

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

For September 1, 2010

The Regular Meeting of the Council of Commissioners was called to order Wednesday, September 1, 2010, 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, 1 presiding and 1 absent, Commissioner Shaw was excused.

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF AUGUST 18, 2010 AND THE SPECIAL MEETING OF AUGUST 25, 2010.

It was moved by Commissioner Lee and seconded by Commissioner Moodry to approve the minutes of the Regular Meeting of August 18, 2010 and the Special Meeting of August 25, 2010. The motion carried with a unanimous verbal vote.

ITEMS NOT ADDRESSED ON THE AGENDA

It was moved by Commissioner Lee, 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 Subsection 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Council Communication No. 10-521 and Communication No. 10-525 to be added to the Agenda of the September 1, 2010 Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Acting Chief Executive Palmer reported the following:

- There are five Wednesday's in September and Council has decided to take September 29, 2010 off.
- The Regular Meeting scheduled for October 6, 2010 will be changed to October 5, 2010 in order to accommodate the Montana League of Cities Convention.

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. PETITIONS
- C. COMMUNICATIONS

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

Commissioner Moodry segregated page 1, Section C, Communication No. 10-499.

Commissioner Morgan segregated page 1, Section C, Communication No. 10-500.

Commissioner Lee segregated page 1, Section B, Petition No. 10-2.

It was then moved by Commissioner Lee, seconded by Commissioner Moodry and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 and Section C, Communication No.'s 3 through 19 with the exception of Communication No.'s 10-499, 10-500, and Petition No. 10-2.

Segregation – Petition No 10-2.

John Harrington, Building Official, on behalf of Fink, Sullivan, Smith and Salo to close and vacate an alley in Block 4 of the Caplis Heights Addition.

John Harrington, Butte-Silver Bow Building Official explained the following:

- Petition No. 10-2 was incorrectly listed as a Petition and should have been a communication.
- A request for an alley closure in the Caplis Heights addition has been received.
- According to the rules of Butte-Silver Bow County 51% of adjoining property owners must sign the petition.
- Butte-Silver Bow owns two-thirds of the property, and Montana Tech owns one-third of the property.
- The Council of Commissioners is being requested to sign the petition in order to move forward with the closure of the alley.

County Attorney Joyce stated Montana State Law also requires 51% of adjoining property owners sign the petition before the closure is allowed to proceed. Ms. Joyce further stated Butte-Silver Bow owns the portion of the land amounting to 51% and Council must decide if the petition should be signed in order for it to be further considered through the regular process.

Commissioner Morgan asked who has signed the request thus far.

John Harrington replied the request has been signed by the Sullivan's, the Fink's, the Smith's and the Salo's. Mr. Harrington also explained the alley is not accessible.

Commissioner O'Leary asked Mr. Harrington if the closure would affect the walking path of the "Rails to Trails".

Mr. Harrington replied the closure would have no affect on the walking path.

Commissioner Foley asked John Harrington if this would go through regular process for Alley Closures once signed by Council.

Mr. Harrington explained this action is needed to begin the process and the closure would go through the normal process once Council signs the request.

It was moved by Commissioner Lee, seconded by Commissioner Moodry and passed with a unanimous verbal vote to concur with the request of Petition No. 10-2 and place on file.

Segregation – Communication No. 10-499

Roger Ebner, Emergency Management Coordinator, requesting Council's approval to accept an Emergency Management Grant Award and authorize the Chief Executive to sign the award agreement.

Commissioner Moodry stated Communication No. 10-499 has a 50% match requirement with a portion coming from the approved department budget, and asked Jeff Amerman if the Communication should be held until the 2010 budget is approved.

Jeff Amerman, Finance and Budget Director stated Mr. Ebner has not indicated a rush regarding this communication and felt a two week delay would be prudent.

It was moved by Commissioner Moodry, seconded by Commissioner Lee and passed with a unanimous verbal vote to refer Communication No. 10-499 be referred to the Committee of the Whole and hold in abeyance.

Segregation – Communication No. 10-500

Patty Boggs, Health Coordinator, North American Indian Alliance, requesting Council's authorization to hold their Annual Pow-Wow and AIDS Fun Run on September 10th and 11th, 2010 at the Civic Center.

Commissioner Morgan asked Josh Peck if a Special Event Form was required in conjunction with the request of Communication No. 10-500.

Josh Peck, Special Events Coordinator, explained a Special Event Form is not necessary for the request because there would be no street closures required and the communication is merely a formality to request permission for the run.

Commissioner Morgan asked Mr. Peck if there would be any liability for Butte-Silver Bow regarding the race.

Josh Peck stated the Special Event Form has not been required for any marathons held in Butte and further stated he would verify if there was insurance for the racers.

It was moved by Commissioner Morgan and seconded by Commissioner Moodry to hold Communication No. 10-500 in abeyance and refer to the Committee of the Whole.

Commissioner O’Leary explained even if the Communication is approved at the next Committee of the Whole, it would not be an approved action until the next regular meeting.

Commissioner Morgan asked County Attorney Joyce to comment regarding approving the communication contingent upon proof of insurance.

County Attorney Joyce stated if the motion to approve the communication is contingent upon proof of sufficient insurance and it is later determined insurance is unnecessary, the approval would go through. Ms. Joyce further explained if it is determined insurance is necessary and proof is provided the approval would be valid. If insurance is required and no proof of insurance is provided, the request for the run would be denied.

Commissioner Schultz stated he felt Butte-Silver Bow could be held liable if a runner was hit while crossing a street.

Captain George Skuletich explained Butte-Silver Bow does not block streets for races such as this, and stated it is the responsibility of the race organizers to supply the manpower necessary at intersections.

Commissioner Schultz stated there is exposure to liability since Butte-Silver Bow will be endorsing the event.

Commissioner Morgan asked Josh Peck why this communication is on the agenda if the race doesn’t require approval by Council.

Josh Peck replied the reason the request is on the agenda every year is from tradition and approval from Council is not necessary to hold the run.

County Attorney Joyce stated Butte-Silver Bow is not endorsing the event since there is no request for street closures and Council approval is not required to hold the event. The event is sponsored by the North American Indian Alliance and local government is not involved.

A substitute motion was made by Commissioner Morgan and seconded by Commissioner Lee to note and place Communication 10-500. The motion passed with a verbal vote of 9 ayes and 1 nay with Commissioner Schultz voting nay.

SECTION II COMMUNICATIONS TO BE READ AND ACTED UPON

Jeffrey Miller, Director of Fire Services, Butte-Silver Bow Fire Department, informing Council of recognition of the admirable performance of five firefighters during the fire at 703 Utah on August 23, 2010.

Jeff Miller, Director of Fire Services explained the purpose of the communication is make the Chief Executive and the Council of Commissioners aware of five letters of accommodation issued to five fire-

fighters by the Fire Department Administration recognizing their actions during the fire at 703 Utah on the morning of August 23, 2010. The firefighters performed under extremely hazardous conditions with fire on two floors extending into the common space in the attic and reports of residents trapped on the third floor of the building. Lives were saved because of the actions of these firefighters and the department wants these actions to be recognized. Mr. Miller explained it was not possible for all the firefighters involved to be present this evening, but wanted Council to be aware of their brave actions.

Commissioner Lee asked Mr. Miller if it would be possible to have the firefighters involved come before Council in two weeks in order for Council to show their appreciation for their heroic actions.

Jeffrey Miller replied he would do his best to bring all five firefighters before Council in two weeks.

Commissioner Schultz asked Mr. Miller for the names of the five firefighters.

Jeffery Miller replied the five firefighters are:

1. Captain Chuck Janhunnen
2. Captain Bill Fisher
3. Firefighter Pat Doble
4. Firefighter Shane Worley
5. Firefighter Jerry Gonzalez

Mr. Miller stated Battalion Chief Rick Ryan played an outstanding role in the event as well.

It was moved by Commissioner Lee, seconded by Commissioner Moodry and approved with a unanimous verbal vote to hold Communication No. 10-511 in Committee of the Whole.

Jeff Amerman, Director Finance and Budget Department, requesting time on the September 1, 2010 Agenda for a presentation on the FY 2010 –2011 Preliminary Budget.

Jeff Amerman, Director Finance and Budget Department explained the purpose of the communication is to introduce four amendments to the budget presented last week and to request adoption of the budget. Mr. Amerman further explained the remainder of the schedule will be a Public Hearing on September 8, 2010 with adoption of the final budget and passing of all budget and levy resolutions on September 15, 2010. This will include any amendments added tonight and during the Public Hearing.

Mr. Amerman stated the first amendment is full implementation of year three of the Fox Lawson Wage Study which will cost approximately 7.3 to 7.4 mills in the tax supported funds.

Commissioner Palmer stated there will be two additional amendments next week regarding the recommendations from the Ad Hoc Swimming Pool Committee.

Commissioner Moodry asked Mr. Amerman if the additional employees for Parks and Recreation is contained in amendment A.

Jeff Amerman replied this amount is not included in the amendments.

Commissioner Moodry commented five bargaining units have not settled and asked if a modest amount could be put into this year's budget in anticipation of a settlement. Commissioner Moodry further commented it would also be possible for funds to be appropriated from reserves once a settlement is reached.

Commissioner Foley asked Mr. Amerman what the actual dollar figure is relating to the 7.3 – 7.4 mills.

Jeff Amerman replied the dollar amount in the tax supported funds is \$375,000.

Commissioner Foley asked Mr. Amerman if he foresaw any problems down the road with the approval of the budget.

Jeff Amerman explained Butte-Silver Bow County decided three years ago to bring all employees to mid-point of market as determined by the Fox Lawson Study. Mr. Amerman further explained he feels this is sustainable in the future with the following comments:

- The effects of the property tax reappraisal took place mainly in year one.
- The price of Copper is \$3.40 per pound.
- Molybdenum is expected to rebound.
- Basin Creek Power will come on line next year.
- URA will be sun setting the following year.
- Butte-Silver Bow will be healthy and sustainable in the future.

It was moved by Commissioner Moodry and seconded by Commissioner Morgan to approve exhibit A of the 2010-2011 preliminary budget and implement year 3 of the Fox Lawson Wage Implementation.

Commissioner Schultz commented he had not had much of a chance to review exhibit A and felt it would be premature to approve it.

Commissioner Moodry replied Fox Lawson is set in stone and must be voted either up or down.

Commissioner Schultz stated he wanted to review the impact of Fox Lawson on each department before voting.

Commissioner Morgan asked Jeff Amerman what impact implementing Fox Lawson would have on the budget.

Jeff Amerman stated implementing year three of Fox Lawson fits in the budget without increasing taxes.

Commissioner Schultz asked Mr. Amerman for a break down for how much goes to elected officials and how much for employees.

Jeff Amerman explained the total cost of implementing Fox Lawson is \$484,000 with the following breakdown:

- Tax Supported Funds - \$163,000
- Special Revenue Funds - \$146,000
- Enterprise Funds - \$30,000
- Internal Service Funds - \$29,000
- Elected Officials - \$115,000

Commissioner Schultz asked if any of these funds could be separated.

Jeff Amerman replied it is possible to fund however Council sees fit, but this action could be viewed as discriminatory.

The motion passed with a roll call vote of 9 yeas and 2 nays, with Commissioners Schultz and Foley voting nay.

Jeff Amerman stated exhibit B comes from fund 4040 which is the Capital Improvement fund. He explained these funds are to be used for roof repairs at the Fire Station and the Library. Mr. Amerman further stated the fund balance after these repairs will be 2.5 million dollars at the end of 2011.

Commissioner O'Leary asked Mr. Amerman if the fund could only be used to repair the roofs or if the fund be used for other issues such as mold, damaged ceiling tiles and carpet.

Jeff Amerman explained fund 4040 is to be used for capital projects and that these issues would qualify as capital projects.

Commissioner O'Leary commented his concern is that \$300,000 is not enough to complete these projects.

It was moved by Commissioner O'Leary and seconded by Commissioner Moodry to amend the exhibit to be increased to \$400,000.

Commissioner Morgan asked Mr. Amerman how he arrived at the \$300,000 figure.

Jeff Amerman explained the amount was provided by Pat Holland, Manager of Butte-Silver Bow Government Buildings.

Commissioner Palmer asked Mr. Amerman if it would be necessary to hire an architect or if the projects could simply be put out for bids.

Jeff Amerman stated he was not certain if an architect was necessary or not.

Commissioner O'Leary stated the tower on the third floor of the Library may have some structural problems. Commissioner O'Leary further stated there are leaks on the third floor as well as the second floor of the Library, ceiling tiles and carpeting are being damaged as well.

Commissioner Morgan asked Mr. Amerman what would happen if \$300,000 was approved and the projects came in at a higher amount.

Jeff Amerman explained a Public Hearing to request the additional funds would be necessary if the projects came in over \$300,000, but the levy would not be affected.

Commissioner Schultz stated he was in favor of voting for the requested amount of \$300,000.

The motion to increase exhibit B to \$400,000 carried with a roll call vote of 6 yeas and 4 nays with Commissioners Schultz, Morgan, Foley and Granger voting nay.

It was moved by Commissioner Moodry and seconded by Commissioner Lee to approve exhibit B as amended to \$400,000. The motion carried with a verbal vote of 8 yeas and 2 nays with Commissioners Morgan and Granger voting nay.

Jeff Amerman explained Exhibit C as being an amendment of \$10,000 in planning for the Big Hole Pump Station Historic Preservation Inventory.

It was moved by Commissioner Moodry and seconded by Commissioner O’Leary to approve Exhibit C. The motion carried with a verbal vote of 8 yeas and 2 nays with Commissioners Morgan and Foley voting nay.

Jeff Amerman stated Exhibit C-2 is a housekeeping item and will be used to purchase heavy duty carts to be used at the Civic Center.

It was moved by Commissioner Moodry and seconded by Commissioner Lee to approve the budget transfer request of Exhibit C-2. The motion carried with a verbal vote of 8 yeas and 2 nays with Commissioners Morgan and Schultz voting nay.

Jeff Amerman requested Council adopt the budget with the four amendments.

It was moved by Commissioner Moodry and seconded by Commissioner Lee to approve the 2010 – 2011 preliminary with amendments A, B, C and C-2. The motion passed with a verbal vote of 8 yeas and 2 nays with Commissioners Schultz and Foley voting any.

It was moved by Commissioner Lee, seconded by Commissioner Moodry and passed with a unanimous verbal vote to hold Communication 10-516 in the Committee of the Whole.

Sandy and Bob Yakawich, BS Café, requesting Council’s authorization of an exemption from the Special Events Ordinance to hold an Uptown Pumpkin Patch on October 22, 23, 24, 25, and October 29th and 30th at the Original Mine Yard.

Josh Peck stated he is excited about this event and feels it will be a great event for Uptown Butte, but explained his concerns regarding the request of Communication No. 10-518:

- The request is for an exemption from the Special Events Ordinance.
- Liability Insurance is necessary inside the Mine Yard.
- Bathroom facilities are necessary.

Commissioner Morgan asked Mr. Peck if the event is under 500 is there a need for liability insurance.

Josh Peck replied the liability insurance is necessary for the mine yards regardless of the number of participants.

Commissioner Lee asked Sandy Yakawich to explain her request and why liability insurance is not being provided for the event.

Sandy Yakawich, BS Café, 26 N Main stated the following:

- People have been asking for a Pumpkin Patch to be held in Butte.
- The money raised from the event will be donated to the Butte Food Bank.
- The event will have less than 500 participants in one day, and it was her understanding the event would be exempt from needing Liability Insurance.
- Mike Thatcher has agreed to underwrite the insurance on his policy if it is necessary to have liability insurance for the event.

Commissioner Moodry thanked Bob and Sandy Yakawich for sponsoring the event. He also thanked Josh Peck for realizing the Special Events Ordinance is in place and the need to uphold the ordinance. Commissioner Moodry further stated exceptions to the ordinance cannot be made.

Commissioner Morgan asked Ms. Yakawich if she had investigated the use of Emma Park for the event instead of the Original Mine Yard.

Ms. Yakawich replied she had not and explained she wanted to keep the event uptown and wanted to see the mine yard used.

Commissioner Lee echoed Commissioner Moodry's sentiments and stated exceptions to the ordinance could not be made.

Commissioner Schultz asked if the communication is only asking to be exempt from providing insurance.

Josh Peck explained the request is for a full exemption from the Special Events Ordinance.

It was moved by Commissioner Lee, seconded by Commissioner Moodry and passed with a unanimous verbal vote to hold Communication No. 10-518 in the Committee of the Whole.

Commissioner O'Leary stated the insurance provisions should be reviewed by the County Attorney.

COMMUNICATION NO. 10-521

Dave Palmer, Chairman Butte-Silver Bow Council of Commissioners, requesting time on the September 15, 2010 agenda to receive reports from recipients of FY 2009 – 2010 Economic Development Mill Levy Funds and for time on the October 6, 2010 agenda to accept sealed proposals for allocation of FY 2010 – 2011 funds.

It was moved by Commissioner Lee, seconded by Commissioner Moodry and passed with a unanimous verbal vote to approve the request of Communication No. 10-521 with the provision that the Council meeting will be held October 5, 2010 and hold in abeyance in the Committee of the Whole.

COUNCIL RESOLUTION NO. [10-64](#)

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS LOT 9 IN BLOCK 6 OF THE WALKERVILLE TOWNSITE (PARCEL NO. 1904860), LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., 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 Lee and seconded by Commissioner Moodry that Council Resolution No. 10-64 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 10 yeas, 0 nays.**

Commissioner Sheehy announced the Rules Committee would meet next week at 5:30 p.m.

Commissioner Lee gave the following update regarding the planning committee for the upcoming Montana League of Cities and Towns Conference October 6, 7 and 8th, 2010:

- Meetings began approximately eleven months ago.
- The Conference will be held at the Civic Center and the War Bonnet.
- 375 to 400 people are expected to attend.
- A golf scramble will be held at the Country Club.
- A five K run will be held with MMIA.
- The President’s Reception will be held at the Finlen Hotel.
- A special gift will be given out to attendee’s
- Invited all Commissioners to attend.

Commissioner Palmer thanked Commissioner Lee for his hard work in putting the convention together.

ADJOURN

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

The meeting adjourned at 9:16 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER