

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

For October 5, 2011

The Regular Meeting of the Council of Commissioners was called to order Wednesday, October 5, 2011, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Acting Chief Executive, Dave Palmer.

ROLL CALL

1 presiding, 10 present, 1 absent. Commissioner Morgan was excused.

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 21, 2011.

It was moved by Commissioner Shaw and seconded by Commissioner Foley to approve the minutes of the Regular Meeting of September 21, 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

Mark Stauffer, 1253 W. Aluminum Street stated, in his view, the marketing effort and the bid process regarding the Greek Café were flawed.

CHIEF EXECUTIVE'S REPORT

Acting Chief Executive Palmer announced there will be no report as Chief Executive Babb is attending the League of Cities Conference in Billings.

SECTION I

BID OPENING

TO ACCEPT SEALED BIDS FOR THE BUTTE SIDEWALKS PROJECT. (Communication No. 11-431 being held in the Committee of the Whole.) **Proof of Publication was noted.**

Jon Sesso opened four bids from the following:

EHC, LLC	Wyoming	Items 1-17B	\$697,542.00
White Resources, LLC	Butte, MT	Items 1-17B	\$556,000.00
LeProwse Construction	Butte, MT	Items 1-17B	\$452,663.50
Interstate Improvement	Faribault, MN	Items 1-17B	\$590,113.00

It was moved by Commissioner Shaw, seconded by Commissioner Granger and carried with a unanimous verbal vote to refer the bids to the Planning Department for a report back to Council.

Jon Sesso stated the report with a recommendation for the bid award will be ready on Friday, October 7, 2011, and the Chief Executive will call for a Special Meeting on October 12, 2011 requesting Council's approval of the recommendation.

SECTION II **PRESENTATION**
COMMUNICATION NO. [11-546](#)

Dave Palmer, Chairman, Butte-Silver Bow Council of Commissioners, requesting time on the October 5, 2011 agenda to receive reports from recipients of FY 2010-2011 Economic Development Mill Levy Funds and request time on the October 19, 2011 agenda to accept sealed proposals for the allocation of FY 2011-2012 Economic Development Mill Levy Funds.

Chairman Palmer introduced the six recipients of the Economic Development Mill Levy Funds for FY 2010-2011 and requested reports from each.

Ron Davis, President, Advantage Butte, reported the following:

- Advantage Butte was established in 2003 in order to create economic development for the Butte Community through sports.
- Advantage Butte received \$12,400 from Butte-Silver Bow Economic Development Mill Levy Funds during the 2010-2011 school year, which was used to underwrite the Class A State Wrestling tournament and the Class AA Boys and Girls Basketball tournaments, as well as the State AA/B Track Meet.
- These events brought \$1,580,200 to the local economy, a return of roughly \$198,000 per day.

Brendan McDonough, 1911 Argyle stated the following on behalf of the An Ri Ra Festival:

- An Ri Ra received \$10,000 from Butte-Silver Bow Economic Development Mill Levy Funds.
- These funds covered 7% of the total budget for the An Ri Ra Festival.
- The funds received were allocated towards the contract for Rocky Mountain Rigging for portable staging.

Chad Harrington, 110 Meadow View Drive stated the following on behalf of Evel Knievel Days:

- Evel Knievel Days received \$7,000 from Butte-Silver Bow Economic Development Mill Funds, which is 4.5 % of the event cost.
- Sponsors provide 19.5%, Butte Events Team provides 15.5 %, with the remaining portion coming from the event itself.
- The total cost of the event is approximately \$155,000.
- The event raised \$80,000, which was 52% of the cost.
- The remaining 8.5% (\$13,000) came from the reserves of the Evel Knievel Days Festival.

Commissioner Hall asked Mr. Harrington for the dollar amount spent on staging.

Mr. Harrington replied approximately \$15,000 was spent on staging.

Commissioner Hall asked if the staging was purchased or rented.

Mr. Harrington replied the staging was rented.

George Everett, 66 W. Park, reported the following on behalf of the Montana Folk Festival:

- The Montana Folk Festival was granted \$25,000 from the Butte-Silver Bow Economic Development Mill Levy Funds.
- These funds were used to help produce the Montana Folk Festival by covering the expenses of bringing performing artists to Butte.
- The five main economic impacts of the festival for the Butte area are:
 1. Successful transition from a national event to a regional event.
 2. A direct economic impact from expenditures spent to produce the event.
 3. A direct economic impact from the monies spent by visitors to the area.
 4. Indirect economic impacts, which include real estate sales, thousands of people being introduced to the Butte Community, return visits and an increased enrollment at Montana Tech.
 5. Marketing benefits for the community's brand and image, which is priceless.

Commissioner Shaw asked Mr. Everett how long the Montana Festival will continue.

Mr. Everett replied the festival will continue for three more years.

Delores Cooney, 133 N. Museum Way, reported the following on behalf of The Mining Museum:

- The Mining Museum received \$3,500 from the Butte-Silver Bow Economic Development Mill Levy Funds.
- The funding received from the Butte-Silver Bow Economic Development Mill Levy Funds was used to update and enhance the Museum's web site to provide for an increase in information available to visitors.

Dave Palmer reported the following on behalf of Our Lady of the Rockies Tram Project:

- The Our Lady of the Rockies Tram Project received \$10,000 from the Butte-Silver Bow Economic Development Mill Levy Funds.
- Our Lady of the Rockies matched these funds with \$5,000.
- An additional \$15,000 was received from the State of Montana through Headwaters RC&D to be used for engineering services and a business plan for the tram project.
- The project is ongoing, with an architect hired to perform the site plan and to work with the neighborhood subdivision through the Planning Department.

SECTION III

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, Acting Chief Executive Palmer called for any friendly amendments or segregations.

Commissioner Andersen segregated Section III, B, Nos. 34 and 35, Communication Nos. 11-582 and 11-583.

Commissioner Foley segregated Section III, B, No. 19, Communication No. 11-567.

It was then moved by Commissioner Shaw, seconded by Commissioner Foley and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 and B, 1 through 35, with the exception of No. 19, Communication No. 11-567; No. 34, Communication No. 11-582; and No. 35, Communication No. 11-583.

Segregation – Communication No. 11-567

Jon Sesso, Butte-Silver Bow Planning Director, requesting Council authority and concurrence to submit comments on the revised draft of the NRD Guidance Plan.

Commissioner Foley explained he segregated Communication No. 11-567 in order to give Jon Sesso the opportunity to discuss the revision of the final draft of the NRD Guidance Plan.

Jon Sesso explained the following:

- The letter contains comments Council will make regarding the Upper Clark Fork River Basin Long Range Restoration Priorities and Fund Allocation Guidance Plan, which has been before Council for the past three years.
- The final draft of August 29, 2011 included revisions submitted by the Governor's Office to the Trustee Council.
- The final revisions contain good news for Butte-Silver Bow and the recommendation is for Council to endorse the plan with the current revisions.
- Slight edits were made to Items No. 2 and No. 5, with reference that any remainders from Silver-Bow Creek Remediation will be spent in Silver Bow Creek and the Warm Springs Creek Watershed.
- The document is important relative to Butte-Silver Bow's statements regarding the guidance plan and makes it possible to move forward with a number of projects that have been on hold over the course of the last few years.
- The deadline for submittal of the letter is October 11, 2011.

It was moved by Commissioner Foley, seconded by Commissioner Granger and passed with a unanimous verbal vote to approve the plan, concur and submit the letter as revised and place Communication No. 11-567 on file.

Segregation – Communication No. 11-582

Susan Callaghan, Callaghan and Gernant P.C., requesting, on behalf of Butte Urban Safari Tours, Council set aside its decisions of August 17, 2011 and September 7, 2011 regarding the Greek Café.

Commissioner Andersen stated there is a possibility of potential grant monies to help with the stabilization of the Greek Café and commented “this feels like an execution.” Commissioner Andersen expressed his concerns regarding the potential of lawsuits and hopes in the future this type of process would be given as much time as possible to go through.

Commissioner Schultz congratulated County Attorney Joyce for her research and the letter she provided to Council which explained the Open Meeting Law and showed the process used regarding the Greek Café was legal. Commissioner Schultz then stated, after reviewing the Open Meeting Law, he came to a different conclusion and explained a bad pattern has been established by stating the following:

- The action taken was in violation of Council’s own procedures.
- The public right to know has not been addressed.
- Money for a roof was requested for the Brinks Building and instead Council voted to tear down the building.
- County Attorney Joyce stated in the Minutes of the August 10, 2011 meeting “the public can raise issues if they do not feel there is sufficient information in a communication to correspond with the action taken.”
- County Attorney Joyce further explained the question now being raised in the letter from Mr. Randall’s requested funds to repair the roof and action taken was not as to whether or not the funds would be given to repair the roof.
- Ms. Joyce also stated she is not able to answer whether or not the action taken is a matter of significant public interest and stated “Council should proceed with caution.”
- The Open Meeting Law requires that the public must be well notified, at least 48 hours in advance, of an action if the item is of significant public interest.

Commissioner Schultz requested anyone in the audience with an interest in the Greek Café please stand, and after several members of the audience rose, he submitted to County Attorney Joyce that there is significant public interest in the Geek Café. Commissioner Schultz further stated the agenda does not list the demolition of the building, the public was not notified and, therefore, the action taken should be set aside. Commissioner Schultz then stated the process was in violation of the Open Meeting Law and was not a legal action.

Commissioner Schultz then made the following statements:

- Council did not follow proper procedure regarding the Brinks Building.
- The request to repair the roof was denied and a separate communication with a specific action requested should have been submitted for consideration on the next agenda by either staff or the Commissioners.
- This action did not happen in the case of the Brinks Building or in the case of the Greek Café.
- Communication No. 11-496, which appeared on the agenda of August 17, 2011, from Karen Byrnes notified Council of the decision not to fund the additional \$14,000 requested by Mr. Kujawa.
- The communication did not include a recommendation for demolition.

- Questioned if an action can be initiated from a letter that does not request a specific action.
- This is not in keeping with Council procedures and this process was incorrect.
- In the minutes County Attorney Joyce explained that there is not a black-and-white answer and the Open Meeting Laws were not violated.
- County Attorney Joyce also explained a question could be made as to whether or not there was a violation of the Public Participation Statute, which requires specific notice of any agency decision, a decision of significant public interest, be included on the agenda.
- This is an item requiring an action of significant public interest that was not addressed.
- When a motion was requested by Commissioner Andersen, Chief Executive Babb stated, in the minutes, “Ms. Byrnes letter was only informational.”
- This means no action was requested, and action was taken that was not listed on the agenda based on Ms. Byrnes’ letter.
- The entire process should be redone, the demolition should be stopped immediately and the proper process followed.
- Council ignored the request of the letters and instead introduced items not included on the agenda.
- Council is in jeopardy on the following fronts:
 1. The public has a right to challenge Council’s action.
 2. There was nothing in the allocation to Mr. Kujawa requiring a signature within 24 hours.
 3. There is a possibility of a lawsuit because of breach of contract.

Mr. Schultz also commented Council has received letters from National and State agencies begging Council not to proceed with the demolition. He restated the process was flawed, should be set aside and redone properly.

It was moved by Commissioner Schultz and seconded by Commissioner Andersen to set aside the motion for demolition as an improper motion and the demolition be stopped.

County Attorney Joyce explained the purpose of her letter was to answer the assertion by Ms. Callaghan that a proper process was not followed. Ms. Joyce stated she reviewed the Public Participation Statutes and the Constitutional provisions, as well as an advisory Attorney General’s opinion. Ms. Joyce explained the following:

- There is no requirement in the law requiring 48 hours’ notice of any action.
- The Attorney General’s opinion suggested, in order to allow the public the ability to participate in a meaningful way, a legislative body should adopt procedures which allow the public knowledge of the topics on the agenda.
- The Attorney General suggested Council schedule regular meetings for the same time each week and prepare and post an agenda 48 hours in advance to notify the public of topics on the agenda.
- Butte-Silver Bow Council of Commissioners follows this process by meeting every Wednesday at the same time, 48 hours notice of every meeting is given, and an agenda is prepared and given to the media, as well as being posted on the Butte-Silver Bow Web Site.
- Members of the public have 48 hours’ to review the agenda and bring any questions or concerns to their commissioner.
- There is no requirement to have a specific request.
- The communication submitted concerning the Brinks Building indicated funds were being requested to repair the roof. This was the first time the request appeared on the agenda and there was no indication funds were being requested to demolish the building.

- The Greek Café, in contrast, has been on the agenda 17 times in the last year, with communications regarding stabilization as well as demolition. A great deal of information has been provided to Council concerning the condition of the building, and there has also been a great deal of public input and discussion regarding Council's decision whether to stabilize or demolish.
- Urban Safari Tours asked in the November 23, 2010 meeting, if Council does not support a stabilization project, what the other option would be, and the only other option is demolition.
- Even though Karen Byrnes' communication did not make a specific request, the specific language of the letter stated, "Council may want to proceed with stabilization without a committed developer or pursue other options."
- The fact that Ms. Byrnes used the language "pursue other options," the public had notice other options would be discussed at the Council Meeting.
- The Public Participation Statutes and Constitutional Provisions were followed and the public had the opportunity to be involved.

Commissioner Ralph stated she has confidence in County Attorney Joyce's opinion and made the following motion:

A substitute motion was made by Commissioner Ralph and seconded by Commissioner Granger to place Communication 11-582 on file.

Commissioner Hall commented Ms. Byrnes article in the Montana Standard, with some creative writing, told the citizens of Butte there was no developer for the Greek Café. Ms. Hall further commented there was a developer, Mr. Kujawa, who did have a plan for the building. Mr. Kujawa was denied funding from the URA and the citizens of Butte-Silver Bow were not informed of this.

Commissioner Schultz quoted from the minutes of the August 10, 2011 meeting, "Chief Executive Babb asked County Attorney Joyce what her recommendation would be. County Attorney Joyce replied her recommendation would be to note the communication and place it on file, stating that the contingency had not been met and a new communication requesting some action should be submitted." Commissioner Schultz stated this was not done and the action was taken without a new communication being submitted.

County Attorney Joyce explained that later in the same meeting the specific language of Ms. Byrnes' communication was clarified, and as the communication did indicate to either proceed with stabilization or pursue other options, motions to stabilize and to demolish were proper.

Commissioner Schultz stated that he agreed that County Attorney Joyce did change positions on the subject as the "flavor" of the meeting began to change. Commissioner Schultz stated his concern regarding changing procedures and stated Ms. Joyce's initial observation regarding following procedures was correct. By following what the County Attorney is now stating, communications only need to state there is a problem, with many options, and submit the communication without a recommendation. Commissioner Schultz further stated the people of Butte did not know the building was not going to be stabilized until the night of August 10, 2011.

County Attorney Joyce stated she takes offense to Commissioner Schultz's statement that she changed her position based on the "flavor" of the meeting. County Attorney Joyce explained she clarified her position after being informed of the exact language of the communication. Ms. Joyce stated she disputed Commissioner Schultz's contention that anyone could submit a very vague communication which would be considered adequate public notice. Ms. Joyce again explained Ms. Byrnes' communication

advised Council they may wish to proceed with stabilization without a committed developer or pursue other options. This communication was on an agenda which was available to the public and previous discussions regarding another option being demolition was sufficient notice to the public that demolition could be an action taken by Council.

Commissioner Schultz then commented Karen Byrnes stated her communication did not ask for specific action by Council and everything started with the letter by Ms. Byrnes.

The motion passed with a roll call vote of 7 yea and 3 nay.

Segregation – Communication No. 11-583

Christine Whitacre, Program Manager, Heritage Partnerships Program, United States Department of the Interior, requesting Council set aside its decisions to demolish the Greek Café.

Commissioner Andersen commented Council should give more thought and care before taking action regarding communications not containing sufficient facts, such as the Brinks Building.

Commissioner Hall reminded Council that URA stands for Urban Revitalization Agency and nothing in the title says demolish.

It was moved by Commissioner Andersen and seconded by Commissioner Shaw to note Communication No. 11-583 and place on file. The motion passed with a verbal vote of 9 yea and 1 nay.

SECTION IV COMMUNICATIONS TO BE READ AND ACTED UPON

11-564

Brendan McDonough, McDonough Event Management and Consulting, requesting Council's permission for the band "Solas" and film crew to film in any or all of the mine-yard properties owned by Butte-Silver Bow.

Brendan McDonough, 1911 Argyle, explained the following:

- Solas is a world-recognized band based out of Ireland.
- The project is titled "Shamrock City" and is independently funded.
- The project is based on Butte and the Irish immigration experience in Butte.
- Filming will take place at various locations in Butte.
- Solas is requesting Council's permission to film in mine-yard properties owned by Butte-Silver Bow.

Commissioner Schultz asked if there is liability insurance to cover those in the mineyards and if there will be any traffic concerns to be considered.

County Attorney Joyce replied an Access Agreement is being prepared which will require insurance coverage. This agreement will be delivered to the Solas representative for signature by Mr. McDonough, who asks Council to concur with this request contingent on the signing of the appropriate Access Agreement.

It was moved by Commissioner Schultz, seconded by Commissioner Granger and passed with a unanimous verbal vote to approve the request of Communication No. 11-564 and place on file.

Commissioner Shaw announced the Library Board will meet October 19, 2011.

Commissioner Frasz asked Karen Byrnes when the RRA Meeting will be held.

Karen Byrnes stated no meeting has been scheduled for the RRA in October.

ADJOURN

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

The meeting adjourned at 9:10 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER