

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

FOR OCTOBER 21, 2009

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **October 21, 2009**, 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, Commissioner Frasz and Commissioner Lee were excused

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF OCTOBER 6, 2009 AND THE SPECIAL MEETING OF OCTOBER 14, 2009

It was moved by Commissioner Palmer and seconded by Commissioner Moodry to approve the minutes of the Regular Meeting of October 6, 2009 and the Special Meeting of October 14, 2009. The motion carried with a unanimous verbal vote.

ITEMS NOT ADDRESSED ON THE AGENDA

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and carried by a roll call vote of 10 yeas, 0 nays to suspend the rules in accordance with the provisions of section 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 09-691 be added to the Agenda of July 15, 2009 Meeting of the Council .

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported the following:

- H1N1 Flu Virus information is available on Butte-Silver Bow's website.
- Appropriation through Homeland Security for \$800,000 for an Emergency Operation Center is moving forward.
- Ad Hoc Committee is being formed for the Courthouse's 100th year anniversary, which will take place next year.

- After speaking with many people in the Health Department and co-commissioners, she felt there should be an opportunity to open this issue up to more discussion.

Chief Executive Babb explained this would not be a Public Hearing and members of the public would not be able to testify, but specific questions could be answered.

Commissioner Shaw asked Dan Haffey to come forward and share information with the Commission.

Dan Haffey, 190 Pintlar Peaks Drive, Anaconda, Montana stated the following in regards to the Tri-County Chemical Dependency Program with the Council:

- Vitally important for these programs to be put under the auspice of the Butte Chemical Dependency Program.
- Butte, Anaconda, and Deer Lodge people are all basically the same people.
- Dissemination of services in other counties over the years.
- State of Montana wants communities to collaborate with surrounding communities.
- Only one DUI Task Force existed three years ago in the five counties, now there are five.
- Butte-Silver Bow currently has three grants that extend into other communities, including the Block Grant for the State of Montana, which is responsible for Butte-Silver Bow County as well as Beaverhead and Madison Counties.
- Precedent has been set showing this can work successfully.
- No consistency in the quality of service in Anaconda, Deer Lodge and Granite County.
- None of the programs in these communities have proven to be successful.
- Under this program, Butte-Silver Bow will have the ability to help other communities who are in great need.
- Liabilities can be worked out.

Commissioner Schultz asked Commissioner Foley why the communication was denied.

Commissioner Foley explained the basis for denial with the following:

- Recommendation of the County Attorney.
- Financial concerns which had not been addressed.
- Not beneficial for the taxpayers of Butte-Silver Bow.

Commissioner Foley stated false information is being perpetuated by the Health Department, i.e. Council doesn't care about people; Council is trying to micro-manage the Health Department. He further stated Council is doing what they feel is in the best interest of the taxpayers of Butte-Silver Bow.

Commissioner Schultz asked County Attorney, Eileen Joyce what will happen to the people affected if Butte-Silver Bow denies these contracts.

County Attorney, Joyce replied she has verified if Butte-Silver Bow does not sign this contract, the Department of Health and Human Services will make a request for interested persons to apply to be the service provider for the three outlying counties. The counties would have a different service provider, just not Butte-Silver Bow.

Commissioner Schultz asked County Attorney if Butte-Silver Bow accepts these contracts do we become a business entity.

County Attorney Joyce replied with the following:

- By entering into this contract, Butte-Silver Bow would be employing people who do not live in Butte-Silver Bow County, and would not be providing services to Butte-Silver Bow, but would be our employees.
- Concern is not about whether or not these services are needed and valuable, but rather about who should be providing the services.
- Concerned about the liability perspective to the local government. When these people become employees of Butte-Silver Bow, they will have all the benefits any other employee of Butte-Silver Bow, i.e. health insurance, and workers compensation coverage.
- Liability issue if there is a car accident in another county.
- Risks need to be evaluated before Butte-Silver Bow takes on employees who don't provide services in Butte-Silver Bow.
- Believes risks need to be shared by the other counties, as they are the ones receiving the services.
- Spoke to the County Attorneys in Powell and Anaconda-Deer Lodge Counties about the possibility of an inter-local agreement to share the liabilities.
- Counties indicated the services Butte-Silver Bow would provide would be very valuable, but thought it would be difficult to draft an inter-local agreement because people would be Butte-Silver Bow employees.
- State of Montana has an obligation to provide these counties with another service provider if Butte-Silver Bow does not accept the contract.

Commissioner Sheehy asked County Attorney Joyce about the Board the Highline has and if such a Board would fit within the Grant Program.

County Attorney Joyce replied Toole County has an agreement with four other counties and has formed Highland Recovery. Toole County is the fiscal administrator for the grant funds, but the Board has a Commissioner from each of the five counties to make decisions as to how to run their Chemical Dependency Treatment. She feels there is a possibility as to forming an inter-local agreement, but it needs to come from the other counties agreeing to accept some of the liability.

Commissioner Palmer asked Teri Hocking if she would be willing to work with the Commissioners in the other counties to set up this type of an agreement in order to make the program work.

Teri Hocking, replied she would be willing to work out whatever type agreement is necessary. She stated the Health Department has had satellite clinics for nearly twenty years without any liability claims. The ability for hiring, training and supervising is a responsibility of the Health Department. The other counties receive no payment for the clinics, and therefore don't feel obligated to accept any liability.

Commissioner Palmer replied if other counties want Butte-Silver Bow to provide the services in their county, they should be willing to set up some type of agreement to make this work.

It was moved by Commissioner Palmer and seconded by Commissioner Moodry to hold Communication No. 09-465 in abeyance and give the Health Department a chance to make

an agreement that would be agreeable with Butte-Silver Bow's County Attorney in order for Butte-Silver Bow to held harmless on all aspects mentioned.

Chief Executive Babb made the following comments regarding a conversation with Joan Cassidy from the State:

- An extension would be granted through November 1, 2009.
- There would be no loss of jobs as a result if Butte-Silver Bow decided to not accept the contract.
- Another extension could be granted if necessary.
- County Attorney Joyce has put a great deal of time and effort into this in order to protect Butte-Silver Bow's best interests.

Commissioner Moodry commented he believes a "hold harmless" is not enough because all Butte-Silver Bow employees have to have the same coverage. The other counties need to share the liabilities in order to assure these employees are afforded the same coverage as any other Butte-Silver-Bow employee.

Commissioner Shaw thanked County Attorney Joyce for her hard work and stated the Commissioners are doing the best they can with the information they have. She explained she segregated the communication in order to assure the people who needed the services did not suffer. She also asked County Attorney Joyce if Jeff Amerman was able to determine if the grant money would be sufficient to cover such items as employee benefits.

County Attorney Joyce replied Mr. Amerman was able to determine the grant funds provided by the State are supposed to cover all employee benefits and costs, however he did not have an opportunity to obtain enough information from the Health Department necessary to fully understand the issue.

Commissioner Schultz stated he shares the same concerns of the other Commissioners and realizes the small counties are suffering. He also has great concern regarding Butte-Silver Bow's liability in hiring employees who do not go through standard Butte-Silver Bow hiring and are supervised by a manager who is not in their offices. This could open Butte-Silver Bow up to a wide variety of problems and he stated he is not comfortable with this.

Commissioner Foley asked Teri Hocking if Butte-Silver Bow Health Department had ever been asked before to extend services into other counties.

Teri Hocking replied to Commissioner Foley with the following comments:

- Since she has been with the Health Department, there has been two times Butte-Silver was approached about extending services into other counties. Butte-Silver Bow did not deny the request, but the person providing the counseling service in that area at the time denied it.
- The Health Department is projecting a \$30,000 revenue production for the first year for the Tri-County Area.
- She has no concerns about the fiscal liability of the program and the employee benefits are paid out of the contract funds and the revenues that are produced.
- All current employees of the Health Department are Butte-Silver Bow employees and are being spread as thin as possible in order to keep everything going.

- One temporary person is on contract due to short duty illness and surgical procedures.
- Health Department has twenty-six contracts of which most are from grants.
- All Public Health Grants are coming out as regional grants.
- Must agree to do the regional activity being requested or will not be able to apply for the grants.
- As current grants (about \$4,500,00 a year) disappear, there will not be the ability to apply for many that come along unless we agree to the regional activity.
- Currently have eight other contracts that involve as many as six counties, and have never had an issue.
- Considered trying a contract basis for the person being used in to fill in, but discovered it was against Federal labor laws which states that if you have permanent or part time people working for a period of time, they are entitled to benefits.

Commissioner Foley commended County Attorney Joyce for her investigation and for protecting the taxpayers of Butte-Silver Bow. He further stated, as the governing body of this county, the Commissioners are trying to protect the taxpayers of Butte-Silver Bow and hopes the Health Department will be able to work with Council without having false information thrown out to scare workers that the intention of Council is to damage the Health Department.

Commissioner O’Leary asked Dan Haffey if any employees hired in other counties would be held to the same professional standards as other Butte-Silver Bow employees are held to. Therefore, not putting Butte-Silver Bow County at greater risk than any other employee we have.

Dan Haffey replied the standards the Health Department and the County have set for employees outside the county are exactly the same as any other employee of the Health Department. The Health Department has employees in Dillon, Sheridan, Anaconda and Deer Lodge who have their own offices. These employees are held to the same standards and work the same hours as any other Butte-Silver Bow employee.

Commissioner O’Leary stated he sat on the board for Western Montana Mental Health, which is also a regional service. He also stated we are a rural State and sometimes we need to do things such as sharing amongst a number of counties. He stated he supports continuing to look at this and working with the other County Commissioners to try to work out the few differences for the greater good.

The motion passed with a roll call vote of 5 yeas, 5 nays with the tie being broken by Chief Executive Babb, voting yea to continue to look at Communication No. 09-465 and asked Ms. Hocking to contact Joan Cassidy for an extension.

SECTION 1V COMMUNICATIONS TO BE READ AND ACTED UPON

COMMUNICATION NO. 09-667

Paul Babb, Chief Executive, requesting Council’s concurrence in the appointment of Derek Harvey as a Probationary Entry Level Firefighter.

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and passed with a unanimous verbal vote to concur with the request of Communication No. 09-667 and appoint Derek Harvey as a probationary entry level firefighter.

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and passed with a unanimous verbal vote to place Communication No. 09-667 on file.

COMMUNICATION NO. 09-678

Paul Babb, Chief Executive, requesting Council's concurrence in the confirmation of Mr. Chris Mjelde as a Firefighter.

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and passed with a unanimous verbal vote to concur with the request of Communication 09-678 and appoint Mr. Chris Mjelde as a Firefighter.

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and passed with a unanimous verbal vote to place Communication No. 09-678 on file.

COMMUNICATION NO. 09-691

Jeff Amerman, Finance and Budget Director, requesting the Council of commissioners authorize the Chief Executive to sign an engagement letter with Dorsey and Whitney, LLP to serve as bond counsel for the Butte-Silver Bow Metro Wastewater Treatment revenue bonds.

In accordance with the provisions of section 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 09-691 to be added to the Agenda of October 21, 2009 Meeting of the Council.

It was moved by Commissioner Palmer, seconded by Commissioner Moodry and carried by a roll call vote of 10 yeas, 0 nays to concur with the request of Communication No. 09-691 and place on file.

SECTION I BID OPENING

SEALED BIDS FOR THE PURCHASE OF VARIOUS MATERIALS FOR THE 2009 BIG HOLE WATER TRANSMISSION MAIN REPLACEMENT PROJECT. (Communication No. 09-680) Proof of publication

Rick Larson, Operations Manager/Utility Division opened 6 bids from the following:

Construction Software Tech, Missoula, Montana	Incomplete
American Ductile Iron Pipe, Castle Rock, Colorado	\$1,311,869.00
United Pipe & Supply, Bozeman, Montana	\$1,286,332.60
US Pipe & Foundry Co, LLC, Woodinville, Washington	\$1,352,667.12
HD Supply Waterworks, Missoula, Montana	\$1,244,476.98
Northwest Pipe Fittings Inc, Butte Montana	\$1,170,410.86

It was moved by Commissioner Palmer and Seconded by Commissioner Moodry and carried with a unanimous verbal vote to refer the bids to the Public Works Department and report back to Council.

SECTION II

PRESENTATION COMMUNICATION NO. 09-674

Dave Fawcett, Chair – Archives Renovation and Vault Addition Review Committee, requesting time on the October 21, 2009 agenda for a project update and introduction of the Project Manager.

Dave Fawcett, 2240 Blacktail Loop, Chairman of the Technical Review Committee for the Archives Board gave a power point presentation with the following information:

- Construction bond was passed approximately one year ago and construction was begun.
- There is a mix of both county employees and volunteers from the community who run the Technical Review Committee.
 - 1) Dave Fawcett – Chair
 - 2) Marty Alexander – Carpenter, Butte-Silver Bow
 - 3) Jeff Amerman – Finance and Budget Director, Butte Silver Bow
 - 4) Ellen Crain – Archivist, Butte Silver Bow
 - 5) Brian Holland – Attorney
 - 6) Steve Huntington – Public Finance Specialist
 - 7) Jim Jarvis – Butte-Silver Bow
 - 8) James Johnson – Archives Friends Board
 - 9) Eileen Joyce – County Attorney
 - 10) Chuck Lee – Electrician, Butte-Silver Bow
 - 11) Pete Godtland - Architect
 - 12) Jon Sesso – Planning Director, Butte Silver Bow
- Technical Review Committee, with Council’s approval, has contracted with MSE for project management.
- Tom Burkhart is the Project Manager for Butte-Silver Bow and is looking out for the best interests of the local government.

Tom Burkhart stated he is an employee of MSE and is a Professional Engineer registered in Montana and Virginia. Mr. Burkhart gave Council the following construction update:

- Construction is making significant progress.
- Concrete floors and roof area have been completed in the Vault area.
- Shelving in Vault area is currently being installed.
- Steel beam for the Wedge (construction infill area) will be delivered first week of November.
- Alley gutter, which will direct run-off from the buildings, was recently poured.
- Change Order #4 will be ready for presentation to Council in approximately two weeks. The change will be for \$41,870.
- Project should experience only three more change orders.
- Technical Review committee continues to be diligent in dealing with the project.
- Project is on budget and is expected to stay that way.

Tad Dale, 3465 St. Ann's, made the following comments:

- Homeowners in this area are concerned about what will happen to the value of their homes and their quality of life.
- Residents of Hillcrest are not against development, but want it done correctly.
- Parkland has been proposed as an exit route out of the Columbia Gardens Subdivision.
- Homeowners in the area are united and oppose the ingress and egress routes, not the development.
- Jim and Judy Wonnacott, Lorraine Mahoney, Ed and Leah Stergar are asking to purchase the surplus parkland.
- Hillcrest residents have concerns regarding water, traffic, sewer, and feel there will great danger to children and pets.
- Two petitions, with over 100 signatures, in regards to the surplus parkland are presented to Council; one petition is to oppose the access routes in the original subdivision proposal, the other petition is in support of the adjacent homeowners purchase of the surplus parkland.
- Best solution for Butte-Silver Bow and the residents of Hillcrest is for the land to be awarded to the adjacent landowners.

Dan Strizic, 2246 Fairway, stated the following:

- Proposal is for the three adjacent residents to acquire the land and extend their existing property lines.
- Proposal represents the unified wishes of the residents of Hillcrest.
- Residents of Hillcrest are asking the Chief Executive and Council to review the facts and history regarding the parkland.
- Residents of Hillcrest want to preserve the land for the purpose that will be beneficial for all.

Charlie O'Leary asked Dori Skrukruud if the land is for sale and if the money from the sale is to generate money for The Parks and Recreation Department.

Ms. Skrukruud replied this is correct.

Commissioner Shaw asked Bob Rowling if the land in question is open land that is not intended to be developed, and once sold could be used for whatever the new owners wanted.

Bob Rowling replied this is correct as long as it meets code.

Commissioner Morgan asked how the price of the property is defined.

Ms. Skrukruud replied they had conferred with the County Attorney and checked State Law in terms of the disposition of property. The 2009 Department of Revenue assessed market value for the property was used. The property does have a discounted value because it has a substandard frontage on a public right-of-way.

County Attorney Joyce explained the property can be put out on Developer's Packet in accordance with chapter 3.24 of the Municipal Code which states the property can sold based on 2/3 votes of the Council.

Presentation No. 2

Rex Leipheimer presented Council with the following information:

- The water, traffic and sewer issues have been signed off on by Professional Engineers.
- There are no water, sewer or traffic issues.
- Twenty seven signatures from residents of the Hillcrest in support of the development were obtained.
- Parkland has been undeveloped for 52 years.
- Made a proposal to the Parks and Recreation Board to trade the parkland for the construction of a trail.
- Trail and parkland will be maintained in a Homeowners Association.
- Parklands will be open to the public.
- Perfect example of “Urban Infill” because the streets, water and sewer are already there.
- Upon completion of the subdivision (3-5 years) \$64,400 a year in tax base will be added to Butte-Silver Bow without adding any infrastructure.
- Not asking for any variances.
- Subdivision will make affordable new homes available in Butte.

Bob Ablen, 130 S Howie St, Helena Montana, stated he is a Professional Traffic Engineer specializing in transportation studies such as this. Mr. Ablen provided Council with the following information:

- Began collecting traffic data in the area in April 2009.
- Traffic counter was placed on St Ann’s Street at west end of road.
- 360 vehicles per day were counted going up and down that road.
- More data was collected in June 2009.
- Traffic counters were placed on Fairway Ave and Ottawa.
- 300 cars were counted on Fairway, and approximately 600 on Ottawa.
- An estimated 400 cars are currently using Ridgeway.
- The 2005 Butte Transportation Plan guidelines for urban local streets calls for less than 100 cars per day.
- Based on the Institute of Traffic Engineers trip generation manual, the new development will generate 268 additional trips per day, which will keep traffic well within the guidelines.
- There will be an average of approximately one car per minute generated in the area.
- Roads in this area are well suited to carrying this level of traffic.
- Width of roads is approximately forty feet, which is enough room for on street parking and two twelve feet travel lanes.
- Recommendations were made for new signage, i.e. stop signs and yield signs at intersections.
- All roads in the area are in good condition.

Commissioner Morgan asked Mr. Ablen which days of the week and what time of day the studies were conducted.

Mr. Ablen replied the first traffic count was conducted in April, and the second count was in June over a forty-eight hour period. The days used were in the middle of the week, and in his experience the daily variation is very small. Monday through Friday traffic, which is the standard to look at, doesn’t vary much.

ADJOURN

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

The meeting adjourned at 10:10: pm.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER