. Elsa Duford asked what the timeline is for the impact fee report. Mayor Ingram replied that he doesn't know at this time.

Carlene Engstrom asked if the subdivisions were to be approved through the County, would the City be responsible to provide water service to the lots in those subdivisions. City Attorney James Raymond replied that the City would be required to provide water service to the properties that are within 500 feet of the water main line. Carlene Engstrom asked what led up to providing the water line to Bill Wilkins property. Mayor Ingram replied that the free water service was an agreement done when the tank was put in, in 1976.

Councilman Corse called for a vote. **Motion made by Councilman Lies to table the annexation until a legal opinion on the supreme court ruling of the early 1970's.** Mayor Ingram asked if the effect of that motion would be that they would approve the annexations subject to the clear understanding that the City's provision for services is legal. Mayor Lies clarified that the motion is to table the annexations until they get a legal opinion that the conditions are binding. Councilman MacDonald asked and Joyce Weaver clarified that according to law the City has until Friday, February 3<sup>rd</sup> to take action on the annexations. Councilman Corse amended his motion to include Councilman Lies' suggestion that, dependent on an opinion from the City Attorney, as to whether the City would be obligated to provide water to the properties, or whether the conditional approval for provisional services would be binding. **Motion made by Councilman Corse, to approve Resolution #915, Steve Jensen, Jensen Backhoe, Inc.'s, property adjacent to Skyline #3 Subdivision, on the condition that it has a deed restriction that the subdivision is dependent on the availability of a water supply adequate to serve the proposed subdivision and that a legal opinion from the City Attorney is given that the City would not be under any further obligation to provide water other than by this agreement.** Steve Jensen asked that Council make a decision and vote yes or no on their request for annexation with conditions, because he has been to many meetings and wants to do something with the land whether it is in the City or the County. Mayor Ingram explained that the motion is for approval of the annexation and makes sure that the constraints of the provision for services is binding and legal, if not they would have to start again. Bill Wilkins asked for a timeline on the City Attorney's opinion. City Attorney James Raymond replied that he would have that opinion tomorrow. **Motion seconded by Councilman Agrella.**

Murak Kalinyaprak asked what will happen if the City Attorney's opinion turns out against the Council's assumption. Mayor Ingram replied that if the Condition of annexation is not binding then the annexation will not be approved.

City Attorney James Raymond asked that the motion should include annexation with conditions, all as outlined in the plan, and subject to a determination that the plan will be legal and binding and put sideways by the City of Polson vs. the Public Service Commission, supreme court ruling or otherwise stated, approval subject to the plan. He spoke with Kyle Karstens to ensure that whatever went on public record is binding and goes with the land with respect to the applicants and binding on those successors in interest. Councilman Lies clarified that the if the supreme court ruling says that the City has to give the owners water at their request then the annexation would be cancelled. City Attorney stated that if after doing ordinary research it is determined that the City has to provide water if requested, notwithstanding the plan, then the annexation is not approved.

**ORDINANCE #615 – ANNEXATION WITH CONDITIONS – STEVE JENSEN, JENSEN BACKHOE, INC.:** Motion made by Councilman Corse, seconded by Councilman Agrella, to approve Ordinance #615, annexation of Steve Jensen, Jensen Backhoe, Inc.'s property adjacent to Skyline #3 Subdivision, with the provision that approval is subject to all conditions as stated in the City's Plan, Annexation by municipality providing services MCA7-24707, prepared by the City's Planning & Zoning Official. That a deed restriction be placed of record stating that final plat approval of a subdivision on this property would be dependent on the availability of a water supply adequate to serve the proposed subdivision and further subject to a legal opinion by the City Attorney, to be provided by Friday, February 3, 2006, that the water restriction being proposed, is binding and legal. Motion carried unanimously.

**ORDINANCE #616 – ANNEXATION WITH CONDITIONS – BILL WILKINS, DREW & DEBRA HOLDERMAN:** Motion made by Councilman Corse, seconded by Councilman Agrella, to approve Ordinance #616, annexation of Bill Wilkins, Drew & Debra Holderman's property, adjacent to Skyline #3 Subdivision, with the provision that approval is subject to all conditions as stated in the City's Plan, Annexation by municipality providing services MCA7-2-4707, prepared by the City's Planning & Zoning Official. That a deed restriction be placed of record stating that final plat approval of a subdivision on this property would be dependent on the availability of a water supply adequate to serve the proposed subdivision and further subject to a legal opinion by the City Attorney, to be provided by Friday, February 3, 2006, that the water restriction being proposed, is binding and legal. Motion carried unanimously.

Murat Kalinyaprak asked what would happen if the City Attorney's opinion is challenged. City Attorney James Raymond replied that he supposed they could go to court.

Meeting adjourned at 6:40 p.m.

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Randy Ingram, Mayor

Attest: \_\_\_\_\_  
Aggi G. Loeser, City Clerk