

**POLSON CITY COMMISSION MEETING MINUTES
CITY HALL – CITY COMMISSION CHAMBERS
MONDAY JULY 15, 2013, 7:00 PM**

ATTENDANCE: City Commissioners: John Campbell, Mike Lies, Stephen Turner, Dan Morrison, Fred Funke and Mayor Pat DeVries presiding. Interim City Manager, Karen Sargeant, City Clerk, Cora Pritt, and Water & Sewer Superintendent Tony Porrazzo. Others present (that voluntarily signed in): Rory Horning, Bonnie Manicke, Andrew Speer, Michael Brandt, Heather Knutson, Margie Hendricks, Mark Palmquit.

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

Mayor DeVries said Commissioner Erickson was out due to illness. Commissioner Lies is attending a memorial service. City Attorney Raymond had telephoned saying that he would not be attending the meeting. Mayor DeVries also explained the absence of meeting minutes from the July 1, 2013 Council meeting.

APPROVAL OF PROPOSED AGENDA: Commissioner Funke moved to approve the proposed agenda, seconded by Commissioner Campbell. Commission discussion: None Public Discussion: None. **Vote: Commissioners Campbell, Funke, Morrison, and Turner, aye. Commissioners Erickson and Lies; absent. Motion carried.**

CONSENT AGENDA:

- A. JUNE 26-JUNE 30, 2013 CLAIMS**
- B. JULY 1-JULY 10, 2013 CLAMIS**

Commissioner Campbell moved to approve the consent agenda, seconded by Commissioner Turner. Commission discussion: None. Public discussion: None. **Motion carried unanimously.**

Mayor DeVries welcomed the new City Clerk, Cora.

CITY MANAGER COMMENTS: Interim City Manager Karen Sargeant reported to the Commissioners that during the 4th of July parade the candy throwing was still an issue. City Manager Sargeant would like to see someone from the police department or another city employee be involved in the planning of the parade. As soon as we find out who is sponsoring the parade next year we will have someone contact them. Streets Superintendent Terry Gembala will be placing a very special thank you notice in the local media to Cub Scout Troop 4947 for their voluntary clean-up of the streets following the parade. The scouts were seen picking up paper, candies, and animal droppings left on the streets by the horses that were in the parade. Reorganizing the front office occurred on Friday, July 12th. With the assistance of other city staff, Police Chief Nash and Assistant Chief Cottle moved their offices to be more space efficient. They switched offices with Mayor DeVries. City Finance Officer Cindy Dooley and City Clerk Cora Pritt also moved in to their new office space. With the assistance of Todd Erickson at the Job Service, we are advertising for an Assistant Planner/Clerk to fill Cora's position when she assumes her new role as City Clerk. Christian Smith, an officer on the Board of Montana Association of Planners and asked her to put the job on their website. The City will also post the job announcement on our website. Hope to conduct interviews the first week of August. The State of Montana Department of Transportation has awarded the City of Polson Street Department two new combination sander/de-icer units to fit into the back of the dump trucks. The equipment was awarded through a _____ grant. Without this grant the equipment would have cost \$43,648.00. Because of the matching fund

requirements, the total cost to the City was \$5, 858.00. Great job Street Department. Polson Rural Fire District and the City of Polson Fire Department have chosen Emergency Service Consulting International to conduct the agency evaluation for the development of the strategic plan for the Fire Department. The proposal from this company came within the budget parameters of \$17,500.00. The plan, which will be an overview of the department, will cover such topics as apparatus in vehicles, management processes, capital assets and improvement program, and service delivery and performance. The service will also look at future needs. The annual Cherry Festival will be held this coming week-end. The following week-end will be the 3-on-3 basketball tournament. In between these two events, Third Ave. W. will be closed from First St. W. to the alley in order for the Goldwing motorcycle group to show off their decked out motorcycles in front of the Cove Deli, from Noon-3:00 p.m. Lots of fun things to do in the month of July with even more things in August.

Mayor DeVries asked Interim City Manager Karen Sargeant if she would like to address the meetings that have been occurring with the Montana Department of Transportation and the City of Polson regarding First St W. Street Superintendent Terry Gembala was also present at the meeting to discuss the possibility of trading Main St. for First St. W. This was a preliminary meeting to just get the process started to take a look at feasibility, what we have to do, what they have to do. The State had mentioned that this is a drawn out process. There will be a closer analysis to determine whether or not this will be worth it.

NEW BUSINESS

INFORM PUBLIC ABOUT B&I HOLDING, LLC. SEWER LAND LEASE DELINQUENCY AND ENFORCE AGREEMENT- Presented by Murat Kalinyaprak. (Clerk Note: the following is the written statement presentation that Murat made before Council. After he completed his presentation this was given to the Clerk.)

July 15, 2013

Murat Kalinyaprak's presentation to the city council.

Timeline:

-December 1, 2003: Currently active contract was signed.

-At some date that I couldn't find out about, Mike Maddy acquired the ownership of Band I, LLC. From 1995 until 2009, beneficial use taxes on the land had been paid by the Lessee.

-September 19, 2011: Murat Kalinyaprak inquired about lease payments due. Bonnie Manicke answered that she had supplied the outstanding balance info to the City Attorney. She said that the last payment was in August 2010 of approximately \$12,000.

-October 3, 2011: During discussion of the sublease agenda item, Commissioner Campbell advised that he would like to see the lease payments current on the building. City Manager Crossett advised that the lease payments were current with the exception of two months' rent that was in dispute. Commissioner Duford inquired about the taxes on the building being delinquent. City Attorney Raymond advised that he did not know, the taxes were collected by the County. Mayor DeVries advised they could contact the County in regards to the taxes. Murat Kalinyaprak commented that as of the last meeting the last payment on the lease had been in 2010.

- The lease payments being current was false information .City should have known about the delinquent taxes.City council approved the sublease based on these false and incomplete info by the city manager and city attorney.

-October 17, 2011: Commissioner Campbell mentioned that at the last meeting they had been told that Band I, LLC had caught up on their rent and sublease had been approved. He wondered how to avoid the lease payments getting so behind and what their recourse was. City Manager Crossett advised that part of the problem was that there was no proper billing cycle , it was outside of other City services and a unique situation. He advised that they would be working on a system issue to streamline the billing .Commissioner Duford expressed that catching up every now and again was not how it should be handled.

- Commissioner Campbell's misimpression about the lease payments being caught up was not corrected. Instead, the city manager offered the lame excuse of billing cycle, when the lease agreement clearly states that the payments are due on the first of each month. Apparently, this wasn't the first time that lease payments had become past due.

- November 10,2011:B and I,LLC and OPE, Inc filed a notice of lease with the county recorder, stating that copies of the sublease (with Option to Purchase) would be provided to any party with legitimate interest. Apparently the city never bothered to get a copy.

- May 16, 2012: Nothing had been done to collect the past due payments. After Murat Kalinyaprak inquired about lease payments again, the first demand letter (later dated June 18, 2012) was sent. It stated that 12 months' worth of payments \$18,000 was due on June 1, 2012. It also informed that Band I, LLC was in default and had 30 days to correct. However, nothing was done after the 30 days.

-January 9, 2013: Murat Kalinyaprak filed a info request form for the second time in trying to get a copy of the demand letter. Finally, on March 1, 2013 he was given a copy of it.

- April1, 2013: At the council meeting, Murat Kalinyaprak commented that he had requested information on the sewer land lease with the Tamsco building owner about a year and a half ago and he received the information several months ago. He added that no payments had been made yet.

-April 2, 2013: City obtained a legalopinion from Bob Long about who should pay the beneficial use taxes, because city attorney Raymond claimed a conflict of interest.

- April 30, 2013: The second demand letter was sent, stating that \$31,505 was due and offering to adjust the lease amount by the number of employees over 10. None of B and I, LLC's disputes and other communications were in writing. This is really poor job on the part of the city attorney and the city managers involved.

-July 5, 2013:After learning that the city still had done nothing to enforce the agreement, Murat Kalinyaprak filed an agenda item request, in order to ask the council to inform the city and to resolve to enforce the agreement.

Suggestions:

-Any reduction on the lease amount properly calculated per the agreement, based on blocks of 2,000 hours, should be passed on to the subleasee.

Questions:

- What was city attorney Raymond's conflict of interest?

- How much Bob Long's opinion cost the city?

- Lease was not reviewed or amended by the city at the end of 2012. Poor job again on the part of the city manager and the city attorney. Can the adjustment now be made retroactive legally?

Murat Kalinyaprak

Murat states there has been a new development, that payment has been made. Murat was informed that a payment in full had been made, but when he asked to see the check it wasn't a payment in full. Instead of \$36,000.00 due the B & I Holding wrote a check for \$24, 160.00. \$3,000.00 of that is for the two months at \$1,500.00 each forgiven by the City. \$3,200.00 of that is a discount based on the number of employees that worked at Core the previous year. Murat asked to view the report Core had written up, per the contract, reporting an employment record from the previous year, so that the full time employment hours could be calculated, and a new lease could be determined, there was no such report. \$5,640.00 was deducted for the delinquent taxes on the land against the written opinion of Bob Long. Murat further states that the lease payment was not paid in full and the taxes should have been separate from that. Murat suggests that the discount based on the number of employees any amount deducted from the lease should be forwarded to the Core as an incentive to hire more employees and not to B & I Holdings.

Mayor DeVries asks Council if there are any questions/comments. Seeing none, the Mayor asks if Council wishes to take any action concerning this item. Commissioner Campbell remarked that the news of payment was very good news. Mayor DeVries asks Interim City Manager Karen Sargeant if this payment will need to be reviewed by Attorney Bob Long for completion. Karen answered that the payment was pretty much the amount due based on the letter sent out by former City Manager Todd Crossett. Public Comment on this item: Bob Fulton states that couple months ago he had contacted then City Clerk, Cindy Dooley regarding this matter. Cindy had said the due was \$36,000.00. That was two months ago so, at \$1,500.00 per month that would be \$39,000.00. Bob further asks what the conflict is with the City Attorney. If it has something to do with Mike Maddy, that is curious because the City Attorney has made many decisions regarding Mike Maddy's interest in property in this town for the last 12 years. So what is the conflict of interest with James Raymond? Mayor DeVries replies that what Council was told, from James, is that he had a conflict because Mike is his client. When that happened or anything else, that's what we were told. A conflict of Interest is something that an attorney has to decide. Bob Fulton then asks if anyone questioned when the attorney/client relationship occurred. Mayor DeVries answered that no one asked. Rory Horning remarks that is fascinating to him that the City would settle on \$24,000.00 is acceptable on rent lease. Rory further tells of a business that is located on the corner of First St. W. & Hwy 93 that had water disconnected because of being 30 days late in payment. The water has been cut off for two years. There were no other comments from the public.

SCHEDULE SPECIAL MEETING FOR 7/29 OR 7/30 TO APPROVE RECOMMENDATION OF FINANCE OFFICER REGARDING PRIVATE NEGOTIATED SALE OF TAX INCREMENT URBAN RENEWAL

REVENUE BONDS. SERIES 201. This item was to be presented by Financial Officer Cindy Dooley. Cindy was absent from the meeting in order to attend a memorial service. Acting on her behalf Interim City Manager Karen Sargeant. City Manager Sargeant asks Council which date they would prefer the meeting on. **Commissioner Dan Morrison makes the motion to hold the meeting on Monday, July 29th at 7:00 p.m. Commissioner Lies seconds** (note: Commissioner Lies arrives at the meeting at approximately 7:13 p.m.) Public comment on this item: Lee Manicke makes the following statement to Council;

Cash balance as of 5-31-13	\$144,028.57
June receipts	63,940.28
	207,968.79
Est. receipts to 12-31-13 (less neg. bal. W/ Co. Treas.)	45,000.00
Approx. bal. at end of this year	\$253,000.00

If this applied towards project costs, bond could be reduced to \$700,000 or less.

With semi- annual payments a \$700,000 bond@ 5% could be repaid in 10 years. Total yearly payment would be \$89,806. With a semi- annual payment of \$50,000 a \$700,000 bond could be repaid in less than 9 years.

Annual TIF District proceed are approx. \$125,000 to \$130,000. This estimated by multiplying the Incremental value by appropriate mill levy.

A \$900,000 bond with a 20 year term is not called for here.

Extending the TIF district to run an additional 15 year is a tax increase of approx. \$2,000,000.

Lee requests that the bond be cut down to the \$700,000.00 bond. There is a discussion between Commissioner Campbell, Mayor DeVries, and Interim City Manager Karen Sargeant as to whether or not the bids could be resubmitted at a time less than the 20 years. The Mayor replies that the bid proposals will be accepted but new bids could be sent out again. The City will need to ask Bond Council if this is doable. Mayor DeVries further states that there will be monies paid back to the County from that district because of the personal property tax issue. The increments from the personal property, because they continue to lower the personal property taxes and the amount of increment that is taxed so, the personal property tax in the district has decreased. When this is figured out, we have to take money from the real estate taxes that increased, and pay for the decreased in the personal property. Lee Manicke returns to the podium to make a comment on this statement. Patty Kugler, County Treasurer, reports that as of the end of the year, June 30th, that negative balance was around \$15,000.00. Since then, until today, they have collected monies and as of today that negative balance is just a few dollars less than \$10,000.00. So when Lee calculated the monies coming in by the end of the year to be \$45,000.00 the \$10,000.00 was deducted from what was coming in. There will still be \$250-260,000.00 at the end of the year. At \$700,000.00 there would still be a leftover of around \$50,000.00. The negative, as of today, is \$9,944.24.

Mayor DeVries then calls for a vote on the meeting date. Vote: passed unanimously.

OLD BUSINESS

BUDGET PROCESS UPDATE INFORMATION: Interim City Manager Karen Sargeant informs the Council that there is still work being completed on the individual personnel issues. Once this process is done, it will be uploaded into the program and run a complete preliminary budget. We will be using last year's tax numbers until we find out what this year's numbers are. The Mayor asks about scheduling a special meeting. Karen replies that the process will begin around the middle of August. So, there will be no need to schedule a special meeting yet.

PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC NOT ON THE AGENDA

Murat Kalinyaprak returns to the podium and thanks the council for the opportunity to address the council on an agenda item. Murat also wishes to express his concern about the litigation item has become a permanent item on the agenda. Last year it was every other meeting. This year, with the exception of a couple of meetings, there has always been litigation/personnel. He states that according to what he understands according to the Codes, personnel may be completely closed session. However, he does not think the same applies to litigation. Murat suggest going to the Attorney General's office to get an opinion on this matter. In Murat's opinion these two topics need to be separated. If it's personnel, fine. If it's litigation we need to at least know what it is about. This gives the impression that this council is conducting business privately and effectively eliminating public participation. We need and deserve a transparent and responsible government. We are demanding it.

Margie Hendricks begins her address to the council by thanking Interim City Manager Karen Sargeant for being cooperative and very helpful to citizens when they go in and ask for things. This is the first time that we have had a citizen on the agenda for a long time. Margie also states that she is worried about the transparency too. In 2005, when Mike Maddy's subdivision was approved, there was a law suit brought against the City by a group of citizens. There was an article that appeared in the *Missoula Independent* about the lawsuit and going to the County Attorney. The reporter asks the County Attorney about his investigation. The County Attorney's investigation was going to City Attorney James Raymond and asking. James Raymond responded that all was okay. That was the end of the investigation. Margie asks if there is a well. The engineer had stated that by the summer of 2006 there needs to be a well. We do not have a well, and Margie has heard that the City is negotiating with Oliver DuPuis for a well. There needs to be a whole lot of transparency about our water issues.

Police Chief Wade Nash is next to address the council. He speaks to them about an interview that he did with Fox News, NBC Montana. The station did an interview about the Mission Mountain Drug Task Force that was formed four months ago between the Salish Kootenai Confederated Tribes and City of Polson Police. Currently there is one Tribal officer and one City officer working on it. In three and a half months, just in the City limits of Polson, they have opened up 64 drug cases. 17 search warrants have been served, and charged 27 misdemeanor and felony charges. We have received mostly methamphetamine, heroine, and cocaine. The Task Force is absolutely working and making a difference. Sellers and drug users are running scared. If you see us up in your neighborhoods, late at night or early

in the morning, we are issuing and serving search warrants on houses. Hopefully that will clarify some of those things. (note: the audience gave a round of applause to Chief Nash as he took his seat)

Bob Fulton speaks to the Council on a personal interest in Ron Melvin, former City Building Inspector. According to a Department Labor & Industry report, dated May 24, 2013. The report reads that the City discharged Melvin for misconduct and disqualified him from receiving benefits beginning on May 20, 2012. Ron challenged that and got a new hearing. That hearing was resolved on July 3, 2013. Part of the findings of the attorney; "employer must prove misconduct through substantial evidence. Many of the documents submitted by the employer during the adjudication process, that were admitted into the record with no objections from either party, are considered here say evidence. Here say evidence is not considered substantial evidence due to it being inherently unreliable." In the next paragraph it reads that "Melvin's testimony however was detailed, direct, and is more creditable than evidence presented by the employer. The employer has failed to show, through substantial evidence that Melvin was discharged for misconduct." A lot of that refers to the April 10th & 12th meetings that James Raymond and Todd Crossett alleged took place in James Raymond's office. This Hearing Officer, Carolyn Holein, didn't believe that that meeting took place. Bob's question is, "if the City asks for that to be appealed, and it's not litigation because if you are appealing it, it had to have been received in Helena today, which suggests that it is either over or it is being appealed. My question is which of those two is the truth?" The Mayor responds that she knows nothing about it. Interim City Manager Karen Sargeant replies that she has received nothing in writing either. Karen further states that maybe Ardrene has received something but Karen has not. Bob Fulton also comments that for the record, this is the third meeting that the City Attorney has not attended.

Bonnie Manicke comments on a lighter side subject. Bonnie was requested to represent the City in the 4th of July parade for her years of service, as the Grand Marshall. Bonnie portrayed Betsy Ross in the parade.

Andrew Speer remarks that he is glad to see Beryl present at the meeting. She is always at the meeting and can be counted on to always update the community via the *Valley Journal*. One of the items that Beryl wrote about a year ago, July 18, 2012, was a discussion about James Raymond's contract. There are a couple of interesting things reported in the article: The Mayor said she wanted the City Manager to advertise for a City Attorney position and she also wanted the renewal of Raymond's contract to be on a City Commission agenda. The next item was Commissioner Fred Funke agreed that the Commission should review Raymond's contract. He's quoted as saying, "Not just Raymond's contract, but all contracts need to be brought up and not just automatically renewed." Mr. Speer comments that he happens to agree. It has been one year and this should be a topic of discussion. The public should be involved.

Michael Brandt makes a quick comment about the list for the City Manager on the Prothman website. It lists five years of public service as one of the requirements for applying. Michael feels that this requirement eliminates a lot of otherwise well qualified applicants. Michael has first-hand knowledge that a potential candidate was told by two of the selection committee members that this would not be a requirement. Michael questions why the change. The Mayor replies that there was a lot of discussion about the requirements and the consensus was that we would have a five year requirement of public

service. The mayor qualifies that Mr. Prothman felt that this was an important requirement. Commissioner Lies comments that it doesn't mean that someone with less than five years public service couldn't apply. Anyone could apply. The Mayor also replies that "public service" is pretty broad.

Meeting is Recessed at 8:00 p.m.

EXECUTIVE SESSION

PERSONNEL/LITIGATION: Mayor DeVries brought the executive session to order. Matters of litigation and personnel were discussed. Mayor DeVries re-opened the meeting, and there being no further business, the meeting was adjourned.

The meeting adjourned at 9:10 p.m.

Mayor Pat DeVries

Attest: Cora E. Pritt, City Clerk