

# **MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS**

**For April 20, 2011**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, April 20, 2011, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Paul Babb.**

## **ROLL CALL**

10 present, 2 absent, Commissioners Frasz and Granger were excused.

## **PRAYER**

Commissioner Shaw led the Commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF APRIL 6, 2011.**

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to approve the minutes of the Regular Meeting of April 6, 2011. The motion carried with a unanimous verbal vote.**

## **ITEMS NOT ADDRESSED ON THE AGENDA**

None

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

Mavis Bentley, 5141 Utah Ave, Butte High School Tennis Coach and Director of the Summer Tennis Program, stated the following regarding the tennis courts located at Stodden Park:

- Only five of the six courts are playable.
- There is a sinkhole 12' x 8' and six inches deep in the sixth court which is unplayable and unsafe.
- In the past year participation in youth and adult tennis has doubled.
- Last year the High School Divisional Tournament was not held in Butte because of the court situation.

Dot Warner, 3220 Wharton, President of Butte Tennis Association stated she wished to back Ms. Bentley concerns regarding the Community needs for safe tennis courts.

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb reported the following:

- House Bill 296, the bill for the Veteran's Home, has passed and will be signed by Governor Schweitzer.

- House Bill 439, the bonding bill, has been sent back for second reading.
- The budget process for 2011/2012 has begun.
- Advertising for summer help has been placed in the newspaper and all State Universities have been notified. Over two hundred applications have been received to date.
- The walk against domestic violence, Take Back the Night, will be held Friday, April 22, 2011 at 6:30 p.m. in the Rotunda of the Court House.
- The hot plant is up and running and work has begun repairing pot holes.
- A list of road projects for this year will be posted soon.

## **SECTION I PUBLIC HEARING**

**TO HEAR PUBLIC COMMENT REGARDING THE ADOPTION OF THE CENTRAL BUTTE AREA NEIGHBORHOOD PLAN AND THE GREELEY-RACETRACK NEIGHBORHOOD PLAN AS AN ADDENDUM TO THE BUTTE-SILVER BOW GROWTH POLICY. (Communication No. 11-180 being held in Committee of the Whole). Proof of Publication was noted.**

Steve Hess, Butte-Silver Bow Assistant Planning Director, gave the following staff report:

- A grant from the Montana Department of Natural Resources was received by the Planning Department last summer to perform two neighborhood plans. One in the Central Butte area and the other in the Greeley Neighborhood.
- A consulting firm was hired to run the project and a steering committee for each neighborhood, was formed.
- Monthly meetings with the Steering Committees were held along with three meetings with residents from the areas.
- A random survey of each neighborhood was conducted.
- A final Neighborhood Plan was written by the Consultant and approved by the Steering Committees as well as the residents of each neighborhood. These plans were approved by the Planning Board last January and forwarded to Council.
- The purpose of the Neighborhood Plans is to adopt them into the Butte-Silver Bow Growth Policy.
- A vision statement was developed and adopted for each neighborhood.
- Each plan has a Priority Action Plan, which is a one year plan outlining hopeful accomplishments for the first year.

Commissioner Schultz asked Mr. Hess if there is any resource to begin immediately addressing the issues of inadequate water pressure, poor lighting, and deteriorating sidewalks and streets.

Steve Hess replied these are big money issues, but some of the smaller issues can be addressed right away. Mr. Hess further stated there may be some planning grant money available through the CDBG Program and the residents may need to participate in a SID to help pay the costs.

Chief Executive Babb stated the Storm Water Ordinance is being passed in order to collect fees to begin addressing some of these issues. Mr. Babb further stated some of the Super Fund Money will also help with the issues in the area.

Commissioner Schultz stated there is an increase in enthusiasm in his district and residents are hopeful about the future.

Commissioner Shaw stated the residents in her district are very enthusiastic about the Neighborhood Plan and hoped the work will continue in the area.

Chief Executive Babb opened the Public Hearing at 7:59 p.m. and called for proponents.

John Sorich, 1820 Wilson, stated he would like to see the area extended to Cobban.

Chief Executive Babb then called for opponents.

On the third and final call, there being none, Chief Executive Babb closed the Public Hearing at 8:00 p.m.

## SECTION II CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
- 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
- 3. JUDICIARY COMMITTEE MEETING REPORT
- 4. PUBLIC WORKS COMMITTEE MEETING REPORT

### B. PETITIONS

- 1. [11-2](#) John Harrington, Building Official, requesting on behalf of Town Pump Inc., to close and vacate a portion of the alley located between Nettie Street and Ottawa Street.  
*Recommendation: Refer to the Public Works Committee.*

### C. COMMUNICATIONS

**Before entertaining a motion for approval of the Consent Agenda Chief Executive Babb called for any friendly amendments or segregations.**

Commissioner Palmer made a Friendly Amendment to Section C, No. 19, Communication 11-207 to change the recommendation to refer to the Judiciary Committee.

**It was then moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4, B 1 and C 1 through 41.**

## SECTION III COMMUNICATIONS TO BE READ AND ACTED UPON

- 1. [11-205](#) Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting time on the April 20, 2011 agenda to discuss and answer questions regarding Communication No. 10-117, the request from Whalen Tire Inc. for the purchase of Lot 1, Block 6 of the Central Addition.

Robert Macioroski, Director Butte-Silver Bow Land Office explained the following regarding the Whalen Tire adjacent property sale:

- The property qualified under the adjacent land owner policy after the property has been offered twice at a public tax sale.
- The lot in question was never a dedicated street and was owned by the Railroad prior to Butte-Silver Bow.
- The initial process began as a street vacation and after it was discovered the area was a lot instead of a street, the Adjacent Land Owner Process was initiated.

Commissioner Andersen stated the area was used as a road for many years and wondered how it went from being a road to being a lot. Mr. Andersen further stated the area is paved, has a stop sign on either end and is a way of egress coming and going through the neighborhood.

Robert Macioroski restated the area was never a through street.

Commissioner Andersen stated he understood but still felt it was illogical and didn't want to have this happen again in the future. Commissioner Andersen further stated the closure has hurt other businesses in the area.

Commissioner Shaw stated her concern that there was not sufficient ingress/egress access for Emergency Vehicles.

Robert Macioroski explained the area may have been used as a street, but it was never intended to be a through street.

Commissioner Morgan stated according to Municipal Code 10.32 there was never a designated stop sign for that location. Commissioner Morgan further stated he was under the impression the lot in question has an easement for emergency vehicle access and at present it would not be possible for emergency vehicles to get through the lot.

Robert Macioroski replied there should be access for emergency vehicles.

Chief Executive Babb stated there would be a follow up to be certain the issue is being handled correctly.

Commissioner Hall asked if the tires will be stored inside the building or outside.

Robert Macioroski replied the tires will be stored inside.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed by a unanimous verbal vote to place Communication No. 11-205 on file.**

2. [11-206](#) Dave Cunningham, Operation Manager, Butte-Silver Bow Public Works Services Division, requesting time on the April 20, 2011 agenda for Brian Milne with Interstate Engineering to present findings from the April 12, 2011 Public Meeting and the April 5, 2011 Ad-hoc Committee Meeting.

Dave Cunningham explained Interstate Engineering and the Ad hoc Committee were advised to investigate all options including a 4 million dollar option. Mr. Cunningham further explained Interstate Engineering did review and compare costs for the operation and revenue construction of multiple options including 7.5 million, 6.5 million and a 4 million dollar option. The Ad hoc Committee reviewed these options and presented them at the last public meeting and has made a judgment call as to which option they prefer.

Brian Milne, Interstate Engineering, gave the following outline of the Aquatics Presentation:

- Review of the Process/Options reviewed
- Examples of Indoor Aquatics facilities with costs
- Outline of a basic pool facility
- Outline of a leisure pool facility
- Bond Election Detail Example
- Ad Hoc Committee Recommendations;
- Cost comparisons for a \$15,000, 12,700, and 8,200 Sq. Ft, leisure pool facility
- Public Comment and Questions

Krystal Smith, Ad Hoc Committee Member, stated the tennis courts are in disrepair and reconstruction of the courts would save money in the long run. Ms. Smith further stated the Committee would like to also see an expansion to the Golf Course Club House to better serve the public.

Bruce Schuelke, Ad Hoc Committee Member, explained the following:

- Landscaping is important and will be imbedded into the design of the Aquatics Facility.
- Water volume is the driver for a Water Park compared to a Pool.
- The tennis courts need to be addressed and included with the Aquatics Facility.
- The concessions are a benefit to the project and will generate revenue.
- Parking needs to be addressed and is included in the landscaping.
- The design bond is driven by the cost of the project.
- Estimated Gross Revenue for the 15,000 Sq. Ft Leisure is \$249,000, the 12,700 Sq. Ft. Leisure is \$218,000, the 8,200 Sq. Ft. Leisure is \$14,500 and the 12,700 Sq. Ft. Basic is \$130,000.
- Estimated Net Revenue for the 15,000 Sq. Ft. Leisure is \$29,000, the 12,700 Sq. Ft. Leisure is \$14,500, the 8,200 Sq. Ft. Leisure is \$-17,300 and the 12,700 Sq. Ft. Basic is \$-58,000.
- The 15,000 Sq. Ft. Leisure provides desirable activities, attracts youth to the park, maximizes the opportunities for revenue to offset operation and maintenance costs and facilities to provide quality of life opportunities to retain and attract businesses and families to Butte.

Commissioner Morgan asked how the average pool usage number for the 15,000 Sq. Ft. Facility of 250 per day was arrived at.

Brian Milne explained this number was based on a little more than 185 per day from the old Corette Pool along with the expected number of Season Pass Users.

Commissioner Morgan asked the Ad Hoc Committee why it is necessary to have six tennis courts.

Mavis Bentley explained stated it is necessary to have at least six courts in order to hold competition matches.

Commissioner Andersen stated he is in support of the facility but is worried if the voters will support it. Commissioner Andersen further stated his concern of the poor climate in Butte.

Bruce Schuelke replied the numbers considered for the facility usages are very conservative and felt signage would help draw larger numbers.

Brian Milne stated picking attractions other facilities don't have will attract users from other areas.

Jennifer Shea, Ad Hoc Member, stated Butte is located at the crossroads of I-90 and I-15 and the summer festivals will also attract users to the facility.

Commissioner Foley commented Butte-Silver Bow is not solely responsible for providing recreational facilities for the Butte School District and the tennis courts could possibly be provided by the School District. Commissioner Foley commended Interstate Engineering Firm for providing accurate information and commended the Ad Hoc Committee for doing a good job researching and presenting the information to the public.

Commissioner Foley asked Bob Rowling, Director Butte-Silver Bow Parks and Recreation, to comment on the size and features of the Aquatic Facility.

Bob Rowling replied the facility will have more usage with the added size and features and will attract users back for repeat usage.

Commissioner Foley asked Mr. Rowling if he is confident in the numbers provided by the Engineering Firm and that sufficient revenue will be produced to maintain and operate the facility.

Bob Rowling replied he is very confident with the numbers provided by Interstate Engineering and the job the firm has done. Mr. Rowling stated it is very important to provide for our youth and the community of Butte-Silver Bow can take this project on and be successful in the outcome.

Commissioner Foley commented he has listened to his constituents regarding the Aquatics Facility and cannot support the issue.

Commissioner Ralph asked Mr. Milne if the projected operation and revenue summary concerning the average daily use of 250 people and 70 days of operation which equals \$14.33 for every person coming through the pool is accurate.

Mr. Milne stated the 250 number represents transient use and explained there will also be family and individual season passes for local residents to add to the total revenue.

Commissioner Schultz stated he has been in support of a pool since being on Council, but has since realized Butte-Silver Bow cannot afford a pool. Mr. Schultz further stated he is most concerned about the additional money the tax payers of Butte-Silver Bow are being asked to pay and suggested waiting until the general election to ask the voters if they will support the Aquatic Facility.

Commissioner Shaw stated the constituents in her district have related they do not support the 7.5 million dollar facility, but feels it is time to let the voters of Butte-Silver Bow make the decision.

Commissioner Hall agreed with Commissioner Shaw regarding the decision needing to be made by the voters of the Community and stated other communities are doing this and so can Butte-Silver Bow.

Commissioner Morgan commented the pool has been an issue for three years and it is time to find out what the people of Butte-Silver Bow want.

Commissioner Henderson echoed Commissioners Shaw, Hall and Morgan's comments regarding letting the voters of Butte-Silver Bow decide.

Commissioner Andersen commented wanting a pool is not the same as deserving or needing a pool. We want a pool but do not need a pool. Commissioner Andersen further commented he will support sending the issue to the voters but is doubtful it will pass.

Commissioner Palmer stated after hearing from residents of the Community asking why Butte-Silver Bow doesn't have a pool, he asked Chief Executive Babb to appoint an Ad Hoc Pool Committee to investigate the possibility. The committee has been meeting for over a year and has provided good information concerning their recommendation for the facility best suited to generate sufficient revenue to operate and maintain the facility in the future.

**It was moved by Commissioner Palmer and seconded by Commissioner Morgan that Council support and put on the ballot the 7.5 million dollar, 15,000 Sq. Ft. Leisure Pool.**

Commissioner Schultz commented he wants a pool but wonders what will happen if the pool isn't able to support itself.

Commissioner Foley stated Council members are elected to represent the views of the public and it is not necessary to send the issue out to the voters.

The motion passed with a roll call vote of 6 yea and 4 nay.

Chief Executive thanked the Ad Hoc Committee for the hard work and time spent over the past year and stated it is time to send this out to the voters for their input.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal vote to place Communication No. 11-206 on file.**

3. [11-229](#) Mark Reavis and Nicole von Gaza, requesting Council take steps to limit the use of firecrackers during future annual Chinese New Year parades.

Mark Reavis, Owner of record of the Uptown Works Building at 1 N. Montana stated the following:

- Business was attacked during the last Chinese New Year's Parade with firecrackers.
- Business is not located on the parade route.
- Two tightly packaged rolls of firecrackers were placed against the building and set off simultaneously.
- The packaged rolls exploded violently and some entered under the garage door and threatening the business.
- A legal firecracker can have no more than 50 mg. of flash powder and the explosive placed against the building contained 2000 time the legal limit of one firecracker.
- As a member of the public and a business owner, want a guarantee this type of dangerous action can never happen again.

Robert Edwards, 110 S. Jackson, President of the Mai Wah Society, explained the following:

- This issue has nothing to do with the firecrackers, the parade or the Mai Wah Society, but rather with an ongoing dispute between the parties involved.
- The Mai Wah Society has hosted the Chinese New Year's Parade since 1998, is escorted by the Butte-Silver Bow Police Department and approved by Council.



*and seconded by Commissioner Shaw to place Council Bill No. 11-3, Ordinance No. 11-3 on second reading and be passed having been deemed read at length. The motion passed with a roll call vote of 10 yea, 0 nay.*

**2. COUNCIL BILL NO. 11-4  
ORDINANCE NO. [11-4](#)**

AN ORDINANCE AMENDING TITLE 6 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “ANIMALS”; AMENDING SECTION 6.08.030 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw to place Council Bill No. 11-4, Ordinance No. 11-4 on second reading and be passed having been deemed read at length. The motion passed with a roll call vote of 10 yea, 0 nay.*

**SECTION IV ORDINANCES AND RESOLUTIONS  
FINAL READING**

**1. COUNCIL BILL NO. 10-13  
ORDINANCE NO. 10-13**

AN ORDINANCE ADOPTING REGULATIONS FOR THE CONTROL AND MANAGEMENT OF STORM WATER TO BE CODIFIED AS CHAPTER 32 OF TITLE 13 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED “STORM WATER MANAGEMENT”; REGULATING THE DESIGN, CONSTRUCTION, USE AND MAINTENANCE OF ANY DEVELOPMENT OR OTHER ACTIVITY WHICH MAY RESULT IN IMPACTS TO WATER BODIES, PROVIDING FOR ADOPTION OF MUNICIPAL STORM WATER ENGINEERING STANDARDS; PROVIDING FOR OWNERSHIP OF STORM WATER MANAGEMENT FACILITIES AND BUTTE-SILVER BOW PARTICIPATION; SETTING FORTH REGULATIONS FOR MANAGEMENT, CONSTRUCTION AND INSPECTION OF FACILITIES; DEFINING AND PROHIBITING ILLICIT DISCHARGES TO THE BUTTE-SILVER BOW STORM WATER SYSTEM; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PERMITS AND FEES; PROVIDING FOR PENALTY FOR VIOLATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw to place Council Bill No. 10-13, Ordinance No. 10-13 be placed on final reading and be passed having been deemed read at length. The motion passed with a roll call vote of 9 yea, 1 nay.*

**2. COUNCIL BILL NO. [11-2](#)  
ORDINANCE NO. 11-2**

AN ORDINANCE CREATING A NEW CHAPTER IN THE BUTTE-SILVER BOW MUNICIPAL CODE TO BE NUMBERED CHAPTER 2.90 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) AND ENTITLED “TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD OF TRUSTEES”; PROVIDING FOR A BOARD OF TRUSTEES AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw to place Council Bill No. 11-2, Ordinance No. 11-2 be placed on final reading and be passed having been deemed read at length. The motion passed with a roll call vote of 10 yea, 0 nay.*

3.

**COUNCIL RESOLUTION NO. [11-14](#)**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW HEALTH DEPARTMENT FROM THE MONTANA STATE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, MONTANA WIC PROGRAM. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-14 be placed on final reading and be passed having been deemed read at length. The motion passed with a roll call vote of 10 yea, 0 nay.*

**ADJOURN**

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to Rise to the Call of the Chair.**

The meeting adjourned at 10.00 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**