

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

FOR MAY 16, 2007

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **May 16, 2007** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Acting Chief Executive Lee

ROLL CALL

8 present, 1 presiding and 3 absent. Commissioner Shaw, Fay and O'Leary were excused.

PRAYER

Commissioners were led in prayer by Commissioner Granger.

APPROVAL OF THE MINUTES OF THE MAY 2, 2007 REGULAR MEETING

Commissioner Coleman made a "friendly amendment" to the Minutes of the May 2, 2007 Regular Meeting. The roll call stated "12 present and 9 absent" and should read "12 present and 0 absent". **He then moved for approval of the May 2, 2007 Minutes of the Regular Meeting. The motion was seconded by Commissioner Sheehy and carried with a unanimous verbal vote.**

ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried with a roll call vote of 8 yeas, 0 nays and 3 absent that in accordance with the provisions of Section 6 of VI of the Rules and 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. 07-343 to be added to the Agenda of tonight's Regular Meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Acting Chief Executive Lee reported that Chief Executive Babb, along with Marko Lucich, Director of the Chamber of Commerce, Jim Smitham, Director of BLDC and Russ Connole, Economic Development Director and I believe the Governor also are all in Seattle at this time to attend a number of meetings in regards to economic development for communities. We certainly wish them success in their efforts.

The Beautify Butte finale is this Saturday at the landfill. There are a number of prizes that are going to be awarded to people that come to the landfill, They will have opportunity to bring items to the landfill which normally are not brought to the landfill, such as appliances, batteries and other items.

He then turned over the meeting to Bob McCarthy, County Attorney. Mr. McCarthy said the jail lawsuit was concluded yesterday. The Judge in the case granted what is called Motion for Directed Verdict. The significance of this is at the conclusion of our case the judge determined as matter of law that there was insufficient evidence to sustain a verdict so he did not allow the case to go to the Jury. I've never seen a Directed Verdict in a major case here. The decision surprised everyone. Yesterday morning, the second half of the trial was to proceed with a counter claim that had been filed by the defendants in the main part of the case, Integrus Architects from Spokane. The lawsuit was about whether or not the architectural firm had performed adequately in sizing the bond issue which was somewhere between a million and a half and two million dollars short of our funding all of the improvements to the existing jail building which is now the police station and law enforcement center and the construction of the new detention center. That was the part that the judge took from the jury when he granted the motion for Directed Verdict. The second half of the case which was to begin yesterday morning was over a counter claim that Integrus had filed for work that they had performed after the bids were opened and it was disclosed that there was insufficient funds for what they termed their re-design work That was for nearly \$90,000.00. As the case was settled yesterday they also had a claim for costs and a claim for attorney fees. The settlement yesterday was to approve payment of the counter claim in this amount of almost \$90,000.00. That amount has been budgeted although it was not anticipated that we would pay it. That amount will be paid and there will be no payments for any costs or any attorney fees and the lawsuit is over.

SECTION I

PUBLIC HEARING

FOR THE PURPOSE TO SOLICIT COMMENTS REGARDING AN AMENDMENT TO THE FY 06-07 CLERK OF THE COURT BUDGET FOR UNANTICIPATED REVENUE FROM THE STATE REIMBURSEMENTS.

(Communication No. 07-284 being held in Committee of the Whole) Proof of publication was noted and placed on file.

Jeff Amerman, Finance and Budget Director, said the purpose of the public hearing is to amend the 06-07 budget in the Clerk of the Court, specifically line item 390 for other purchased services. This is where all the costs for juries go. This year there has been an extensive amount of trials and so the costs are significantly higher than what were originally budgeted. The original budget was \$10,000. We are asking for an additional \$14,000 to get us through the end of the year. These will all be reimbursed by the state so that is the source of the revenues here. After the expenditures occur, we bill the state and they pay us.

Acting Chief Executive Lee opened the public hearing at 7:50PM and called for any proponents.

Lori Maloney, Clerk of the Court spoke as a proponent. She said she now has 18 trials scheduled between now and the first of July. Fifteen of those are criminal trials.

There being no other proponents, Acting Chief Executive Lee called for opponents. On the third and final call there being none he called the public hearing closed at 7:52PM.

SECTION II INVITATION FOR BIDS

SEALED BIDS FOR THE DEMOLITION, REMOVAL AND DISPOSAL OF THE FORMER IMMACULATE CONCEPTION SCHOOL COMPLEX LOCATED ON THE CORNER OF CALEDONIA AND WESTERN STREETS IN BUTTE, MONTANA. (Communication No. 07-314) Proof of publication was noted and placed on file.

John VanDaveer, Director of the Public Works Department, opened the following bids:

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|--------------------------|--------------|
| 1. Beckman Excavating | \$84,990.00 |
| 2. Smith Contracting | \$63,360.00 |
| 3. Jim Gilman Excavating | \$148,500.00 |

He recommended that the bids be sent to the Public Works Department for review and report back to council.

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by unanimous verbal vote to send the three bids to the Public Works Department for review and report back to Council and place 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 Chairman Lee called for any segregation. There being none it was then moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a unanimous verbal vote to approve the Consent Agenda, Section III-A, Items 1 through 4 and Section III-B, Items 1 through 32.

Now Emergency Communication No. 07-343 – Bob McCarthy, County Attorney, requesting approval of line item budget transfers

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a unanimous verbal vote to concur with the request in Communication No. 07-343 and place on file.

SECTION IV

**ORDINANCES AND RESOLUTIONS –
REFERRED TO JUDICIARY**

- 1. **COUNCIL BILL NO. 07-7
ORDINANCE NO. 07-7**

AN ORDINANCE AMENDING CHAPTER 2.20 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “LAW ENFORCEMENT DEPARTMENT”; AMENDING 2.20.085, BSB MC ENTITLED “FEES OF SHERIFF”; ADDING A BAIL BOND FEE CHARGED BY THE SHERIFF AND PROVIDING FOR THE DEPOSIT OF SUCH AN INCREASE INTO THE LAW ENFORCEMENT PATROL VEHICLE REPLACEMENT AND EQUIPMENT FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

- 2. **COUNCIL RESOLUTION NO. 07-35**

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW CIVIC CENTER FROM THE BUTTE-SILVER BOW CIVIC CENTER

CONCESSIONS TO BE USED FOR LABOR AND PRODUCTS TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

3. COUNCIL RESOLUTION NO. 07-36

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW FIRE DEPARTMENT FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE BOULEVARD VOLUNTEER FIRE DEPARTMENT SOCIAL FUND TO BE UTILIZED FOR EQUIPMENT FOR THE FIRE DEPARTMENT TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION V ORDINANCES AND RESOLUTIONS – FINAL READING

1. COUNCIL RESOLUTION NO. 07-13

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE HIGHLAND RIDGE MINOR SUBDIVISION 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

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a roll call vote of 8 yeas, 0 nays and 3 absent to place Council Resolution No. 07-13 on final reading and passed having been deemed fully read at length.

2. COUNCIL RESOLUTION NO. 07-31

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE SUNSET NORTH MAJOR SUBDIVISION 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.

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a roll call vote of 8 yeas, 0 nays and 3 absent to place Council Resolution No. 07-31 and passed having been deemed fully read at length.

3. COUNCIL RESOLUTION NO. 07-32

A RESOLUTION RESCINDING BUTTE-SILVER BOW COUNCIL RESOLUTION NO. 1762 WHICH AUTHORIZED THE SALE OF PARCEL NO. 1906355 TO ROBERT L. MC LAUGHLIN AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy to place Council Resolution No. 07-32 on final reading and passed having been deemed fully read at length.

County Attorney McCarthy explained this resolution was issued when they discovered that through inadvertence we sold this property without having negated a previous sale. We sold it once. The person didn't comply with the conditions and so we sold it again and discovered we still had a resolution authorizing the sale to somebody else. This simply clears up the record so we could actually sell it to our subsequent purchaser.

A roll call vote on Resolution No. 07-32 was then taken and the motion passed with a roll call vote of 8 yeas, 0 nays and 1 absent.

4. COUNCIL RESOLUTION NO. 07-33

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE SAWMILL MINOR SUBDIVISION 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.

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a roll call vote of 8 yeas, 0 nays and 1 absent to place Council Resolution No. 07-33 on final reading and passed having been deemed fully read at length.

5. COUNCIL RESOLUTION NO. 07-34

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE WHISKEY GULCH MINOR SUBDIVISION 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

It was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a roll call vote of 8 yeas, 0 nays and 1 absent to place Council Resolution No. 07-34 on final reading and passed having been deemed fully read at length.

ADJOURN

There being no further business to come before the Council, it was moved by Commissioner Coleman, seconded by Commissioner Sheehy and carried by a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 8:06 PM.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER

5. COUNCIL RESOLUTION NO. 07-34

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE WHISKEY GULCH MINOR SUBDIVISION 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