

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

FOR SEPTEMBER 2, 2009

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **SEPTEMBER 2, 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

12 present, 0 absent.

PRAYER

Commissioner Lee led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF AUGUST 19, 2009 AND THE SPECIAL MEETING OF AUGUST 26, 2009

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the minutes of the Regular Meeting of August 19, 2009 and the Special Meeting of August 26, 2009. The motion carried with a unanimous verbal vote.

ITEMS NOT ADDRESSED ON THE AGENDA

It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas, 0 nays 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 Resolution 09-56 to be added to the Agenda of the September 2, 2009 Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported on the following meetings:

- Advisory Council Meeting with Managers of Natural Resource Damage Fund.
- Meeting once a month with Flu Coordination Council.
- On-going Negotiation Meetings.

SECTION IV

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 Shaw made a friendly amendment on Communication No. 09-603, Section B, Item No. 17: the Change Order No. be changed to read Change Order No. 3.
- Commissioner Palmer made a friendly amendment on Communication No. 09-608, Section B, Item No. 22: recommendation be changed to read Hold in Abeyance in the Committee of the Whole.
- Commissioner Palmer made a friendly amendment on Communication No. 09-558, Section 9I: concur and place on file be added to the recommendation.
- Commissioner Palmer made a friendly amendment on Communication No. 09-584, Section 16: concur and place on file be added to the recommendation.
- Commissioner Morgan made a friendly amendment to Communication No. 09-593: recommendation be changed to refer Communication to Public Works.
- Commissioner Palmer segregated Communication No. 09-578, section 13 Committee of the Whole Report.
- Commissioner O'Leary segregated Communication 09-484 Section 2, Rules Committee Report..
- Commissioner Moodry segregated Communication No. 09-604, section 4-B, Item 18.

It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1-4, exclusive of Committee of the Whole Report, Section 13, Communication No. 09-578, Rules Committee Report, Communication No. 09-604, and Section 4-B, Item 18, Communication No. 09-604.

Segregation of Communication 09-578

Commissioner Palmer informed Council all of the necessary signatures have been received for Communication No. 09-578.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve Communication 09-578 and place on file. The motion passed with a unanimous verbal vote.

Segregation of Communication No. 09-484

Commissioner O'Leary requested clarification of Section II, Communication No. 09-484, Rule No. 29.

Commissioner Schultz stated he didn't feel Council is following all of the Rules and Procedures. He explained the Rules Legislative Handbook states a motion could be approved by either a majority or by a two-thirds majority. He requested the rule state either majority or by a two-thirds majority, and the Committee affirm the guidelines of the Handbook are being followed.

Commissioner O'Leary asked County Attorney Eileen Joyce for concurrence.

County Attorney Eileen Joyce replied the charter indicates the Chief Executive votes to break all ties and the Rules cannot be changed in a way that would change the Charter.

Commissioner O'Leary questioned if the Committee had this information prior to making their recommendation on this matter.

Commissioner Sheehy responded the Committee did not have this information and that is why the County Attorney's concurrence was requested in the decision.

A substitute motion was made by Commissioner Sheehy and seconded by Commissioner Moodry to hold Communication No. 09-484 in abeyance.

Segregation of Communication No. 09-604

Commissioner Moodry questioned Ellen Crain why hiring a Project Manager was necessary when an Engineering firm had been retained.

Ellen Crain explained the following:

- The existing building is out of alignment.
- A great deal of time is being required of Dave Fawcett, herself and others on the Technical Review Committee.
- Communication between Architects and Contractor is beyond manageability.
- An expert is needed on a daily basis to make certain everything is running smoothly.
- Budget has leeway to hire a qualified expert.

Commissioner Moodry stated he understood, but questioned if it was not the responsibility of the Architectural Firm.

Ellen Crain replied the Architectural Firm is doing the job to the best of their ability, but feels there is a need for a facilitator to smooth out communication between the Architects and the Contractor.

Commissioner Palmer stated he feels Dave is requesting a "babysitter". He requested the Architectural Firm and the Contractor appear before Council and explain the need for a babysitter as a go-between for the two companies in order to get the job done.

It was moved by Commissioner Moodry and seconded by Commissioner Sheehy to hold Communication No. 09-604 in abeyance and ask for a representative from the Architectural Firm and from Oswood Construction give clarification to the Technical Committee if not Council. The motion passed with a unanimous verbal vote.

SECTION 1 INVITATION FOR BIDS

SEALED BIDS FOR THE DEMOLITION, REMOVAL AND DISPOSAL OF DETERIORATED SIDEWALKS AND FURNISHING, PLACING AND FINISHING OF NEW CONCRETE SIDEWALKS AND CURBS AT VARIOUS LOCATIONS WITHIN BUTTE-SILVER BOW. (Communication No. 09-605) Proof of publication

Rick Larson, Operations Manager/Utility Division opened 3 bids from the following:

Nadeau Concrete, Butte, Montana	\$147,934.00
White Resources, Butte, Montana	\$159,001.55
LeProwse Construction, Butte, Montana	\$149,456.00

It was moved by Commissioner Palmer and Seconded by Commissioner Lee 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 09-585**

- Bernard Harrington, Mayor of Walkerville, addressed Council with the following:
- Requested Council's concurrence to allow Butte-Silver Bow Health Department to enforce, in Walkerville, Butte-Silver Bow Community Decay Ordinance.
- Stated Walkerville has been working with Ed Randall, Butte-Silver Bow Health Department, for sometime on the Decay Ordinance.
- Council of Walkerville reviewed the Ordinance and asked Ed Randall questions that were referred to County Attorney Eileen Joyce.
- County Attorney responded, the City of Walkerville could adopt the Ordinance at any time, but must do so in its current form with no changes.
- All Public Hearings would take place at Butte-Silver Council of Commissioners meeting.
- Public Hearing was held June 10, 2009, at which no one spoke against the Ordinance.
- The Council of Walkerville voted to adopted the Ordinance as written.
- On August 12, 2009, the Council of Walkerville passed Council Resolution 2009-1 adopting the Ordinance.

Commissioner O’Leary asked when the Resolution was first started.

Mayor Harrington replied the Resolution was the Town of Walkerville’s first Resolution of the year.

Commissioner Moodry questioned if Butte-Silver Bow has the ability and the funds to enforce the Decay Ordinance in Walkerville.

Ed Randall, responded he feels the budget will be stretched, but the work can be done and Walkerville should be part of the Ordinance.

Commissioner Moodry asked County Attorney Eileen Joyce if Butte-Silver Bow is fully funded to be able to delegate resources to enforce the Ordinance in Walkerville.

County Attorney Eileen Joyce replied, if the Council of Commissioners decides to include the City of Walkerville in the Community Decay Ordinance, the Ordinance will have to be amended to do so. The Council of Commissioners will have to decide if it is in the best interests of the Community of Butte-Silver Bow to include Walkerville in the Ordinance. The Council will have to decide if more funding is necessary for the Community Decay Department.

Commissioner Palmer stated he was proud to live in and represent Walkerville and the whole Community of District No. 12 which includes Walkerville and feels it is a good move on the part of the County to have Walkerville use Butte-Silver Bow ‘s Community Enrichment Ordinance and wants to go on record as supporting this effort of the Community Enrichment Department.

Commissioner Shaw commented she feels there is no line of demarcation and it is in the best interest of Butte-Silver Bow to include Walkerville and the other Communities of Butte-Silver Bow in the Ordinance.

Commissioner Hall questioned if Walkerville tax money went into the Butte-Silver Bow Tax Fund.

Mayor Harrington responded Walkerville has its own Mill Levy ,they pay school taxes, county taxes and State taxes.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the request and place Communication No. 09-585 on file.

County Attorney Eileen Joyce questioned Mr. Palmer if he wanted to include in his motion the Community Decay Ordinance be amended to include the Town of Walkerville.

Commissioner Palmer responded he would amend his motion to include the amending of the Community Decay Ordinance to include the Town of Walkerville.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to amend the Community Decay Ordinance to include the Town of Walkerville and place Communication No. 09-585 on file. The motion passed with a unanimous verbal vote.

SECTION III

PRESENTATION COMMUNICATION NO. 09-588

Paul Riley, BS/REHS, Environmental Monitoring and Management Manager, informed Council The Air Quality Standard for the State of Montana and the United States EPA will be changed from a PM 10 standard to a PM 2.5. Mr. Riley stated he provided Council with a handout, which explained the public education program the Environmental Health Department will be providing.

- Daily updates with all news media.
- Air Quality Hot Line.
- Staff presentations.
- Web site for State of Montana air quality.
- Clean wood burning handouts.
- Updated rules and regulations of EPA emission standards to wood stove vendors.
- Local Fire Department will control open burning with permits.
- Work with BSB public works department to remove sanding material and use of liquid deicer in the winter months.
- Revision of local ordinance in regard to residential wood burning and emissions.
- Explained the Air Quality Standards for Good, Poor and Alert Status.
 1. Good means 0-20 ug/m3.
 2. Poor means 20.5 – 30.4 ug/m3.
 3. Alert means 30.5 + ug/m3.
- Stated the six air quality categories are on the State DEQ Web site.
 1. Good Air Quality means PM-2.5 ranging from 0 ug/m3 to 13.4 ug/m3.
 2. Moderate Air Quality means PM-2.5 ranging from 13.5 ug/m3 to 20.4 ug/m3.
 3. Unhealthy for sensitive groups Air Quality means PM-2.5 ranging from 20.5 ug/m3 to 35.4 ug/m3.
 4. Unhealthy Air quality means PM-2.5 ranging from 35.5 ug/m3 to 80.4 ug/m3.
 5. Very Unhealthy Air Quality means PM-2.5 ranging from 80.5 ug/m3 to 135.4 ug/m3.
 6. Hazardous Air Quality means PM-2.5 greater than 135.4 ug/m3.
- Referred to graph which compared the air stations at Greeley School and the Front Street station.
- Explained the results and values showed the air quality was consistently higher at the Greeley station.
- Front Street station has been abandoned and all equipment moved to the Greeley station.

Commissioner Foley questioned Mr. Riley as to why the difference in the two areas.

Mr. Riley replied the Front Street station is a low-lying area and there are many wood-burning households in the area.

Commissioner Schultz stated he lives in the Greeley area and sees red dust on his car after washing. He commented he felt this dust is coming from the Pit.

Mr. Riley responded he agreed and felt the dust was road dust from the pit. He further stated the State of Montana DEQ oversees the air quality of the Pit and his department has no jurisdiction over the Pit.

Commissioner Frasz asked Mr. Riley if the grants received in the Health Department are in jeopardy if there is a violation of code.

Mr. Riley replied there is a possibility of that happening if the code was violated on a consistent basis. He commented this is the reason for educating the general public in regards to efficient wood-burning.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to place Communication No. 09-588 on file. The motion passed with a unanimous verbal vote.

SECTION V COMMUNICATIONS TO BE READ AND ACTED UPON

1. COMMUNICATION NO. 09-602

Commissioner O'Leary explained to Council he has never been an opponent of the Wolf introduction program, however feels the goals of Fish Wildlife and Parks was met some time ago. He feels the wolves have been prolific and are causing problems for wild life population as well as the domestic animal population. He explained the Fish Wildlife and Parks is proposing a moderate hunt, 75 permits, which he feels is reasonable. Commission O'Leary stated he is asking for Council's support of this hunt as a reasonable measure for the sake of wildlife, the benefit of hunters and the agricultural community.

It was moved by Commissioner O'Leary and seconded by Commissioner Sheehy to support the 2009 Montana Wolf Hunt and send a fax to Judge Malloy and a letter to the Governor.

Commissioner Schultz stated he is a strong supporter of agriculture as well as hunters, but does not feel it is necessary to send a letter signed by Council to express this. He further stated Council has no standing in this matter.

Commissioner Foley echoed the comments of Commissioner Schultz. He stated he doesn't disagree with the hunt and feels the Fish Wildlife and Parks is doing a good job. He feels Council's influence is very minimal and should not step into the issue. Mr. Foley further stated he feels the Commissioners should send individual letters is they so choose, but not as a governing body.

Commissioner Moodry commented he agreed the hunt is a good thing which he supports personally, but does not feel Council should be involved. He further stated he feels Council efforts should be confined to issues closer to home.

Commissioner Hall stated she agreed with what Commissioner doing, but would rather not vote for the killing of wolves.

Commissioner O'Leary commented he appreciated the views of the Council, but feels Council is here to represent the people. He stated he is not afraid of the repercussions coming down the pike on this issue. He further stated he would be willing to delete from his motion sending a fax to Judge Malloy, but is still in favor of sending a letter of support of support to the Governor.

A substitute motion was made by Commissioner O’Leary and seconded by Commissioner Sheehy to delete from his motion any reference to fax a letter to Judge.

Commissioner Schultz explained he still feels this matter is beyond the scope of Council.

Commissioner Palmer stated he represents a large area of the community, which includes a lot of rural area. This area is affected by this issue and he feels Council should support the entire community they represent.

Commissioner Schultz answered Commissioner Palmer by stating he did not want to give the impression the interest of the entire County was not the Council’s interest. He explained he feels Council is not a decision making body for the hunt.

Commissioner Foley commented a letter sent by Council will not stop environmentalists and he feels it is not the role of Butte-Silver Bow to be involved in this matter.

Commissioner Morgan suggested creating a petition the Commissioners could sign individually if they so chose rather than sending a letter from the Council as a Whole.

Commissioner O’Leary replied he feels Council should “weigh in” on this issue.

Commissioner Hall stated she did not feel twelve people should make the decision for the entire City. She suggested giving the information to the entire community and ask them to individually contact the Governor with their opinion.

Commissioner Schultz thanked Commissioner Hall putting into words what he was trying to express.

Commissioner Foley commented he respected Commissioner O’Leary for his involvement in the community and his stand on this issue, but feels he needs to respect Council’s stand on this matter.

A substitute motion was made by Commissioner Foley and seconded by Commissioner Granger to deny the request to send a letter of support and place on file. The motion passed with a roll call vote of 7 yeas and 5 nays.

2.

COMMUNICATION No. 09-609

Commissioner Palmer explained this communication is on the agenda in order for Council is to appoint a new member to the Planning Board. He has been in contact with Jeanne Caddy who serves on the Big Hole Watershed Committee, lives in Divide and is a good member of that rural community. Commissioner Palmer stated he feels Ms. Caddy will be a good fit for the Planning Board.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to appoint Jeanne Caddy to the Planning Board and place on file. The motion passed with a unanimous verbal vote.

**SECTION VI ORDINANCES AND RESOLUTIONS –
 SUSPENSION OF THE RULES
 RESOLUTION NO. 09-56**

RESOLUTION RELATING TO \$750,000 SEWER SYSTEM REVENUE BONDS (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$390,700 SUBORDINATE LIEN, TAXABLE SERIES 2009A BOND, AND \$359,300 SERIES 2009B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF

It was moved by Commissioner Palmer and seconded by Commissioner Lee to refer Resolution No. 09-56 to Judiciary Committee. The motion passed with a unanimous verbal vote.

**SECTION IV ORDINANCES AND RESOLUTIONS –
 REFERRED TO JUDICIARY**

COUNCIL RESOLUTION NO. 09-54

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE ALBANY STREET MINOR SUBDIVISION II OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

COUNCIL RESOLUTION NO. 09-55

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE FLEECER VIEW SUBDIVISION PHASE III OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**SECTION V ORDINANCES AND RESOLUTIONS-
 FINAL READING**

**1. COUNCIL BILL NO. 09-05
 ORDINANCE NO. 09-05**

AN ORDINANCE AMENDING SECTION 1 OF BUTTE-SILVER BOW ORDINANCE NO. 178 AND CHAPTER 16.04 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “SUBDIVISION REGULATIONS;” AMENDING SECTION 16.04.010, B-SB MC ENTITLED “REGULATIONS ADOPTED BY REFERENCE;” PROVIDING FOR AMENDMENTS TO THE FOLLOWING SECTIONS: SECTION 1: GENERAL; SECTION 2: SUBDIVISION CLASSIFICATION AND PROCEDURES; SECTION 5: FINAL PLAT; SECTION 6: MINOR SUBDIVISION; APPENDIX A: FIRE PROTECTION STANDARDS; AND AMENDING AND RENAMING SECTIONS: SECTION 3: PREAPPLICATION PROCESS; SECTION 4: PRELIMINARY PLATS; SECTION 7: MAJOR SUBDIVISIONS; SECTION 8:

SUBDIVISION EXEMPTIONS; SECTION 9: SUBDIVISION EXEMPTION DETERMINATION; SECTION 10: SPECIAL SUBDIVISIONS; SECTION 11: DESIGN STANDARDS; SECTION 12: REQUIRED IMPROVEMENTS; SECTION 13: GUARANTEE OF PUBLIC IMPROVEMENTS; SECTION 14: DEDICATION OF PUBLIC PARKS AND OPEN SPACE; SECTION 15: UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS; SECTION 16: FLOOD HAZARD EVALUATION; SECTION 17: ENVIRONMENTAL ASSESSMENT; SECTION 18: ADMINISTRATIVE PROVISIONS; AND CREATION OF SECTION 19: ADOPTION; APPENDIX B: ADMINISTRATIVE MATERIALS; PROVIDING FOR THE REPEAL OF ALL PARTS OF ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Bill No. 09-05, Ordinance No. 09-05 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 12 yeas, 0 nays.**

2. **COUNCIL BILL NO. 09-06
ORDINANCE NO. 09-06**

AN ORDINANCE AMENDING SECTION 17.060.030 OF BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) WHICH SECTION ADOPTED THE ZONING MAP OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR A CHANGE TO THE OFFICIAL ZONING DISTRICT MAP BY REZONING AN AREA PRESENTLY ZONE R-1S (SINGLE-FAMILY SUBURBAN RESIDENCE) TO M-2 (HEAVY INDUSTRIAL) LEGALLY DESCRIBED AS ALL OF GOVERNMENT LOT 2, LOT 1 EXCEPT EAST PORTION, EAST PORTION OF LOT 1, PORTIONS OF THE BRILLANT #3088, AND PORTION OF TRACT B, COS 866-B, ALL SITUATED IN THE NE1/4 OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 8 WEST, OF THE P.M.M OF THE CTIY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA, PROVIDING FOR THE REPEAL OF ALL PARTS OF ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Bill No. 09-06, Ordinance No. 09-06 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 12 yeas, 0 nays.**

3. **COUNCIL RESOLUTION NO. 09-53**

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS THE NORTH TWENTY-EIGHT FEET OF LOT 5 IN BLOCK 7 OF THE SMITH AND KESSLER ADDITION, 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. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Bill No. 09-53, Ordinance No. 09-53 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 12 yeas, 0 nays.**

Chief Executive announced the MACO conference will be held in Helena in September and the Montana League of Cities and Towns will be in Great Falls in October. He informed the Commissioners to contact either Shelly or Nancy for further information regarding these conferences.

Commissioner Moody informed Council the Finance and Budget Committee along with Jeff Amerman began work on the preliminary budget and will be continuing through next week. He requested any questions, changes or amendments within the preliminary budget be brought to the Council Secretary by Friday to be included on the next agenda.

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 9:15 pm.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER