

**MINUTES OF THE REGULAR MEETING OF THE
BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS
FOR FEBRUARY 17, 2010**

The Regular Meeting of the Council of Commissioners was called to order Wednesday, February 17, 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

11 present, 1 absent, Commissioner Moodry was excused.

PRAYER

Commissioner Lee led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF February 3.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the minutes of the Regular Meeting of February 3, 2010. 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 11 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 No. 10-10 to be added to the Agenda of the February 17, 2010 Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

Fran Doran, 900 W Silver, stated she has been working on a project called “ Splash Butte” for the past two and one-half years, and would like a member of her committee to be considered if new members are added to the Parks and Recreation Board. She explained over the past few years her group has gained a great deal of knowledge regarding recreation in the community and are working hard to promote Splash Butte. Ms. Doran further stated Splash Butte is not opposed to a splash pad, but feels we should be working towards a pool, a water park and incorporating splash pads in parks all over the city. She stated she feels splash pads are for toddlers and children over the age of ten will not use them. She does, however, feel they work for neighborhoods and require very little monitoring. Ms. Doran stated her committee would like to meet with the Commissioners and have a discussion regarding the direction the Splash Butte Committee is heading in and also regarding a pool that she feels the Butte community really wants.

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported the following:

- Will not segregate Communication No. 09-699 regarding the taxable valuation for Silver Bow County tonight, and will have Dan Fisher, Jeff Amerman and Chad Tipton address Council next week and answer any questions by Council members.
- The spray paint at Clark's Park Commissioner Hall had questioned is from Thinkone who are surveying and locating lines.
- Jon Sesso, Karen Byrnes and Bob Pavlovich met with the Veterans Home Committee via teleconference to obtain some answers to questions they had. He stated there are still more questions than answers, but the presentation will still be given on March 4, 2010 at the War Bonnet Inn. He asked for as many community members and Council members to be present at the presentation as possible.
- Work has begun on appropriation requests, which are due at the end of this month.

SECTION I

PUBLIC HEARING

TO HEAR PUBLIC COMMENT ON PETITION 09-09 FILED BY COREY AND MELINDA ST. PIERRE TO CLOSE AND VACATE A PORTION OF IDAHO STREET. (Petition 09-09 being held in Public Works Committee) Proof of Publication was noted and placed on file.

Jon Sesso reported the following:

- This is a small parcel of land off of North Montana Street as it veers northwesterly onto Idaho Street.
- The applicants own the house and the garage next to the roadway.
- This is a correction as the land was transferred to Mr. St. Pierre several years ago in error, and is part of the originally platted Idaho Street.
- This is a housekeeping measure to make sure the proper procedures have been done in order for Mr. St. Pierre to have a clear title to the property.

Chief Executive, Babb opened the Public Hearing at 7:42 p.m. and called for proponents.

On the third and final call, there being none, Chief Executive, Babb called for opponents.

On the third and final call, there being none, Chief Executive, Babb closed the Public Hearing at 7:43 p.m.

SECTION II

PRESENTATION COMMUNICATION NO. 10-62

Jon Sesso, Planning Director, Butte-Silver Bow Planning Board, requesting Council's authorization for time on the February 17, 2010 agenda for a briefing on possible projects for the Community Transportation Enhancement Program and to schedule a public hearing on February 24, 2010.

Jon Sesso, Planning Director, Butte-Silver Bow explained the following:

- It is customary to hold a public meeting before Council to solicit comments and ideas from the general public before any potential Community Transportation Enhancement Program dollars are pursued.
- It is a requirement of the grant application for Council to hold the public meeting, take comment and establish priorities for the next set of projects.
- The program began in 1992, and Butte-Silver Bow has been allocated approximately three million dollars over the course of the program.
- The program requires a 13-½ % match of local funds and an 87% Federal share.
- The program is from the Federal Transportation Department and concentrates on issues associated with pedestrians.
- Projects approved and implemented so far include; Blacktrail Creek Walking Trail, landscaping at the airport, park improvements at the Race Track Park, landscaping along Iron street, Historic signage, Silver Bow Creek Greenway, Continental Drive Trail, Montana Street Pedestrian Bridge, BA&P Trail, Civic Center Trail, Welcome sign, and sidewalks in Central Butte.
- Over the course of eighteen years, 2.5 million has been spent, and there is approximately \$600,000 left in the account.
- The program was established to pursue the following categories:
 1. Bicycle and pedestrian facilities.
 2. Landscaping and beautification
 3. Historic Preservation.
 4. Railroad transportation facilities.
 5. Abandoned railroad corridors.
- The program is an entitlement program in which the funds are allocated based on population as related to the State.

Mr. Sesso stated there are currently three projects being considered and is asking Council for their comments as well as any comments from the Commissioners' constituents. He also asked Council for any suggestions they might have. The three projects being considered are:

1. Central Butte Sidewalks
2. Continental Drive Trail
3. Montana Street Bridge Project

Mr. Sesso further stated a public meeting is scheduled for next week to solicit public comment.

Commissioner Foley commented the cost of the bridge over Montana is too expensive. He stated a crosswalk would be more cost effective. Mr. Foley stated the uptown sidewalk project should be a priority as well as the Continental Drive Trail.

Commissioner O'Leary commented he was happy with the sidewalks put in on the north side of the Original Mine Yard. Mr. O'Leary stated he had an idea concerning the Continental Drive Trail and felt it was not safe for pedestrians to walk along motorized roadways. Mr. O'Leary stated the walking trail along Continental Drive should be converted to a bicycle trail and another location for a pedestrian walking trail should be found. Mr. O'Leary further stated it would be a good idea to tie together all of Butte's Parks with bike trails.

Commissioner Shaw stated she is pleased to hear the sidewalk project on Woolman Street will be completed and asked if this will be completed before the Folk Festival and if the project will include the fence along the top section just before Montana Street.

Mr. Sesso replied yes to both of Commissioner Shaw's questions.

Commissioner Hall commented she was happy to hear work is being considered to make the Continental Walking Trail safer. Ms. Hall stated safety and the esthetic value of the Montana Street Bridge would be important factors to be considered.

Jon Sesso explained there is a combination of items concerning the Continental Drive Trail, which could make the trail safer such as lighting and a reduced speed limit. He stated lighting comes with a cost as lights will shine in someone's back door and it is necessary to be sensitive to the residents along the trail to the West. He further stated speed in the most important factor and reducing the speed limit would make the trail safer. Both solutions will have impacts on those who use the roadway and it is important to find the proper balance.

It was moved by Commissioner Palmer, seconded by Commissioner Lee and approved with a unanimous verbal vote to place Communication No. 10-62 on file.

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 Chief Executive Babb called for any friendly amendments or segregations.

Commissioner Morgan segregated page 2, Section B, Communication No. 10-75.

It was then moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 and Section B, Items 1 through 28 exclusive of No. 9.

Segregation – Communication No. 10-75

Theresa R. Hocking, RN/CIC/MSN/MPH, Health Officer, requesting Council's authorization for the Chief Executive to sign six contracts between Butte-Silver Bow Health Department and various entities.

Commissioner Morgan asked Theresa Hocking to explain the last contract, which refers to renting space in Boulder Montana.

Ms. Hocking explained the contract in Boulder is the same as the contract in Deer Lodge, Anaconda and Dillon. The only person Butte-Silver Bow supplies is the practitioner and the public health departments in those communities provide all other services. The Health Department in Boulder is attached to the Boulder Clinic, but the Public Health Office does not have an exam room. This contract is for renting one exam room, one day per month.

Commissioner Morgan asked County Attorney, Eileen Joyce if she saw any potential problem with the contract.

County Attorney Joyce replied other similar contracts in communities where Butte-Silver Bow provides family services have been approved and recommended that this contract be approved.

It was moved by Commissioner Morgan and seconded by Commissioner Frasz to concur with the request of Communication No. 10-75 and place on file.

Commissioner Schultz asked County Attorney Eileen Joyce if there is an assumption of liability for Butte-Silver Bow for space rented on other premises.

County attorney Joyce replied she thought this would be covered in the lease agreement and the liability would stay with the entity that owns the property

Commissioner Schultz stated this does not eliminate the renter from being legally liable for premises liability.

County Attorney Joyce stated there is coverage for any buildings Butte-Silver Bow has a rental agreement with through the MMIA coverage.

Commissioner Schultz asked if the county's liability was covered for premises outside the borders of Butte-Silver Bow County.

County Attorney Joyce replied she would check on the coverage, but felt the county would be covered for any agreement entered into that has been approved by the county and relates to a Butte-Silver Bow employee.

The motion passed with a verbal vote of 10 yeas and 1 nay.

SECTION IV COMMUNICATIONS TO BE READ AND ACTED UPON

- 10-73 Dan Foley, Butte-Silver Bow Commissioner, District No. 9, requesting Council's authorization of an amendment to the Butte-Silver Bow Municipal code under 3.12.012 and 3.12.013 that would require "All bids subject to approval by the Council of Commissioners shall be opened at regularly scheduled meetings of the Butte-Silver Bow Council of Commissioners".

Commissioner Foley stated the following:

- He is asking to return to the policy that been in use regarding bid openings.
- The system is not broke and wants to know what is being fixed.

- There should be a compelling reason for changing the policy.
- Wanted to know where the change in policy came from.
- Learned the idea did not come from the Chief Executive, but was supported by him.
- A few department heads, i.e. the Community Development, Public Works and the County Attorney's Office, directed the policy change.
- These departments felt the change would be a more efficient type of process for the developers as well as the departments and the public.
- Stated he had not received any phone calls from constituents asking for the policy change and asked if any other Council members had received phone calls regarding the policy change.
- Thanked County Attorney Joyce for her assistance on this matter and for finding out how other counties conduct their bid openings.
- Most other cities do not solicit bids during Council meetings, but feels the past policy provides the most open and transparent form for the process.
- Butte-Silver Bow's form of government is unique and the people of Butte-Silver Bow want openness in their government.
- Commissioners of Butte-Silver Bow are part-time Commissioners and have a limited time to make decisions.
- Stated he is not challenging the Chief Executive, but feels strongly about open government.
- Asked for the Commissioners support to require all bid openings be held at a regularly scheduled meeting of Butte-Silver Bow Council of Commissioners.

Chief Executive Babb stated the following:

- The policy change has been discussed for a long time and dates back to when Bob McCarthy was the County Attorney.
- Believes the process at Council is formal and cumbersome and doesn't feel the public understands what happens at the table during the bid opening.
- The new process will take place at a separate location, but will be the same and will be fully disclosed to the public.
- Feels the now policy should be put to the test and if any problems arise, switch back to the old policy.

Commissioner Frasz stated he felt the bid opening process could be improved on and the time for Council's involvement is during budget time. Commissioner Frasz further stated the new policy for bid openings should be tested and given a chance to see if it is more efficient.

Commissioner Morgan commented he was concerned about changing the bid opening policy at first, but after checking with other communities, found out bids were not opened during Council meetings. He also talked with contractors and engineers who stated having bid openings during the day was more convenient.

Commissioner Shaw stated she also wondered why the bid opening process was being changed, and agreed with Commissioner Foley the public doesn't trust government at all levels. Ms. Shaw asked County Attorney Joyce if it would be possible for department heads to submit a communication to Council advising them of any upcoming bid openings. She also asked if the

communication would be held in abeyance until the bid opening occurred and until the final recommendation was sent to Council.

County Attorney Joyce replied the issue of public openness could be addressed with a communication to Council stating when and where the bid opening will take place, and would give some level of comfort that nothing being done secretly. She also stated the communication could be kept open until the award happens, and the law requires the bid award must occur at a Council meeting. The law does not require the bid opening occur at a Council meeting, and if the department has budget authority to go out for bid, they do not need Council approval for a bid opening.

Chief Executive Babb stated it was discussed at Tuesday's staff meeting to have a communication to Council informing them of an upcoming bid opening, and he was open to ways that would improve this process and ensure both Council and the public receives the information. He further stated he had requested Karen Byrnes and Kristen Rosa submit a report to Council after the bids for TIFID were opened. The report submitted by Ms. Rosa was well done and Mr. Babb stated he wants this format to be continued. This information is valuable to Council and department heads as well as the public.

Commissioner Hall stated she understands the bid opening process, but is not sure if the public does. All the bids involve taxpayers' money, and the process for the openings should be convenient for the public. Ms. Hall further stated she felt the change didn't look good and may cause mistrust by the public.

Commissioner Foley explained he brought the communication before Council to make sure all members of Council were aware of the issue. Mr. Foley stated if a problem arose, it would be Council who would be questioned and not the department heads.

It was moved by Commissioner Foley and seconded by Commissioner Sheehy to approve Communication 10-73 and refer to the County Attorney for Ordinance preparation.

Commissioner Schultz stated he had researched other governments in the State and found Butte-Silver Bow's form of government is unique. The issue is open government and Council represents the public. Commissioner Schultz further stated public trust is the most important issue and a shadow of doubt will be cast if the process is changed.

Commissioner Sheehy stated he did not feel there is anything wrong in having the bids opened during the day, but is concerned about the perception of wrong doing by the public. He further stated he is in favor of Commissioner Foley's communication.

Commissioner Palmer commented he sent this idea to the Rules Committee for adoption, and the intention was to streamline and simplify the bid opening process. He stated at one time every communication that came before Council was read out loud and voted on. This process was streamlined and simplified by approving the Consent Agenda. Mr. Palmer further stated opening the bids during the day will improve the process and will be open and above board.

Commissioner O'Leary asked if the policy for the bid openings will make it mandatory to have a representative from both the County Attorney's and the Clerk's and Recorder's Office.

Chief Executive Babb replied this is correct.

The motion failed with a roll call vote of 5 yeas and 6 nays.

10-74 Dan Foley, Butte-Silver Bow Commissioner, District No. 9, requesting Council's authorization of an amendment to the Butte-Silver Bow Municipal Code under 2.36.040 that would expand the Park and Recreation Board from five members to seven members.

Commissioner Foley explained the reason for his communication is to request a member of Council be added to the board and for Council to appoint a citizen member to the board. This will keep the board at an odd number in case of the need for a vote and to keep communication open between the board, the public and Council.

Chief Executive Babb stated he had no issue with adding members to the Park and Recreation Board, but felt in order for communication to improve there is a need for an update of some type to be given to Council.

Commissioner Schultz commented he could not find a meeting date for the Park and Recreation Board and feels there is a need for a Commissioner to be on the board.

Commissioner Shaw stated she also feels there is a need for a Commissioner on the Park and Recreation Board. Ms. Shaw further stated she feels a disconnect exists between the Parks and Recreation Department and what Council is trying to accomplish.

Commissioner Lee stated he also feels having a Commissioner on the Park and Recreation Board is a good idea, but has never felt there was a disconnect with the board.

Commissioner Morgan voiced his concern regarding appointing a Council member and a citizen member as the Commissioners confirm the five members appointed by the Chief Executive. He explained he felt the Commissioners would be in control of the entire board. He questioned if it would be better to have four citizen members with one Commissioner member on the board.

Commissioner Foley replied every board is different and some require Council to confirm the members and others do not have this requirement. He explained his intention is not to "stack the board" and he stated he was open to suggestions.

Commissioner Schultz stated he has never had a problem talking with any member of the Parks Board, but feels there is a need for more communication and having a Commissioner on the board would accomplish this.

Chief Executive Babb stated it would not be a problem to make one of the five board members a Commissioner. One board member does not show up consistently and Chief Executive Babb stated he would visit with this person to see if they would be willing to turn their seat over to a Commissioner if that is what Council decides.

It was moved by Commissioner Foley seconded by Commissioner Sheehy to amend his communication to make one of the members of the Park and Recreation Board a Commissioner appointed by its own membership.

3.

COUNCIL RESOLUTION NO. 10-09

A RESOLUTION AUTHORIZING THE COUNCIL OF COMMISSIONERS TO ACT AS THE GOVERNING BOARD TO GOVERN THE ADMINISTRATION AND OPERATION OF THE MELROSE REFUSE DISPOSAL DISTRICT, A "SPECIAL DISTRICT", AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Resolution No. 10-09 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 11 yeas and 0 nays.**

SECTION VII

**SUSPENSION OF THE RULES
FOR FINAL PASSAGE**

COUNCIL RESOLUTION NO. 10-10

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF CERTAIN PARCELS OF TAX DEEDED REAL PROPERTY OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and seconded by Commissioner Lee that Council Resolution No. 10-10 be placed on final reading and passed having been deemed read at length. The motion carried with a roll call vote of 11 yeas, 0 nays.**

Commissioner Frasz stated the Fire Advisory Council will not meet on February 24, 2010 as listed on the Calendar of other Meetings and events.

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 9:21 p.m.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER