

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

For JUNE 1, 2011

The Regular Meeting of the Council of Commissioners was called to order Wednesday, June 1, 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

11 present, 1 absent, Commissioner Morgan was excused.

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF MAY 25, 2011.

It was moved by Commissioner Palmer and seconded by Commissioner Shaw to approve the minutes of the Regular Meeting of May 18, 2011. The motion carried with a unanimous verbal vote.

ITEMS NOT ADDRESSED ON THE AGENDA

Chief Executive Babb announced there will be a Suspension of the Rules to add Communication No. 11-357 to the agenda.

It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried by a roll call vote of 10 yea, 1 nay to suspend the rules in accordance with the provisions of Subsection 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Council Communication No. 11-357 to be added to the Agenda of the June 1, 2011 Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

Earl Larvie, 614 W. Galena, stated he has been a Pit Bull owner for twenty years. Mr. Larvie further stated Pit Bulls not inherently dangerous animals, and Pit Bulls owners need to be held responsible for their animal's actions.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported the following:

- The Building next to the Civic Center was demolished today.
- Any questions regarding the Big Hole or other bodies of water should be referred to Roger Ebner.

- Meetings continue with Department Heads and Elected Officials regarding next year's budgets.
- Negotiations with Unions have begun and interest based bargaining will be utilized.

COMMUNICATION NO. 11-357

Kristen Rosa, TIFID Administrator, requesting a Public Hearing be set for June 1, 2011 to hear public comment on the Resolution relating to issuance of bonds for financing a portion of the cost of the TIFID Waste Water Line.

Resolution No. 11-23 was introduced to Council at the May 18, 2011 meeting to be read and acted on. The Resolution, among other things, called for a Public Hearing to be held at the June 1, 2011 Council meeting to hear any public comment on the issuance of bonds to finance a portion of the cost of the TIFID waste water line. At the time the Resolution was submitted the communication requesting time on the June 1 agenda to conduct a Public Hearing was inadvertently not included.

PUBLIC HEARING

TO HEAR PUBLIC COMMENT ON THE RESOLUTION RELATING TO ISSUANCE OF BONDS FOR FINANCING A PORTION OF THE COST OF THE TIFID WASTE WATER LINE. **Proof of publication was noted.**

Chief Executive Babb opened the Public Hearing at 7:45 p.m. and called for proponents.

On the third and final call, there being none, Chief Executive Babb called for opponents.

On the third and final call, there being none, Chief Executive Babb closed the Public Hearing at 7:46 p.m.

SECTION I

PRESENTATION COMMUNICATION NO. 11-298

Kristen Rosa, TIFID Administrator, requesting time on the June 1, 2011 agenda to present the annual report of the TIFID.

Kristen Rosa reported the following:

- The Annual Report is a requirement of the Ordinance for Tax Increment Financing Districts.
- The TIFID Board Staff participated in a strategic planning session and developed a Vision Statement as well as a Mission Statement.
- All ideas were condensed into three major goals:
 1. To develop the infrastructure in support of economic development.
 2. Maintain and expand marketing efforts.
 3. Pursue partnership opportunities to enhance and advance the mission.
- Construction on the waste water line began yesterday and should be completed this year.
- Construction of the Fed Ex Facility began in October of 2010 and is anticipated to be completed in August of 2011.

Segregation – Communication No. 11-350

Terry Schultz, Butte-Silver Bow Council of Commissioners, District No. 4, requesting specific changes in the Animal Control Ordinances.

Commissioner Foley commented this issue has been brought to Council before and discussed extensively. Commissioner Foley further commented the Animal Control Services has made strong efforts to enforce the present ordinance.

It was moved by Commissioner Foley and seconded by Commissioner Frasz to deny Communication No. 11-350 and place the communication on file.

Commissioner Schultz disagreed with Commissioner Foley's standing on the issue and stated the following:

- He received many phone calls from constituents regarding the problem.
- He is proposing a manner of dealing with all dogs and whether or not they should be designated as dangerous.
- His communication contains a specific request regarding the length of a leash for Pit Bulls, that they be only under the control of an adult and that Pit Bulls be muzzled.
- He is speaking for the rights of eight year old girls, Senior citizens whose homes have been invaded and for citizens who are treed by these dogs while walking.
- He considers this to be a Human Safety Feature, is passionate about the matter and feels it deserves to be heard.

The motion to deny Communication No. 11-350 and place on file passed with a roll call vote of 8 Yea, and 3 Nay.

SECTION III

COMMUNICATIONS TO BE READ AND ACTED UPON

1. [11-355](#) Ed Randall, Butte-Silver Bow Community Enrichment Department, requesting time on the June 1, 2011 agenda to reject a bid for the stabilization of the Greek Café and an order for demolition of said building.

Ed Randall gave the following brief history of the Greek Café:

- The Greek Cafe is a county-owned property which has been in disrepair for many years.
- The building has no roof.
- The Cafe carries a great deal of liability for Butte-Silver Bow.
- A meeting was held several years ago with members of CPR regarding repair and stabilization of the building.
- Studies conducted by two engineering firms state the building could collapse at any time.
- Work was done with the Historic Preservation Officer to find funds to either stabilize or place the Greek Café under private ownership.
- A private developer showed interested in the property providing the building be stabilized.
- When Council was asked if stabilization of the Café was an option they agreed to give one last opportunity to try to save the building.

- Funding of approximately \$75,000 to stabilize the building was found through Grant money, URA funds and Community Enrichment funds.
- Bids for the stabilization were too high for the funds available.
- The next step is to ask for permission to demolish the building.

Mr. Randall stated he is now asking Council for permission to proceed with the demolition plan or a plan Council wishes to approve.

Commissioner Shaw asked Mr. Randall for a cost estimate of the demolition as well as dumping fees and development of the land after completion of the demolition.

Ed Randall replied he would guess the cost would be approximately between \$30,000 and \$40,000. Mr. Randall stated there is concern regarding the adjacent building which is a legal question.

Chief Executive asked Mr. Randall to state the demolition cost of the National Hotel and the IC Gym.

Mr. Randall replied the cost to demolish the National Hotel was \$46,500 and included all fees such as hazardous materials, asbestos testing and air quality. The cost of the IC building was higher because it contained more asbestos and was approximately \$80,000. This amount included landfill fees, air quality and asbestos testing and removal fees.

Commissioner Shaw stated the original motion regarding the Greek Café by John Morgan was moved, seconded and passed by a roll call vote of 7 to 3 to move the Greek Café to Developers Packet Process using existing public grant funds only within time constraints as set forth in the Developers Packet. Ms. Shaw stated the time constraint in the packet was June 30, 2011 which was the deadline for the grant. The motion further stated if no qualified developer is found when the Developers Packet is due, the Greek Café will be scheduled for demolition. Commissioner Shaw stated it has come to her attention of a possibility of an extension for the grant and asked Jim Jarvis, Butte-Silver Bow Historic Preservation Officer, to explain the time extension.

Jim Jarvis explained there are two grants available for this project, one is from the National Park Service, and the other is from the Montana Department of Commerce through the Federal Stimulus Dollars which came to Montana. The Stimulus dollars of \$45,000 carried a deadline of June 30, 2011 which was the reason for the timeline associated with the bid packages. Mr. Jarvis further explained in the last two weeks it has come to his attention an extension of these grant funds may be granted until the end of September. With this extension it is possible to go back out for bid to give contractors more time with the possibility of more contractors responding with bids.

Commissioner Shaw stated she received a call from Carrie Kiely, President of Butte CPR, who requested permission to read a statement into the record regarding funds being offered by the Butte CPR. Ms. Shaw asked Ms. Kiely to come forward and read her statement.

Kari Kiely, 1402 W. Porphyry read a position statement urging Council to stand behind the stabilization of the Greek Cafe. See copy in file for further information. Ms. Kiely stated the Butte CPR Board voted last evening to give \$20,000 to the temporary stabilization project.

Commissioner Andersen asked Jim Jarvis if the second grant could be extended as well.

Jim Jarvis stated the National Park Service Grant of \$30,000 has been indicated as being very flexible with the deadline.

Commissioner Andersen asked if the total grant money is \$75,000.

Jim Jarvis replied the amount of \$75,000 from those two sources is correct.

Commissioner Andersen asked if any other sources for grants were investigated.

Jim Jarvis replied these were the only two sources of grant money applied for. Mr. Jarvis further stated there was also URA funding available for the project.

Commissioner Andersen asked if the funds from URA are still available for the project.

Karen Byrnes, Butte-Silver Bow Community Development Director, stated an allotment of \$95,000 was the original amount designated toward the stabilization of the Greek Café. Ms. Byrnes further stated approximately \$20,000 of this allotment has been spent on engineering and architectural fees for drawings prepared for the bid package.

Commissioner Schultz stated he received a phone call from Jay Fortune, the contractor who bid on the stabilization project. Mr. Fortune felt Butte-Silver Bow was not as open as they should have been and that there were no parameters' issued regarding the bid. Commissioner Schultz asked if adequate information was given to the contractor when the bid packet was issued.

Ed Randall, Community Enrichment Manager, stated he took offense at Commissioner Schultz's statement regarding Butte-Silver Bow not being above board when putting out the bid packet. Mr. Randall further stated the packet was put out for bid and Mr. Fortune placed a bid on the project. The bid was not necessarily too high for the work needing to be done, but was too high for the funds available for the stabilization of the building.

Commissioner Foley commented the issue of the Greek Café is frustrating and some will be upset no matter what decision Council makes. Commissioner Foley further stated the building has been vacant for over thirty years and Council needs to make a decision according to what is the best use of taxpayers' money.

It was moved by Commissioner Foley and seconded by Commissioner Frasz to approve the request of Communication No. 11-355 and order the demolition of the Greek Café.

Commissioner Andersen stated taxpayers' money will be spent whether the building is stabilized or torn down and since approximately \$170,000 is available to stabilize the Café it would be better consider stabilizing the building.

Commissioner Andersen asked Nick Kujawa to speak regarding the demolition costs of the Greek Café.

Nick Kujawa, 1237 Steel, stated the following regarding his developer's packet for the Greek Café:

- Based on the Beaudette Plans, the cost estimate was \$270,000 with the interior demolition cost estimate being \$70,000.
- His developer's packet response, which was approved by Council, stated Butte-Silver Bow would complete the stabilization work and out of \$169,750 available, \$95,000 would remain available to Kujawa Development after successful stabilization of the building.
- The cost of demolition is unknown and Butte-Silver Bow should bid this out in order to obtain an exact number.
- The new development of the grant extension until the end of September changes the picture because contractors bid in January and February for summer jobs. More contractors will bid on the demolition since 50% of the project will now need to be finished by the end of September instead of the end of June.
- Suggested going out for a dual bid, one for the demolition of the building and one for stabilization of the building.

Commissioner Schultz apologized to Ed Randall if he had offended him and stated he did not think he had done anything wrong. Commissioner Schultz explained he was merely expressing Mr. Fortune had asked him to express.

A substitute motion was made by Commissioner Schultz to put out a bid for demolition and request bids for the stabilization of the Greek Café. Commissioner Shaw seconded the motion.

Commissioner Palmer asked the County Attorney if it is possible to go out for dual bids. Mr. Palmer asked if bid for the demolition comes in low enough to fit the budget will the County be obligated to follow through with the bid and if a bid for stabilization fits in the budget, will the county obligated to follow through with both bids.

County Attorney Joyce replied the County always has the ability to accept or reject all bids. County Attorney Joyce explained if the bid documents make it clear the county has the option to reject all bids, both bids could be put out in order to help decide which path to follow.

Commissioner Palmer stated he would not vote for a motion to demolish without seeing a bid first and stated he liked the idea of going out for dual bids.

Commissioner Shaw asked Commissioner Schultz if he would add to his motion to have the Historic Preservation Officer ask the two granting agencies for an extension in the event Council decides to move forward with the stabilization of the Greek Café.

Commissioner Schultz stated he would like to add to his motion asking for an extension of the grants as part of his motion.

Commissioner Granger asked Ed Randall if the Butte-Silver Bow Public Works Department has the ability to demolish the building.

Ed Randall replied this is an option since Butte-Silver Bow owns the building.

Commissioner Hall stated the empty lots in Butte-Silver Bow bring in no revenue and cost the County money every year to maintain. Commissioner Hall further stated it is worth the effort to try and stabilize the building in an effort to bring in tax revenue.

Commissioner Andersen stated he would like to see the building stabilization go out for a re-bid and agrees with Commissioner Hall it is worth the effort.

Commissioner Foley reminded Council of other buildings with the same issues and stated there many other issues in our community which need to be addressed.

Commissioner Schultz amended his motion to reject the previous bid by Fortune Construction and put out a request for new bids.

Chief Executive Babb stated it would be best to vote on the motions before amending any motions.

Commissioner Hall commented if the building is saved tax revenue will be generated.

A motion to end all motion was made by Commissioner Granger to alert the Butte-Silver Bow Public Works Department to demolish the building as soon as possible. The motion was seconded by Commissioner Henderson.

Chief Executive Babb explained it would be necessary to confirm the Butte-Silver Bow Public Works Department has the expertise to demolish the building.

Commissioner Schultz stated there could be problems with having the Public Works Department demolish the Greek Café because of the building next to it.

Commissioner Shaw asked the owner of the building next to the Greek Café to speak on behalf of his building.

Robert Edwards, 110 S. Jackson, stated his building has a granite block foundation and will continue to stand if the Greek Café is demolished. Mr. Edwards further stated he is concerned about having the county tear down the Greek Café and stated an Engineering report is needed. Mr. Edwards stated he would sue Butte-Silver Bow if they decide to tear down the building without an Engineering report.

The motion to end all motions to have the Butte-Silver Bow Public Works Department demolish the Greek Café failed with a roll call vote of 5 yeas and 6 nays.

The substitute motion to have a dual bid with a rebid for stabilization and a bid for demolition with instructions for the Historic Preservation Officer to request an extension of the grant monies passed with a roll call vote of 6 yeas and 5 nays.

It was moved by Commissioner Schultz, seconded by Commissioner Palmer and passed with a unanimous verbal vote to reject the bid by Fortune Construction and place the Communication No. 11-355 on file.

2. [11-356](#) Robert Macioroski, Director, Butte-Silver Bow Land Office, requesting time on the June 1, 2011 agenda to discuss funding for appraisals on the surplus parkland properties.

Robert Macioroski explained the next step to offer the parkland properties for sale is to send out request for proposals for appraisals on the properties by independent appraisers. The request for proposals and a list of independent appraisers serving Southwest Montana has been completed. Mr. Macioroski further explained it is necessary to have funds before the proposals can be sent out and he is requesting approximately \$20,000 to begin the process.

Chief Executive Babb asked Mr. Macioroski where the funds will come from.

Mr. Macioroski replied he didn't know and asked for Council's guidance.

Commissioner Palmer asked if there are any other options.

Mr. Macioroski replied parkland properties are more difficult to send out for sale than regular tax deed properties and require many more steps be followed. Appraisals must be completed by a qualified appraiser.

Commissioner Palmer asked approximately how much money will be generated from the sale of the parklands.

Mr. Macioroski replied there is no way to be certain, but some of the properties are fairly valuable.

Chief Executive Babb asked County Attorney Joyce if the money generated from the sale of the parkland properties will need to go to the Park System.

County Attorney Joyce replied this is correct.

It was moved by Commissioner Foley, seconded by Commissioner Schultz and passed with a unanimous verbal vote to refer Communication No. 11-356 to the Committee of the Whole and ask Jeff Amerman to review and report back to the Committee of the Whole with his suggestion for finding the funds.

SECTION IV

SUSPENSION OF THE RULES FOR FINAL PASSAGE

It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried by a roll call vote of 10 yeas and 1 nays to suspend the rules for the purpose of passing Council Resolutions No. 11-26 by waiving Subsection 7 of Rule XXXVI of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.

Commissioner Shaw that Council Resolution No. 11-20, be placed on final reading and passed having been deemed read at length. The motion passed with a roll call vote of 11 yea and 0 nay.

2. **COUNCIL RESOLUTION NO. [11-21](#)**

A RESOLUTION APPROVING A 50 FOOT IN WIDTH GRANT OF EASEMENT, BEING TWENTY-FIVE FEET ON EITHER SIDE OF THE CENTER LINE OF A PUBLIC TRAIL TO NORTHWESTERN CORPORATION D/B/A NORTHWESTERN ENERGY, A DELAWARE CORPORATION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., DESCRIBED AS TRAVERSING THE FORMER B.A.&P. RAILWAY RIGHT-OF-WAY AS SHOWN ON ATTACHMENT A, FOR CONSTRUCTION, OPERATION, MAINTENANCE, REPLACEMENT, UPGRADE AND REMOVAL OF A NATURAL GAS PIPELINE, COMMUNICATION SYSTEM AND NECESSARY APPURTENANCES; FINDING THE NECESSARY FACTS FOR THIS RESOLUTION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 11-21, be placed on final reading and passed having been deemed read at length. The motion passed with a roll call vote of 11 yea and 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 9:15 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER