

CITY OF POLSON COUNCIL MEETING

Council Chambers

August 4, 2014

7:00 p.m.

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

ABSENT: Commissioner Todd Erickson

Others present (that voluntarily signed in): Elsa Duford, Dennis Duty, Margie Hendricks, Murat Kalinyaprak, Bonnie Manicke, Andrew Speer, Diane Speer, Gordon Zimmerman.

CALL TO ORDER - Mayor Knutson called the meeting to order. The pledge of allegiance was recited. Roll call was taken.

APPROVAL OF PROPOSED AGENDA- Commissioner Turner motion to approve the agenda. Commissioner Southerland second. Commission Discussion: none Public Comment-Murat Kalinyaprak had a few small suggestions; he requested that the Mayor announce the date/time of each meeting when calling the meeting to order, sometimes to state if the meeting is a special meeting, in the past the agenda indicated if there was going to be a vote taken, or if an item was information only. Put this back on the agenda. Murat also questioned the absence of minutes. Mayor Knutson answered that the minutes were not complete. **VOTE: Unanimous Motion carried**

CONSENT AGENDA-a. Additional Claims June, 2014 b. Claims July 17-31, 2014. Commissioner Campbell motion to approve the Consent Agenda. Commissioner Siler second. Commission discussion: none Public Comment: Elsa Duford inquired about the claims pertaining to the Water/Sewer new building charges for paint, lumber, etc. Elsa asked how this is being funded. City Manager Shrives answered from the Water/Sewer funds. Elsa commented then that the purchases weren't being paid for out of any type of grant. **VOTE: Unanimous Motion carried**

CITY MANAGER COMMENTS-City Manager Mark Shrives reported on the following items:

Introduced the new Building Inspector, Dave Simons Jr. Dave will be filing the necessary papers with the State of Montana to begin doing not only building inspections, but also electrical, plumbing, and mechanical, therefore making the City of Polson Building Department a one-stop shop. Dave commented that he was glad to be here and looked forward to serving the community.

City Manager Shrives handed out a schedule to the Commissioners for the months of August and September 2014.

The Irrigation project on the Old nine golf course has been put on hold until spring 2015. The design has been completed but there are a couple of obstacles; the project should have been started earlier and the financing has to be secured. Other options are being reviewed as well.

The triangular piece of property by the Golf Pro Shop, that the State owns, would be a bit of a process in order to purchase the property. The Montana Department of Transportation would have to consider this property surplus, therefore making it eligible to be put up for sale. The City of Polson would need to submit a letter of interest. The property would then need to be appraised and the decision on whether or not to sell the land. City Manager Shrives guessed that the appraisal would cost

approximately \$1,500.00. Commissioner Campbell felt there should be another option just to put a sign up advertising the Golf Course Restaurant. Commissioner Campbell suggested putting the sign somewhere in the parking lot. He has observed people driving down Bayshore Drive looking for the restaurant. When they don't see the restaurant, then they just keep going. City Manager Shrives said he would talk with Golf Director Roger Wallace about other options.

When the Polson Redevelopment Agency presented the project of paving the parking lot at Salish Point, Mr. Lee Manicke questioned whether or not a Lakeshore Permit would be needed. After researching the question the City Attorney determined that a Lakeshore Permit would be required.

A decision has been reached in the lawsuit filed by Citizens for Open Government vs. City of Polson. The City of Polson filed a Summary Judgment. The order reads: "The City's motion for Summary Judgment is denied in part and granted in part as follows: The City's motion for Summary Judgment asserting Citizens for Open Government lacks standing to bring its claim is denied; the judge did determine that the Citizens for Open Government did have standing to assert its claims. The second item was the City's motion for Summary Judgment based on merit of Citizens for Open Government claims is granted and the City is entitled to judgment as a matter of law. So, essentially the City's motion for Summary Judgment was granted to throw the case out. The judge also determined that there were no attorney fees awarded for either side.

