

**POLSON CITY COMMISSION MEETING MINUTES  
CITY HALL – CITY COMMISSION CHAMBERS  
MONDAY, OCTOBER 18, 2010, 7:00 P.M.**

**ATTENDANCE: Commissioners: Judy Preston, John Campbell, Mike Lies, Elsa Duford, Fred Funke, and Mayor Pat DeVries presiding. City Manager Todd Crossett present. City Attorney James Raymond absent. Others present: Ken Siler, Gayle Siemers, Murat Kalinyaprak, Becky Dupuis, Brandon Hanson, Ed McCurdy, Robin Wallace, Dave Devore, Jeff Key, Ron Boyce, Ric Smith**

**CALL TO ORDER: Mayor DeVries called the meeting to order and the Pledge of Allegiance was recited.**

**APPROVAL OF PROPOSED AGENDA: Commissioner Preston moved to approve the agenda as proposed, seconded by Commissioner Lies. The motion carried unanimously.**

**CONSENT AGENDA:**

- A. SPECIAL COMMISSION MEETING MINUTES SEPTEMBER 13, 2010**
- B. COMMISSION MEETING MINUTES OCTOBER 4, 2010**
- C. OCTOBER 1-15 CLAIMS**

**Commissioner Lies moved to approve the Consent Agenda items A-C with grammatical errors corrected on item A, seconded by Commissioner Campbell. The motion carried unanimously.**

**CITY MANAGER COMMENTS:** City Manager Crossett introduced Jeff Key the lead engineer on the Highway 93 corridor study and transportation plan. The City is working on both projects with the Tribes, Lake County, and MDOT.

On Tuesday the first three completed blocks (400, 500 and 600 blocks) of Main Street would be back open to traffic and pedestrians. The Northern two blocks, including the intersection at 4th would remain closed, with paving planned to be completed by the end of the week. There were serious safety concerns for pedestrians in the northern blocks as construction was being completed.

There would be a Skyline presentation the following night at the Baptist Church, with a question and answer session beginning at 5:00 p.m. and a Phase 1 final design presentation at 7:00 p.m. They were working diligently on the project and if they stayed on schedule they would be able to begin construction in spring, possibly finishing the project by December 2011.

City Manager Crossett, Commissioner Lies, and Mayor DeVries had attended the MLCT fall conference in Butte. There was a committee working on the medical marijuana law to propose legislation to make it more workable. Fiscally, the State of Montana was doing well in the current year; however they projected a budget shortfall of up to 400 million in the upcoming year.

He reviewed the profits and losses for the golf course restaurant and reported that it was slightly ahead of break even for the year. They would be closing at the end of October, and for the final couple weeks they were offering specials on food and drinks. The manager was currently the only employee, and she would be opening back up for special events and Christmas parties.

Senator Tester had visited on Friday October 15<sup>th</sup>. The Mayor and several City Commissioners and Department Heads were in attendance. City Manager Crossett thought the visit had gone well. He gave the Senator and his staff an overview of City infrastructure priorities and issues and thanked him for the support his office had provided the City in obtaining grants. Senator Tester had congratulated them, particularly on the Skyline project, which had been awarded in part upon collaboration between governmental entities.

**RESIGNATION – COMMISSIONER RON BOYCE WARD 1:** Mayor DeVries noted that Commissioner Boyce no longer resided within his Ward, and had turned in a letter of resignation from the position. **Commissioner Funke moved to approve the resignation of Commissioner Boyce, seconded by Commissioner Lies. The motion carried unanimously.** Mayor DeVries presented Ron Boyce with a plaque and thanked him for service on behalf of the City of Polson.

**HANDICAPPED PARKING & ACCESS:** **Commissioner Preston moved to table the agenda item until the presenter was able to attend, seconded by Commissioner Lies. The motion carried unanimously.**

**MAIN STREET SID ADDITIONAL FUNDING:** Gayle Siemers explained that they were here to follow up on the objections expressed at the September 13<sup>th</sup> special meeting in regards to the cost of the Main Street SID on property owners. He asked for direction from the Commission, and asked that they form a committee of 3-4 members of the Main Street district led by City Manager Crossett. Mayor DeVries noted that the original SID for Main Street had been \$1.5 million, but the City had used all CTEP funds, borrowed the next year's CTEP funds from the County, \$150,000 contributed by the county, and the TIF district funds of about \$90,000 which had brought the SID total down to 750,000. The City was in the grip of a cash flow problem, and she didn't know of any additional funds the City could contribute. She suggested that they could go before the PRA and request upcoming years' TIF district revenue; however they were in the process of looking into other projects. There was a group working on fundraising for Main Street, but she was under the impression they were working to raise money for items not included within the project already. Commissioner Duford inquired about Karen McMullen's fundraising efforts. Mayor DeVries confirmed that was the same group, and they were very positive and doing everything they could. City Manager Crossett advised that he understood their primary focus was to obtain the additional items not included within the project. Within the City's budget there were no additional funds. They could look at future TIF funds with the approval of the PRA and City Commission to perhaps pay off the bond early or reduce payments. Using additional TIF funds would take away from other project in the district. They could look into additional grant funding; however grants are not typically awarded to completed projects. Gayle Siemers asked the Commission to direct the City Manager to form a committee to find funding. He stressed that some people on Main Street would lose their property if relief was not found. Commissioner Duford expressed that she did not find it fair that residents of Main Street were charged the same as the businesses, since businesses were able to raise money with their property. Dave Devore commented that he had a great deal of linear footage on Main Street, however the square footage of his businesses were significantly less and he did not have as much ability to earn with his property. Gayle Siemers commented that people were struggling and the SID had been charged in a non-equitable way. Ed McCurdy questioned why only businesses that were adjacent to Main Street were included in the SID, and not the whole City.

He added that many of those who came before the Commission in favor of Streetscape were not property owners in the assessment. Mayor DeVries noted that after an SID was created and approved the assessments could not be changed. City Manager Crossett reviewed that the SID had been proposed and passed after it had been advertised and was not met by more than 50% opposition. He advised that if there were a committee to be formed he would work with them if they established objectives and worked together, realizing that there were no clear answers for finding alternate funding. Commissioner Preston inquired if Mr. Siemers had been involved with the fundraising committee that had been meeting every Thursday. Becky Dupuis commented that the fundraising committee was working for items that were not included in the cost of the project, she was not sure if they had plans to fundraise to lower the cost of the SID. She noted that when the SID passed the Streetscape committee had said they would make every effort to find any other funding to lessen the cost. She pointed out that they had accomplished something with getting for half of the project paid. She opined that if a group was formed they could talk about what would happen if a property owner couldn't pay. Ed McCurdy wondered if they could make special considerations for the residential property owners with no ability to make payments. Becky Dupuis advised that the prices could not be assessed differently; every foot of frontage had to be the same price. Mayor DeVries felt that properties could not be priced differently once the SID was in place. City Manager Crossett advised that the City had to remain impartial, and to raise funding for residential property owners they would have to work independently of the City. Becky Dupuis commented that there were many things to consider, including if the property was sold and the SID was paid through the sale, could that be used as a revolving door fund. Commissioner Campbell inquired about the difference of property tax between residential and business properties. Mayor DeVries noted that residential property had lower property tax, and age and occupancy could affect the taxes. However, there was no relief for SID payments. Dave Devore pointed that felt they needed to help all of those who were unable not to pay, not just residential properties. He added that any residential property could be converted to commercial. City Manager Crossett advised that any fundraising for individual properties would have to be done by a private group formed of their own volition. The City must treat all property owners the same. Ed McCurdy expressed that they were before the Commission for a call to action and the Commission to do something. He noted that they were not here to challenge the SID procedure, but to ask for help. Mayor DeVries expressed her agreement with City Manager Crossett. She suggested they talk to the PRA, adding that any funding the City gave would have to be the same for all properties. Gayle Siemers expressed that they were asking the Commission to direct City Manager Crossett to lead the group. Mayor DeVries responded that the things they wanted done in regards to the non-equitabilities of the Sid, could not be done by the City. Gayle Siemers commented that they had no money on Main Street and no opportunity to have a voice. If they did not form a committee on behalf of Main Street, it may lead to discontent. Becky Dupuis suggested that City Manager Crossett work with the group, with the legal help of City Attorney Raymond and explain exactly what the City could and could not do. City Manager Crossett noted that if they were to set up a group, they could invite him and he would be happy to attend as a participant and do his best to offer what assistance he could – though he gave no guarantees that he would be successful in coming up with a solution. Mayor DeVries added that she would also attend. She suggested they include both members who did and did not support the project. Becky Dupuis noted that the economy had changed a great deal since the SID was created two years ago. She didn't feel that the City put one over on anyone, everyone had notice to protest. They had approached the State for

funds; however they had responded that their funds were committed for the next 10 years. Gayle Siemers asked the Commissioner to go look back at January 27, 2008 when there were 25 letters in opposition to the project and only 2 in favor. He added that some people who pushed for Streetscape did not own property involved. Dave Devore commented that he had received mixed signals on the project. He said he had been told his property would not be affected, and now after construction he claimed he would have to pay thousands to replace his irrigation and put in a retaining wall. He questioned why they made 5<sup>th</sup> Avenue & 6<sup>th</sup> Avenue sidewalks different widths. He wondered why if the City could cause something negative for a property owner, like taking out their landscaping, why they couldn't do something positive. He commented that he thought they were going with consistency on the sidewalk, and he would be checking some things out with that. Murat Kalinyaprak commented that this would be a good time for the City Attorney to be at a meeting. He demeaned the City Attorney, commenting that they should "hire a more responsible person" who will sit in the meetings. The Mayor indicated that the City Attorney had contacted her prior to the meeting and had been excused. He further commented that there was a division in Polson, with some people trying to turn it into the Lake Tahoe of Montana. That it might hurt locals, but it would help rich people from outside the area to live in a beautiful place. He commented that he had heard unnamed Commissioners on record referring to people downtown as barflies, drunk cowboys, and low incomes. He did not know who could be done, and felt bad for those who had spoke against the project. Commissioner Duford wondered if there was any way for the already formed group to switch gears to raise money for those who could not pay. She got the impression that Karen McMullen was supportive of that. Mayor DeVries noted that there were many open meetings. She wondered if maybe Mr. Siemers would be willing to start the group. Gayle Siemers responded that he was asking the Commission to direct the City Manager to help them. Mayor DeVries replied that they would participate in a productive group, but she felt that they needed to form the group independently. Commissioner Preston commented that she would like to see solidarity from the committee and as a citizen should like to be positively involved in the group. Gayle Siemers commented that when he served on the hospital board they had asked each member to give a donation. He asked each of the Commissioners to donate \$5,000 to the project. He felt that was fair, adding that he would be calling them each individually to ask for their donation. Becky Dupuis wondered if, despite the Streetscape committee being denied, the City requested funds from the State they may be more likely to receive funds. Mayor DeVries commented that they had contacted the state. She noted that the City had already used up the Sidewalk Loan fund on the project. Gayle Siemers commented that his sidewalk that was replaced was new. Mayor DeVries commented that they were doing what was best for the City. Rick Smith directed attention to the code of conduct the Commission had adopted, and asked the Commission to enforce it, adding that the comments made about the City Attorney were not appropriate. He commented that he had lived in Polson since 1981, and change was always difficult. He felt that in the big picture things could work very positively for the committee. Murat Kalinyaprak commented that his statements describing the City Attorney were not personal. Mayor DeVries noted that she had excused the City Attorney from the meeting at his request. City Manager Crossett pointed out that he had access to the City Attorney 24 hours a day 7 days a week and that he accessed his time at all hours – often exchanging emails after 11:00 pm. He expressed his confidence the City was getting "at least their money's worth". Commissioner Preston commented that everyone was entitled to their opinion, despite the code of conduct they could not shoot someone down for stating their opinion. Murat Kalinyaprak wondered why has being put in a position to defend

himself. Mayor DeVries expressed that she hoped they would move forward positively, despite being unable to change the setup of the SID.

**MDOT US 93 POLSON CORRIDOR STUDY & AREA TRANSPORTATION PLAN:** Jeff Key explained that has working with CDM Engineering on the companion projects. They would come before the Commission 3-4 more times as they progressed to completion of the study. The City, the Tribe, the County, and MDOT were all cooperating on the project. He began a power point presentation, detailing both the corridor study and the area transportation study. He reviewed the history of the Highway 93 studies and went into detail in regards to nature of the study and implementation of the plan. He noted that public engagement was important. He described the software used for the project and went over the data collection process.

**CITY OF POLSON CODE OF ETHICS AND CREATION OF ETHICS PANEL OF CITIZENS:** Murat Kalinyaprak requested that the City adopt a code of ethics and establish an ethics committee. He commented that this came out of necessity, because when a citizen has a complaint they have no mechanism other than to go before the County Attorney and then the State. He had filed with both, and he claimed both had informed him that they did not handle ethics complaints. He felt there was nowhere for citizens to go. He gave background the City's previous ethics committee and code which had been repealed when the committee members of the Mayor and Police Chief were found to conflict with the State Code. He added that was like having the fox guard the hen house. They had also claimed that a City ethics committee was an extra hoop for a citizen to go through, but he disagreed. He felt that having a committee would help the citizen. He proposed that they establish a three person committee, and, in another attack on the City Attorney, he advised the Commission to hire an attorney more familiar with the State Code. Commissioner Campbell inquired how much of the ethics issue was included within the personnel policy. Mayor DeVries advised that the employees were covered within the personnel policy, which they must sign upon employment. She had researched forming a committee and noted that it was very extensive to form, they must consider many things including what is a violation and that they would have to give a firm structure to the task for the committee members. City Manager Crossett noted that Bozeman was the only other Montana City that had responded that they had an ethics committee. City Manager Crossett noted that in communicating with Bozeman officials their biggest problem was finding people to serve on the committee. He pointed out that the legal authority to make a finding on a violation of ethics law lie with the County Attorney. If they were to form a committee they must operate in very specific terms, reviewing a case that, if found substantive, they would pass onto the County Attorney. The Committee itself would have no legal authority. He further noted that either way, the County Attorney had the right to chose not to pursue a claim he/she found to be unsubstantiated or a violation of the law. Personnel issues were handled through the City Manager, and any criminal activity would give directly to the City Attorney. He added that he was not a legal authority, but had the power to enforce the personnel policy which included ethics. Commissioner Preston commented that the MCA seemed to have a vehicle in place for complaints; however, it was easy to dismiss one person. She felt a committee recommendation may give a person's complaint more weight. Mayor DeVries advised if they formed a committee they would have to make very clear the code of ethics for the committee members. Commissioner Duford felt that everyone would benefit, since Mr. Kalinyaprak was saying that there was no avenue for a citizen that had been the subject of an ethics violation. Mayor DeVries

wondered what requirements they would need to make the committee work. City Manager Crossett explained that he believed it had been contemplated by the MCA as volunteer position. He noted that if the committee found the matter substantive it would be passed onto the County Attorney for a decision; there was not an additional option for the committee to take. Commissioner Preston expressed that some things are not decided on merit, and some people were treated differently. Commissioner Campbell expressed that the complainant would at least feel heard if they came before the committee, even if they did not get what they wanted. Murat Kalinyaprak commented that the County Attorney never listened to his complaint. Mayor DeVries wondered if that was due to an ethical complaint not necessarily being a violation of the law. Murat Kalinyaprak asked what the Mayor was arguing, if ethics were not important. Mayor DeVries clarified that they must establish what the rules are, if their ethics rules were not a violation of law they would need their code to have teeth in it to enforce. City Manager Crossett agreed that it was important for a process and procedure to be in place and that a committee would have no legal right to enforce ethical notions not specifically codified at the State or City levels. A violation must be found, not by an opinion, but by a process that establishes one way or another. He advocated for great care. And noted that if a committee were formed and failed to function within the law and within specific parameters that it may very easily be used as a political tool through which to slander – ultimately creating a source of serious legal exposure for the City. Commissioner Campbell agreed, the State Code talks about criminal actions, but there was a difference it was immoral and wrong and what was illegal. Murat Kalinyaprak felt that an ethics violation could be criminal. He felt the previous Polson ethics committee was a good intention, with the wrong implementation. It should have been rectified, not done away with. Other forms of complaints, like labor violations, had committees that the State maintained for the benefit of the people. He felt it was the responsibility of the Commission to offer this step in between for the people. He hoped the committee would not be busy, but would be there as needed to comfort people. Mayor DeVries noted that they needed to work to establish the ethics code before they put it in place. Commissioner Campbell agreed that he was not ready to vote. He felt it was a good idea, but there was not enough information at the current time. Commissioner Duford felt it would tell citizens they had a place to go if they do have a complaint about the Commission or employees. Mayor DeVries clarified that it would be for the Commission, as the employees were covered through the personnel policy. Commissioner Preston noted that they needed to look further into the previous committee being established and rescinded and that the matter was worth looking into. Dave Devore asked if it works well in Bozeman, why not put it in place? **Commissioner Campbell moved to table the City of Polson Code of Ethics and creation of Ethics Panel of citizens, seconded by Commissioner Lies.** Murat Kalinyaprak commented that he didn't just come up with this request out of the blue, he was looking for the Commission to solve his real problem in regards to the two complaints he had made against the two previous mayors. **The motion carried unanimously.** Mayor DeVries requested that staff would look into how the Bozeman committee worked, Polson's personnel policy, and the MCA ethics provisions and guidelines and definitions for the committee. A majority of the council indicated that this was their desire as well. Robin Wallace inquired what would be the legal ramifications for a member of the committee. Murat Kalinyaprak commented that there was no need to be paranoid, all levels of government have public members appointed to citizen panels and they do their best. Mayor DeVries advised that anytime you are serving on a committee you can be sued for a decision you make. She noted that they needed to contact the City's insurance agency to be clear on the

ramifications. Commissioner Campbell agreed that you can be sued serving on a board, but the insurance covers the City's boards.

**PRELIMINARY SEPTEMBER 2010 CASH REPORT:** The cash report was perused, and a report would be given by City Treasurer Bonnie Manicke at the following Commission Meeting.

**PUBLIC COMMENT ON MATTERS OF SIGNIFICANT INTEREST TO THE PUBLIC NOT ON THE AGENDA:** Mayor DeVries commented that she had enjoyed the MLCT fall conference. She had learned that they should be keeping a cash reserve of 20% of their budget. There was concern that the entitlement funds that municipalities received would be repealed, and they would be contacting the legislature to not take those funds back. She noted that Kalispell was looking into adding a .25 cent transaction fee to all purchases. Though that was a small charge on a large purchase, it was a huge fee when purchasing a single cheap thing. She expressed her support for the Polson soccer team which would be in the semifinals the following weekend. She expressed gratitude to John Tester, and felt they should send his office a formal thank you.

Commissioner Preston asked how agenda items that were tabled or not addressed were brought back to the agenda so that they did fall by the wayside. She noted the well property at Mission Bay was such an item, and it was hard to keep track of things that needed addressed after the meetings. City Manager Crossett advised that staff tracked tabled items so that they were brought back when appropriate. He added that he had received no direction from the City Commission relevant to the well property. He further noted that he had, by necessity, to take direction from a majority council only – not from individual citizens or commissioners.

Murat Kalinyaprak commented that he was tired of asking when Roger Noble would show up. He commented that there were several things that needed answers and he was willing to compile and be in charge of managing a list. He also wished to clarify his comments at the previous meeting in regards to Rotary and Mission Bay residents attending. He explained that people participate in government to the extent they wish, and if someone researches and compiles information they may speak more than others. He expressed that he did not have a problem with who showed up at the meeting, he was praising their involvement. However he was concerned over the makeup of the crowd. He could care less how many people showed up from Mission Bay, but he didn't realize that Rotary was a politically active group. The public hearing had went on without a notice in the paper and a letter to the editor asked people to attend the meeting at 7:00. He felt it was interesting that so many people showed up at 6:30, it was apparently networking. In his opinion the hearing was probably illegal. He had attended the last Rotary meeting and the Chamber of Commerce president had thanked the members who showed up. He added that he didn't show up to the meeting until nearly 7:00. He added that maybe the Rotary was rallying because Doug Chase was also a Rotarian. Ken Siler commented that he was in Rotary and thought that he was also a citizen. He felt Mr. Kalinyaprak was "dead wrong about that".

Commissioner Preston commented that she would like to know if the meeting schedule was handled correctly. City Manager Crossett replied that he was sure it was. He agreed to confirm that for Commissioner Preston. He said it was always their intention to do things properly. Commissioner Duford commented that several years ago a brief agenda was published in the paper to let people know. She didn't think a sign in the window was adequate, and she would like to see notice put in the paper again. Mayor DeVries pointed out that although not all people

use the internet, the agenda was always available, along with all the attachments, on the City's website. Robin Wallace commented that she had not known what time the meeting tonight was, and she had looked up the City of Polson on Google and easily found the meeting time and agenda. Murat Kalinyaprak commented that he was not accusing anything; it had just not been in the newspaper. City Manager Crossett advised the Commissioners that he took his directives from the majority of the Commissioners, not individuals like Mr. Kalinyaprak, unless it was the directive of the Commissioners to do so. Don Smith asked if all the Commission meetings were like this, and if they were how did they get anything done. He felt there was a lot of wasted time, and beseeched the Commissioners to let the City voted form of government work. Commissioner Preston advised that she personally would like assurance that the hearing was legally done. Commissioner Campbell noted that they just needed to know what the State law requires. City Manager Crossett advised that there was a tremendous work load on all of the personnel and noted that increasing that workload at the behest of individual citizens ultimately would come at a cost to other community projects and priorities and asked the Council to consider that and to be clear as to how they directed City staff. Mayor DeVries expressed understanding as to how things could be frustrating. She also pointed out that Virginia Sloan from Senator Tester's office had been talked very highly of Polson and the City Manager and what they had accomplished the past year. She noted that it was appropriate to allow people to say what they want. She added that the City Clerk had noticed the meeting the way the City Attorney had advised.

**The meeting adjourned at 9:55 p.m.**

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**Mayor Pat DeVries**

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**Attest: Kala Parker, City Clerk**