

**POLSON CITY COMMISSION MEETING MINUTES
CITY HALL – CITY COMMISSION CHAMBERS
MONDAY OCTOBER 15, 2012, 7:00 PM**

ATTENDANCE: City Commissioners: Todd Erickson, John Campbell, Stephen Turner, Mike Lies, Dan Morrison, Fred Funke and Mayor Pat DeVries presiding. City Manager Todd Crossett, City Attorney James Raymond, City Treasurer Bonnie Manicke, City Clerk Cindy Dooley, and Police Chief Wade Nash present. Others present (that signed in): Rory Horning, Andrew Speer, Paul London, Skyla London, Irene Marchello, Lou Marchello, Elsa Duford, Rick LaPiana, and Heather Knutson.

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

APPROVAL OF PROPOSED AGENDA: Commissioner Morrison moved to approve the proposed agenda, seconded by Commissioner Lies. Commission discussion: None. Public discussion: None. Motion carried unanimously.

CONSENT AGENDA:

A. SEPTEMBER 29 – OCTOBER 11 CLAIMS

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

COMMISSION MEETING MINUTES OCTOBER 1, 2012: Commissioner Lies moved to approve the City Commission meeting minutes of October 1, 2012, seconded by Commissioner Turner. Commission discussion: None. Public discussion: None. Commissioners Erickson, Turner, Lies and Funke voted aye. Commissioners Campbell and Morrison abstained. Motion carried.

CITY MANAGER COMMENTS:

City Manager Crossett said that Joan Hart, the police and court clerk for the City was given the “Criminal Justice Professional of the Year” award by Lake County DOVES (Domestic Violence Education & Services). He offered congratulations and a round of applause followed. Also, Polson Law enforcement was involved in a rescue several weeks ago from the Flathead River that ended well.

The Parks department is finishing up on the Boettcher Park playground upgrade. There have been numerous groundwater issues which have caused the playground to have to be raised, but the drainage will be much better.

There is no date set for the warranty work on Main Street, but it should be fairly soon.

City Manager Crossett said the Bay Club golf course restaurant is closed for the season. Final numbers will be pulled together and he is working with the Golf Board and Roger Wallace to propose a plan to improve the operation for next year.

The DEQ test hole project is finished. It went very well; the holes are hardly visible. There were only minor interruptions and it finished very quickly.

City Manager Crossett attended the ICMA (International City/County Management Association) conference recently. There was a lot of conversation on economic development. From presentations, City

Manager Crossett surmised that cities are going to be asked to do more as the Federal and State governments cut back. Paradigms are changing – the markets, the way we do business, the way we make a living and transportation to name a few. Communities that understand this change and can adapt will fare much better. He said that economic development is a long-term proposition, so being able to look down the road and plan for the long-term will be a key to success. Engaging the public is important and the things that we are doing now are good.

City Manager Crossett had an idea from the Great Falls City Manager for handling the agenda. In Great Falls, the commission meets the week prior to the City Commission meeting to specifically look at setting the agenda. For example, items can be looked at for placement on the agenda, or whether to gather more information before putting an item on the agenda. The downside is it creates an extra meeting, but the upside is that it gives the Commission more opportunity to set the agenda and set the priorities.

NEW BUSINESS

APPROVE RESOLUTION #1034 TO LEVY AND ASSESS FISCAL YEAR 2012-2013 ANNUAL ASSESSMENTS: City Treasurer Bonnie Manicke presented Resolution #1034 which sets the special assessments that will be placed on tax bills for tax year 2012. Special Improvement District #42 commonly known as the “Streetscape” will assess 58 property owners (the same as 2011) for a total of \$69,064.01. This is used to pay the principal and interest on debt used in the streetscape project. Street Light Maintenance District #19 is a residential lighting district. The assessment has been decreased to \$14,078.21. This annual assessment level should provide adequate revenue for the next three to five years as Mission Valley Power has not increased their rate in this district in the last three years. The next assessment is the Street Light Maintenance District #20 which is a commercial lighting district which serves the downtown area. The assessment for tax year 2012 is \$4,871.36. This maintenance district is supported 40% by property owners directly and 60% by the City’s General Fund. There is an increase of \$1,000 in the assessment this year, \$400 of which will come from the 99 property owner assessments and \$600 from the City’s General Fund. The new decorative lighting is metered by Mission Valley Power rather than by a set charge per light fixture. The average metered fee per month is \$942.88 which is a \$143.38 increase. The lighting is on a photo-ray setting so the fee does fluctuate between the winter and summer months. There have been seven decorative light bulb fixtures that have been replaced due to burn out. Two of the bulbs were under warranty, but the rest are being replaced at a cost of \$29.46 each. The streetscape fund raising committee was notified about the short life of the bulbs and the expense to replace them. The next assessment is for noxious weed control in the amount of \$4,500. The City sent 27 certified letters to property owners notifying them of weed control maintenance needed on their property (there were 31 letters sent in the previous year so it is down slightly). If a letter is sent the property owner is assessed \$75 plus the cost of mowing the property if the City mows it. If a letter has to be sent for a second year, the assessment is \$150. The assessment increases in \$75 increments for each year a letter has to be sent. City Treasurer Manicke said the final assessment for tax year 2012 is the delinquent utility service accounts for water, sewer and storm water charges. There are a total of 13 accounts that will be assessed a total of \$3,222.81 on the 2012 real property tax bills. The grand total of the assessments is \$95,736.39 and assesses a total of 1,548 parcels. Mayor DeVries asked City Treasurer Manicke if the Christmas lights are also metered. She replied that the lights are placed on the older metal poles which have outlets and they are metered. These lights are part of the Light Maintenance District #20. **Commissioner Funke moved to approve Resolution #1034, seconded by Commissioner Lies.** Commission discussion: None. Public discussion: None. **Motion carried unanimously.**

APPROVE POLSON REDEVELOPMENT AGENCY (PRA) REPORT FOR FY12: Jules Clavadetscher, PRA member presented the report covering July 1, 2011 through June 30, 2012. He thanked City Clerk Cindy Dooley and City Treasurer Bonnie Manicke for assisting with the report. He cited 7-15-4237, MCA which requires this annual report by September 30th of each year. The report has been delayed in anticipation of getting more accurate tax revenue numbers for next year. The PRA obtained four appraisal reports on the Gambles building this past year with a value of about \$3,000. The Tax Increment District Fund currently has a fund balance of \$66,575.28. There are no long-term liabilities at June 30, 2012. The expenditures for FY12 totaled \$76,595.29 including the fees paid for the appraisals. The majority of the expenditures were for capital outlay to complete the trail and rip-rap at Sacajawea Park. Jules Clavadetscher reported that the anticipated tax revenue for FY13 is \$113,000. The report also includes a compilation report from City Clerk Dooley and a set of financial statements. Mayor DeVries asked if there were any other capital outlay projects this year. Mr. Clavadetscher replied that in previous years the PRA had helped fund the stairs at Riverside Park and contributed to the Streetscape project, but the trail at Sacajawea was the only project this past year. **Commissioner Morrison moved to approve the PRA report for FY12, seconded by Commissioner Erickson.** Commission discussion: Commissioner Erickson asked what the sunset date is for the Tax Increment Financing District (TIFD). Mr. Clavadetscher said that TIFDs can run for 15 years. In this case, the start date of the district is somewhat convoluted and that will need to be decided by an attorney. Based on the base year for the district of tax year 2002, the final year for the TIFD would be 2017. Lee Manicke said that there is some conflicting information between the financial statement reports and the narrative presented by Mr. Clavadetscher. There are accounts payable liabilities of \$525 and the appraisal costs totaled \$2,580. One of the appraisals for \$525 was done by an individual who was not qualified to do the appraisal and he thought that appraisal was not paid for. The expenditures were not broken down fully so Mr. Manicke supplied his figures: Black Mountain Software tax increment program fee \$1,030; Gambles appraisals \$2,580; Sacajawea Park trail \$72,460.00 broken down as \$19,185 to Hu Beaver for Sea Wall construction and \$49,815 to Hu Beaver for walkway construction and \$3,460 for miscellaneous construction expenses. The miscellaneous expenses included a working lunch of \$59.72 from Stageline Pizza. He did not know who attended the lunch or how many pizzas could be purchased for that amount. Lee Manicke said that \$113,000 of estimated income for the coming year is low based on his projection of \$130,874 based on last year's mill levy. He said by understating the income potential it doesn't show the true effect of the TIFD on the traditional taxing districts such as the County, Schools and City. He feels that anyone reading this report is not fully informed. He said that everyone should carefully read City Clerk Dooley's compilation report and understand what she is saying. He is recommending that the report should not be approved. Mayor DeVries asked City Clerk Dooley about her report. She said that the letter is a standard compilation report and reports on the actual figures from the prior year. She said that the \$113,000 projection of FY13 income was arrived at from the budgeted figure of \$100,000 plus the \$13,000 of personal property tax reimbursement that the TIFD will receive. She commented that she had received final figures from DOR today that showed the estimated tax revenue at about \$130,000. Commissioner Campbell said he felt the number should be estimated lower rather than higher and Mr. Clavadetscher agreed based on the experiences with the district over the last several years. City Manager Crossett addressed the working lunch that was provided. He said that the trail was done by City crews at a significant savings, as only materials had to be purchased. The Parks department crew assisted the Streets department to lay asphalt. Approximately three large pizzas were purchased because the crews could not leave for lunch while laying the hot asphalt. Murat Kalinyaprak said that the Chair should acknowledge the information provided by Lee Manicke and he then thanked Mr. Manicke. Lee Manicke said that the Personnel Policy manual should be consulted on whether it is appropriate to buy lunch for City employees when they are working in town. **Motion carried unanimously.**

APPROVE RECOMMENDATION FROM PRA TO HIRE A BOND ATTORNEY USING TAX INCREMENT FINANCING FUNDS: PRA member Jules Clavadetscher reported that on October 11th the PRA met and voted to recommend to the Commission the hiring of a bond attorney for reviewing the legality of potential PRA projects using TIFD funds and to write the bond resolution if appropriate for acquiring TIF bonds to pay for the projects. He commented that the reason a bond attorney is required instead of using the City Attorney's services is that it requires a great deal of expertise and licensing and that the bond counsel will have insurance to cover their work in this area. He has been told that bond counsel should write the bond resolution to approve a TIF bond as-well. He feels that in the future when projects are brought before the Commission and the means to pay for them, that the projects need to have been vetted as clearly and succinctly as possible. Commissioner Campbell asked if the same bond counsel would be used to review all the projects at the same time and Mr. Clavadetscher said that they would. City Attorney Raymond said that bond counsel is a separate function because the bonds are sold and require a particular set of expertise. Bob Murdoch has served as bond counsel for the City in the past. The PRA has a chicken and egg dilemma because it is unclear at this point whether some of the projects qualify for use of TIF funds but you can't get a bond resolution without knowing what projects are going to be done. This step would allow the bond attorney to look into the legality of the projects and make a determination as to whether the bond resolution could go forward. City Attorney Raymond asked Jules Clavadetscher to explain the potential projects and the problems. Mr. Clavadetscher said that the boardwalk project under the bridge would extend the boardwalk into the river which is Tribal waters. The Attorney General has stated that TIF funds can only be used for projects inside the TIF district. This project requires a legal opinion in regards to whether it is in the TIF district or not. This particular project is already slated to go before the Shoreline Protection board in November. City Manager Crossett said that there is a reasonable basis to believe that the project is appropriate because no municipality controls its navigable waters so it is within the parameters of the district. He said in most cities either the State, U.S. government or a utility owns the water rights. Commissioner Campbell said the issue that he sees is not the water rights, but the land under the water. If the boardwalk pilings are placed on Tribal land – that is the issue as he sees it; the water rights issue is still ongoing. City Manager Crossett said that the project is similar to building a dock. The property owner owns the dock but gets a permit to place it on tribal land. Commissioner Campbell said that in both cases City Manager Crossett mentioned that the Tribe owns the water and he pointed out that that is still in negotiations. Jules Clavadetscher said you can understand now why it is necessary to get a legal opinion as to whether the boardwalk is on TIF property or not. **Commissioner Morrison moved to authorize the City Manager to use PRA TIF funds to hire a bond attorney, seconded by Commissioner Turner.** Commission discussion: Commissioner Lies asked if the schools can pull out of the TIF district. Jules Clavadetscher said that under the current TIF laws the school cannot pull out their funding. If the laws are changed then "all bets are off". It is unclear whether there would be grandfather provisions for existing TIF districts, etc. He said the current issue is just to find out the legality of the proposed projects. Commissioner Lies said there has been discussion about the schools getting their share of the TIF money back and a legislative session is coming up. Mayor DeVries said that it would require a change in the law and it is her experience that the law would apply going forward and that it would not affect existing districts, but it does point out the need for an attorney.

Public discussion: City Treasurer Manicke explained that she has compiled some financial data to share with the Mayor, PRA and Commission. She said over the years the City has participated in general obligation bonds, revenue bonds and special improvement bonds which ranged in amount from \$40,000 to \$1.6 million. Tax increment bonds would be new to the City and it requires an analytic review. The tax increment district has only received revenue for the past three years – a balloon payment in 2009 and

tax collections in 2010 and 2011. The revenue analysis is in the primary stages. City Treasurer Manicke said that TIF bonds are considered risk bonds. For example, the tax revenues could change in the district due to fee property becoming exempt or nonpayment of taxes due to the economy. The State of Montana Intercap loan program exempts TIF funding from their loan portfolio because of the risk involved with the bonds. She stated that the TIF district should establish a revolving fund based on 20% of the yearly TIF tax revenues. This revolving fund could be used by all properties in the district for improvements. Usually loans are made from the revolving fund with interest; therefore the revolving fund increases as the loans are paid back. A TIF bond of \$1 - \$1.5 million would use a major portion or maybe all of the yearly tax revenue to make the principle and interest payments on the debt. City Treasurer Manicke encouraged the Commission to obtain more information prior to engaging a bond attorney and spending the TIF district funds. She said that the TIF district funds are difficult to get as they reduce the amount of money that the cities, schools and county have to operate with. In the last legislative session, a bill was introduced to exclude school districts from TIF participation. It did not pass, but it was a slim margin of defeat. Mayor DeVries said that she did not think that by hiring the bond attorney that they would be looking at \$1.2 million in bonds. Jules Clavadetscher said there is no funding proposal at this time. The bond attorney is needed to look at the legality of the projects.

Lee Manicke said that it is well established that projects using TIF funds must be within the urban renewal area designated as blighted. Two of the projects, the fishing dock formally the Polson City dock and the walkway under the bridge, are not in the urban renewal district according to Mr. Manicke. He said the pertinent boundaries of the urban renewal area as described in the Polson Urban Renewal Plan are: Salish Point bounded on the north and west by Flathead Lake and the Central Business District bounded by the Flathead River on the west. This indicates that the boundaries are the water line. He further stated that the description does not include any mention of a boundary that extends over or under Flathead Lake or the Flathead River. He said that the Shoreline Protection along with the Confederated Salish & Kootenai tribes may grant the permit to build the boardwalk, but they do not have the authority to change the boundaries of the TIF district. Mr. Manicke said that there should be a project plan prepared that includes plans, drawings, specifications, cost estimates, time frames and all possible sources of funding in addition to TIF funds which includes private capital, grants, special improvement districts, etc. He said, according to the Montana Statutes the project plans must be presented to the planning board to determine if they are in line with the growth policy and then approved by the Commission. Prior projects including the Riverside stairs and the Sacajawea trail did not go to the Planning Board for their approval. He said that it should be made clear to the bond attorney that he is only determining the TIF boundaries and not working on the approval of a bond, it should not take a lot of effort to do that. He said that it is premature to hire a bond attorney and that a project plan should be presented first.

Elsa Duford asked if there is a proposed project that the public can look at. Jules Clavadetscher said that there are some drawings of the proposed boardwalk but it would be premature to make those available as the project has not been approved by the PRA or the Commission.

Rory Horning said he feels the question about the boardwalk and the TIF boundaries could be given to the Attorney General (AG) for a free opinion. He said the Commissioners can ask the AG for these types of opinions. He said that if the Commission does decide to get a bond attorney that he/she not be placed on retainer. He/She should be paid a fee for the service of looking at the TIF boundaries. He reminded the Commission that this is their "neighbor's money" that is being used to pay this.

Commissioner Lies and Commissioner Campbell stated that perhaps this motion would be putting the cart in front of the horse. Commissioner Campbell said that when the projects are proposed that this motion would be part of the proposal. Jules Clavadetscher said this is the dilemma as City Attorney Raymond said with the chicken and the egg – which do you do first. It is difficult to propose a project if you don't know that it is legally feasible. The PRA would like to have the legality resolved before they propose a project. Commissioner Morrison said that made sense to him.

Mayor DeVries said she is familiar with bond attorneys and is confused as to why we need the bond attorney to answer the question of whether the projects are legal. City Attorney Raymond clarified that it is the bonding that needs the legal clarification. The projects will need bonds to be done and it needs to be determined if TIF bonds can be used for the projects. He said that his opinion and the AG's opinion are not important – it is only the bond attorney's opinion that counts when bonds are being issued. Mayor DeVries asked if there have been discussions with the bond attorney and what the fee structure would be. City Manager Crossett said there are some preliminary numbers. The contract could be setup as a staged contract which would have estimated hours for certain phases and then decision points where the Commission decides whether to proceed further. Mayor DeVries asked if we would go to the same bond attorney or use a different bond attorney – we have used others in the past. City Manager Crossett said the threshold for an RFQ (request for qualifications) is \$25,000 but the City could opt to go thru the RFQ process or to simply solicit interested parties outside of a formal RFQ. Jules Clavadetscher said the \$5,000 - \$10,000 amount that was mentioned in the agenda item was based on information from City Treasurer Manicke and City Clerk Dooley. He said he has not talked to any bond attorneys about cost so he is not sure how valid that number is. City Manager Crossett said that he thought \$10,000 would be roughly what it would cost to go through the entire bonding process. He feels that the initial cost would be far less than this. City Treasurer Manicke said that when she has worked with bond attorneys in the past that she has a firm project and that the Commission needs to analyze this more before expending the money. Elsa Duford said that City Treasurer Manicke's comments make sense to her.

Commissioner Erickson said it appears that there are no projects at this time that would require a bond attorney. City Attorney Raymond clarified that there are potential projects moving forward that are going to Shoreline Protection and the bond attorney is needed to look at the TIF funding source. City Treasurer Manicke commented that she has never used a bond attorney to decide metes and bounds, which is what is being done here. She is not sure that a bond attorney would have the background to do that – he/she only does the bond resolution paperwork.

Lee Manicke said that the boardwalk project needs more analysis. He said the City has an agreement with BenEricka LLC (who own the Salish building property and dock) that grants a license to the City for public use of the walking path over and across the BenEricka property. The license can be terminated by BenEricka, its successors or assigns if the City does not maintain, repair or replace as necessary, the walk path over and across their property for the next five years. He said it is unclear what if any agreement has been made after the five years is up. If BenEricka decides to sell the property or decides not to honor the agreement after five years, there is the possibility that there could be a walkway on both sides with no access across the Salish property according to Mr. Manicke. Lee Manicke said there are many things that need to be looked at with the whole project before hiring a bond attorney. He feels the project should be presented to the Planning Board and let them sign off on it. The Sacajawea walk path was approximately \$185 to \$450 per front foot which would make the walk way under the bridge about \$380,000. He said that you can currently walk across the highway. He feels that the money could be spent on other projects that would do a lot more good. City Manager Crossett said that in regards to the agreement with BenEricka LLC that the agreement can be cancelled if the City does not maintain the path. If the City

does maintain the path then BenEricka cannot cancel the agreement. He feels that the contract provides for the right-to-use and this would not be an issue for the boardwalk project and that the salient discussion is whether it is the best project to carry out the stated goals of the TIF relative to other potential projects. Lee Manicke said the contract states that it is for a period of five (5) years and that there is nothing in the contract that extends the agreement.

City Treasurer Manicke said that the Streetscape project which was a \$1.5 million project started in 2006 when Lou Marchello was Mayor. There was a committee that worked under the PRA to bring the project to a conclusion in 2010. It took awhile to find the offsetting funds for the project including the \$750,000 and the SID bonds. She said that this project is trying to be pushed through with very little information – it may be a good project, but this is not the proper time to be hiring a bond attorney.

Commissioner Turner asked if we are hiring the bond attorney right away. Mayor DeVries responded that this is what we would be doing – hiring the bond attorney now. Jules Clavadetscher said it probably would not happen before the Shoreline Protection Board makes its decision. Mr. Clavadetscher emphasized that a project has not been approved by the PRA and he wants to make sure the project is legal before presenting anything to the Commission. He would like to be able to address the concerns expressed regarding tribal property and upcoming legislation with the PRA before he asks the Commission to make a decision. Mayor DeVries commented that if it will be over a month before we need to look at hiring the bond attorney that we don't need to pass the motion now. Mr. Clavadetscher replied that he would like to give the City Manager the authorization now and then if there are questions concerning the hiring of the bond attorney those can be directed to City Manager Crossett.

Rory Horning said the agenda item is not clear. The agenda item says that the Commission is approving hiring a bond attorney. He said that as written, this gives the City Manager a blank check, there is no budget set for the amount to spend. He further stated that if the Commission does not know for sure what they are doing they should not be doing this.

Commissioners Funke, Morrison, Turner, and Erickson voted aye. Commissioners Lies and Campbell voted nay. Motion carried.

APPROVE AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT: City Attorney Raymond said this is basically a housekeeping issue. He explained that at the time City Manager Crossett was hired he had to decide whether to participate in the Public Employees Retirement System (PERS) or opt out and receive the City's retirement contribution directly which is available to certain types of municipal employees. He said the contract should have contained language to allow payment of the City's portion of PERS directly to City Manager Crossett if he elected out of PERS. He said this is a common outcome for city managers as they move around periodically. He said this amount was paid to City Manager Crossett from June 15, 2009 through May 31, 2011. He stated that for some reason the payment was discontinued starting in June, 2011 and was not noticed by City Manager Crossett. He said he is not sure if the Auditor or City Clerk Dooley caught it and they questioned City Attorney Raymond about why the amount was not included in the City Manager's contract. He said that he (City Attorney Raymond) was not aware of it. City Attorney Raymond said this amendment clears that up by adding subparagraph B to section 7 which reads: "In the event Employee elects not to participate in the Public Employees Retirement System, then and in that event City shall pay over to Employee a sum equal to the City's PERS employer contribution which is 7.07% of gross salary monthly." Commissioner Campbell asked if subparagraph A was also being added. City Attorney Raymond said subparagraph A is already in the employment agreement. Mayor DeVries said she contacted Aggi Loeser who was the City Clerk at

the time to get her recollection of this matter at the time City Manager Crossett was hired and Ms. Loeser said that she explicitly remembers going through the numbers with City Manager Crossett and giving him these options. Mayor DeVries said he has received the pay for quite some time. Commissioner Campbell asked whether we follow the contract. City Attorney Raymond said it was not in the contract because he did not know about it. He further stated that it should have been caught when the June, 2011 contract was done, but again he did not know about it. Commissioner Campbell said that if it was not in the contract, it should not have been paid. Commissioner Lies said the contract states he could either take PERS or reject it and if he rejected it the sum would go away. City Manager Crossett said that when he was recruited it was advertised that the position included retirement. He said when the contract was negotiated the MCA allowed for City Managers to opt out of PERS and receive the retirement contribution directly which he did. He said the City Managers Association has its own retirement that City Managers can contribute to so he decided to take the payment in cash, pay the taxes and then invest it which seemed more secure to him. He said that he would not have chosen to just not take any retirement. He said that the net gain for the Commission is that if they decide to cancel it they gain that money for the City, but the downside for him is that he is giving up retirement which was part of the deal when he was hired. Commissioner Campbell said he has not seen anything that was ever handed to him that gives the City Manager this payment and asked if anyone else had received anything. Mayor DeVries said that the payment was made to City Manager Crossett for almost two years. Commissioner Campbell agreed that that was the only evidence they do have. Mayor DeVries also reminded Commissioner Campbell that she had the information from former City Clerk Loeser. Commissioner Campbell said we have contracts and we have city council meetings – can we trace that back to where this was approved. Mayor DeVries said that it was included in the budget for two years and approved by the Council. Commissioner Campbell said that payroll information is often not broken down in the budget. Commissioner Campbell said that in the amendment language Section 7.B. contradicts Section 7.A. Commissioner Campbell said Section 7.A. states that the City Manager retirement benefits shall be the same as other employees and as far as he knows all other city employees must participate in PERS – they do not have the option to not participate. He said all other City employees do not get 7.07% added to their paycheck; they get 7% deducted from their paycheck. The City does contribute 7.07% to PERS for the employee but the employee must contribute approximately that same amount which puts the employee in a position of investing in his/her own retirement system. He said that this payment to City Manager Crossett is not a contribution to a retirement plan; it is a 7% raise. He further stated that this puts City Manager Crossett in a position outside of every other City employee. Commissioner Campbell said this amendment basically says that the City will calculate 7.07% of his gross salary and give it to the City Manager and he does not have to invest it in a retirement plan. He said that if Section 7.B. is eliminated and Section 7.A. remains that would be fair to all the City employees. Mayor DeVries said that it is not the same as other employees because the other employees do not have the option to not participate in PERS, but the City Manager does have the option as part of State law. Commissioner Campbell said that from his point of view Section 7.A. says that the City wants to offer him the same opportunity that other employees have, but then in Section 7.B. the City wants to offer him something special – a 7.07% raise on top of the 3.2% COLA that was recently given. Commissioner Funke said we should stick with the contract that we have. Commissioner Lies said that money that is budgeted for PERS cannot just be moved or set aside and then paid to an employee as salary. Commissioner Campbell said that he would be fine with paying the 7.07% to the PERS if City Manager Crossett decided to participate in PERS, and then City Manager Crossett would pay in his 7% to the system. He said this would help the other employees as-well because the PERS is in dire need of contributors. He reiterated his comment that this is a 7% raise. City Manager Crossett said that the decision to opt out of PERS was a one-time decision and cannot be changed now and he had made that decision under the assumption the City would honor its commitment. Commissioner Lies asked who made the decision to pay it out.

Commissioner Campbell said that he has been here during City Manager Crossett's tenure and he did not know about it. He asked Mayor DeVries if she knew about it. Mayor DeVries said she did not know anything about this until two weeks ago, but she had a different view of it since she has talked to former City Clerk Loeser and the fact that City Manager Crossett was paid the amount for almost two years. She said the Commission must have approved it and that must have been the agreement when he was hired. She said that it is unusual for an employee to be able to opt out of PERS but it is allowed by State law for certain employees. City Attorney Raymond said it is in the ARM (Administrative Rules of Montana) but he did not bring it with him. Mayor DeVries said when City Manager Crossett was hired he was told he could opt out of PERS and get the 7.07% and that is what happened for almost two years. She further stated that it was then stopped by one employee without telling anyone else that was happening. Commissioner Campbell asked if it was stopped because it was not in the June, 2011 contract. City Attorney Raymond said it is unclear if it was stopped because it was not in the contract or if there was a glitch in the software. City Clerk Dooley clarified that the payment was stopped because it was interpreted by that individual to not be in the contract. Mayor DeVries said this individual did not check it with anyone else and thinks "fair is fair". Commissioner Lies said that this payment was put into play without a motion, without a vote and without anyone knowing about it. He said that he was here when City Manager Crossett was hired and he just found out about it. Mayor DeVries said the contract was approved. Commissioner Lies said the contract states that the City Manager can opt out and that is what he did, it does not say anything about increasing his salary \$400 plus a month. City Manager Crossett said that it was seen by former City Clerk Loeser as an administrative decision as the cost to the City would be the same either way. He said the City was going to pay 7.07% into PERS or it was going to pay 7.07% directly and the City Manager would put it into his own retirement, either way it was the same amount. He said he saw it as an administrative decision and he feels that former City Clerk Loeser also saw it as an administrative decision. **Commissioner Morrison moved to approve the amendment to the Polson City Manager employment agreement, seconded by Commissioner Turner.** Commission discussion: City Clerk Dooley said that this amendment will require a Budget Amendment if the amendment is approved. Commissioner Lies said that the money will come out of the reserve. Mayor DeVries said the information the Commission received shows the amount of retro-pay from June 2011 to June 2012 is \$5,807.88 and the fiscal year 2012 payments total \$5,825.61. Commissioner Campbell asked how much has been paid to City Manager Crossett without it being in his contract. Mayor DeVries said it was approximately the same amount as what we would be paying now – about \$11,500. City Manager Crossett said it was same amount that would have been paid into PERS. Mayor DeVries said that if the City had been paying the amount into PERS the City would not have paid employment taxes on that amount since it would go directly to PERS which she estimated amounts to about \$1,000 for those two years that it was paid. City Manager Crossett agreed with that statement.

Public discussion: Ken Avison asked if there is interest due and owing on the amount as-well. Mayor DeVries said this has not even been discussed. City Manager Crossett said he was not interested in collecting interest on the amount. Mayor DeVries said the sad part about this is it should have been dealt with in June 2011 not now; and how that did not happen is mind-boggling to her. Commissioner Lies said that it should have been clarified in 2009. Mayor DeVries said that former City Clerk Loeser had numbers that she presented to City Manager Crossett but those numbers cannot be found, but she felt the representatives of the City did offer him something. Ken Avison said he did not mean his statement frivolously as he has dealt with PERS and teachers retirement and he is wondering how this will shake out. Mayor DeVries said that we have not looked into what would happen if City Manager Crossett were to go back and opt into PERS from day one. She said the City would owe a lot of money, if this is a possibility.

Police Chief Nash said that in Montana verbal contracts are binding. He said this is the first he has heard about this issue and is wondering what liability the City would have if a civil attorney is hired to sue for the verbal contract. Mayor DeVries said the fact that he was paid for almost two full years indicates to her that there was an agreement with the City Manager. Commissioner Campbell said it is also an indication that the Commission did not know it was being paid. Commissioner Campbell said the City should go by the contract. He said everyone goes by a contract except apparently the City of Polson. Murat Kalinyaprak said that even a verbal contract can be invalid if the party does not have authority to enter into the contract. He said that whoever agreed with him to enter into this payment did not have the capacity to enter into this contract. In his opinion the City Manager must either pay back the amount that has been illegally paid to him or the City should pay those funds to PERS. Commissioner Campbell said that the City uses written contracts so why do we need verbal contracts; whatever was said verbally should have been in the written contract. Commissioner Campbell said this has been missed on numerous contracts. He said this contract was signed by City Manager Crossett and the City and it was what was agreed to. Commissioner Campbell said we cannot base our decisions on something that is unknown – we need to go by the contract.

Commissioner Morrison said that the payment was made for two years. Commissioner Campbell asked Commissioner Morrison if he knew about the payment. Commissioner Morrison said he did not know about the payment until today. Commissioner Lies said if no one knew that the payment was being made, then something must be wrong somewhere. Commissioner Funke said it is important to stay with the contract – what good is a contract if you don't follow it. Commissioner Campbell asked if this would apply to other contract workers such as the City Attorney and Golf Pro. Mayor DeVries said that the City Manager is an employee with a contract. The City Attorney and Golf Pro are subcontractors and this would not apply to them. Mayor DeVries asked Commissioner Erickson for his thoughts since he deals with employment issues each day. Commissioner Erickson said that many good points had been raised and that he felt the intent of the contract should be honored – meaning that the contribution should be made to PERS. He said that he does not know the mechanics of the agreement at that time and why it was missed. Mayor DeVries asked if City Clerk Dooley had the old contract available as she was concerned that the language may be different. City Clerk Dooley gave the Mayor the contract to review and it does say the same language as is stated in Section 7.A. of the amendment.

City Manager Crossett posed a question to the Commission asking them - why would he give up a retirement package voluntarily without having been presented with another way to receive that benefit when he has a family to care for. Commissioner Campbell said this is two different things – the PERS would take 7% out of the City Manager's paycheck and the amendment would put 7.07% in the City Manager's paycheck. City Manager Crossett said this was not accurate because the State Law requires municipalities to contribute to PERS, so this is the City's share that is at issue and not the employee's share. He said the Commission would be saving the City's 7.07% share on his expense and that is the decision that the Commission needs to make. Commissioner Campbell said that the City is offering City Manager Crossett the same package that other City employees get. City Manager Crossett said that he can't opt in to PERS now – it was a one-time decision. Commissioner Campbell said he should check into this because he thinks that you may be able to start it at this point as a city employee but you wouldn't be eligible for back pay into the plan. City Attorney Raymond said he did not look into this but he said there is rule that states it is a one-time option but there could be exceptions to that rule. Commissioner Lies said that it might be able to be done, because Fire Chief Fairchild was switched over from another retirement plan that was in place of Social Security to PERS. Murat Kalinyaprak said that he was looking over the MCA codes just now and it says that the option to not take PERS has to be done in writing and he is wondering if that was done. City Manager Crossett said he did sign an agreement that former City

Clerk Loeser gave him and he is assuming that the Clerk's records are intact and have not been gotten rid of for any reason.

