

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

**For MARCH 23, 2011**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, March 23, 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**

12 present, 0 absent,

## **PRAYER**

Commissioner Hall led the Commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF March 2, 2011.**

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to approve the minutes of the Regular Meeting of March 2, 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**

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb reported the following:

- Updated Council on his recent trip to Washington D.C. and explained all appropriations with the Federal Government are on hold. Chief Executive Babb further explained money will go to the agencies after the budget has passed. Butte-Silver Bow submitted \$181,000,000 in Federal requests for projects.
- Explained Senator Testor arranged a meeting with the Veteran's Administration on behalf of the Veteran's Home. There are currently two bills in the Montana Legislature, with the bonding bill being passed out of Committee and moving to the Senate. House Bill No. 296 has also passed out of Committee and if passed by the House, will be moved on to the Senate. A form must be filled out by the State and submitted by April 15, 2011. Once funding amounting to \$4,600,000 is secure at the Montana level, \$9,000,000 can be secured from the Federal Government.
- Invited Council to visit the Butte-Silver Bow paving operation to see the equipment and Hot Plant in order to gain an understanding the process used for patching and repairing roads in Butte-Silver Bow.

## SECTION I

## 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. COMMUNICATIONS

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

Commissioner Palmer made two Friendly Amendments to No. 9, Communication No. 11-113 to change the recommendation to read refer to the Public Works Committee and No. 45, Communication No. 11-151 the recommendation should read concur and schedule Public Hearing for April 6, 2011.

Commissioner Palmer segregated Section I, Consent Agenda, B Communications, No. 2, Communication No. 11-06, No. 8, 11-112 and No. 38, Communication No. 11-144.

Commissioner Foley segregated Section I, Consent Agenda, B Communications, No. 31, Communication 11-136 and No. 42 Communication No. 11-48.

**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 and B 1 through 45 exclusive of No's 2,8, 38,31, and 42.**

### **Segregation – Communication No. 11-106**

Lindsey Moe, Human Resources Director, requesting Council's authorization for the Chief Executive to sign an agreement with Fresh Healthy Vending.

Commissioner Palmer explained approximately ten years ago there was another request for placement of a vending machine in the courthouse and it was advised to have a policy established. A Communication was submitted at that time but was placed on file without a resolution being drafted. Commissioner Palmer further explained the importance of having a policy concerning the vending machines in the courthouse as well as on any public property.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to refer Communication No. 11-106 to the Judiciary Committee to draft a policy.**

### **Segregation – Communication No. 11-112**

John P. Walsh, Sheriff, Butte-Silver Bow Law Enforcement Department, requesting Council's authorization for the County Attorney to add a new section to Ordinance 2.20.085 Fees of Sheriff.

Commissioner Palmer stated Sheriff John Walsh has requested Communication No. 11-112 be withdrawn because the funds will be placed in a different account.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to change the recommendation of Communication No. 11-112 to note and place on file.**

### **Segregation – Communication No. 11-136**

Robert Macioroski, Director, Butte-Silver Bow Land Records Office, requesting Council's authorization for the Chief Executive to sign a lease agreement with Park Street Properties of the Bell Diamond Mineyard.

Commissioner Foley asked Jim Jarvis to give the history of this project and asked if he had any concerns regarding the lease.

Jim Jarvis Historic Preservation Officer stated a public hearing was held last year regarding the project and explained the lease is necessary to allow the developer to move forward with financing of the project. Mr. Jarvis further stated the lease has not changed since last year's discussion and from a Historic Preservation prospective the language within the lease agreement allows for any impact to the Bell Diamond Mineyard and Headframe to be addressed.

Commissioner Granger requested Mr. Lester be allowed to comment regarding the lease agreement.

Dennis Lester, Silver Star, Montana explained the steps of the project:

1. A Geologic Study will be completed first.
2. An Engineering Feasibility Study will follow.
3. A Testing Phase, which would include drilling, is the next step. All drilling will need to be approved by the EPA and Butte-Silver Bow.
4. Drilling Operations will then begin.
5. Flow Testing will be necessary once drilling begins to characterize the flow from the well.
6. Steam will then be brought up through a closed loop system.

Commissioner Shaw asked Mr. Lester if a lease agreement was necessary in order to begin the funding process.

Mr. Lester replied that is correct.

Commissioner Morgan inquired about the reclamation of the site.

Mr. Lester replied the site will be characterized according to what is currently in place. The site will be restored to the same condition or possibly better.

Commissioner Schultz asked Mr. Lester if the purpose of the project is to use the geothermal to generate electricity.

Mr. Lester replied yes this is correct.

Commissioner Schultz asked how far away the plant could be built.

Mr. Lester replied the plant could be placed up to two to three miles away, but it would be best to build the plant as close as possible in order to keep the heat loss at a minimum.

Commissioner Schultz inquired about the effect the close proximity of the plant would have on the headframe.

Mr. Lester replied nothing will be vented into the atmosphere and will be contained in a closed loop system. Mr. Lester further stated the plant will be built in a way that will be aesthetically pleasing and will not block the frame.

**It was moved by Commissioner Foley, seconded by Commissioner Granger and passed with a unanimous verbal vote to concur and place Communication 11-136 on file.**

#### **Segregation – Communication No. 11-144**

Gere Hafer Speer, Butte-Silver Bow Deputy Clerk, requesting Council's authorization to provide adequate security for anyone required to work late night hours, alone, in the Courthouse.

Commissioner Palmer explained since this communication was submitted the Clerk and Recorder's Office has taken care of the situation and handled it in house. Pat Holland has also apprised Council of the security measures which have been put in place at the Courthouse.

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to note and place Communication No. 11-144 on file. The motion carried with a verbal vote of 11 yea and 1 nay, with Commissioner Schultz voting nay.**

#### **Segregation – Communication No. 11-148**

Robert Macioroski, Director Butte-Silver Bow Land Records Office, requesting Council's authorization to accept the Kujawa Development, LLC proposal for 88 E. Park Street and instruct the County Attorney to draft a Resolution of Sale.

Commissioner Foley asked for confirmation of what was stated in the buy-sell agreement presented to Kujawa Development LLC.

Karen Byrnes stated the purchase sale agreement is being negotiated with Kujawa Development LLC and will allow Butte-Silver Bow to move forward with the stabilization of the building with Grant funds. Ms. Byrnes further stated once the building is stabilized Mr. Kujawa will execute the purchase sale agreement which will outline the thresholds in the Developer's Packet and will pay the agreed upon purchase price.

Commissioner Morgan asked if the grant funds are sufficient to cover the costs of stabilizing the building.

Ms. Byrnes replied there is no way to know for sure if the grant funds are sufficient, but the Engineering Consultant firm, which has performed some work on the building, has stated they believe the grant funds should be sufficient to perform the necessary work. If the bids received are \$70,000 or less, Butte-Silver Bow will move forward with the plans as stated, and if the bids are greater than \$70,000 it will be necessary to decide if the County wants to use all secured grant funds and use a portion of URA Funds to complete the stabilization.

Commissioner Morgan asked if the grant money is capped at \$70,000.

Ms. Byrnes replied that is correct.

Commissioner Morgan asked if it is safe to place workers in the building to perform the stabilization.

Karen Byrnes replied the safety of workers will be addressed by the Engineering Firm and insurance will be provided by Butte-Silver Bow as well as the contractors performing the work.

Commissioner Morgan asked Nick Kujawa what the time for completion of the building is.

Nick Kujawa replied the timeline is contingent on three items:

1. Secure plans from a licensed structural engineer for temporary stabilization and interior cleanup of property.
2. Execution of the stabilization and interior cleanup of property provided the cost does not exceed \$70,000.
3. Certification from a licensed structural engineering firm the property is structurally stable

Commissioner Foley asked if there is a possibility insurance coverage will be denied after an engineering firm certifies the building as stable.

Mr. Kujawa replied he has assurances from his insurance company they will insure the building once a licensed engineering firm certifies it as being stabilized.

**It was moved by Commissioner Foley and seconded by Commissioner Palmer to concur and place Communication No. 11-148 on file. The motion carried with a verbal vote of 11 yea and 1 nay with Commissioner Granger voting nay.**

Chief Executive Babb expressed condolences and recognition to the Stallman Family and stated the communication authorizing a Memorandum of Understanding with Brian Ketterhagan to review the Julia Stallman Homicide/Cold Case was passed by Council in the Consent Agenda.

## **SECTION II**

## **COMMUNICATIONS TO BE READ AND ACTED UPON**

### [11-122](#)

Patty Higinbotham, Chair, Butte-Silver Bow Public Library Board of Trustees requesting Council's authorization to serve wine at the Library Grand reopening event April 1, 2011.

Lee Phillips stated the following:

- The Library has contracted with a catering service which will provide general liability as well as liquor liability; the caterer will also provide certificates of insurance to the County and will provide and serve the wine.
- Letters of written consent have been obtained from the Pastor of the First Baptist Church and the Pastor of St. John's Episcopal.
- Council authorization is required to serve alcohol at a closed private event.

Commissioner Morgan asked County Attorney Joyce if the Insurance by the caterer is sufficient to cover the Library Board, which is paying for the caterer to furnish the alcohol.

County Attorney Joyce replied the ordinance regarding use and consumption of alcoholic beverages in government buildings requires adequate on-premises liability insurance coverage which is being provided by the caterer, and the building is insured through the City-County. Ms. Joyce further stated the Friends of the Library are paying for the event not the Library Board.

Commissioner Morgan asked if the Friends of the Library needed to secure additional insurance.

County Attorney Joyce replied she is comfortable the insurance provided by the caterer is sufficient.

Commissioner Ralph asked if the funds for the event are coming from the Friends of the Library.

Ms. Phillips explained the money for the event will come from grant funds. Ms. Phillips further explained there is a line for contributions and donations within the Library grants account, and specific contributions have been made for this event.

Chief Executive asked Ms. Phillips if the money comes from private entities.

Ms. Phillips explained there are four lines in the grant account and one line is specifically for donations and contributions from the public.

Chief Executive Babb asked Jeff Amerman, BSB Finance and Budget Director, if the funds come from a line item in a grant if this would be considered government money.

Jeff Amerman replied Ms. Phillips is referring to fund 2880, which is the Library Grants Fund and is a governmental fund. Mr. Amerman further stated the alcohol for the event cannot come from any government fund.

County Attorney Joyce commented she was mistakenly under the impression the Friends of the Library were paying for event. Ms. Joyce further stated it is Council's decision to make as to whether or not Alcohol may be served in a public building. Ms. Joyce also stated she was not sure if it is allowable to pay for the alcohol with funds involved in any type budget process of local government.

Commissioner Schultz stated he did not feel it was right to pay for alcohol from any funds contributed to government by the public. Commissioner Schultz further stated serving alcohol in a government building is setting a bad precedent.

Commissioner Foley commented the ordinance states the use and consumption of alcoholic beverages on any property owned by local government is prohibited and asked County Attorney this means property owned by Butte-Silver Bow and not just the building.

County Attorney Joyce replied her interpretation of the ordinance is to include both real and personal property.

Commissioner Foley reminded Council alcohol is consumed on many Butte-Silver Bow properties on a regular basis and asked why the consumption of alcohol at the Library Re-Opening is being questioned.

Commissioner Schultz stated a large usage of the Library is by children and it is inappropriate to serve alcohol at a facility where children are the primary users.

Commissioner Ralph stated perhaps the ordinance should be amended to state alcohol consumption is not permitted in County owned buildings. Commissioner Ralph asked Ms. Phillips if there is an auction being held at the event.

Ms. Phillips replied the auction is a book sale.

Commissioner Andersen restated Commissioner Foley's regarding the consumption of alcohol on public property.

Commissioner Shaw stated this is not a moral issue and according to ordinance only Council can approve the use of alcohol on certain public property which includes the Library. Ms. Shaw further stated this is a matter of equity and of following the ordinance.

Commissioner Morgan stated using funds from a line item government budget is not correct.

Lee Phillips stated no children will be present at the event and explained the 2880 account in question is used for donations. These funds are at the discretion of the Library Board to spend as they see fit. Monies for this specific event were placed in the 2880 account for accountability.

Commissioner Henderson stated this communication should be held until the County Attorney has had time to investigate the legality of where the money comes from and how it is spent.

Commissioner Foley commented more is being made out this than necessary.

**It was moved by Commissioner Foley and seconded by Commissioner Palmer to approve Communication 11-122 and place on file.**

Commissioner Henderson repeated his feelings that the communication should be held for further investigation.

Commissioner Hall asked Jeff Amerman to explain his interpretation of the issue.

Jeff Amerman explained there are three separate issues involved, one issue is whether or not alcohol can be consumed at the event, the second issue is whether or the County can fund the party and the third issue involves the County purchasing the alcohol for the event. Mr. Amerman fur-

ther explained the County would risk having a huge liability if the alcohol were to be purchased with County funds and suggested a third party should purchase the alcohol.

**A substitute motion was made by Commissioner Schultz and seconded by Commissioner Henderson to hold Communication No. 11-122 in abeyance until the County Attorney researches the legality of using the funds in the 2880 account.**

Commissioner Morgan asked Jeff Amerman what account the payment of alcohol would come from.

Jeff Amerman replied payment of the alcohol should not come out of any Butte-Silver Bow account. Payment for catering of food would come out of the 2880 account. Any alcohol would need to be purchased by a third party outside of Butte-Silver Bow funds.

Commissioner Morgan asked Ms. Phillips if it would be possible to have a third party pay for the alcohol.

Ms. Phillips replied the caterer stated the alcohol must be purchased by their business and the Library Board would not be allowed to purchase or handle the alcohol in any manner.

Chief Executive Babb asked Ms. Phillips, as a solution, if the Library would be willing to pay for the food and have a third party pay for the alcohol portion of the catering bill.

County Attorney Joyce agreed having a third party pay for the portion of the bill to pay for alcohol.

Ms. Phillips replied yes having a third party pay for the alcohol portion of the bill would not be a problem.

**Commissioner Morgan made a motion to end all motions to approve Communication No. 11-122 with the condition any alcohol be paid by a third party, not by Butte-Silver Bow and place on file. The motion to end all motions was seconded by Commissioner Granger. The motion carried with a verbal vote 8 yea, and 4 nay with Commissioner's Henderson, Schultz, Ralph and Frasz voting nay.**

11-141 R. Edward Banderob, Interim Facilitator, requesting Council specify the procedure to prepare an "Economic Development Project Proposal" regarding the Greeley School Building and adjoining Butte-Silver Bow District #1 parcel of land.

Commissioner Palmer explained the Greeley School Building is owned by School District No. 1 and Butte-Silver Bow no longer owns the land it sits on. The Public Housing Authority now owns the land and at their last meeting a motion was made for a land swap with the School District for the land the Greeley School sits on in order for the School District to own both the building and the land it sits on. Commissioner Palmer further explained the communication will now have to be presented to the School Board.

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to place Communication No. 11-141 on file.**



## SECTION IV

### ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

1. **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.

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

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING A PORTION OF THE ALLEY LOCATED BETWEEN WEST PARK STREET AND WEST GALENA STREET ADJACENT TO LOT 7, A PORTION OF LOT 8, ALL OF LOT 48 AND THE WEST 32 FEET OF LOT 49 OF THE ORIGINAL BUTTE TOWNSITE TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN.

3. **COUNCIL RESOLUTION NO. [11-12](#)**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS LOT 19 OF THE NORTH STAR – SOUTH STAR AND JANUARY LODES LOCATED IN SECTION 13, TOWNSHIP 3 NORTH, RANGE 8 WEST P.M.M., PARCEL NO. 25810, OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNER PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

## SECTION V

### ORDINANCES SECOND 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 that Council Bill No. 10-13, Ordinance No. 10-13 be placed on second reading and passed having been deemed read at length. The motion carried with a roll call vote of 12 yea and 0 nay.**

## **SECTION VI**

### **ORDINANCES AND RESOLUTIONS FINAL READING**

#### **1. COUNCIL RESOLUTION 10-15**

A RESOLUTION ACCEPTING THE DONATION BY CONTINENTAL PUBLIC LAND TRUST (CPLT) TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA, THE REAL PROPERTY HERIN DESCRIBED ON EXHIBIT "A" TO THIS RESOLUTION FOR THE PURPOSE OF PROMOTING AND FACILITATING REDEVELOPMENT OF THESE PROPERTIES AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Resolution No. 10-15 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 12 yea, 0 nays.**

Commissioner Schultz announced a Town Hall District Meeting will be held at 7:00 p.m. at the Race Track Fire Hall.

Commissioner Palmer stated there are five Wednesday's in June and asked Council which day they wish to take off.

Commissioner Schultz asked if it would be possible to take June 29<sup>th</sup> off as it the 4<sup>th</sup> of July weekend and Council agreed.

Commissioner Shaw stated there will be a Community Enrichment Meeting March 25, 2011 at 2:00 p.m. in the first floor conference room.

Commissioner Foley announced there is a meeting regarding the update of the five year review of the Montana Pole Plant at 7:00 p.m. at the Boulevard Fire Hall.

Chief Executive Babb updated Council regarding a meeting held with the Fire Commission to determine changing the requirement of earning an 85 score on the Civil Service Test to a passing score of 70. Chief Executive Babb explained the Fire Commission made a motion to change the passing score to 70 and to add the Human Resource Director and the Fire Chief to the Interview Committee.

Commissioner Henderson asked if a tour of the crusher would be set up for Council.

Chief Executive Babb stated the tours will be set up by the Public Works Director Dan Dennehy.

**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.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**