

MEMORANDUM

To: Polson City – County Planning Board

From: Dave DeGrandpre, AICP, Land Solutions

Copy: Polson Development Code Update Committee
Joyce Weaver and Thomas Fleming, Polson Building and Planning Department
LaDana Hintz, Lake County Planning Department
Mark Shrives, Polson City Manager
Rich Gebhardt, Polson City Attorney
Joel Nelson, Land Solutions

Date: July 1, 2014

RE: Special Use Permits

One of the subjects the Polson Development Code Update Committee thought would be important for the City-County Planning Board to consider while reviewing the revised PDC draft is the special use permit procedure in general, and also proposed thresholds for triggering special permit review in the Highway Commercial Zoning District (HCZD) and the Commercial Industrial Zoning District (CIZD).

The special use permit procedure requires public review of developments that may have a significant impact on the landscape setting, public facilities or neighboring land uses. Special uses are those that may be compatible with the land uses permitted by right in a zoning district (i.e. permitted uses), but require individual review because of their location, scale, design and configuration. Special uses may include the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district.

GENERAL SPECIAL USE PERMIT APPLICATION PROCEDURE

Current Polson Development Code Text

Historically special use permit requests include a pre-application with the planner (city or county, depending on the location of the proposed land use), an application submittal and a public hearing conducted by the planning board. After the hearing the planning board would make a final decision on the application. However, earlier this year the city determined the planning board is an advisory body (as per 76-1-106 and 76-1-107, MCA) that does not have the authority to make final decisions on land

uses. Because of this, the city adopted a new procedure where the planning board, after holding a public hearing, makes a recommendation to the city commission and the city commission makes the final decision. The county did not adopt this change so the two entities are reviewing special use permits differently at this time.

One of the weaknesses of the old special use permit text is there were no criteria given to evaluate a request, so the decisions had the potential to be somewhat arbitrary. Another potential weakness is when a special use is proposed on a recently subdivided lot, and that lot was considered for the same particular use when the subdivision was reviewed, a land use would be reviewed twice on the same property. Polson's previous attorney found this to be unlawful.

Proposed Polson Development Code Text --- General Procedure (page 58 of the June 10, 2014 draft, Chapter III.K)

- 1. Pre-Application.** The purpose of this procedure is to ensure that a properly completed application is filed.
 - a. The developer shall submit to the administrator a properly completed pre-application form, supplementary materials, and fee adopted by the governing body.
 - b. The administrator shall, within 15 working days, conduct a pre-application review unless this time period is waived by the developer. The administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed. At any time during the review process the administrator may require additional information necessary to demonstrate compliance with these regulations.
 - c. Pre-application review is not a regulatory proceeding, but an opportunity for the applicant to be made aware of the requirements of these regulations. The need for a community impact report or environmental assessment shall also be determined at the pre-application review.
 - d. If the developer is willing to provide written notice waiving the 15 working day requirement in K.1.b., above, a pre-application review may take place before the city-county planning board during the next public meeting for which notice may be published. At the meeting, the administrator, members of the public, and the planning board may provide feedback to the developer regarding compliance with these regulations, project design and issues to be addressed in the special use permit application.

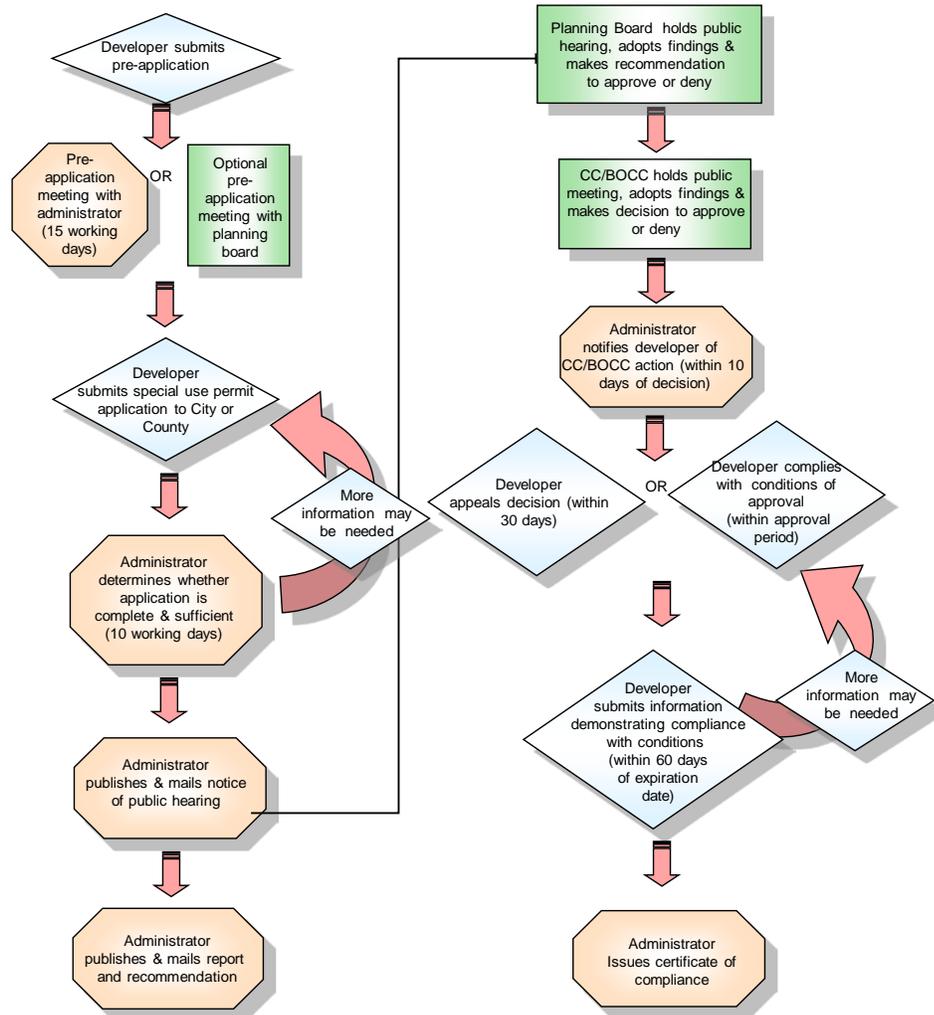
- 2. Application.**
 - a. The developer shall submit a properly completed application form, preliminary plat or site plan, narrative describing the project in light of the evaluation criteria (see K.3., below), any supporting materials necessary to demonstrate compliance with these regulations, and the required application fee.
 - b. Within 10 working days of receiving the application, supporting materials and fee, the administrator shall determine whether the application is complete and sufficient. When an application is determined incomplete or insufficient, the administrator shall provide written

notice to the developer indicating what information must be submitted for the review to proceed.

- c. The administrator shall place a hearing on the proposed special use on the agenda of the next regular planning board meeting for which these notice requirements can be met, and at which time will allow for its proper consideration. Notice of the hearing shall be provided as follows:
 - i. By certified mail, at least 15 calendar days before the hearing, to the developer and all adjoining property owners (including purchasers of record under contract for deed);
 - ii. By newspaper publication, at least calendar 15 days before the hearing, one legal notice in the official newspaper; and
 - iii. By first class mail, at least 15 calendar days before the hearing, to all potentially affected public agencies and public utilities, and any person who has requested mail notice of such hearings and paid the annual fee for that service. All notices shall comply with III.M.
- d. The administrator shall prepare, or contract for preparation of a report that describes the proposed special permit use, its site, its context, and its compliance, or failure to comply, with the applicable requirements of these regulations. In preparation of the report, the administrator may seek input from the police, fire, parks, sewer and water, streets, solid waste and other departments as well as other agency and service providers including the Montana Department of Transportation, Polson School District, Mission Valley Power, Montana Department of Environmental Quality and others. In the report the administrator shall propose findings of fact and a recommendation of approval, approval with conditions or denial of the proposal for the planning board's consideration.
- e. The planning board shall conduct a hearing on the proposed special permit use following the procedure established in III.V. At that hearing, the planning board shall review the particular facts and circumstances of the proposed special use and adopt findings of fact in support of its recommendation. If the board finds the application complies with the evaluation criteria in K.3., below it shall recommend approval of the application. If the planning board finds the application fails to comply, it shall recommend denial of the application. Conditions may be attached to a recommendation of approval of any special use permit, as provided in III.L.
- f. Following the public hearing, the administrator shall forward the public comments, report, recommendation and findings to the City Commission or Board of County Commissioners.
- g. The CC/BCC shall then consider the request at its next meeting for which public notice posting requirements can be met. At the meeting, the CC/BOCC shall review the particular facts and circumstances of the proposed special use and adopt findings of fact in support of its decision. If the CC/BOCC finds the application complies with the evaluation criteria in K.3., below it shall approve the application. If the CC/BOCC finds the application fails to comply, it shall deny the application. Conditions may be attached to an approval of any special use permit, as provided in III.L.
- h. Consideration of a special use permit application may be tabled for no more than 35 days.

- i. The administrator shall notify the developer and other interested parties who have specifically requested such notice of the governing body’s decision within 10 days after it is made.

Special Use Permit Procedure Flow Chart*



*This flow chart shows a typical special use permit application and review process. The administrator or board may require additional information during the review, applications may be amended and other changes in the process may occur.

3. Evaluation Criteria. The CC/BOCC, after weighing and evaluating the proposed use in light of the criteria set forth below, shall grant a special use permit if the application, supplemental information, public hearing and other evidence demonstrate that:

- a. The proposed use complies with the applicable specification standards, performance standards and the requirements of any base and overlay zoning districts in which the project is proposed;

- b. The proposed use, including mitigation measures, shall have no more adverse effects on the health, safety, or welfare of persons living or working in the neighborhood, or shall be no more injurious to property or improvements in the neighborhood than would any other use generally permitted (including special permit uses) in the same district. In making such determination, consideration shall be given to the location, type, height, scale, layout, and the type and extent of landscaping and screening on the site, as well as measures proposed by the developer to minimize impacts to neighborhood;
 - c. Adequate facilities and services are, or will be, through the application of these regulations and the adoption of conditions, made available to serve the proposed use including police, fire, parks, sewer, water, streets, motorized and non-motorized transportation, drainage, solid waste, schools and other facilities and services as appropriate;
 - d. Adequate measures shall be taken as necessary to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads; and
 - e. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, runoff or glare.
- 4. Exemption from Special Use Permit Review.** The administrator shall have the authority to waive special use permit review of development on parcels of land that have been subdivided in accordance with the Polson Development Code since 1993 when:
- a. The use is listed as a special permit use in the zoning district (Chapter II.);
 - b. The use was contemplated and reviewed under the Polson Development Code and Montana Subdivision and Platting Act (Chapter VI);
 - c. The use is of the same or lesser scale as was contemplated during subdivision review. Scale shall be measured by traffic generation, water and sewer demand, storm drainage, signage and parking requirements; and
 - d. All elements of the preliminary subdivision approval are complied with.

After determining the proposed development meets the requirements for use of this exemption, the administrator shall process the development request as a permitted use through the issuance of a zoning conformance permit (see III.J.). The administrator’s decision may be appealed to the BOA (see III.P.). Development shall comply with all portions of the current Polson Development Code.

Rationale for the Proposed Changes

One main change is to provide criteria to review special use permits to ensure there is a rational basis for decisions and also to provide consistency in review. The other main change is to provide an exemption for special uses occurring on recently subdivided lots when the specific use was contemplated during subdivision review so development is not reviewed twice.

THRESHOLDS FOR SPECIAL USE PERMIT REVIEW IN THE HCZD AND CIZD

Current Polson Development Code Text --- HCZD and CIZD

The HCZD “provides a place for commercial uses that rely on easy automobile access. It is also the appropriate location for any commercial development that needs extensive outdoor sales space. *The view from the highway is critical to the city’s image, so all new developments in the HCZD require a special use permit.*”

The CIZD “encompasses the ‘commercial core’ of the city, and provides a place for the redevelopment or development of uses that depend on pedestrian circulation and a central location.” Note to planning board: While the CIZD still exists in the ‘commercial core,’ over the years it has also been applied to areas along the highway north of Polson that are not auto-oriented commercial. Currently all commercial and industrial land uses are permitted by right, as opposed so special uses.

Proposed Polson Development Code Text --- HCZD (page 31 of the June 10, 2014 draft, Chapter II.Q)

Q. Highway Commercial Zoning District

1. **Purpose.** The Highway Commercial Zoning District (HCZD) provides a place for commercial uses that rely on easy automobile access. It is also the appropriate location for any commercial development that needs outdoor sales space.
2. **Land Use.** The permitted and special uses allowed in the HCZD shall be as shown in Table II. 18. All uses not explicitly permitted are prohibited. Examples of appropriate uses include overnight accommodations, eating, drinking and entertainment establishments, retail and wholesale goods, sales and service, day care centers, plant nurseries, car washes, veterinary clinics, auto, recreational vehicle and truck sales and repair, gas stations and similar uses.

Table II.18 HCZD Land Use

Permitted Uses	Special Uses
Highway oriented commercial <u>not</u> meeting the thresholds in 2.a. below	Highway oriented commercial meeting or exceeding the thresholds in 2.a. below
Accessory uses customarily associated with the permitted and special uses	Light industrial, may be associated with agricultural processing and/or sales
Public parks and recreation areas	Private parks and recreation areas
Minor utility installations (see III.C.6.)	Religious institutions
	Wireless communication facilities (see IV.EE)

- a. **Thresholds for Special Use Permit Requirements.** Highway oriented commercial development meeting or exceeding either of the following thresholds shall require a special use permit in this district.
 - i. Any structure or combination of structures that exceeds 20,000 square feet in size. This square footage is cumulative, meaning if additional structures are added that bring the

total above 20,000 square feet, a special use permit shall be required for the development.

- ii. Development projected to generate more than 1,000 average daily vehicle trips.

Proposed Polson Development Code Text --- HCZD (page 36 of the June 10, 2014 draft, Chapter II.S)

S. General Commercial – Industrial Zoning District

1. **Purpose.** The General Commercial – Industrial Zoning District (CIZD) is intended to provide a place for a wide range of commercial uses that do not rely on direct highway access or a CBZD location, and industrial development in the city and jurisdictional area.
2. **Land Use.** The permitted and special uses allowed in the CIZD shall be as shown in Table II. 20. All uses not explicitly permitted are prohibited.

Table II.20. CIZD Land Use

Permitted Uses	Special Permit Uses
Commercial, industrial or light industrial generating less than 100 truck trips or 200 or more total vehicle trips per average weekday (whichever is less), with primary access through a residential district	Commercial, industrial or light industrial generating 100 or more truck trips or 200 or more total vehicle trips per average weekday (whichever is less), with primary access through a residential district
Accessory uses customarily associated with the permitted and special permit uses	Wireless communication facilities (see IV.EE)
Religious institutions, social services, government, public safety/service	Parks and recreation areas, public or private
Minor utility installations (see III.C.6.)	
Community gardens	

Rationale for Proposed Thresholds

HCZD provides a location for auto-oriented businesses while the CIZD provides a location for more general commercial business that does not require a downtown location. The rationale for providing thresholds is some commercial development should be located in these districts—this is where the community has decided to build commercial developments—so the permit process for smaller scale land uses should be relatively easy. However, some developments in these districts, because of the scale or vehicle traffic generated by the businesses, have the potential for significant impacts to surrounding property owners and the community, so SUP review should be required. Please understand the proposed thresholds are an attempt to provide a point for our discussions and are not based on a scientific methodology.