

CITY OF POLSON

SPECIAL COUNCIL MEETING

Commission Chambers

May 12, 2014

6:00 p.m.

ATTENDANCE: Mayor Heather Knutson, City Commissioners: John Campbell, Todd Erickson, Dan Morrison, Ken Siler, Jill Southerland, Stephen Turner, City Manager Mark Shrives and City Clerk Cora Pritt.

Others present (that voluntarily signed in): Elsa Duford, Lee Manicke

1. CALL TO ORDER

Mayor Knutson called the meeting to order. The pledge of allegiance was recited.

2. APPROVAL OF PROPOSED AGENDA

Commissioner Campbell motioned to approve the Proposed Agenda. Commissioner Southerland seconded. Commission Discussion: None Public Discussion:

VOTE: Unanimous Motion carried

3. APPROVE EMERGENCY ORDINANCE NO. 668 AND ORDINANCE TO AMEND THE CITY OF POLSON DEVELOPMENT CODE REGARDING THE JURISDICTION AND PROCESS FOR THE REVIEW AND APPROVAL OF SPECIAL USE PERMITS.

This item was presented by City Manager Mark Shrives. Mr. Shrives commented that at the last meeting, May 5, 2014, Lee Manicke brought up the comment that the City should not make this change to the Development Code without an Ordinance. There was follow up with the City Attorney and although the City Attorney felt the amendment would work, he felt that an Ordinance would be the best way to do it since we were changing an ordinance. So, what we have tonight is an Emergency Ordinance. An Ordinance normally takes two readings, but an Emergency Ordinance can be implemented with a first reading and follow up with the second reading in the next couple of meetings. If this Ordinance is passed tonight then that will put in place the amendment that was passed at the last meeting. This will allow the City County Planning Board to review the Special Use Permits that are on the schedule tomorrow night. Nothing else changed other than we now have an Ordinance instead of an amendment.

Mayor Knutson then asked if the Commission had any questions of City Manager Shrives.

Commissioner Turner questions why some of the Special Use Permit process is being reviewed at some of the Commercial developments have. City Manager Shrives answered that that is the second part of this the Development Code Re-write will look at this. There are some that don't need reviewed that are allowed, but we didn't want to get into what the re-write committee is doing. Those recommendations will be coming. This was to try and fix a problem of the law. That's why we need to do this. We knew we had the Special Use Permits coming up. Once identified as a problem, we had to do something to deal with it. Commissioner Morrison questioned why the emergency. What's the emergency? City Manager Shrives answered that the emergency is the fact that tomorrow night we have 3 Special Use Permits that we are trying to get the proper procedure in place. Commissioner Morrison asked if the proper procedure hadn't been followed in the past. City Manager Shrives answered that it had not. Commissioner Morrison asked if the City had talked with Montana Municipal Interlocal Agency (MMIA). City Manager Shrives answered that there had not been a discussion with MMIA but the City Attorney has given his opinion, as well as Dave DeGrandpre giving his opinion, as well as contracted Planner Eric

Mulcahy. All agree that the proper procedure is not being followed. Commissioner Morrison suggested contacting MMIA's Community Technical Assistance Program (CTAP) department and let them review the process. Mayor Knutson commented that the City is not in an alignment with the Montana Code Annotated (MCA). We need to get the process aligned and corrected as soon as possible.

Commissioner Erickson wanted to know about retroactive. City Manager Shrives commented that it would be effective forward.

Mayor Knutson asked for a motion. **Commissioner Campbell motioned to approve Emergency Ordinance No. 668, an ordinance to amend the City of Polson Development Code regarding the jurisdiction and process for the review and approval of Special Use Permits. Commissioner Southerland second.** Commission discussion: Commissioner Morrison commented that he had received calls from some persons who were concerned that this was being done quickly without review from the State. Commissioner Southerland asked Mayor Knutson and Commissioner Turner speak as to why they voted "no" on the amendment at the last meeting. Mayor Knutson answered that there was concern about what was being said. Commissioner Turner stated that he's simply against that it has to be presented twice. It is a waste of time and money. Also, if he is going to vote on something, he wants to get the entire presentation. Information and public comment could get lost. Mayor Knutson agreed, but noted that the Commission will be getting the notes from the Planning meetings. City Manager Shrives commented that the Commission will be getting the Staff Report along with a transmittal agenda summary from the Planner. Mayor Knutson asked if the item is controversial, could the Commission then request to see all the information. City Manager Shrives answered that yes, and the Commission could delay a decision until all the information could be gathered. The idea is to turn this around as quickly as possible so that we don't cause delays. That's why a Tuesday Planning Board meeting followed by a Monday City Council meeting would be a quick turn-around. The whole idea was to not drag this on. Mayor Knutson further commented that if the City County Planning Board recommends not to approve that would be the time that people might have to come a second time. Commissioner Turner agreed that timely fashion is a part of this. Right now Polson has a reputation of being very slow to get something approved and built. Commissioner Southerland asked if the Commission could reserve the right to "tweak" this as they go along. City Manager Shrives that from a process point, yes. Mayor Knutson clarified that the Commission could work with the Planning Department in creating a check list process. Commissioner Erickson asked if there were any other communities that did this process. City Manager Shrives answered that yes, the contracted Planner Eric Mulcahy said that Columbia Falls and Kalispell follow this same type of process; the packet is reviewed by the Planning Department with a recommendation to the Council. Commissioner Southerland asked for clarification on a potential applicant coming before the Council if the City County Planning Board has given a denial to the applicant's proposed project. City Manager Shrives answered yes, they could come before you. If an applicant wants to appeal a decision made by Council, it will now go to District Court. If the applicant wishes to appeal a decision made by the Administrator, the Planner, then that would go before the Board of Adjustments. Commissioner Turner asked who was on the agenda. City Manager Shrives answered Valley Glass, Walgreens, and the Mental Health Crisis Center. Public Comment: **Lee Manicke**- "Address these concerns. The issue tonight is to bring the existing Development Code in compliance with the State law. The other issue you are talking about is coming up in the re-write. There's some discussion about having some type of a criteria where it's done by the Administration or by/through the Planning Board. I don't know what that criteria might be. Walgreen maybe ought to go through the Planning Board, maybe Valley Glass shouldn't but that criteria hasn't been set as of yet. That will be public meetings with the Planning Board to go over that and that will also come back to City Council. So, you've got a chance to look at that later on. Dan's concern, the reason it is done this way, as I see it, is an emergency ordinance is that if there's an appeal I think there's a big opportunity to have whichever side might appeal for or against I think there's a great opportunity to get it thrown out. Just because City Council didn't follow the City of Polson didn't follow the State rules. You look at the clinic, there was an appeal, it was approved by the Council and there was an appeal. Super Wal-Mart was also the same thing a few years ago. It went to the State Supreme Court. I think if you have anybody that doesn't want the

Walgreen's in here or the clinic the crisis center, or Valley Glass I think whoever appeals that would win because if this ordinance wasn't in place, brought out in public, and Council didn't follow the rules. So I think it needs to get done. I don't know what the liability the City would have on that but I think there may be some if there was an appeal and the City didn't follow the rules. I think it needs to get done tonight. Having someone look at it, it has to come back for second reading, if you want to send it to MMIA it may be a good idea." **Elsa Duford**-“I have a question on the agenda for tonight. Is the May 5th meeting packet available to the public yet? The minutes. City Manager Shrives answered that no, they're not ready yet. Okay, so when it refers to this I have no idea what is in that packet. I did have, I guess I was more than surprised to find out that since 1993 the City Commission hasn't been following State law. That's kind of appalling. The issues here as far as the Development Code and this change, I guess one of questions is when it says the Administrator, does that mean you(note-Elsa is addressing the City Manager). City Manager Shrives replied the Administrator is the Planner. Elsa-“Okay. That helps. The part of these information that was on the website deals with the effect of in-growth. The effect on the services. The ability of the City to furnish the facilities necessary to accommodate the growth. From what I have been hearing, and as far as the Water/Sewer thing has been a big issue of not having the capacity at this time. So, are all these things actually taken into consideration before you make a decision as to whether the City, at this time, has the ability to take on more development for the reasons given? It sounds like it's not up to the necessary Water/Sewer situation to accommodate more growth at this time. So, I guess my question for the Council is, is it alright for you to go ahead and approve this ordinance and these additional businesses, I'm not opposed to these businesses coming in, I'm just questions whether the City has the capacity to service that many more additional connections to the Water/Sewer. It was a surprise to me to find out that after all these years the City hasn't been in compliance with State law. I will mention to that there was a lot of misinformation, I think, that came out of this new form of government and this Charter. Some people had the idea that if you had a Charter you could do almost like whatever you wanted to. But you are still required to comply with State law even if you have a Charter. I think some people didn't get that clear. Of course 1993 goes beyond way back beyond the Charter but I don't think we can just kind of glibly say that sorry we didn't comply with the law after all these years. It is important to know, going in, what the law does require. Thank You.”

VOTE: Unanimous Motion carried

4. PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC NOT ON THE AGENDA-There was no comments.

5. EXECUTIVE SESSION-Mayor Knutson asked City Manager Mark Shrives if the Commission wanted to go in to Executive Session. City Manager Mark Shrives answered yes. Mayor Knutson asked if this was litigation between two governmental agencies. City Manager Shrives answered no. Mayor Knutson then asked does the discussion of this legal matter in open meeting have the potential to adversely affect the City if the strategy to defend the matter is disclosed. City Manager Shrives answered that as the Chief Administrative Officer of the City of Polson he believes that the City's strategy in litigation should not be disclosed and it would adversely affect the City if it were disclosed.

Mayor Knutson then stated that based upon the representations of the City Manager, she finds that the Commission should close its meeting into executive session so that they may discuss the litigation strategy of pending, threatened or actual litigation. She further commented that she believed that the Commission will be discussing this matter for approximately 15 minutes. Thereafter, we will reconvene the meeting only to adjourn the meeting.

RECESS-6:30 P.M.

6. RE-CONVENE-6:45 Mayor Knutson asked for a motion to Adjourn. City Manager Shrives commented that before that he needed to inform the Commission that due to a family medical emergency City Manager Shrives will not be at the May 19th meeting. Karen Sargeant will be taking over.

Commissioner Turner motioned to adjourn. Commissioner Siler second.

VOTE: Unanimous Motion Carried.

7. ADJOURN-6:47 P.M.

Mayor Heather Knutson

ATTEST:

Cora E. Pritt, City Clerk