Commissioner Morrison said that a precedent was set when City Manager Crossett was paid this amount for two years. He said the City will be sued and that is ridiculous. Commissioner Campbell said that City Manager Crossett was actually being paid outside the contract. He said there was a mistake made somewhere and the council should not make another mistake. Commissioner Erickson asked if we now have enough information to make an intelligent decision about this. Mayor DeVries said that we probably don't have enough information. Commissioner Erickson suggested that the City Attorney should look into the exceptions that have been presented and the legality of what is being proposed. Mayor DeVries asked City Attorney Raymond if he understood the questions that were being raised, such as whether you can join PERS after opting out. City Attorney Raymond said the question of whether you can opt back in to PERS was not really the question here and that he will not give any legal advice on the record. Mayor DeVries then asked City Attorney Raymond - if the Commission wants advice on this matter if they have to get another attorney. City Attorney Raymond said no and he would be happy to give legal advice off the record.

Commissioner Turner asked why there is no paper trail. Mayor DeVries said that following her conversation with former City Clerk Loeser, (presently in the eastern U.S.) who indicated there was documentation showing the options, she went to City Clerk Dooley and asked her to look for it as it should be in the employee's file. She is not sure if we are missing an employee file, but City Clerk Dooley and the Payroll Clerk were unable to find any documentation. Commissioner Campbell said this presents a real problem. Mayor DeVries said that what we have is what was paid and former City Clerk Loeser's and City Manager Crossett's recollections which are identical. Mayor DeVries also contacted another Commissioner who was on the board at the time that City Manager Crossett was hired and he could not remember anything about it. Former Mayor Lou Marchello said that his recollection is that when City Manager Crossett was hired he had the option to take the 7.07% and that is why we let him do it. Commissioner Campbell asked Mr. Marchello why it was left out of his contract and Mr. Marchello did not know why. City Attorney Raymond said that if he had known about it, it would have been in the contract.

Heather Knutson said she wanted to caution the Commission about making a rash decision and that they should do a cost-benefit analysis on this based on the different outcomes that could come from this as one decision could cancel out the other. She said she has dealt with this in the business world on many occasions and that contracts can have loop-holes in them. She said she would appreciate this as a citizen. **Commissioner Morrison withdrew his motion and Commissioner Turner withdrew his second. Commissioner Erickson moved to table the agenda item, seconded by Commissioner Turner.** Commission discussion: None. Public discussion: Rory Horning said that as someone who has ongoing dialogues with the City government, that he hopes that the City will be able to produce documentation on issues that you have. He said it would be very disturbing to find out that the City's document keeping process is flawed. **Commissioners Erickson, Turner and Morrison voted aye. Commissioners Campbell, Lies and Funke voted nay. Mayor DeVries voted aye. Motion carried.** Mayor DeVries said this will provide time to get more information. City Attorney Raymond asked to be excused. Commissioner Campbell asked if the payment would not be paid while the agenda item is tabled. Mayor DeVries said that City Manager Crossett is not currently being paid the amount. City Attorney Raymond withdrew his request to be excused.

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

Lee Manicke said he would like to thank Commissioners Campbell and Lies for their comments and input.

Heather Knutson said she wanted to thank the Commission and the City employees for the time that they put in at the City. She said she had an opportunity recently to be involved in a meeting with Mayor DeVries, City Manager Crossett, Police Chief Nash and Parks Superintendent Karen Sargeant that could have been a very contentious meeting and she was very proud about how it was handled. She said the meeting was kept very calm, there was positive direction and everyone kept their eye on the ball on what was trying to be accomplished. She said the officials represented the City well. She said that she appreciates the time that the Commissioners take to be here, time spent away from their families, and the time spent going through paperwork and documentation. She said the decisions that the Commission must make are not easy and clearly the right answers are not always readily available, so she appreciates the time taken to do the research. She said that beyond reserving her right to agree or disagree with the decisions, she wants to thank the Commission for their time.

Murat Kalinyaprak said that he felt the City Attorney was not doing a good job.

Mayor DeVries closed the public meeting at 8:45 pm.

Executive Session on litigation: Mayor DeVries brought the executive session to order. The City Attorney discussed litigation issues with the Commission. **Mayor DeVries re-opened the meeting and adjourned.**

The meeting adjourned at 9:05 p.m.

Mayor Pat DeVries

Attest: Cindy Dooley, City Clerk

Attest: James Raymond, City Attorney