APPROVE THE FINAL PLAT OF RIDGEWATER COMMERCIAL SUBDIVISION, PHASE 4-

Contracted City Planner Eric Mulcahy presented this agenda item. There is a staff report that goes through Final Plat. This is a 2-lot minor subdivision, zoned Highway Commercial that requires a Special Use Permit. The plat was approved May 2, 2005. Mr. Mulcahy mentions that there was a typo in his report, he had typed March 2, 2005. The subdivision comes with a Subdivision Improvement Agreement (SIA) which is a document that references the improvements yet to be completed. They are required to provide a Letter of Credit of 125% of those improvements that aren't complete. The applicants have done so with a SIA and the Letter of Credit. The Commission would need to approve that as well as the Final Plat should you do so tonight. The applicants have met all Conditions of Approval. The Plat does comply with the Polson Development Code and Subdivision Regulations. Staff recommends approval of Phase 4. **Commissioner Morrison motion to approve the final plat of Ridgewater Commercial Subdivision, Phase 4 and the Subdivision Improvements Agreement in the amount of \$68,048.06.**

Commissioner Turner second. Commission discussion: Commissioner Siler asked who will be monitoring the SIA as to whether or not it has been completed. Mr. Mulcahy answered that first this is put on a calendar so that we know when the SIA is about to expire. Prior to that there is a certified letter from the applicant's engineer stating that the improvements are complete. Then the City engineer checks the improvements, once it has been approved by the City engineer then the SIA will be put on the Council Agenda for the Commission to release the collateral. It will not be released until the items have been completed. Should the applicant fail to complete the items by the end of the SIA, there are two options. The first is that the City can take the funds, because the funds are in the City's name, and complete the improvements. The second is to extend the SIA with a new Letter of Credit. This is why the expiration date on the Letter of Credit is at least 30 days past the date of expiration of the SIA so that there is time to secure the funds if need be. Mayor Knutson questioned the SIA Exhibit "A" and "B". There was only one attachment in reference to the final part that needed to be completed. Mr. Mulcahy commented that Exhibit "B" is not applicable. That would only be if the City were going to complete the improvements. So, Exhibit "B" can be stricken. Mayor Knutson then clarified the SIA, Whereas, the City has conditioned its approval of the final plan of Ridgewater Subdivision, upon the conditions as set forth in the preliminary plat of the subdivision being completed and all improvements, as cited in "Exhibit A". Mayor Knutson comments that the next section does refer to "Exhibit B" and what has been done is the estimated contract improvements endorsed by a public engineer overseeing the installation. It needs to reference "Exhibit A" on the document as well. City Manager Shrives suggests that the motion be amended and delete "Exhibit B" from the Agreement. Mayor Knutson states that we are speaking to the Whereas, the City's Subdivision regulations require that a sub divider shall provide a financial security of

with the estimated total cost of construction of said improvements as evidenced by a city accepted. We need to include that language within "Exhibit A" as well. Mayor Knutson suggests changing the wording "Exhibit B" to read "Exhibit A". So "Exhibit A" will be referenced on the first page and change the wording on that. Commissioner Campbell clarified that the Letter of Credit is only good until January 2015. Mr. Mulcahy comments that that is correct. Public Comment: **Murat Kalinyaprak**-"If you approve this subdivision tonight, you will be breaking the law on many grounds. This agenda wasn't published until Friday evening. 48 hour notice may be appropriate in emergency cases but I don't think this is an emergency. It doesn't give public enough time to participate, especially when exhibits and attachments are not available. For example, nobody has seen what the plat map of Phase 4 apparently has up to 19C maybe more. From 10C to 19C they are referring to. Then the Phase 2, for this purpose, only refers to lots 13 and 14. So it's not clear which is which and the words subdivision, development and others are used haphazardly, inconsistently, in a probably purposeful way to confuse what is going on. The title insurance attached to this agenda packet refers to lot 10, 11, 12, 16, and 19C. This subdivision is about 13 and 14. So, it doesn't apply to this lot. The Special Agreement to complete the project I believe it only comes in to the picture when the project is substantially completed and there's a little bit more left to finish it. If this is a 10 lot subdivision it needs to come in front of the Planning Board and all of the other things. Then you have to look at it as a 10-Lot subdivision and you can sign any special agreements to finish that whole 10-lot subdivision, Phase 4. The other thing is, the initial plat that he is referring to had only 3 phases and there were no distinction between residential or commercial phases. So this is misleading to word this as Commercial Subdivision Phase 4. There is no such thing. There was never a preliminary approval for a commercial subdivision, Cougar Ridge Commercial Subdivision. So, this Council is being misled with slick words. This is based on a lot of things that have happened since that time. This has no resemblance to the original concept of this development. Couple of years ago they did an eight lot boundary line adjustment that boggles the mind. How you can have an eight lot boundary adjustment". At this point, Mayor Knutson informs Mr. Kalinyaprak that his 3 minutes are up but she extends an additional 30 seconds to him. Murat further states-"Thank You. That needs to be investigated. A lot of people, including surveyors, argued that it was illegal and then last December there was a two-lot boundary line adjustment recorded with the County. The Mayor signed it saying it was approved by the City Council. I don't remember it coming in front of the City Council. You need to investigate that. The CRD agreement signed last year to refund impact fees also is illegal because they have not provided proof for what they have..." Mayor Knutson then advised Mr. Kalinyaprak that his time is up. Murat-"I would like, if you would allow me another 30 seconds. This is an important issue here." Mayor Knutson agrees and gives Mr. Kalinyaprak an additional 30 seconds. Murat-"So, I don't know what the rules say about who can ask for an investigation, but I believe the City Manager has that according to the Charter. I believe the Mayor has or maybe the Council has. So, I see that this Council has new members who are willing to look into the old issues. I would really encourage maybe we will communicate with the City Attorney. Hopefully he should be in some meetings now that he's on contract, to address some legal issues like this. I really would urge this Council to not pass this and to investigate the past actions."

Elsa Duford-"I went by the letter dated that was in the packet, dated July 28, and it says the conditions for Ridgewater Phase 4 Commercial Subdivision. The Commission granted approval of this Plat on March 21, 2005 as part of a multi-phase, mixed use development. Well on March 21, 2005, unless that is a wrong date, this was not a Phase 4 at all, it was a meeting, public hearing for a zone change for Cougar Ridge. It involved 115 acres and two parcels. So I think we're not talking about the same thing here. Did you say May 2nd meeting? Well this says March 21st meeting. (Note-Mr. Mulcahy comments that he had a typo). Elsa-"Well it makes a whole lot of difference to address this. Because at the time this was all being discussed there wasn't any Phase 4. There was a Phase 1, 2, and 3 in Cougar Ridge. There was a whole lot of people that were concerned about this development and it effected a number of neighborhoods. They had petitions going out and that was just for three. We never heard of a Phase 4. So to us that is something new and I don't think you should make any decision on this based on the information was a typo. We all were looking at the wrong information. All this was on the letter led us to believe that was what this was about. So, we are misled in this. A zone change from Rural Residential to

Low Density Residential was what this meeting was about. There was no decision made. In fact, it was tabled. They didn't, it says "*the preliminary plat approval for Cougar Ridge Subdivision Staff Report Master Plan Development-Phase 1 Zone Change/Annexation. Marchello made a motion to table this agenda item until a final water report is received by the City.*" We're not even talking about the same things here. This was not approved according to the information that the public was provided on the website. I don't think you should make any decision until we have everybody is on the same page. This is also dealing with a water issue at that time. They hadn't even had the report yet." Mayor Knutson advises Elsa that her three minutes are up. Elsa-"Everybody is misinformed here. I don't mean to be picky or sore. I am sorry that it turned out to be a mistake but this is going to have to be redone. And so everybody has got the same information. Thank you." **Margie Hendricks**-"I got involved in City government over Cougar Ridge. We heard that Hillcrest was going to one of the roads that Cougar Ridge would use. It was a 60 lot commercial subdivision, 118 lots multiple housing, 145 lots single family residence. The developer said that there were no arterials going through Cougar Ridge. We thought a highway access onto Hillcrest St. thru to Kerr Dam Road was an arterial. So we wanted to make a presentation about Hillcrest. Hillcrest is only 23 feet wide. It's substandard. The developer mentioned, at one of the meeting, in a private conversation that we didn't need our five foot walking path. Of course if they did approve that road, we wouldn't be able to have a five foot walking path. The point I am trying to make is, there has not been public participation connected to this subdivision. I went to City Hall to get a preliminary plat map that was approved. It's not available. They don't have one. Fortunately I dug through a box and I found one. But you don't have one. Here you are dealing with the Conditions of Approval of a Preliminary Plat and you don't have one. Actually another plat is recorded at the County Courthouse. A totally different one. A totally different plat. How did that happen? Did citizens get to participate in the change of plat? Did the Commissioners get to participate in the change of the plat? Did the Planning Board? No, and let me tell you how that happened. When the citizens went to participate concerning Hillcrest they were told by the Planning Board, by the Mayor that they were only dealing with the Master plan, not the Master plan, the Phase 1 and so later date, Phase 2 and 3 we would have an opportunity to participate in Phase 2 and 3. It was on the Conditions of Approval. It was recommended by the County Planners because Joyce didn't have much experience at that time." Mayor Knutson advises Margie that her 3 minute are up. Mayor Knutson extends the time by 1 additional minute to give Margie a chance to wrap up her comments. Margie-"Thank you. The point I'm trying to make is that when it went to be voted on, the former City Attorney said, "No, we can't do it that way. You have to approve it without a lot and come back in phases." To the Planning Board for review. Which means, that when the public hearings, which means the public wouldn't have a chance to contribute their, what they had to say. It could come back, they said, if there were material changes. Well there were significant material changes. There was not phases. When they approved Phase 1, they had final approval, they recorded it and then they came back and added a lot saying that it was part of Phase 1. When they approved Phase 2, it was recorded, final approval. They came back and said here's another lot that is Phase 2. So they are adding these lots. Thank you."

Mayor Knutson then reminds the Commission the motion that is on the table, to approve both the final plat of Ridgewater Subdivision Phase 4 and the Subdivision Improvement Agreement in the amount of \$68, 048.06 with the attachment "B" within the agreement removed and the wording changed to reflect that that is in fact in attachment "A". Mayor Knutson then asked if there were any additional Commission Discussion. Commissioner Southerland asked if there were any truth to what these people have brought forward. Do we have the facts to show that this has followed the right process? City Manager Shrives answered that the history he has read, the motion that occurred on May 2nd, was to accept Cougar Ridge Subdivision and all the items, in Item Five on the Agenda, which was Master Plan Phase 1, the Zone Change first reading of Ordinance No. 617, Annexation Resolution No. 892, including Conditions 1 through 47, and Conditions 48, not to use 15th Avenue as an access, and Condition 51 amended to remediate a the lead condition if necessary. The motion was seconded. It was passed and approved. The discussion about the previous City Attorney making the comment about the material and the phasing, in the minutes of that meeting it says,

City Attorney James Raymond stated that condition 49 as recommended by the CCPB requires the developer to bring each phase back to the CCPB for review. The way the code is currently comprehended and states that they have to have a master plan and present the phases for approval by

Council. If in subsequent phases there is a material change to the what is comprehended in the master plan as presented and approved today, then in that event they have to back to the CCPB to get approval as to that individual phase. He agrees that it is a liability problem for the City if we don't follow our own rules. However, the way condition 49 reads is that each individual phase goes back to the CCPB for review, which is the motion that was made. Our own rulebook says it goes back to the CCPB only if there is a material change. Perhaps the answer is to defining materiality here and what makes a material change that will require it to go back to the CCPB. If it is going to conform with the master plan, in each phase, exactly as in the master is approved tonight then there is no reason to go back to the CCPB, but if there is any change, perhaps that's the reason, rather than adopting this condition that says they need to go back to the CCPB for review regardless.

That is the condition that was removed from the motion that removed it from having to go back to the City County Planning Board for each phase. There's a lot of information. We are talking 2005 and it is long past appeal time. There is normally a 30 day period to file an appeal in a decision like this. So, City Manager Shrives commented that he was not going to say that the facts that we heard tonight are wrong, but we can't deal with those facts because we cannot appeal those facts anymore. **Murat Kalinyaparak**-“Is that a legal opinion?” City Manager Shrives answered him, “No, it's not a legal opinion.” **Murat Kalinyaparak**-“So where's the legal opinion?” City Manager Shrives stated that that is the answer. Mayor Knutson clarified that the Master Plan was approved, and if any of these phases came in, reflect and fall within the Master Plan then it only has to come to the City Commission. City Manager Shrives answered that was the way the motion read. Mayor Knutson further stated that what she understands is that this phase reflects the Master Plan. It is two commercial lots. Mr. Mulcahy answered that she is correct. Previous phases to the east and west were approved. Phase 4 will fill in the lots in between. The previous phases were approved in this same way. Mayor Knutson asked Mr. Mulcahy about the title report not reflecting the correct information. Mr. Mulcahy answered that as far as he knows the title report it correct. It covers the property, the owners, the liens which were required to get consent from individual lien holders, and it did get consent of plat from Glacier Bank for the two liens. It references Ridgewater Phase 4 Subdivision. Dennis Duty requests permission to address the Commission. Mayor Knutson allows his comment on the ground that he may be able to shed some additional information that will help with this item. The Commission agreed that Mr. Duty should be permitted to address the Commission. **Dennis Duty**-“Well, this discussion has come up every time. I think many of you have been here for these past platting. The Master Plan was approved. We've been told over and over again, if you go back through the minutes, that a substantial change was increase in the density. If we increased the amount of density in the Master Plan that was a substantial change basically shifting where the lots exactly where and how the road went exactly is not a substantial change. So, we have less density than was originally approved in the Master Plan. So, this has not been a substantial change according to what we've been told has been put in the record. Just so we're clear.” **Murat Kalinyaparak**-“Excuse me Mayor, I would like to speak as a rebuttal according to the Roberts Rules of Order if nobody else is waiting for a first round of speaking.” Mayor Knutson-“I'm sorry but I think we are going to move forward. Your point that you've made, you've made some good points and we have talked, discussed those with us.” **Murat Kalinyaparak**-“I think I have a right to rebuttal a comment.” Mayor Knutson-“I would like to ask the Commission do you agree that we should allow a rebuttal or are you ready to move forward.” Commissioners-“Ready to move forward on a vote.” Mayor Knutson once again reviews the motion. There is a motion to approve Phase 4-2 commercial lots, they're in line with the additional phases 1, 2, and 3. We are looking to approve both the final plat of Ridgewater Commercial Subdivision

Phase 4, and the Subdivision Improvement Agreement in the amount of \$68,048.06 with attachment “B” removed and the wording corrected to reflect Attachment “A” fulfilling those obligations.

VOTE: Unanimous Motion carried

BOYS AND GIRLS CLUB 20/2000 AND VISION FOR FUTURE OF CLUB-presenting this agenda item are Aric Cooksley, Executive Director of the Boys and Girls Club and Linda Greenwood. Mr. Cooksley spoke first giving a history of the organization and what the club is about. The purpose of the Boys and Girls Club is built on three principles; 1). To build academic success 2). To improve and increase citizenship in our youth 3). To teach and improve healthy lifestyles within the youth of our community. Some of the things currently doing, this summer we implemented a program called Summer Brain Game. Kids can lose up to 2-3 months of retention. Nationally this game was implemented and children weren't experiencing any retention loss. So, this summer Polson implemented the program. Also there have been clubs implemented within the club, i.e.-a photography club, a fishing club is being taught by a member of the Staff. During the school year we have Power Hour, which helps in tutoring children and helping them to be successful. Where we want to be in the future is beginning a College Prep Program. This is a program that engages high school children. This program guarantees two things: 100% graduation of children who participate and 100% are getting college acceptance. Those kinds of standards and goals are what are driving the club in every area. We are beginning a State program called Smart Moves. This program encourages healthy lifestyle choices and teaches about prescription drug use/abuse. We are working with the University of Montana about education/research on obesity prevention and diabetes prevention. This will be a 6 month program, with the University representatives coming in 3 times a week, and working on high energy activities, nutrition education, working with the families too. Linda Greenwood introduced the “Open the Door to the Future” 20/2000 program. This is a program that has 2,000 families throughout Lake County that donate \$20.00 per month to ensure that funds are coming in. This would be a sustainable resource. This would be a do-able amount to donate. The Boys and Girls Club is asking each member of the City Council to consider donating \$20.00 of their monthly check. This would set an example for the City employees and the Community. The Lake County Commissioners have donated \$15,000.00 and many County employees do this payroll deduction. We will be visiting with the business and major corporations in the area as well as the individual asking them to join this program. The more people involved, the more we are helping the kids, and sustaining the Club for a long time. Commissioner Campbell asked about the membership fee for the children. Mr. Cooksley answered that currently there are two options: pay \$50.00 per year per child or pay \$5.00 per month per child. If this is not possible, there is a small scholarship program available. The hours are 3:30-7:00 p.m. during the school year and Noon-6:00 p.m. during the summer and school breaks.

PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC NOT ON THE AGENDA- Murat Kalinyaprak-“I appreciate Mayor’s giving public extra time tonight. As you can see we are really trying to help you with positive improvements to the process and also to the government in general. This three minute rule goes back to 2005. It was really the previous City Attorney’s doing. He admitted himself that this is very rare for this size town to have a three minute rule, especially when the Council has the discretion to set a time limit if there’s a big crowd that shows up some night. You can make a motion at the beginning to say we are going to limit. For a while, a couple years, this Council did not enforce this three minute rule. Nobody abused it. Somebody putting their effort and time into trying to help this government, and if they want to talk for four minutes or five instead of three it’s not really excessive. Otherwise, people get resentful. This three minute rule is actually to encourage public participation. People may be encouraged to participate on every single agenda item, they may start speaking slow and take their three minutes on each item and they can tag team. Let’s go back to the good friendly ways of communicating with the public and allowing them to participate. Otherwise it just gets into all those kind of games. This clock really doesn’t fulfill the function of giving people a clue as to how much time they have left. The last vote of this Council was not to enforce this three minute rule and then some day the Mayor showed up with a clock PDA. The City was donated a clock. So, anyway,

that's my suggestion and personally a citizen told me that the last time, when I was cut off, that he was curious about what I was going to say next. The other comment that I have is I really find it sad that when a citizen points out to you, that the agenda packet in front of you, the lot numbers in the Title Insurance and the lot numbers on the plat map, and on the phasing documents, you know we got encouraged when a Councilman/Mayor asked a question, "well is that true?" and the guys says, "as far as I can see." Come on can't you guys read? It says 10, 11, 12, 16, 19C. I know it by memory. This plat phase is for 13 and 14C. You are bad actors, I am sorry, you are bad actors. Don't even pretend, just pass it."

Mayor Knutson asked for a motion to adjourn. Commissioner Morrison motioned to adjourn. Commissioner Southerland second. Vote: Unanimous Motion carried

ADJOURN 8:18 p.m.

Mayor Knutson

Mayor Knutson

ATTEST:

Cora E. Pritt, City Clerk