

ORDINANCE NO. 623

AN ORDINANCE TO AMEND THE POLSON DEVELOPMENT CODE TO AMEND THE ZONING MAP AND CHANGE THE ZONING DESIGNATION OF AN AREA PREVIOUSLY ZONED LOW DENSITY RESIDENTIAL TO HIGHWAY COMMERCIAL:

WHEREAS, after notice and public hearing on the issue of changing the zoning of a certain geographic area of land annexed into the corporate limits of the City of Polson by Resolution 929, the City Council has determined that a portion of the geographic area should be zoned as requested by the Applicant and a portion of the area should remain zoned as Low Density Residential; and

WHEREAS, the areas to be rezoned pursuant to the Polson Development Code, together with their new zoning classifications, are as follows:

The geographic area encompassed by proposed Lot 1 and Lot 2, as delineated, defined and set forth on the Preliminary Plat of Wal-Mart Subdivision, as conditionally approved by the City Council on June 29, 2006, shall be zoned Highway Commercial.

The geographic areas encompassed by proposed Lots 1, 2 and 3, Preliminary Plat of Wal-Mart Subdivision, with such preliminary plat conditionally approved on June 29, 2006, are, until approval and recording of the Final Plat of Wal-Mart Subdivision, specifically described as:

A tract of land in the East ½ of Section 11, Township 22 N, Range 20 W, P.M.M., Lake County, Montana, further shown and described as being Parcel B of Certificate of Survey # 5202, on file in the office of the Clerk and Recorder of Lake County, Montana.

EXCEPTING THEREFROM those lands heretofore conveyed to the Montana Department of Transportation by Bargain and Sale Deed dated April 23, 2004; recorded June 15, 2004, under Microfile No. 448793, records of Lake County, Montana.

Containing: 1,231,093 sq. ft. (28.262 acres).

WHEREAS, the owner of the above-described land to be zoned has contemporaneously requested annexation of the above-described parcels within the limits of the City of Polson, and the Council, after public hearing and consideration of all public comments made and submitted pursuant to law, has approved such annexation by Resolution No. 929; and

WHEREAS, the City Council has given due and proper consideration to all factors necessary to satisfy the relevant Montana zoning statute at MCA §76-2-304, the Polson Development Code, the factors set forth by the Montana Supreme Court in *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974), and the Application of the Applicant specifically addressed the *Lowe* factors in detail; and

WHEREAS, the City Council has determined from the report of its planning staff, all public comments made and submitted at and prior to public hearing, comments from the developer and applicant prior to public hearing, and, notwithstanding the consideration and recommendation of denial of the City-County Planning Board following separate public hearing on May 9, 2006, that the amendment is in accordance with the comprehensive plan; is designed to lessen congestion in the streets, will promote general health and welfare; will benefit the community from the standpoint of fire, panic or other dangers; will provide adequate light and air and avoid overcrowding of land or undue concentration of population; facilitate protection of public facilities; takes due note and consideration of the peculiar suitability of the property for particular uses and the character of the district; and will conserve the value of buildings and encourage the most appropriate use of land throughout the City; and

WHEREAS, the report of the City planning staff, as presented and submitted to the City Council, is hereby adopted and issued as the findings of the City Council as to the criteria of MCA §76-2-304 and *Lowe v. City of Missoula*; and

WHEREAS, the area proposed for zoning as a Highway Commercial Zone, described above, is surrounded on three sides by existing Highway Commercial zoning; and

WHEREAS, this Ordinance represents a partial granting and partial denial of the Applicant's zoning application, and does not reflect or implement any new zoning classifications on any land other than those

classifications and lands that were the subject of proper public notice, public hearing and public comment, as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

1. ORDINANCE 525, Chapter III, and Title Eleven to the Polson City Code is amended to change the zoning designation from Low Density Residential to Highway Commercial of the geographic areas of proposed Lots 1 and 2, as delineated, defined and set forth on the Preliminary Plat of Wal-Mart Subdivision, as conditionally approved on June 29, 2006, and the City Planning and Building Office is instructed to amend the zoning map required at Paragraph D to conform with this Ordinance.

2. REPEALING CLAUSE: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

FIRST READING: _____, 2006.

SECOND READING: _____, 2006.

NOW, THEREFORE, IT IS ORDAINED AND RESOLVED that this ordinance shall become effective on _____, 2006.

PASSED AND ADOPTED THIS ____ day of _____, 2006.

CITY OF POLSON

Randy Ingram

ATTEST:

Aggi Loeser, City Clerk

STATE OF MONTANA)

: ss.

County of _____)

On this ____ day of _____, 2006, before me, the undersigned Notary Public for the State of Montana, personally appeared RANDY INGRAM and AGGI LOESER, known to me to be the Mayor and the City Clerk of the CITY OF POLSON, Montana, the municipal corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

(Seal)

[Type, Stamp or Print Name]
Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____, 20____.